

CALIFORNIA COASTAL COMMISSION

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



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original revised findings

F16a

Prepared August 14, 2014 for August 15, 2014 Hearing

To: Commissioners and Interested Persons
From: Dan Carl, Central Coast District Director
Mike Watson, Central Coast District Coastal Planner
Subject: **STAFF REPORT ADDENDUM for F16a**
Application A-3-SNC-98-114 (Monterey Bay Shores Resort)

In the time since the revised findings staff report was distributed, the Applicant (SNG) and its representatives have raised several issues, including by letters dated August 5, 2014 and August 8, 2014 (see letters by Edmond Ghandour and Steve Kaufmann in the Central Coast District Deputy Director's Report, Item 12 on the Commission's August 15, 2014 agenda) that require a response. In addition, staff has received other correspondence (also included in the District Director's report) that merits a response. Staff provides this addendum to respond to various issues raised, and to clarify certain aspects of the staff recommendation.

A. Letters from Ed Ghandour and Steve Kaufmann

1. CDP Approval Date

The Applicant correctly notes that while the Commission held a public hearing and voted on certain amendments to the recommended conditions of approval on Wednesday April 9, 2014, the action to approve the project occurred on April 11, 2014. Thus, the recommended revised findings are modified to reflect the correct action date, including changes to the recommended findings Title Page (page 1), Staff Note (page 2), and the Motion and Resolution (page 5, Section I).

2. Summary of Commission Action - CDP or CDP Amendment Required

The Applicant claims that the report includes "gratuitous and unnecessary" language regarding future permit requirements. Staff notes that the language in question is not new language. Rather, the language in question was already present in the original report approved by the Commission on April 11, 2014, and SNG did not object to it at that time. Nevertheless, staff agrees that this language is not necessary, so it deletes "including that which might ordinarily not require additional permitting" from the Summary of Commission Action on page 3 of the recommended revised findings.

3. Hazards - Engineers Recommendation

The Applicant suggests that the revised findings should include additional language to reflect its engineers' recommendation that a deep foundation involving piles or caissons will be required.

Staff believes that such a finding is inconsistent with the Commission's action in approving Special Condition 1(q) which does not define the precise type of foundation to be used for this project. The condition instead requires the final foundation design to be the least environmentally damaging feasible alternative, in compliance with current California Building Code requirements.

4. Shoreline Erosion - Foundation Systems

The Applicant objects to findings in the hazards section that suggest that a foundation system other than caissons might be found to be the environmentally preferable alternative, in compliance with current California Building Code requirements. The purpose of the condition is to ensure that appropriate alternatives are considered, and the system that best meets that standard be applied. To instead have the findings conclude one way or the other is thus inappropriate. Rather, it is appropriate to include the discussion of potential alternatives, as was the case at the original hearing. If a caisson system is shown to be the environmentally preferable alternative, in compliance with current California Building Code requirements, then the Applicant will be able to use a caisson foundation. The findings do not prevent such an outcome, and they are consistent with the condition that allows for some alternative foundation system that meets the requirements of the condition.

5. Landform Alteration (Dune Manipulation/Screening)

The following underlined language was added in two places in the revised findings: "This will ensure that alterations of existing dune features will result in dunes that look as natural as they can be after the alterations, thereby protecting the visual resources of the site as much as possible consistent with the conditions of approval." The Applicant claims that the underlined language "suggests the possibility of importing other conditions or requirements into Special Condition 1(a) and (b)." Staff disagrees. This language describes the effect of these particular special conditions – that they protect the visual resources of the site to the extent possible while still being consistent with the approved special conditions. This language does not alter any special conditions nor does it address the substance of these conditions.

6. Landform Alteration – Fire Road Access

With regard to foredune grading for the fire access road, the Applicant objects to language in the recommended revised findings stating that the fire road be sited and designed to minimize building visibility to the maximum extent feasible. Special Condition 1(b) includes a requirement that buildings be screened by dune features except that buildings inland of the dune view line may be visible from southbound Highway 1. Special Condition 1(v) requires all development to be sited, designed, colored, screened and camouflaged to minimize its visual incompatibility with the existing dune landscape. The findings to which SNG objects are generally consistent with these requirements, which were not altered by the Commission at its April 11 hearing. Staff modifies the recommended findings, however, to remove the suggestion that the proposed buildings must be modified to be more subsurface than proposed by SNG. Accordingly, staff makes the following change on page 79 of the recommended revised findings (with the new deletion in double strikethrough):

Grading for the fire road along the north of the buildings to allow it to connect and loop around to the seaward side of the buildings will, however, expose the buildings in that area in the southbound Highway One view. Thus it is critical that the fire road be sited

and designed in such a way as to minimize building visibility in Highway One views to the maximum extent feasible, and to ensure that the fire road and any unavoidably visible buildings are sited, designed, and screened in such a way as to blend with the dune aesthetic as much as possible, ~~including through utilizing below grade development as appropriate to meet such standard, and~~ including using dune field manipulation and other means.

7. Snowy Plover/Smith's Blue Butterfly – CDP or CDP Amendment Required

The Applicant alleges that the recommended revised findings modify Special Condition 15 by requiring a future CDP or CDP amendment for modifications of relevant plans to carry out changes in the approved modified Habitat Protection Plan (HPP). Special Condition 15 states that if there are changes to the HPP legally required by another agency or changes to the HPP necessary to incorporate standards that ensure adequate protection of snowy plover, Smith's Blue Butterfly, and Monterey Spineflower, those changes must be approved by an amendment to the permit, unless the Executive Director determines that no amendment is necessary. The possibility that the project might need to be redesigned to reflect changes in the modified HPP was explicitly discussed at the Commission's April 9, 2014 hearing. Staff believes that the revised findings accurately reflect the Commission's action as they are consistent with the discussion at the hearing and with Special Condition 15.

The Applicant also objects to how Special Condition 2(e) is characterized in the recommended revised findings on page 101. On this point, the recommended revised findings lack appropriate specificity with regards to the referenced text on page 101 because it could be read to mix the requirements of Special Conditions 2(e) and 15, which are both discussed there. The findings suggest that Special Condition 2(e) requires consultation with CDFW, USFWS, and the Executive Director prior to doing pre-construction surveys. Staff notes that consultations are only required if the pre-construction surveys identify protected species in the project impact area. Accordingly, staff makes the following change on page 101 of the recommended revised findings as follows (changes shown in double strikethrough and double underline):

And finally, Special Condition 2(e) requires pre-construction surveys for sensitive species, and consultation with the biological monitor and CDFW, the USFWS, and the Executive Director to develop appropriate ~~implementation of mitigation measures if any sensitive species are found consistent with the revised HPP required by Special Condition 15 and any other state or federal agency requirements.~~

8. Public Parking

The recommended revised findings state that the visual impacts of the parking lot must be screened/minimized by "appropriate siting and design, including through limiting visibility and making sure it blends into the dune aesthetic to the maximum extent feasible." The Applicant alleges the recommended findings amount to a rewrite of special condition 5(b)1, which approved the parking lot and related development in its proposed location. With one exception, staff believes the recommended findings are consistent with the Commission's direction that the parking area need not be moved and also with Special Conditions 1(c), 1(i)(1) and 1(v), which require areas like the parking lot to be sited, designed, and screened to minimize visibility. The

Commission approved the parking lot in the location proposed by SNG, so staff is modifying page 124 of the recommended revised findings as follows (changes shown in double strikethrough:

The proposed 46 public parking spaces are located in an important Highway 1 public viewshed, as discussed in the Visual Resources section of this report, but the visual impacts of this development can be screened/minimized by appropriate ~~siting and design~~, including through limiting visibility and making sure it blends into the dune aesthetic to the maximum extent feasible.

9. Use Hours / Access Plans – Changes to the HPP

The Applicant alleges that the recommended revised finding language on page 127 presumes that changes to the HPP will be required by another agency and that these changes will require a CDP or CDP amendment. Staff notes that the preceding sentence makes clear that other agency involvement is necessary “only if legally required.” As such, there is no presumption. Project modification and other agency involvement were explicitly discussed at the Commission’s April 9, 2014 hearing. The revised findings accurately reflect those discussions and are consistent with Special Condition 15.

B. August 8, 2014 Letter from the California Environmental Law Project and Center for Biological Diversity (also on behalf of California Audubon, Peninsula Audubon, and Sierra Club)

The above-referenced August 8, 2014 letter addresses Special Conditions 2(d), 2(e), and 15 of the recommended revised findings. The purpose of the revised findings is to modify the original staff report findings to accurately reflect the Commission’s approval action. The comments are generally geared towards changing the project approval in ways not identified by the Commission, and thus are outside the scope of the revised findings process. Special Condition 15 addresses the concerns raised by the commenters including by requiring the Applicant to modify its Habitat Protection Plan (HPP) to incorporate standards that ensure adequate protection of snowy plover, Smith’s blue butterfly, and Monterey spineflower, and to update all related plans for the project that are necessary to comply with the approved modified HPP. All plan revisions and HPP modifications are subject to review and approval by the Executive Director. Special Condition 15 also requires the Applicant to obtain any legally required approvals from the California Department of Fish and Game and the U.S. Fish and Wildlife Service. As noted above, HPP modifications and other agency involvement were explicitly discussed at the Commission’s April 9, 2014 hearing. The revised findings accurately reflect those discussions and are consistent with Special Condition 15.

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FAX: (831) 427-4877
WEB: WWW.COASTAL.CA.GOV



F16a

CDP approved:	04/09/2014
Staff report prepared by:	M. Watson
Staff report approved by:	D. Carl
Staff report date:	07/24/2014
Hearing date:	08/15/2014

REVISED FINDINGS

Application Number: A-3-SNC-98-114 (Monterey Bay Shores Resort)

Applicant: Security National Guaranty, Inc. (SNG)

Project Location: Undeveloped dune area seaward of Highway One between Fort Ord Dunes State Park and the Monterey Peninsula Regional Park District's Eolian Dunes Preserve in the City of Sand City, Monterey County.

Project Description: Division of a roughly 40-acre dune parcel into three parcels and construction of an approximately 1.34 million square-foot mixed-use residential and visitor-serving development, including 184 hotel rooms, 184 condominium units (92 residential and 92 visitor-serving residential units (akin to condo-hotel units)), restaurant, conference center, hotel and residential courtyards, spa, garden, 3 swimming pools, and surface and underground parking for 947 vehicles. The project also includes some 680,000 cubic yards of grading (385,000 cubic yards of which would be disposed), including building up and extending dune areas, 15.6 acres of dune habitat restoration, public access trails and amenities, utility extensions and infrastructure, and related development (i.e., emergency road access road, tunnel access to resort, signs, fences, lights, trails, etc.).

Commission Action: Approved with Conditions (April 9, 2014)

Staff Recommendation: Adopt Revised Findings

STAFF NOTE

On April 9, 2014, the Coastal Commission approved a coastal development permit (CDP) by a vote of 10-2 for the proposed project. Because the Commission-approved project differed from the staff's recommendation, this report contains revisions reflecting the Commission's action. The conditions and findings have been modified throughout from the previous version of the report, including changes to the sections related to visual and scenic resource protections, public access and recreation, and natural resources. Changes to the staff recommended conditions and findings are shown in ~~striketrough~~ (for deletions) and underline (for additions). Commissioners who are eligible to vote on the revised findings are those from the prevailing side who were present at the April 9, 2014 hearing (i.e., Commissioners Bochco, Cox, Groom, Howell, Kinsey, McClure, Mitchell, Turnbull-Sanders, Vargas, and Zimmer)

SUMMARY OF ~~STAFF RECOMMENDATION~~ COMMISSION ACTION

The ~~Applicant proposes to develop~~ Commission approved development of a 368-unit mixed-use residential and visitor-serving facility in the dunes seaward of Highway One and between Fort Ord Dunes State Park and the Monterey Peninsula Regional Park District's (MPRPD) Eolian Dunes Preserve in the City of Sand City in Monterey County. The project includes a land division of a roughly 40-acre parcel into three parcels, construction of 184 hotel rooms, 92 visitor-serving condominium units (akin to condo-hotel units), 92 residential condominium units (i.e., straight residential), hotel and residential courtyards, a restaurant, conference center, spa, garden, 3 swimming pools, and surface and underground parking for 947 vehicles. In total, the project would result in some 1.34 million square feet of resort and residential facilities spread out over the site in a main development footprint of roughly 12 acres. The project also includes a roadway extension from inland public roads, three entrance driveways, public access trails and amenities, dune restoration, utility extensions and infrastructure, and related development (i.e., emergency access road, tunnel access to resort, signs, fences, lights, trails, etc.). In order to build the project, the Applicant would grade a large majority of the dune site, approximately 700,000 cubic yards of grading in all, and would dispose of nearly 400,000 cubic yards of sand.

The ~~proposed project would put~~ involves a major development on a site that is subject to numerous coastal hazards. Because of some of those coastal hazards, it is difficult to develop at this site with certainty regarding stability over time, including due to the relatively unconsolidated dune nature of the site. To address such uncertainties and allow development, special conditions require development to be set back for 75 years of erosion using a moderate erosion estimate for the site. Recognizing the inherent uncertainty, and the LCP requirement that development be appropriately sited to minimize risks from hazards, the project ~~would be~~ is conditioned to be removed over time as portions of it become threatened or exposed (and shoreline protective devices would be prohibited in the future). In short, development would be removed over time to allow natural shoreline processes to continue as they would otherwise, as much as possible, thus avoiding the loss of beach and other attendant impacts associated with shoreline structures and development at the shoreline interface more broadly.

In terms of public views, a development of this size, scale, and scope ~~proposed by the Applicant~~ will be visible from several vantage-points. ~~Recommended~~ Special conditions recognize this, and minimize view impacts by protecting the most significant public views, namely from Highway One, as much as feasible. This is accomplished through requiring that the development ~~mostly~~ partially be hidden behind existing and modified dunes from the view of passing motorists. This also serves to help lessen view impacts from other public vantages, including from the public recreational trail that is located between the site and the highway, and from Fort Ord Dunes State park upcoast. Even with these mitigations, the project will be prominent in views from the Highway, from the recreational trail, from Fort Ord Dunes State Park, from across Monterey Bay and from along the beach. These impacts are tempered through conditions, where the overall objective is to minimize the visibility of the project in Highway One views to the maximum extent feasible, and to otherwise site, design, color, screen, and camouflage the project (including making maximum use of integrated dune screening and natural landscaping and screening elements to the maximum extent feasible) to minimize visual incompatibility with the existing dune landscape and public views. Other visual protection conditions are intended to help minimize these and other view impacts as well, such as through limiting glare and lighting as much as is feasible. Overall, the most significant views from along Highway One will be protected to the degree feasible for a development of this size, scale, and scope.

For coastal dunes, it is important to note that the Court of Appeals held that the Sand City LCP does not allow for the designation of ESHA west of Highway One. Thus, the ESHA protection provisions of the LCP do not apply, but the provisions requiring protection of dune habitat and natural resources more generally do apply, and the development needs to be consistent with those requirements. Here, the main way that is accomplished is through conditions that ensure that the proposed dune restoration program covers the portions of the site needed to appropriately address sensitive species requirements (e.g., for snowy plover, Smith's blue butterfly, Monterey spineflower, etc.), including through requiring authorization for the project from California Department of Fish and Wildlife (CDFW) and U.S. Fish and Wildlife Service (USFWS)) ~~input and authorization for the project as conditioned, if legally required, and via~~ modifications to the Applicant's Habitat Protection Plan regarding potential impacts to western snowy plover, Smith's blue butterfly and Monterey spineflower. In this way, even though the dunes will be significantly manipulated, they will only be manipulated so far as the identified sensitive resources can be protected during ground disturbance activities and the end result is intended to be functioning natural dune habitat outside of the main development envelope area.

Finally, in terms of other coastal resource impacts, conditions are included to: modify the access areas and amenities in such a way as to provide better public access utility; provide for an ambulatory public access easement area and a dune conservation easement area to ensure that the remainder of the site that is not within the main development envelope is retained for access and dune preservation; circumscribe the use of the condominium hotel component of the project to make these units function as much like a hotel product as possible given their residential nature; require a payment of almost \$1.8 million to provide for lower cost overnight facilities along the coast; require a series of transportation demand management best practices to limit traffic and related impacts; ensure that all traffic and circulation mitigation measures associated with the project's CEQA requirements are implemented; require CDPs or CDP amendments for any future development at this site, including that which might ordinarily not require additional permitting; require a deed restriction incorporating the terms and conditions of this CDP be

recorded against the use and enjoyment of the property; compel the Applicant to pay for the defense of any legal challenge the Commission may face in approving this CDP; and require other changes to address coastal resource impacts (e.g., construction BMPs, water quality BMPs, etc.).

Thus, ~~staff is recommending approval of the Commission approved~~ a modified project that allows the Applicant a significant mixed-use development in roughly the form proposed, but one that is modified in the ways described above so as to limit coastal resource impacts as much as feasible for a project of this size, scale, and scope. ~~The motion to act on this recommendation is found on page 6 below.~~

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Exhibit 24 – SWRCB Final Cease & Desist Order 2009-0060
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I. MOTION AND RESOLUTION

Staff recommends a YES vote. Passage of this motion will result in adoption of revised findings as set forth in this report. The motion requires a majority vote of the members of the prevailing side present at the revised findings hearing, with at least three of the prevailing members voting. Only those Commissioners on the prevailing side of the Commission’s action are eligible to vote on the revised findings. The Commissioners eligible to vote are Commissioner’s Bochco, Cox, Groom, Howell, Kinsey, McClure, Mitchell, Turnbull-Sanders, Vargas, and Zimmer.

Motion: *I move that the Commission adopt the revised findings in support of the Commission’s action on April 9, 2014 approving Coastal Development Permit Number A-3-SNC-98-114.*

Resolution: *The Commission hereby adopts the revised findings set forth below for Coastal Development Permit Number A-3-SNC-98-114 on the grounds that the findings support the Commission’s decision made on April 9, 2014, and accurately reflect the reasons for it.*

Staff recommends that the Commission, after public hearing, **approve** a coastal development permit for the proposed development. To implement this recommendation, staff recommends a **YES** vote on the following motion. Passage of this motion will result in approval of the CDP as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

Motion: *I move that the Commission approve Coastal Development Permit Number A-3-SNC-98-114 pursuant to the staff recommendation, and I recommend a yes vote.*

Resolution to Approve CDP: *The Commission hereby approves Coastal Development Permit Number A-3-SNC-98-114 and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with City of Sand City Local Coastal Program policies and Coastal Act access and recreation policies. Approval of*

~~the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.~~

II. STANDARD CONDITIONS

This permit is granted subject to the following standard conditions:

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the Permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Expiration.** If development has not commenced, the permit will expire ~~two~~ five years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. **Interpretation.** Any questions of intent of interpretation of any condition will be resolved by the Executive Director or the Commission.
4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the Permittee to bind all future owners and possessors of the subject property to the terms and conditions.

III. SPECIAL CONDITIONS

This permit is granted subject to the following special conditions:

1. **Revised Plans.** PRIOR TO ISSUANCE OF THE CDP, the Permittee shall submit two full size sets of Revised Plans with graphic scale to the Executive Director for review and approval. The Revised Plans shall be prepared by a licensed professional or professionals (i.e., architect, surveyor, geotechnical engineer, etc.), and shall be based on current professionally surveyed and certified topographic elevations for the entire site. The Revised Plans shall be substantially in conformance with the VTM, site plans, and cross-sections sheets TM-1 – TM-6 submitted to the Coastal Commission (dated October 21, 2013 as revised on October 28, 2013, December 20, 2013, and January 17, 2014 and dated received in the Coastal Commission's Central Coast District Office January 3, 2013 and January 30, 2014) as shown on Exhibit 4 – 6; the MBS Access, Signage and Lighting Plan (dated

October 2013 and dated received in the Central Coast District Office October 28, 2013 – Exhibit 23); and the Habitat Protection Plan (dated October 2013 and dated received in the Central Coast District Office October 28, 2013 – Exhibit 20), but shall be modified to achieve compliance with this condition, including that the Revised Plans shall show the following required changes and clarifications to the project:

- (a) **Dune Manipulation for Screening Purposes.** The project includes re-contouring of the protected dune feature, an extension of the protected dune feature to the north, and dune field manipulation north of the extended dune for screening purposes. Dune field manipulation north and northwest of the extended dune view line (see Exhibit 8) shall be limited to a finished elevation generally equal to existing grade except that undulations in height may go up to a maximum of 3 feet greater than existing grade to allow for replicated dune landscaping. All such dune manipulation shall be designed to replicate natural dune landforms and integrate into the surrounding dunes to the maximum extent feasible.
- (b) **Highway One Dune Screening for Buildings and Related Development.** All building and related development shall be sited and designed so that views of it from either southbound or northbound Highway One (from a height of 5 feet above the roadway) are blocked by existing and/or modified dune features (including through extending dune areas over the top of such development, as applicable) in such a way that such views are of dunes and not of buildings and related development, except that buildings and related development are allowed to be visible in the southbound Highway One view if located inland of the dune view line (see Exhibit 8). The Revised Plans shall be submitted with documentation demonstrating compliance with this requirement.
- (c) **Highway One Dune Screening/View Mitigation for Other Development.** All other development located inland of buildings and related development (e.g., road access, tunnel access, parking areas, pathways, etc.) shall be sited, designed, and screened in such a way as to minimize its visibility in Highway One views to the maximum extent feasible, including through utilizing below grade development as appropriate to meet such standard. All development that is visible (including any retaining walls – see also below) shall be sited and designed to blend into the dune aesthetic to the maximum extent feasible (including through colorization, natural materials, non-linear and curvilinear contouring, surface roughness, etc.).
- (d) **Road Development Minimized.** All road development (providing access to the project through the tunnels as well as ~~secondary~~ access to the project to the north) shall be minimized consistent with the VTM. ~~to the maximum extent feasible. Access to the resort shall be limited to the main tunnel access if feasible (thus eliminating the two additional accessways to the north), with the secondary emergency access being the fire road access, provided it is limited to the maximum extent feasible in scale and scope, and sited and designed to blend into the dune aesthetic (including through colorization, natural materials, non-linear and curvilinear contouring, surface roughness, etc.) to the maximum extent feasible.~~ No other road development is authorized by this CDP, thus any proposed future road development shall require either an amendment to this CDP or approval of a separate CDP.

~~(e) **Parking Lot Shifted South.** The public parking lot (see also below) shall be shifted to the south (i.e., closer to the main tunnel access) so that its upcoast edge roughly aligns with the extension of the protected dune feature to the north.~~

(e) **Height Limits.** Development height shall be limited as necessary to meet the requirements of this condition, and in no case shall development exceed 45 feet above existing grade for hotel and condominium-hotel components (hotel and condominium-hotel components include facilities commonly included in hotels and condominium-hotels such as restaurants, meeting rooms, shops for hotel guests, and spa facilities), and 36 feet above existing grade for all other development. The Revised Plans shall be submitted with documentation demonstrating compliance with this requirement, including through site plans and architectural elevations prepared and certified by a licensed architect that identify all hotel and condominium-hotel components versus other components of the project, and evidence demonstrating why components fall into either category.

(f) **Visitor-Serving Priority Maintained.** If a fewer number of units can be accommodated in order to meet the terms and conditions of this CDP, then the mix of units shall be maintained at the same ratio as proposed (i.e., 184 standard hotel units, 92 visitor-serving condominium hotel units, and 92 residential condominium units), or at a ratio that results in a higher percentage of standard hotel units than proposed and the same or a higher percentage of visitor-serving condominium hotel units than proposed. In no case shall the ratio of residential condominium units to other units increase as compared to that proposed.

(g) **Foredune Grading.** Foredune grading shall be allowed as low as 32 feet above NGVD only in areas directly seaward of buildings and for the fire access road, and only where such grading is designed to: (1) replicate natural dune landforms and integrate into the surrounding dunes to the maximum extent feasible; and (2) meet the other requirements of this condition. Other foredune grading, other than for approved dune restoration and/or public access purposes, shall be prohibited.

(h) **Resort Pathways.** The portion of the resort pathways (not including public access pathways) that extend southwest and on top of the protected dune feature shall be eliminated from the project, leaving two resort pathways extending toward the ocean and one along the fire access road. These remaining resort pathways shall be sited and designed to blend into the dune aesthetic (including through colorization, natural materials, non-linear and curvilinear contouring, surface roughness, etc.) as seen in public views to the maximum extent feasible. Any portion of the resort pathways that extend to the beach from the buildings and related development shall be sited and designed to minimize landform alteration and to conform to the bluffs to the maximum extent feasible, to eliminate or minimize (if elimination is not possible) railings, and to minimize impacts on public views.

(i) **Public Access Amenities.** The Revised Plans shall clearly identify all public access amenities to be provided as part of the approved development, including but not limited to:

- 1. Parking Lot.** A public parking lot providing 46 full-size parking spaces. The parking lot shall be surfaced (including curbs and gutters) with permeable pavement or permeable concrete colored to blend with the surrounding dune environment as much as possible. A minimum of ten bicycle parking stands; three recycling bins; three trash bins; one water fountain; three ADA parking spaces; and one doggie mitt station, shall be provided in the parking lot in locations that maximize their public utility and minimize their impact on public views. The parking lot shall be ADA compatible.
- 2. Pathway System.** A dedicated public pathway system that extends from the inland public recreational trail adjacent to and along the public parking lot and then to an overlook atop the bluff and then to the beach via a stairway/path. The portion of the pathway system that extends from the public recreational trail to and along the public parking lot (to the upcoast edge of the parking lot) shall be a similar width as the inland public recreational trail, but shall be surfaced with permeable pavement or permeable concrete colored to blend with the surrounding dune environment as much as possible from at least the point where it enters onto the subject property, and shall include separation from the road and parking utilizing concrete curbs, bumpers, or other barriers to insure safety of pedestrians and bike riders ~~be separated from the road and parking lot edge by at least 5 feet, or as far as is feasible.~~ The portion of the pathway system that extends from the upcoast edge of the parking lot to the overlook shall be a wooden boardwalk approximately 6 feet in width. All portions of the pathway system, other than the beach stairway/path, shall be ADA compatible, and shall be curvilinear (and not linear) in appearance to the maximum extent feasible.
- 3. Overlook.** A public overlook near the blufftop edge of approximately 300 square feet. The overlook shall be a wooden boardwalk surface, and shall be sited and designed to eliminate the need for railings to the maximum extent feasible (e.g., setback a sufficient distance from the blufftop edge so as to not necessitate such features). At least: three benches; one interpretive panel/installation; one recycling bin; one trash bin; and one doggie mitt station, shall be provided at the overlook in locations that maximize their public utility and minimize their impact on public views. The overlook shall be ADA compatible.
- 4. Beach Stairway/Pathway.** A public beach stairway/pathway providing access down the bluff and to the beach from the overlook location. The stairway/pathway shall be sited and designed to minimize landform alteration and to conform to the bluffs to the maximum extent feasible, to eliminate or minimize (if elimination is not possible) railings; to avoid to the maximum extent feasible construction and post-construction impacts to sensitive species, including seacliff buckwheat; and to maximize public utility and minimize impacts on public views. The public beach stairway/pathway may extend onto Fort Ord Dunes State Park if such extension is allowed by State Parks, and if such extension better meets the intent of this condition, including in terms maximizing public access utility and protecting dune landforms and public views.
- 5. Signs.** Public access identification, interpretation, and direction signs. At a minimum,

public access identification and direction signs shall be placed where the pathway system connects with the inland public recreational trail, at the base of each Fremont Street off-ramp, at the entrance to the approved project (where it meets the public street), at or near the point where the tunnel entrance diverges from the parking lot entrance, at the entrance to the parking lot, at the beginning of the boardwalk section of the pathway system (at the parking lot), at the base of the beach stairway/pathway, and at other locations where identification and direction is necessary and appropriate. The Permittee shall also make reasonable efforts to work with Caltrans to install a Coastal Commission Public Access ("Feet") sign on both southbound and northbound Highway One, provided that the Permittee shall not be responsible for any decision made by Caltrans regarding such signage or for the installation or maintenance of such signs. The Permittee shall pay for such signage, including installation costs, upon Caltrans consent for such signs. At least one interpretive panel/installation that provides interpretation of the site, dunes, erosion and coastal hazards, the Monterey Bay, or other related and/or similar subjects shall be provided at the overlook. Signs shall include the California Coastal Trail and California Coastal Commission emblems and recognition of the Coastal Commission's role in providing public access at this location. All signs shall be sited and designed to maximize their utility and minimize their impacts on public views.

The public access amenities shall utilize a similar design theme that is subordinate to and reflective of the surrounding dune environment to the maximum extent feasible. Natural and curvilinear forms (e.g., curving pathway segments, rounded overlook areas, etc.) shall be used to the maximum extent feasible. The public access amenities portion of the Revised Plans shall be in conformance with all parameters of the Public Access Management Plan (see Special Condition 5). Minor adjustments to the above requirements may be allowed by the Executive Director if such adjustments enhance public access and public view protection and do not legally require an amendment to this permit.

- (j) **Setbacks.** All development, other than (1) public access pathways, overlooks, and stairways, (2) resort pathways, (3) foredune grading down to 32 feet above NGVD (subject to the requirements of this condition), and (4) dune restoration (subject to the approved dune restoration plan – see below), shall initially be located inland of the 75 year at 2.6 feet per year setback line as shown on Exhibit 9 of the Adopted Findings (using the inland edge of the line). As circumstances dictate, development shall be removed and the affected area restored (subject to Special Condition 9 requirements), with the same allowable seaward located exceptions.
- (k) **Landscaping.** All non-native and/or invasive plants on the site, including iceplant, shall be removed and the site kept free of such plants for as long as any portion of the approved development exists at this site. All landscaping, other than decorative landscaping within interior courtyards and similar areas (such as the port cochere area), shall consist of only non-invasive dune species native to the Sand City and southern Monterey Bay dune systems (see also Special Condition 3 below). All landscaped areas on the project site shall be maintained in a litter-free, weed-free, and healthy growing condition. No plant species listed as problematic and/or invasive by the California Native

Plant Society, the California Invasive Plant Council, or as may be so identified from time to time by the State of California, and no plant species listed as a ‘noxious weed’ by the State of California or the U.S. Federal Government shall be planted or allowed to naturalize or persist on the site. The Revised Plans shall include certification from a licensed landscape professional experienced with native dune species indicating that all plant species to be used are non-invasive dune species native to the Sand City and southern Monterey Bay dune systems.

- (l) **Lighting Minimized.** Exterior lighting shall be wildlife-friendly, shall use lamps that minimize the blue end of the spectrum, and shall be limited to the minimum lighting necessary for pedestrian and vehicular safety purposes. All lighting (exterior and interior) shall be sited and designed so that it limits the amount of light or glare visible from public viewing areas (including but not limited to views from Highway One, Fort Ord Dunes State Park, the recreational trail, the public access amenities, the beach, and areas across Monterey Bay (e.g., Cannery Row) to the maximum extent feasible (including through uses of lowest luminosity possible, directing lighting downward, directing lighting away from windows, etc.). Lighting upcoast of the main tunnel entrance (i.e., along the pathways, parking lot, and fire road access), shall be prohibited other than the minimum lighting necessary for pedestrian and vehicular safety purposes. Otherwise allowable lighting from the public road to the main tunnel entrance shall be limited to pathway and roadway bollards 48 inches or less in height, and any such allowable lighting extending north and seaward from the main tunnel entrance shall be bollard or footing lighting that is as low to the ground as feasible. Overhead light standards and decorative pole lights shall be prohibited. The Revised Plans shall be submitted with documentation demonstrating compliance with these lighting requirements.
- (m) **Windows and Other Surfaces.** 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.
- (n) **Utilities.** The Revised Plans shall clearly identify all utilities (e.g., sewer, water, stormwater, gas, electrical, telephone, data, etc.), the way in which they are connected to inland distribution networks, and “will-serve” or equivalent documentation demonstrating that each applicable utility provider can and will serve the approved development. All utilities shall be located underground, including that the Revised Plans shall provide for removal or undergrounding of all existing overhead utilities on the site and in areas between the site and Highway One.
- (o) **Stormwater and Drainage.** The Revised Plans shall clearly identify all stormwater and drainage infrastructure and related water quality measures (e.g., pervious pavements, etc.), with preference given to natural BMPs (e.g., bioswales, vegetated filter strips, etc.). Such infrastructure and water quality measures shall provide that all project area stormwater and drainage is: filtered and treated to remove expected pollutants prior to discharge, and directed to inland stormwater and drainage facilities (and is not allowed to be directed to the beach or the Pacific Ocean) if needed to handle the volume of

stormwater and drainage expected, including during extreme storm events (see also below). Infrastructure and water quality measures shall retain runoff from the project onsite to the maximum extent feasible, including through the use of pervious areas, percolation pits and engineered storm drain systems. Infrastructure and water quality measures shall be sized and designed to accommodate runoff from the site produced from each and every storm event up to and including the 85th percentile 24-hour runoff event. In extreme storm situations (>85th percentile 24-hour runoff event storm) where such runoff cannot be adequately accommodated on-site through the project's stormwater and drainage infrastructure, any excess runoff shall be conveyed inland off-site in a non-erosive manner. Stormwater and drainage apparatus shall be coordinated in conjunction with the Dune Restoration Plans (see Special Condition 3) to determine the best suited locations to avoid any adverse impacts on dune restoration activities.

(p) Signage. The Revised Plans shall clearly identify all signs associated with the project and the site, and all signs shall be sited and designed: (1) to minimize their visibility in public views; (2) to seamlessly integrate into the dune landform to the maximum extent feasible (including using natural materials, earth tone colors and graphics, avoiding lighted signs as much as feasible, directing any allowed sign lighting downward, etc.); and (3) to be subordinate to the dune setting.

(q) Foundations and Retaining Walls. Foundation and retaining wall plans shall be prepared in consultation with a licensed civil and structural engineer (or engineers as appropriate), and such structures shall be sited and designed consistent with standard engineering and construction practices in such a way as to best meet the objectives and performance standards of these conditions (including to minimize visual incompatibility with the existing dune landscape and public views, and to ~~allow for easy facilitate~~ removal as required). The building foundation or foundations shall be the least environmentally damaging feasible alternative, in compliance with current California Building Code requirements. ~~mat foundations or severable foundations that are limited in size, areal extent, and depth to the maximum degree feasible for the buildings and other structures being supported, unless the Permittee submits evidence substantiating to the Executive Director's satisfaction that mat and/or severable foundations cannot be designed in compliance with current California Building Code requirements. If the Executive Director determines that mat and/or severable foundations cannot be engineered in compliance with current California Building Code requirements, alternative foundations or combination of foundation systems are allowed, including a system of mat and deep piers, provided they are consistent with the conditions of this permit.~~ Foundation systems shall not be designed or engineered to address ocean and related forces (e.g., wave attack, ocean flooding, erosion, etc.) except to the extent that such design may facilitate their removal, as these forces are to be addressed through appropriate development setbacks and removal over time (see below and see Special Conditions 8 and 9). ~~All foundation elements shall be sited and designed to be removable, including in terms of limiting extent of excavation or disturbance beyond the immediate development footprint, and including providing for modularity to the extent that it may facilitate removal of the foundation and supported development in response to an eroding shoreline (see also Special Condition 9).~~

- (r) **Subsurface Elements.** The Revised Plans shall clearly identify all subsurface elements associated with the project (e.g., parking, back of house, etc.).
- (s) **Geotechnical Signoff.** The Revised Plans shall be submitted with evidence that they have been reviewed and approved by a licensed geotechnical and/or structural engineer (or engineers, as appropriate) as meeting applicable regulations for site stability (i.e., seismic and liquefaction) and the requirements of these conditions, including in terms of foundations and retaining walls (see above). The geotechnical signoff shall be supported and accompanied by a site specific geotechnical analysis of the site that evaluates and addresses applicable hazards, including the potential for liquefaction and/or dynamic settlement. The geotechnical analysis shall include, at a minimum: analysis of the subsurface soil characteristics, the structural loading of the building elements, and recommendations on spacing and depth of all foundation elements.
- (t) **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 obtain a separate CDP or CDP amendment, or a determination from the Executive Director that no CDP or CDP amendment is required, authorizing all aspects of such sand movement and disposal/reuse within the coastal zone and/or affecting coastal zone resources.
- (u) **Fencing.** All existing site fencing shall be removed and replaced with the minimum amount of fencing necessary to meet project objectives, and where such replacement fencing is minimized, sited and designed to be compatible with the dune landscape (e.g., rough-hewn wooden split rail, low rope and pole barriers for restoration areas as needed, etc.) and to minimize public view impacts to the maximum extent feasible.
- (v) **Views.** All development shall be sited, designed, colored, screened, and camouflaged (including making maximum use of integrated dune screening and natural landscaping and screening elements to the maximum extent feasible) to minimize visual incompatibility with the existing dune landscape and public views.

The Permittee shall undertake development in accordance with the approved Revised Plans.

2. **Construction Plan.** **PRIOR TO ISSUANCE OF THE CDP**, the Permittee shall submit two copies of a Construction Plan to the Executive Director for review and approval. The Construction Plan shall, at a minimum, include the following:
 - (a) **Construction Areas.** The Construction Plan shall identify the specific location of all construction areas, all staging areas, and all construction access corridors in site plan view. All such areas within which construction activities and/or staging are to take place shall be minimized to the maximum extent feasible in order to have the least impact on dunes, public access, and public views, as well as to maintain best management practices (BMPs) to protect dune resources on-site and in the surrounding area, including by using inland areas for staging and storing construction equipment and materials, as feasible. Construction (including but not limited to construction activities, and materials and/or

equipment storage) is prohibited outside of the defined construction, staging, and storage areas.

- (b) Construction Methods and Timing.** The plan shall specify the construction methods to be used, including all methods to be used to keep the construction areas separated from dune resources and public recreational use areas (including using unobtrusive fencing (or equivalent measures) to delineate construction areas). All work, other than interior work where any lighting is minimized in the same way as identified in Special Condition 1, shall take place during daylight hours and lighting of the work area is prohibited.
- (c) Property Owner Consent.** The plan shall be submitted with evidence indicating that the owners of any properties on which construction activities are to take place, including properties to be crossed in accessing the site, consent to such use of their properties.
- (d) Biological Monitor.** The plan shall provide that a qualified biological monitor, selected by the Permittee and approved by the Executive Director, shall be present during all construction activities to ensure that dune areas and sensitive species are protected. The biological monitor shall prepare weekly reports, and shall submit such reports monthly to the Executive Director. If the reports indicate that development is not in conformance with the terms and conditions of this CDP, including with respect to protecting dune and sensitive species habitats, then the Permittee shall modify construction activities to ensure conformance, including as directed by the Executive Director.
- (e) Pre-construction Surveys.** The plan shall include pre-construction surveys for sensitive species, including western snowy plover and Smith's blue butterfly. If any such species is identified in the project impact area, the Permittee shall consult with the biological monitor, the California Department of Fish and Wildlife, the U.S. Fish and Wildlife Service and the Executive Director, and shall implement mitigation measures as directed by the Executive Director, including measures consistent with the approved Habitat Protection Plan and/or any other state or federal agency requirements. The Permittee shall apply for an amendment to this CDP to implement such mitigation measures if the Executive Director determines that an amendment is legally required.
- (f) BMPs.** The plan shall clearly identify all BMPs to be implemented during construction, including their location and their specific use parameters. The plan shall also contain provisions for specifically identifying and protecting all natural drainage swales (with sand bag barriers, filter fabric fences, straw bale filters, etc.) to prevent construction-related runoff and sediment from entering into these natural drainage areas which ultimately deposit runoff into the Pacific Ocean or to Fort Ord Dunes State Park. Silt fences, straw wattles, or equivalent measures shall be installed at the perimeter of all construction areas. At a minimum, the plan shall also include provisions for stockpiling and covering of graded materials, temporary stormwater detention facilities, revegetation as necessary, and restricting grading and earthmoving during the rainy weather. The plan shall indicate that: (a) dry cleanup methods are preferred whenever possible and that if water cleanup is necessary, all runoff shall be collected to settle out sediments prior to discharge from the site; all de-watering operations shall include filtration mechanisms; (b) off-site equipment wash areas are preferred whenever possible; if equipment must be

washed on-site, the use of soaps, solvents, degreasers, or steam cleaning equipment shall be prohibited; in any event, such wash water shall be collected and appropriately disposed off-site, and shall not be allowed to enter any natural drainage areas; (c) concrete rinsates shall be collected and appropriately disposed off-site, and they shall not be allowed to enter any natural drainage areas; (d) good construction housekeeping shall be required (e.g., clean up all leaks, drips, and other spills immediately; refuel vehicles and heavy equipment off-site and/or in one designated location; keep materials covered and out of the rain (including covering exposed piles of soil and wastes); all wastes shall be disposed of properly, trash receptacles shall be placed on site for that purpose, and open trash receptacles shall be covered during wet weather); and (e) all erosion and sediment controls shall be in place prior to the commencement of grading and/or construction as well as at the end of each day. Particular care shall be exercised to prevent foreign materials from making their way to the beach or Pacific Ocean or Fort Ord Dunes State Park. Contractors shall insure that work crews are carefully briefed on the importance of observing the appropriate precautions and reporting any accidental spills. Construction contracts shall contain appropriate penalty provisions to address non-compliance with the approved Construction Plan, including provisions sufficient to offset the cost of retrieving or cleaning up improperly contained foreign materials.

- (g) **Construction Site Documents.** The plan shall provide that a copy of the signed CDP be maintained in a conspicuous location at the construction job site at all times, and that such copy is available for public review on request. The signed CDP and approved Construction Plan shall also be retained in the project file at the Commission's Central Coast District office and be available for review by the public on request. All persons involved with the construction shall be briefed on the content and meaning of the CDP and the approved Construction Plan, and the public review requirements applicable to them, prior to commencement of construction.
- (h) **Construction Coordinator.** The plan shall provide that a construction coordinator be designated to be contacted during construction should questions arise regarding the construction (in case of both regular inquiries and emergencies), and that their contact information (i.e., address, phone numbers, etc.) including, at a minimum, a telephone number that will be made available 24 hours a day for the duration of construction, is conspicuously posted at the entrance to the job site where such contact information is readily visible from public viewing areas while still protecting public views as much as possible, along with indication that the construction coordinator should be contacted in the case of questions regarding the construction (in case of both regular inquiries and emergencies). The construction coordinator shall record the name, phone number, and nature of all complaints received regarding the construction, and shall investigate complaints and take remedial action, if necessary, within 24 hours of receipt of the complaint or inquiry.
- (i) **Notification.** The Permittee shall notify planning staff of the Coastal Commission's Central Coast District Office at least 3 working days in advance of commencement of construction, and immediately upon completion of construction.

Minor adjustments to the above construction requirements may be allowed by the Executive

Director in the approved Construction Plan if such adjustments: (1) are deemed reasonable and necessary; (2) do not adversely impact coastal resources; and (3) do not cause delays in construction. The Permittee shall undertake construction in accordance with the approved Construction Plan.

- 3. Dune Restoration Plans.** PRIOR TO ISSUANCE OF THE CDP, the Permittee shall submit two full size sets of Dune Restoration Plans to the Executive Director for review and approval. The Dune Restoration Plans shall be substantially in conformance with the plans submitted to the Coastal Commission (titled Habitat Protection Plan, October 2013 and dated received in the Coastal Commission's Offices on October 28, 2013); shall provide for dune habitat restoration and stabilization for all dune areas of the site outside of development areas (as well as for all dune extension and screening areas); and shall be modified to achieve compliance with this condition, including providing for, at a minimum, the following components:

- (a) **Objective.** Restoration shall be premised on enhancing dune habitat so that it is self-functioning, high quality habitat in perpetuity.
- (b) **Non-Native and Invasive Removal.** All non-native and/or invasive species shall be removed, and continued removal shall occur on an as-needed basis to ensure complete removal over time.
- (c) **Native Dune Plants.** All vegetation planted outside interior courtyards and similar areas (such as the port cochere area) shall consist of non-invasive dune plants native to the Sand City and southern Monterey Bay dune systems, including explicitly providing for a program to enhance Monterey spineflower and dune buckwheat populations.
- (d) **Sensitive Species.** Special provisions shall be applied to explicitly enhance sensitive species habitats, including at a minimum snowy plover and Smith's blue butterfly habitats, as part of dune restoration activities, and such provisions shall be consistent with applicable state and federal agency requirements for these species.
- (e) **Plant Maintenance.** All required plantings shall be maintained in good growing conditions for as long as any portion of the approved development exists at this site, and whenever necessary shall be replaced with new plant materials to ensure continued compliance with the approved plans.
- (f) **Performance Standards.** Success criteria for biodiversity and vegetative cover for each vegetation type (as characterized by a specific plant palette and planting plan and any modifications based on slope and aspect) rather than on management areas shall be provided.
- (g) **Dune Contours.** Final contours of the restoration shall mimic and seamlessly integrate with natural dune contours present and/or generally historically present in this area.
- (h) **Implementation.** A map shall be provided showing the type, size, and location of all plant materials to be planted, the irrigation system (if any), topography and finish contours, and all other landscape features. If fencing is required to protect restored

habitat, then such fencing shall be limited to temporary rope and pole barriers or equivalent, and shall be sited and designed to limit visual impacts as much as possible. Detailed guidance on plant propagation, planting methods, and irrigation shall be included, as shall a schedule for all restoration activities.

- (i) **Monitoring and Maintenance.** A plan for monitoring and maintenance of habitat areas for the duration of any development approved pursuant to this CDP shall be included, and shall at a minimum include:
 - 1. **Schedule.** A schedule out to 5 years.
 - 2. **Field Activities.** A description of field activities, including monitoring studies.
 - 3. **Monitoring.** Monitoring study design, including: goals and objectives of the study; field sampling design; study sites, including experimental/revegetation sites and reference sites; field methods, including specific field sampling techniques to be employed (photo monitoring of experimental/re-vegetation sites and reference sites shall be included); data analysis methods; presentation of results; assessment of progress toward meeting success criteria; recommendations; monitoring study report content and schedule; and an analysis of high resolution aerial photographs at least every five years.
 - 4. **Adaptation.** Adaptive management procedures, including provisions to allow for modifications designed to better restore, enhance, manage, and protect dune restoration areas.
- (j) **Reporting and Contingency.** Five years from occupancy of the approved development, and every ten years thereafter, the Permittee shall submit, for the review and approval of the Executive Director, a restoration monitoring report prepared by a qualified specialist that certifies the restoration is in conformance with the approved Dune Restoration Plans, along with photographic documentation of plant species and plant coverage beginning the first year after initiation of implementation of the plan, annually for the first five years, and then every ten years after that. If the restoration monitoring report or biologist's inspections indicate the restoration is not in conformance with or has failed to meet the performance standards specified in the approved Dune Restoration Plans approved pursuant to this CDP, the Permittee shall submit a revised or supplemental restoration plan for the review and approval of the Executive Director. The revised or supplemental restoration plan shall be prepared by a qualified specialist, and shall specify measures to remediate those portions of the original approved plans that have failed or are not in conformance with the original approved plans. These measures, and any subsequent measures necessary to carry out the approved plans, shall be carried out in coordination with the direction of the Executive Director until the approved plans are established to the Executive Director's satisfaction.
- (k) **Dune Restoration Implemented Prior to Occupancy.** Initial dune restoration activities, including at a minimum non-native and invasive removal and initial site planting, shall be implemented prior to occupancy of the approved development.

- (l) Dune Restoration Maintained.** All dune restoration activities pursuant to the approved Dune Restoration Plans shall be the Permittee's responsibility for as long as any portion of the approved development exists at this site.

The Permittee shall undertake development in accordance with the approved Dune Restoration Plans, which shall be initiated within 90 days of Executive Director approval of such plans, or within such additional time as the Executive Director allows if there are extenuating circumstances.

- 4. Dune Area Conservation Easement.** PRIOR TO ISSUANCE OF THE CDP, the Permittee shall execute and record a document, in a form and content acceptable to the Executive Director, granting or irrevocably offering to dedicate to a political subdivision, public agency or private association approved by the Executive Director a dune area conservation easement (Dune Easement). The Dune Easement shall apply to the Dune Restoration Area described in Special Condition 3 above and generally depicted in Exhibit 11a. If development is removed in response to coastal hazards (see Special Condition 9), including to allow for the public access easement to move inland (see Special Conditions 5 and 6), the affected area shall be restored in compliance with the dune restoration parameters of the approved Dune Restoration Plans (see Special Condition 3 above) and the restored dune area incorporated into the Dune Area Conservation Easement. Development, as defined in Public Resources Code Section 30106, shall be prohibited in this area other than: (a) dune restoration, monitoring, and maintenance activities conducted in accordance with the approved Dune Restoration Plans (Special Condition 3); (b) public access development and activities conducted in accordance with the approved Public Access Management Plan (Special Condition 5); (c) resort pathways (subject to the requirements of these conditions); and (d) foredune grading down to 32 feet above NGVD (subject to the requirements of these conditions). The Dune Easement shall be recorded free of all prior liens and encumbrances that the Executive Director determines may affect the interest being conveyed. The Dune Easement shall include a legal description and graphic depiction of the legal parcels subject to the CDP and a metes and bounds legal description and graphic depiction of the Dune Easement area prepared by a licensed surveyor based on an on-site inspection, drawn to scale, and approved by the Executive Director.
- 5. Public Access Management Plan.** PRIOR TO ISSUANCE OF THE CDP, the Permittee shall submit two copies of a public access management plan (Public Access Plan) to the Executive Director for review and approval. The Public Access Plan shall be substantially in conformance with the plans submitted to the Coastal Commission (titled Access, Signage, and Lighting Plan dated October 2013 and dated received in the Coastal Commission's Central Coast District Office October 28, 2013) but shall be modified to achieve compliance with this condition. The Public Access Plan shall clearly describe the manner in which general public access associated with the approved project is to be provided and managed, with the objective of maximizing public access and recreational use of all public access areas associated with the approved project (including but not limited to the public parking lot, pathway system, overlook, beach stairway/pathway, and the beach) and all related areas and public access amenities (e.g., bench seating, bike parking, signs, etc.) as described in this special condition. The Public Access Plan shall be consistent with the approved Revised Plans (see Special Condition 1), and shall at a minimum include the following:

- (a) **Clear Depiction of Public Access Areas and Amenities.** All public access areas and amenities, including all of the areas and amenities described above and in this condition, shall be clearly identified as such on the Public Access Plan (including with hatching and closed polygons so that it is clear what areas are available for public access use).
- (b) **Public Access Areas.** All parameters for use of the public access areas of the site, including but not limited to the following areas, shall be clearly identified. All access areas and amenities shall be sited and designed to integrate with the surrounding dune environment to the maximum extent feasible; shall be made up of natural materials (e.g., wood) when feasible; shall be natural and curvilinear forms (e.g., curving pathway segments, rounded overlook areas, etc.) when feasible and shall utilize the same design theme throughout. In addition:
1. **Parking Lot.** The parking lot shall be publicly available for general public vehicle parking, bicycle parking, pedestrian access, and bicycle access. At least: ten bicycle parking stands; three recycling bins; three trash bins; one water fountain; three ADA parking spaces; and one doggie mitt station, shall be provided in the public parking area in locations that maximize their public utility and minimize their impact on public views. The parking lot shall be ADA compatible. Use of the parking lot for other than general public access purposes shall be prohibited during public access use hours (see below). The Public Access Plan shall include a description of the manner in which the Permittee will ensure that other site users and/or employees will not park in the parking lot during these times.
 2. **Pathway System.** The pathway system shall be publicly available for general public pedestrian (and bicycle from the inland public recreational trail to the upcoast edge of the parking lot) access. The portion of the pathway system that extends from the public recreational trail to and along the public parking lot (to the upcoast edge of the parking lot) shall be a separate, dedicated pedestrian and bicycle path similar in width as the inland public recreational trail; shall include separation from the road and parking utilizing concrete curbs, bumpers, or other barriers to insure safety of pedestrians and bike riders ~~a minimum of five feet of horizontal separation from the road and parking lot edge, or as far as is feasible~~; and shall be surfaced with permeable pavement or permeable concrete colored to blend with the surrounding dune environment to the maximum extent feasible from at least the point where it enters onto the subject property. The portion of the pathway system that extends from the upcoast edge of the parking lot to the overlook shall be a wooden pedestrian boardwalk approximately 6 feet in width. All portions of the pathway system shall be ADA compatible, and shall be curvilinear (and not linear) in appearance to the maximum extent feasible.
 3. **Overlook.** The overlook shall be publicly available for general public pedestrian access. The overlook shall be approximately 300 square feet, shall be made up of a wooden boardwalk surface, and shall be sited and designed to eliminate the need for railings to the maximum extent feasible (e.g., setback a sufficient distance from the blufftop edge so as to not necessitate such features). At least: three benches; one interpretive panel/installation; one recycling bin; one trash bin; and one doggie mitt

station, shall be provided at the overlook in locations that maximize their public utility and minimize their impact on public views. The overlook shall be ADA compatible.

- 4. Beach Stairway/Pathway.** The beach stairway/pathway shall be publicly available for general public pedestrian access. The stairway/pathway shall be sited and designed to minimize landform alteration and to conform to the bluffs to the maximum extent feasible, to eliminate or minimize (if elimination is not possible) railings; to avoid to the maximum extent feasible construction and post-construction impacts to sensitive species, including seacliff buckwheat; and to maximize public utility and minimize impacts on public views. The public beach stairway/pathway may extend onto Fort Ord Dunes State Park if such extension is allowed by State Parks, and if such extension better meets the intent of this condition, including in terms maximizing public access utility and protecting dune landforms and public views.
 - 5. Beach.** The beach and offshore area (i.e., extending from the seawardmost property line to the toe of the dune bluff, including as the toe of the dune bluff migrates inland) shall be publicly available for general public pedestrian and beach access, and all activities typically associated with same (e.g., walking, swimming, surfing, sunbathing, picnicking, stargazing, etc.). Resort development, other than minimal landings, if necessary, associated with approved resort pathways (see Special Condition 1), shall be prohibited in the beach area.
- (c) Public Access Signs/Materials.** The plan shall identify all signs and any other project elements that will be used to facilitate, manage, and provide public access to the approved project, including identification of all public education/interpretation features that will be provided on the site (i.e., educational displays, interpretive signage, etc.). Sign details showing the location, materials, design, and text of all public access signs shall be provided. The signs shall be sited and designed so as to provide clear information without impacting public views and site character. At a minimum, public access identification and direction signs shall be placed where the pathway system connects with the inland public recreational trail, at the base of each Fremont Street off ramp, at the entrance to the approved project (where it meets the public street), at or near the point where the tunnel entrance diverges from the parking lot entrance, at the entrance to the parking lot, at the beginning of the boardwalk section of the pathway system (at the parking lot), at the base of the beach stairway/path, and at other locations where identification and direction is necessary and appropriate. The Permittee shall also make reasonable efforts to work with Caltrans to install a Coastal Commission Public Access ("Feet") sign on both southbound and northbound Highway One provided that the Permittee shall not be responsible for any decision made by Caltrans regarding such signage or for the installation or maintenance of such signs. The Permittee shall pay for such signage, including installation costs, upon Caltrans consent for such signs. At least one interpretive panel/installation that provides interpretation of the site, dunes, erosion and coastal hazards, the Monterey Bay, or other related and/or similar subjects shall be provided at the overlook. Signs shall include the California Coastal Trail and California Coastal Commission emblems and recognition of the Coastal Commission's role in

providing public access at this location. All signs shall be sited and designed to maximize their utility and minimize their impacts on public views.

- (d) No Disruption of Public Access.** No development or use of the property governed by this CDP may disrupt and/or degrade public access or recreational use of any public access areas and amenities associated with the approved project such as by setting aside areas for private uses or installing barriers to public access (e.g., furniture, planters, temporary structures, private use signs, fences, barriers, ropes, etc.), except that temporary low rope and pole barriers or similar measures may be used if approved by the Executive Director to protect sensitive species. Except with respect to temporary low rope and pole barriers or similar measures set forth above, any development, as defined in Public Resources Code Section 30106, that diminishes public access and recreational use of the access areas and amenities required by this CDP shall be prohibited.
- (e) Reconstruction/Relocation Required.** In the event that the approved public access amenities (including but not limited to the pathway system, overlook, and beach stairway/pathway) are threatened to a degree that they are in danger of being damaged or destroyed, or are damaged or destroyed, or become located ten feet or more seaward of the toe of the bluff, such amenities shall be reconstructed with due diligence and speed, and with minimum disruption to continued public use (and relocated inland as necessary to provide long term stability). Prior to reconstruction, the Permittee shall submit two copies of a Reconstruction Plan to the Executive Director for review and approval. If the Executive Director determines that an amendment to this CDP or a separate CDP is legally required, the Permittee shall immediately submit and complete the required application. The Reconstruction Plan shall clearly describe the manner in which such amenities are to be reconstructed (and relocated as applicable), and shall be implemented immediately upon Executive Director approval or approval of the CDP or CDP amendment application, unless such CDP or CDP amendment identifies a different timeframe for implementation.
- (f) Public Access Use Hours.** All public access areas and amenities shall be available to the general public from 5 a.m. until midnight, except that the beach shall be available to the public 24 hours a day, and all public access areas shall be free of charge.
- (g) Public Access Required Prior to Occupancy.** All public access areas and amenities of the approved project shall be constructed and available for public use prior to occupancy of the approved development.
- (h) Offsite Public Parking.** The plan shall provide for the construction and development of free public beach access parking spaces as close as possible to the project site, and in no case further than one-half mile from the project site, unless the Permittee submits evidence substantiating to the Executive Director's satisfaction that only construction and development of a lesser number of such spaces is feasible. If the Executive Director determines that only a lesser number of such spaces is feasible, then the plan shall provide for payment to the City of Sand City's in-lieu parking fee fund at the current rate for the number of such spaces that are deemed by the Executive Director to be infeasible, and such payment shall be specifically earmarked and reserved and only allowed to be

used for providing and maintaining public beach access parking. Any such funds shall only be used for said purpose subject to Executive Director review and approval. For any such parking spaces that are deemed feasible, the plan shall clearly document the manner in which the 35 (or fewer if fewer are deemed feasible) required parking spaces are to be constructed, developed, and maintained, including providing for other property owner consent, for as long as some portion of the approved development remains. The Permittee shall undertake such offsite parking space development in accordance with the approved plan, and such spaces shall be available prior to occupancy of the approved development.

- (i) **Public Access Areas and Amenities Maintained.** All public access areas and amenities of the approved project shall be maintained in their approved state in perpetuity, unless they are threatened by coastal hazards. If threatened by coastal hazards, such public access areas and amenities shall be relocated and/or modified to ensure the approved public access is maintained. If the Executive Director determines that an amendment to this CDP or a separate CDP is legally required to relocate or modify public access areas or amenities, the Permittee shall immediately submit and complete the required application.

The Public Access Plan shall be approved and attached as an exhibit to the easement required by Special Condition 6 prior to recordation of the easement. The Permittee shall undertake development in accordance with the approved Public Access Plan, which together with the public access easement required by Special Condition 6, shall govern all general public access to the site pursuant to this CDP.

6. **Public Access Easement.** PRIOR TO ISSUANCE OF THE CDP, the Permittee shall execute and record a document, in a form and content acceptable to the Executive Director, granting or irrevocably offering to dedicate to a political subdivision, public agency or private association approved by the Executive Director either fee title or an easement for public access (Public Access Dedication). The Public Access Dedication shall apply to all public access areas described in Special Condition 5 and generally depicted in Exhibit 11b and shall restrict these areas in the same ways identified in Special Condition 5. The Public Access Dedication area shall be ambulatory, including that (a) the beach portion of the easement area shall move inland if the toe of the dune bluff moves inland; and (b) the pathway system, overlook, and beach stairway/pathways portion of the easement area shall move inland if the toe of the dune bluff moves inland and/or if, as a result of coastal hazards, relocation and/or reconstruction of access amenities in these areas is necessary to retain their utility. The Public Access Dedication shall be recorded free of all prior liens and encumbrances that the Executive Director determines may affect the interest being conveyed. The Public Access Dedication shall include a legal description and graphic depiction of the legal parcels subject to the CDP and a metes and bounds legal description and graphic depiction of the Public Access Dedication area prepared by a licensed surveyor based on an on-site inspection, drawn to scale, and approved by the Executive Director.
7. **Public Rights.** By acceptance of this CDP, the Permittee acknowledges and agrees, on behalf of itself and all successors and assigns, that the Coastal Commission's approval of this CDP shall not constitute a waiver of any public rights, if any, that may exist on the property, and

that the Permittee shall not use this CDP as evidence of a waiver of any public rights that may exist on the property.

8. Coastal Hazards Risk. By acceptance of this CDP, the Permittee acknowledges and agrees, on behalf of itself and all successors and assigns:

- (a) **Coastal Hazards.** That 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, tsunamis, tidal scour, coastal flooding, liquefaction and the interaction of same;
- (b) **Assume Risks.** To assume the risks to the Permittee and the property that is the subject of this CDP of injury and damage from such coastal hazards in connection with this permitted development;
- (c) **Waive Liability.** To unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such coastal hazards;
- (d) **Indemnification.** To indemnify and hold harmless the Coastal Commission, its officers, agents, and employees with respect to the Commission's 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
- (e) **Property Owners Responsible.** That any adverse effects to property caused by the permitted development shall be fully the responsibility of the property owners.

9. Coastal Hazards Response. By acceptance of this CDP, the Permittee acknowledges and agrees, on behalf of itself and all successors and assigns, that:

- (a) **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 measures beyond ordinary repair and/or maintenance (including sealing and waterproofing repair and/or maintenance that does not involve extraordinary measures) to protect it from coastal hazards. The intent is also to ensure that development is removed and the affected area restored under certain circumstances (including as further described and required in this condition), including that development, except public access amenities and resort pathways, is required to be removed, consistent with the Removal and Restoration Plan required in subsection (g) of this special condition;
- (b) **Shoreline Protective Structures Prohibited.** Future shoreline protective structures (including but not limited to seawalls, revetments, groins, etc.) shall be prohibited for the life of the development;
- (c) **Section 30235 Waiver.** Any rights to construct such shoreline protective structures, including rights that may exist under Public Resources Code Section 30235 and LCP Sections 4.3.1 and 4.3.5, are waived;

- (d) Public Access Amenities.** In the event that the approved public access amenities (including but not limited to the pathway system, overlook, and stairway/pathway) are threatened with damage or destruction from coastal hazards, or are a hazard, or are damaged or destroyed by coastal hazards, or become located ten feet or more seaward of the toe of the bluff, such amenities shall be reconstructed with due diligence and speed, and with minimum disruption to continued public use (and relocated inland as necessary to provide long term stability). Prior to reconstruction, the Permittee shall submit two copies of a Reconstruction Plan to the Executive Director for review and approval. If the Executive Director determines that an amendment to this CDP or a separate CDP is legally required, the Permittee shall immediately submit and complete the required application. The Reconstruction Plan shall clearly describe the manner in which such amenities are to be reconstructed (and relocated as applicable), and shall be implemented immediately upon Executive Director approval or approval of the CDP or CDP amendment application, unless such CDP or CDP amendment identifies a different timeframe for implementation;
- (e) Resort Pathways.** In the event that the two approved resort pathways providing resort access towards the ocean (see Special Condition 1) are threatened with damage or destruction from coastal hazards, or are damaged or destroyed by coastal hazards, or become located ten feet or more seaward of the toe of the bluff, such amenities shall be reconstructed (and relocated inland as necessary to provide long term stability) subject to the same parameters of their approved initial construction. Prior to reconstruction, the Permittee shall submit two copies of a Reconstruction Plan to the Executive Director for review and approval. If the Executive Director determines that an amendment to this CDP or a separate CDP is legally required, the Permittee shall immediately submit and complete the required application. The Reconstruction Plan shall clearly describe the manner in which such amenities are to be reconstructed (and relocated as applicable);
- (f) Blufftop Edge Monitoring.** PRIOR TO ISSUANCE OF THE CDP, the Permittee shall submit two copies of a blufftop edge monitoring plan (Blufftop Plan) to the Executive Director for review and approval. The Blufftop Plan shall be prepared by a certified engineering geologist and/or geotechnical engineer familiar and experienced in shoreline processes, and it shall provide for a schedule and methodology for monitoring and reporting on the location of the blufftop edge in relation to the approved development (including but not limited to buildings, roads, utility infrastructure, subsurface elements, etc.). The Blufftop Plan shall include, at a minimum, the following:
- 1. Reference Points.** Provisions for establishing, prior to construction, numbered monuments or surveyed points of measurement (reference points) to be located along the seaward edge of the approved development at a minimum of 25-foot increments, as well as at the most downcoast and most upcoast portions of the seaward edge of the approved development.
 - 2. Measurement Episodes.** Provisions for a licensed surveyor, in coordination with a certified engineering geologist, civil engineer and/or geotechnical engineer familiar and experienced in shoreline processes, to conduct measurements, in feet, of the linear distance (measured perpendicular from the shoreline) between the established

reference points and the blufftop edge: ~~(a) on April 1st or thereabouts every year; and~~ ~~(b)~~ immediately after any event that results in the blufftop edge eroding inland 10 feet or more, or any combination of events that total 10 feet since the last measurement episode, or no less than every five years. The Plan shall provide for a methodology consistent with standard surveying and blufftop delineation methods for determining the location of the blufftop edge and documenting distances on land. Each measurement episode shall also be documented through identification of: (a) the date of the measurement; (b) the person making the measurement and their qualifications; (c) tidal and weather details for the times and dates of the measurement episode, including each date/time associated with any photos (see below); and (d) photos (in color, and in both hard copy 8.5" by 11" and electronic jpg formats (or equivalent), and at a scale and resolution that allows for comparison by the naked eye between photos of the same location taken at different times) of: (i) the area between each reference point and the blufftop edge, providing full photographic coverage of the blufftop area between each reference point and the blufftop edge; (ii) each reference point and the surrounding area; and (iii) the point on the blufftop edge from which each measurement derives and the surrounding area, including photos both from a blufftop and a beach vantage so as to provide full photographic coverage of the bluff face itself and the blufftop edge. The photo documentation shall be accompanied by a site plan that identifies the location and orientation of each photo, each view of which shall be numbered. Measurement episodes shall include photos from the same vantage points each time to the extent possible, and shall include additional vantage points (and coverage of those additional vantage points as well in subsequent measurement episodes) as necessary to provide coverage of the required photographic area. Measurement episodes shall include photos from the same vantage points each time to the extent possible, and shall include additional vantage points (and coverage of those additional vantage points as well in subsequent measurement episodes) as necessary to provide coverage of the required photographic area.

3. **Other Removal and Restoration Criteria.** Provisions for assessing and documenting each of the other removal and restoration criteria described in subsection (g) of this special condition. Assessment shall, at a minimum, evaluate all removal and restoration criteria and make recommendations on how to meet those criteria. Documentation shall, at a minimum, include: (a) site plans; and (b) photographic documentation (in color, and in both hard copy 8.5" by 11" and electronic jpg formats (or equivalent), and at a scale and resolution that allows for comparison by the naked eye between photos of the same location taken at different times) sufficient to provide full photographic coverage of the areas in question.
4. **Public Access Amenities and Resort Pathways.** Provisions for assessing and documenting the public access amenities and resort pathway areas, including at least the parameters associated with their reconstruction, as identified in subsections (d) and (e) of this special condition above. Assessment shall, at a minimum, evaluate all reconstruction criteria and make recommendations on how to meet those criteria. Documentation shall, at a minimum, include: (a) site plans; and (b) photographic documentation (in color, and in both hard copy 8.5" by 11" and electronic jpg formats (or equivalent), and at a scale and resolution that allows for comparison by the naked

eye between photos of the same location taken at different times) sufficient to provide full photographic coverage of the areas in question.

- 5. Reporting.** Provisions for submittal of two copies of a report documenting and analyzing the required monitoring. The report shall be submitted to the Executive Director for review and approval every five years, starting with May 1st, 2019, and within one month of any event that results in the blufftop edge eroding inland 10 feet or more. The report shall provide a site plan that identifies the blufftop edge extending from the downcoast to upcoast property lines, and that identifies the established reference points as well as a line that extends through them. The report shall also include: (a) all of the documentation described in the previous sections; (b) a narrative description of all measurement episode activities; (c) tables showing changes over time between the blufftop edge and the established reference points as compared to all past reports, including in terms of average annual changes, largest change between reports, and any other relevant data that helps identify changes over time; (d) identification and documentation of coastal hazards in the area over the time since the last report, including any significant storm and erosion events; and (e) any additional information relevant to helping understand any changes in the distance between the blufftop edge and the approved development. Should any approved report identify next steps that involve development, such development shall be undertaken within the timeframes identified in the approved report. If the Executive Director determines that an amendment to this CDP or a separate CDP is legally required to perform such development, the Permittee shall immediately submit and complete the required application, and such development shall occur within the timeframes identified in the CDP or CDP amendment. The Permittee shall undertake development, if any, in accordance with the approved Blufftop Plan.

(g) Removal and Restoration. The Permittee shall immediately submit two copies of a Removal and Restoration Plan (RRP) to the Executive Director for review and approval when any of the following criteria are met, which RRP shall also be implemented subject to all of the following:

- 1. Government Agency.** If a government agency has ordered that any portion of the approved development (including but not limited to buildings, roads, utility infrastructure, subsurface elements, etc.) are not to be occupied or used due to one or more coastal hazards, and such government agency concerns cannot be abated by ordinary repair and/or maintenance. The RRP shall provide that all development meeting such criteria is immediately removed, as necessary to allow for such government agency to allow occupancy to all of the remainder of the development, after implementation of the approved RRP.
- 2. Setback.** If the blufftop edge erodes (including as identified through the Blufftop Plan reports required pursuant to subsection (f) above) to within 50 feet of any portion of the approved development (including but not limited to buildings, roads, utility infrastructure, subsurface elements, etc.) other than the two resort pathways providing access toward the ocean and the public access amenities (whose relocation is addressed separately, see above), the RRP shall provide for removal of the

development as necessary to ensure that at least a 50-foot blufftop setback area free of development (other than public access amenities, the two resort paths towards the ocean, and dune restoration, all subject to the terms and conditions of this CDP) remains after implementation of the approved RRP.

The RRP shall identify the width of the blufftop area (as measured between the established reference points and the blufftop edge) needed to conduct the required removal (i.e., the area necessary to place and/or operate construction equipment between the bluff edge and development, including providing clear documentation and evidence supporting identification of that width (e.g., identification of construction methods and equipment, expected removal structures and areas, construction timeframes, etc.)). The required removal shall take place when any portion of the blufftop width is at or less than the width identified in the approved RRP as needed to conduct the required removal, or when the blufftop edge is within 10 feet of any portion of the approved development, whichever is sooner.

- 3. Public Access Easement.** If any portion of the approved development (including but not limited to buildings, roads, utility infrastructure, subsurface elements, etc.) other than the two resort pathways providing access toward the ocean and the public access amenities (whose relocation is addressed separately, see above) encroaches into the ambulatory public access easement area (i.e., from the toe of the bluff seaward – see Special Condition 5), then the RRP shall provide that all development meeting such criteria is immediately removed as necessary to ensure that no development is located in the ambulatory public access easement area after implementation of the approved RRP.
- 4. Daylighting.** If any portion of the approved foundation and/or subsurface elements (including but not limited to mat foundations, caissons, piers, pilings, grade beams, retaining walls, etc.) become visible at or below 22 feet above NGVD, then the RRP shall provide that all development supported by these foundation elements as well as the foundation elements themselves shall be immediately removed as necessary to ensure that no development is visible at or below 22 feet above NGVD after implementation of the approved RRP.

In cases where more than one of the above criteria is met, the RRP shall be required to meet all requirements for all triggered criteria. In all cases, the RRP shall also ensure that: (a) all non-building development necessary for the functioning of the approved development (including but not limited to emergency access roads and utilities) is relocated as part of the removal episode, as necessary, so that it is located at least 50 feet inland of the blufftop edge; (b) all removal areas are restored as dune that is functionally and visually connected with surrounding dune areas in compliance with the dune restoration parameters of the approved Dune Restoration Plans (see Special Condition 3 above), and all such restored dune areas are incorporated into the Dune Area Conservation Easement (see Special Condition 4 above); (c) resultant uses of the reduced scale development remain primarily designed for visitor-serving use at least the same ratio as originally approved pursuant to the approved Revised Plans required by Special Condition 1; and (d) all modifications necessary to maintain compliance with the terms

and conditions of this CDP, including the objectives and performance standards of these conditions (including to minimize visual incompatibility with the existing dune landscape and public views) are implemented as part of the RRP.

If the Executive Director determines that an amendment to this CDP or a separate CDP is legally required to implement the approved RRP, then the Permittee shall submit and complete the required application within 30 days or, in the case where removal is going to be required in the future (e.g., in the case of the setback criteria above) at least one year before removal is expected to be required. The RRP shall be implemented according to the above timeframes for implementation unless the Executive Director (or the approved CDP or CDP amendment, if applicable) identifies a different time frame for implementation. The Permittee shall undertake development in accordance with the approved RRP.

10. Hotel Overnight Units. By acceptance of this CDP, the Permittee acknowledges and agrees, on behalf of itself and all successors and assigns, that:

- (a) **Hotel Length of Stay Provisions.** All hotel overnight units shall be open and available to the general public. Rooms shall not be rented to any individual, family, or group for more than 29 consecutive days per year or for more than 14 days between the Saturday of Memorial Day weekend through the Monday of Labor Day weekend; and
- (b) **Conversion Prohibited.** The conversion of any of the hotel overnight units to limited use overnight visitor accommodation units (e.g., timeshare, 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.

11. Condominium-Hotel Visitor-Serving Overnight Units. By acceptance of this CDP, the Permittee acknowledges and agrees, on behalf of itself and all successors and assigns, that:

- (a) **Hotel and Condominium Hotel Overnight Units.** The approved development includes a standard operating hotel with 184 overnight units and a condominium-hotel component with 92 visitor-serving overnight condominium-hotel units, or lesser numbers at a similar or more hotel to condominium-hotel ratio if: (1) required to meet the terms and conditions of this CDP, including pursuant to the approved Revised Plans required by Special Condition 1; and/or (2) portions of the project are modified through removal.
- (b) **Condominium Hotel Component.** PRIOR TO ISSUANCE OF THE CDP, the Permittee shall submit two copies of plans and documentation materials (Condominium Hotel Plans) for Executive Director review and approval that clearly identify: all elements of the condominium-hotel visitor-serving component of the project; the manner in which ownership will be applied to each element of the condominium-hotel visitor-serving component (including common areas and individual units); an operator responsible for managing the condominium-hotel visitor-serving units (operator), including the booking of reservations for all units; the non-hotel lobby area configuration and operational parameters; the mechanism by which the individual units are to be booked, including at a minimum provisions for a reservation database to be managed by operator; and all other

provisions necessary to meet the requirements of this special condition. As used in this condition, the terms “book”, “booked”, and “booking” shall mean the confirmation of a reservation request for use of an individual unit by either the owner of the unit, the owner’s permitted user, or by a member of the public, and the entry of such confirmation in the operator’s reservation database. The condominium-hotel visitor-serving (CHVS) component of the project shall be maintained in its approved state, and shall be managed and operated consistent with the approved Condominium Hotel Plans.

- (c) **Unit Owner Occupancy Limitations.** Each owner of a CHVS unit, including any individual, family, group, or partnership of owners for a given unit (no matter how many owners there are) may use their unit for no more than 84 days in any calendar year, with no stay exceeding 29 consecutive days. Such occupancy limitations shall be unaffected by multiple owners of an individually owned unit or the sale of a unit to a new owner or new owners during the calendar year, meaning that all such owners of any given unit shall be collectively subject to the occupancy restrictions as if they were a single, continuous owner. Whenever any unit is not occupied by its owner(s), that unit shall be available for use by the general public on the same basis as a traditional hotel room.
- (d) **CHVS Unit Rentals.** The operator shall manage the booking and the reservation of all CHVS units. The operator shall have the right and obligation to offer any unit for general public use during all time periods not reserved by a unit owner for his or her personal use. The operator shall book all unit reservations in the operator’s reservation database, a service for which the operator may charge the unit owner a reasonable fee.

The operator shall have the right, working through the unit owners, to book any unoccupied room to fulfill public demand. The owner may not withhold units from use unless they have already been reserved for use by the owner, consistent with the length of occupancy limitations identified above. In all circumstances, the operator shall have full access to the unit’s reservation and booking schedule so that the operator can fulfill its booking and management obligations hereunder.
- (e) **CHVS Unit Marketing.** The operator shall market all CHVS units to the general public. Owners of individually owned CHVS units may also independently market their units. Unit owners shall not discourage rental of their units nor create disincentives meant to discourage rental of their units.
- (f) **CHVS Units Management.** The operator shall manage all aspects of the condominium-hotel component of the project, including all CHVS units, 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 created by the operator upon each change in user occupancy for any unit. All units shall be rented at a rate similar to that charged for traditional hotel rooms of a similar class or amenity level in the California coastal zone.
- (g) **Marketing and Sale of Condominium Hotel Interests.** All documents related to the marketing and sale of condominium interests in CHVS units (including marketing

materials, sales contracts, deeds, CC&Rs and similar documents, etc.) shall notify potential buyers of the following:

- 1. Liability.** Each owner of any unit is jointly and severally liable with the property owner(s) and the operator for any violations of the terms and conditions of this CDP with respect to the use of that owner's unit;
- 2. Occupancy Limits.** The occupancy of a unit by its owner(s) and their guests is restricted to a maximum of 84 days per calendar year, and a maximum of 29 consecutive days. When not in use by the owner, the unit shall be made available for rental by the operator to the general public pursuant to the terms of this CDP, which permit and the CC&Rs applicable to the unit contain additional restrictions on use and occupancy; and
- 3. Operator.** The operator, or designee, shall manage the booking and the reservation of all CHVS units. The operator shall have the right and obligation to offer any unit for general public use during all time periods not reserved by a unit owner for his or her personal use. The operator shall book all unit reservations in the operator's reservation database, a service for which the operator may charge the unit owner a reasonable fee.

Prior to the sale of an individual unit, the unit's seller and the operator (and any successors-in-interest) shall obtain a written acknowledgement from the buyer indicating that he or she understands, acknowledges, and accepts each of the above marketing and sale restrictions.

- (h) Conversion Prohibited.** The conversion of the approved CHVS units to other types of limited use overnight visitor accommodation units (e.g., to timeshare, fractional ownership, etc.) or to full-time occupancy condominium units or to any other units with use arrangements that differ from the approved project, other than to standard operating hotel units, shall be prohibited.
- (i) Occupancy and Use Monitoring and Recording.** The operator shall monitor and record occupancy and use by the general public and the owners of individual CHVS units throughout each year. Such monitoring and record keeping shall include specific accounting of owner usage for each individual unit; rates paid for occupancy and for advertising and marketing efforts; and transient occupancy taxes (TOT) for all units, services for which the operator may charge unit owners a reasonable fee. The records shall be sufficient to demonstrate compliance with the restrictions set forth in this special condition. All such records shall be maintained for at least ten years and shall be made available to the Executive Director upon request and to any auditor required by the section below. Within 30 days of commencing operations, the operator shall submit notice to the Executive Director of commencement of operations.
- (j) Audit.** WITHIN 120 DAYS OF THE END OF THE FIRST CALENDAR YEAR OF OPERATIONS, the operator shall retain an independent auditing company, approved by the Executive Director, to perform an audit to evaluate compliance with this special

condition regarding occupancy restrictions; marketing and sale restrictions; management requirements, recordkeeping, and monitoring by the hotel owner(s), the owners of individual CHVS units, and the operator. The operator shall instruct the auditor to prepare a report identifying the auditor's findings, conclusions and the evidence relied upon, and such report shall be submitted to the Executive Director, upon request, within six months after the conclusion of the first year of operations.

Within 120 days of the end of each succeeding calendar year, the operator shall submit a report to the Executive Director identifying compliance with this special condition and the approved Condominium Hotel Plans, including regarding occupancy restrictions, marketing and sale restrictions, management requirements, recordkeeping, and monitoring by the hotel owner(s), the individual unit owners, and the operator. The audit required after the first year of operations and all subsequent reports shall evaluate compliance with this special condition by the operator and owners of individual CHVS units during the prior one-year period. After the first five calendar years of operations, the one-year reporting period may be extended to every five years upon written approval of the Executive Director if each of the previous reports reveal compliance with all restrictions imposed by this special condition. The Executive Director may, by written notice to the operator, require a third party audit regarding the subject matter of the reports required in this section for the prior three or fewer calendar years if he or she reasonably believes that the foregoing submitted reports are materially inaccurate. The property owner(s), each individual unit owner, and the operator shall fully cooperate with and shall promptly produce any existing documents and records which the auditor may reasonably request. The expense of any such audit shall be borne by the property owner(s) and/or the operator.

- (k) Compliance Required.** The property owner(s) and operator or any successors-in-interest shall maintain the legal ability to ensure compliance with the terms and conditions stated herein at all times in perpetuity, and shall be responsible in all respects for ensuring that all parties subject to these restrictions comply with the restrictions. The property owner(s) and the operator shall be jointly and severally responsible for ensuring compliance with the requirements described in this condition and/or recorded against the property, as well as jointly and severally liable for violations of said requirements. Each owner of an individual CHVS unit is also jointly and severally liable with the property owner(s) and operator for all violations of said requirements and for any and all violations of the terms and conditions of this CDP with respect to the use of that owner's unit. Violations of this CDP can result in penalties pursuant to Public Resources Code Section 30820.
- (l) CC&R Declaration of Restrictions.** PRIOR TO OCCUPANCY OF THE APPROVED DEVELOPMENT, the Permittee shall submit for the review and approval of the Executive Director two copies of a declaration of restrictions in a recordable covenants, conditions, and restrictions (CC&R) form (CC&R Declaration of Restrictions for the CHVS units) that shall include: (1) all the specific restrictions listed in Sections (a) through (k) above; (2) acknowledgement that these same restrictions are independently imposed as condition requirements of this CDP; and (3) a statement that the provisions of the CC&R Declaration of Restrictions that reflect the requirements of Sections (a) through (k) above, cannot be changed without approval of a CDP amendment, unless it is

determined by the Executive Director that such an amendment is not legally required (if there is a section of the CC&Rs related to amendments, and the statement provided pursuant to this paragraph is not in that section, then the section on amendments shall cross-reference this statement and clearly indicate that it controls over any contradictory statements in the section of the CC&Rs related to amendments). The approved CC&R Declaration of Restrictions for the CHVS units described above shall be recorded against all individual property titles simultaneously with the recordation of the subdivision map for the approved project.

(m)Implementation Plan. PRIOR TO OCCUPANCY OF THE APPROVED

DEVELOPMENT, the Permittee shall submit two copies of a plan specifying how the requirements of this condition will be implemented for Executive Director review and approval. The plan must include, at a minimum, the form of the sale, deed and CC&R terms and restrictions that will be used to satisfy these special condition requirements and the form of the rental program agreement to be entered into between the individual unit owners, the property owner(s), and the operator. The plan shall demonstrate that the Permittee will establish mechanisms that provide the property owner(s) and operator and any successor-in-interest property owner(s) and operator(s) adequate legal authority to implement the requirements of this special condition. Any proposed changes to the approved plan and subsequent documents pertaining to compliance with and enforcement of the terms and conditions required by this special condition, including deed restrictions and CC&Rs, shall be prohibited without an amendment to this CDP, unless it is determined by the Executive Director that an amendment is not legally required.

12. Visitor-Serving Units Available Prior to Occupancy of Residential Units. PRIOR TO THE OCCUPANCY OF THE RESIDENTIAL CONDOMINIUMS, the Permittee shall provide evidence in a form acceptable to the Executive Director that construction of the project's visitor-serving elements, including the 184 hotel units and the 92 visitor-serving condominium-hotel units (or lesser numbers at a similar or more hotel to condominium-hotel ratios if required to meet the terms and conditions of this CDP, including pursuant to the approved Revised Plans required by Special Condition 1) have been completed and are available for transient occupancy use. Occupancy of the residential units shall not precede the completion and operation of the project's visitor-serving elements.

13. Transient Use of Residential Condominiums. Any declaration of restrictions (i.e., covenants, conditions, and restrictions (CC&Rs), etc.) prepared for the residential properties and uses on-site shall not preclude the transient use of the 92 (or lesser numbers if required to meet the terms and conditions of this CDP, including pursuant to the approved Revised Plans required by Special Condition 1) residential condominiums for vacation rentals or other short-term visitor-serving arrangements, including explicitly allowing for the conversion of the residential condominiums to standard operating hotel units or condominium-hotel units coordinated with those units onsite, subject to a CDP or CDP amendment.

14. Lower Cost Visitor Accommodations Mitigation Payment. PRIOR TO CONSTRUCTION, the Permittee shall provide evidence in a form and content acceptable to the Executive Director, that a payment of \$25,700 per unit for 25% of the total number of high cost overnight visitor accommodation units (184 hotel units and 92 visitor-serving

overnight condominium-hotel units, or 276 total such units) in the approved project has been paid in lieu of providing lower cost accommodations on site. Based on 276 such units, the payment would be \$1,773,300 (i.e., $0.25 \times 276 \times 25,700 = 1,773,300$). If there are fewer units to meet the terms and conditions of this CDP, including pursuant to the approved Revised Plans required by Special Condition 1, then the payment would be proportionally reduced.

The required \$1,773,300 (or less, if applicable) mitigation payment shall be deposited into an interest bearing account, to be established and managed by one of the following entities as approved by the Executive Director: the City of Sand City, Monterey County, the California Department of Parks and Recreation, Hostelling International, or similar entity. The purpose of the account shall be to establish new lower cost overnight visitor-serving accommodations, such as new hostel or tent campground units, at appropriate locations within the coastal area of Monterey County with a priority given to local hostels. The entire mitigation payment and any accrued interest shall be used for the above-stated purpose, in consultation with the Executive Director, within ten years of it being deposited into the account. If any portion of the fee remains ten years after it is deposited into the interest-bearing account required by this condition, the Executive Director may require that the funds be transferred to another entity that will provide lower cost visitor amenities in a Central California coastal zone jurisdiction.

PRIOR TO EXPENDITURE OF ANY FUNDS CONTAINED IN THIS ACCOUNT, the Executive Director must review and approve the proposed use of the funds as being consistent with the intent and purpose of this condition. In addition, the entity accepting the funds required by this condition shall be required to enter into a memorandum of understanding (MOU) with the Commission, which shall include, but not be limited to, the following: (1) a description of how the funds will be used to create or enhance lower cost accommodations in the coastal zone; (2) a requirement that the entity accepting the funds must preserve these newly created lower cost accommodations in perpetuity; and (3) an agreement that the entity accepting the funds will obtain all necessary permits and approvals, including but not limited to a CDP, for development of the lower cost accommodations required by this condition.

- 15. Confirmation of Other Agency Approval.** PRIOR TO CONSTRUCTION, the Permittee shall submit to the Executive Director written evidence that all necessary permits, ~~permissions, 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, California Department of Parks and Recreation.~~ The 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). Prior to construction, the Habitat Protection Plan (HPP, dated October 2013 and dated received in the Central Coast District Office October 28, 2013 – Exhibit 20) referenced in Special Condition 3 shall be modified and submitted for Executive Director review and approval to incorporate standards in the HPP that address the eight concerns for western snowy plover, and each of the concerns for Smith’s blue butterfly and Monterey spineflower, in the U.S. Fish and Wildlife Service April 7, 2014 letter on the project addressed to Mike Watson of the Coastal Commission. Prior to construction, the

Permittee shall submit to the Executive Director for review and approval any revisions to the plans for the project that may be necessary to comply with standards included in the approved modified HPP. If no permit, approval or authorization is required from a given agency, then the Permittee shall have no obligation to submit any documentation to the Commission from that agency. Any mandatory changes to the approved project required by these agencies an agency listed in this condition shall be reported to the Executive Director. No changes to the approved project, either as a result of any mandatory changes required by the agencies listed or changes required by the approved modified HPP, shall occur without a Commission amendment to this CDP unless the Executive Director determines that no amendment is legally necessary.

16. Traffic. PRIOR TO CONSTRUCTION, the Permittee shall submit to the Executive Director for review and approval evidence that all EIR transportation (including all traffic and circulation) mitigation measure requirements (including the requirements of the EIR Addendum) have been met and/or achieved.

17. Transportation Demand Management Program. PRIOR TO CONSTRUCTION, the Permittee shall submit to the Executive Director for review and approval a Transportation Demand Management Program (TDMP). Said program shall include, but not be limited to, the following:

- (a) **Transit.** An agreement to work with the Monterey-Salinas Transit District to encourage increased bus service for visitors, residents, and employees (e.g., a bus stop at California Avenue extension, etc.);
- (b) **Shuttle.** Participation in shuttle systems to the Monterey airport and Monterey Transit Plaza, Monterey Fisherman's Wharf, Cannery Row, and other area attractions;
- (c) **Bicycles.** Adequate bicycle storage for visitors, residents, and employees;
- (d) **Showers.** Adequate on-site shower facilities and lockers available to all employees;
- (e) **Carpool.** Creation and implementation of a carpool plan for at least employees, and coordinated with residents as appropriate, with notices of the carpool program posted in employee work areas and residential common areas;
- (f) **Subsidies.** Public transportation fare/monthly pass subsidies for all employees; and
- (g) **Information.** Information regarding the aforementioned components of the Transportation Demand Management Program shall be provided to all employees (and visitors and residents as applicable) and included in any employment paperwork for new employees.

The Permittee shall undertake the development in accordance with the approved TDMP.

18. Future Development Restrictions By acceptance of this CDP, the Permittee acknowledges and agrees, on behalf of itself and all successors and assigns that this CDP is only for the development described in this CDP. Pursuant to Title 14 California Code of Regulations

(CCR) Section 13253(b)(6), the exemptions otherwise provided in Public Resources Code Section 30610(b) shall not apply to the development governed by this CDP. Accordingly, any future improvements to the development authorized by this CDP, including but not limited to repair and maintenance identified as requiring a CDP in Public Resources Code Section 30610(d) and 14 CCR Section 13252(a)-(b), shall require an amendment to this CDP.

- 19. Indemnification by Permittee/Liability for Costs and Attorneys Fees.** By acceptance of this CDP, the Permittee agrees to reimburse the Coastal Commission in full for all Coastal Commission costs and attorneys fees – including (1) those charged by the Office of the Attorney General, and (2) any court costs and attorneys fees that the Coastal Commission may be required by a court to pay – that the Coastal Commission incurs in connection with the defense of any action brought by a party other than the Permittee against the Coastal Commission, its officers, employees, agents, successors and assigns challenging the approval or issuance of this CDP. The Coastal Commission retains complete authority to conduct and direct the Commission’s defense of any such action against the Coastal Commission.
- 20. Deed Restriction.** PRIOR TO ISSUANCE OF THE CDP, the Permittee shall submit to the Executive Director for review and approval documentation demonstrating that the Permittee has executed and recorded against the property governed by this CDP a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this CDP, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the special conditions of this CDP as covenants, conditions and restrictions on the use and enjoyment of the property. The deed restriction shall include a legal description of the legal parcels governed by this CDP. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this CDP shall continue to restrict the use and enjoyment of the property so long as either this CDP or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the property.
- 21. Expiration.** Notwithstanding Standard Condition 2, above, if development has not commenced, this CDP shall expire five years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. An application for extension of this CDP must be made prior to the expiration date.
- 22. Indemnification for any Civil Liability.** The Permittee agrees to reimburse the Commission for any civil liability imposed by any court for the approval or issuance of this CDP.

IV. COASTAL DEVELOPMENT PERMIT DETERMINATION

The standard of review for this CDP application is the City of Sand City certified LCP and, because the project is located between the first public road and the sea, the public access and recreation policies of the Coastal Act.

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 as seen in standard map view 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 Salinas River, a distance of approximately 13 miles that is made up primarily of undeveloped dune, much of it in public park and conservation ownership.

The 39.04 acre project site¹ extends along approximately 1,500 linear feet of this shoreline in the dunes between Highway One (and the Monterey Bay Sanctuary Scenic Trail, a widely used public recreational access trail located just seaward of Highway One) and the Monterey Bay, between Fort Ord Dunes State Park (upcoast) and Monterey Peninsula Regional Park District's Eolian Dunes Preserve (downcoast). The site is located immediately seaward of the Fremont Street exit/entrance along southbound Highway One at the upcoast and seaward edge of the City of Sand City (the City limit line runs along the State Park boundary²). The site is an undeveloped dune area that is part of the undeveloped dunes extending both up and downcoast on the adjacent public park lands.

A portion of the site was mined for sand many years ago (mining ceased in 1986), and as a result the site is sometimes referred to as "the Lonestar site" in reference to the former sand mine operator. Sandy elevations at the site undulate dramatically, and the site includes a very large dune form nearest the Highway at the downcoast edge of the site,³ another large dune feature about midway along the property's Highway One frontage, a large depression just seaward and upcoast of the two taller dune features,⁴ and a relatively flat area on the upcoast edge that drops down in elevation at the property boundary with the State Park. See Exhibit 1 for project location maps and Exhibit 2 for an site aerial photograph.

The project site has multiple LUP and IP land use designations, including visitor-serving commercial, visitor-serving residential (medium density), medium density residential, and public recreation. In general, the applicable permitted uses include a hotel (up to 375 units maximum), residential time share units (up to 100 units maximum), residential units (up to 175 units maximum), and parks and recreational facilities. The LCP explicitly states that these densities are maximums, and the LUP requires permitted development intensity to be limited so that constraints such as public access and recreation needs, natural hazard avoidance, dune habitat and natural landform protection, and public view protection and enhancement are adequately addressed. It is important to note that LCP amendment 2-97 (approved by the Commission in June 1997) provided that these allowed uses may be mixed on the site. That is, there can be

¹ 7.14 acres of which is located below the mean high tide (MHT) line.

² The Applicant also owns an adjacent property located near the northeast corner of the site between the subject site and the Fort Ord Dunes State Park, and nearest the highway (APN 011-501-004). This adjacent property is located outside of the City and in unincorporated Monterey County.

³ At 160 feet in elevation at its crest, this tall dune feature on the site represents the tallest dune in the southern Monterey Bay dune complex.

⁴ The depression area measures some 3.5 acres, and is the primary location of the former sand mining operation.

residential uses on a portion of the property identified for visitor-serving commercial and vice versa, again, so long as coastal resource constraints are appropriately addressed. See land use designations noted in Exhibit 3.

B. PROJECT DESCRIPTION

The proposed project is an approximately 1,337,909 square-foot mixed-use residential and visitor-serving project including 184 hotel units, 92 straight residential condominium units, and 92 visitor-serving residential condominium units (akin to quasi residential condo-hotel units, and referred to as condo-hotel units in this report), courtyards/gardens, restaurant, conference center, spa, retail, 3 swimming pools, and surface and underground parking for 947 vehicles. The project is designed to be set into the dunes, and the development program would occupy some 12 acres of the site for this purpose. Thus, the project includes approximately 680,000 cubic yards of grading to both create the space within which the majority of the development would be constructed (i.e., the main building portion of the site would be constructed on a pad that is 30 to 50 feet lower than the existing sand level), and to backfill around such area following construction.⁵ The excavation and resultant backfilling would result in approximately 385,000 cubic yards of excess sand that the Applicant proposes to export offsite, take to the dump, or store on site for use in a beach nourishment project in the vicinity of the site.⁶ Buildings and related development would range from one to nine stories, and from 10 to 90 feet tall when seen in finished form (e.g., as seen from seaward side). The project would also divide the site from one into three parcels, 12.76-acre, 9.62-acre, and 16.67-acre.⁷ The 16.67-acre parcel would include the beach, foredune, and underwater area; the 12.67-acre parcel would be occupied by the main resort, including the hotel, spa, and condo-hotel components, as well as the surrounding dune area; and the 9.62-acre parcel would be occupied by the straight residential component of the project. The project also includes a roadway extension from inland public roads, three entrance driveways from the roadway extension, public access trails and amenities, dune restoration, utility extensions and infrastructure, and related development (i.e., gate and gatehouse, emergency access road, tunnel access to resort, signs, fences, lights, trails, etc.) (see Exhibits 4 - 7 for project site plans, floor plans, cross-sections, program areas, and visual simulations). Primary subcomponents of the project are further described as follows:

⁵ Given that the base topographic survey of the site submitted by the Applicant is over ten years old, the Commission requested that the current proposed project materials be provided in terms of a current topographic map. The Applicant chose not to provide a current topographic map. Thus, the sand cubic yard figures in this report are based on the previous version of the proposed project and ten-year-old topography surveys. This lack of information also affects measurements from existing grade as the lack of current surveys means the Commission must rely on ten-year-old surveys to estimate development height and related project components. This complicates the analysis, and is noted here so that it is clear that heights, volumes, and related figures are subject to some uncertainty.

⁶ Despite Commission requests for additional information detailing more specifically what each of these options entails, the Applicant has not provided any more information than identifying the options themselves.

⁷ The project includes residential and visitor-serving condominiums that would be further divided for purposes of individual ownership. The Commission requested more information on this point, but the Applicant declined to provide it. Thus, while the land division is described in terms of three resultant parcels, two of those parcels would be further divided for the condo-hotel and residential condominium components. Given the 184 condominium units proposed, one would expect that there would be at least that many additional parcels created, and likely more (e.g., for condominium common space). Thus, it is probably more accurate to identify this as a land division going from one to nearly two hundred parcels, but, for the purposes of this report, has been described as resulting in three parcels. Any approval would require all of the land division to clearly be identified.

Primary Structures

The main structures at the site would provide approximately 801,306 square-feet of interior habitable space arranged in an undulating and curvilinear pattern along the main dune excavation area and extending laterally (along the shoreline) nearly across the whole site. These structures would include approximately 380,453 square feet of hotel, condo-hotel, and residential condominiums; a 140-seat restaurant, 60-seat bar, retail, wellness spa, conference and meeting space, and kitchen totaling 59,295 square feet; three pools and courtyards totaling 85,858 square feet; and other building elements such as area serving back-of-hotel functions, corridors, lobbies, offices, utility rooms and common space totaling some 361,558 square feet. These structures would extend from a finished floor elevation of 32 feet above NGVD⁸ to a maximum roof height of +122' at the top floors of the visitor-serving residential condominiums. Since the roofs would be topped with planters that appear to be about 3 feet tall, the maximum building elevation would be at approximately +125'. The buildings would be arrayed at the site, with the tallest buildings along the downcoast edge (nearest the tall dune) and lowest elements nearest the ocean. As proposed, building elevations would range from 40 feet to 58 feet from existing grade,⁹ and from 20 feet up to 100 feet above finished grade, and would appear as up to 10 stories as seen from the seaward side. All told, the hotel/condominium-hotel structures would extend nearly 100 feet from the finished floor to the roof. Some of the roofs of the structures would be vegetated.

Almost all of the parking to serve the development, 947 spaces, would be located underground in parking garages that would be beneath the structures described above and extending from a finished floor elevation of +22' up to +52'. Together, the underground parking garage (including entrance ramps and turn-about) adds an additional 450,745 square feet to the overall development for a total of approximately 1,337,909 square feet. Another 53 spaces would be provided in surface parking lots, the bulk of which would be provided through 46 proposed public parking spaces that would be located on the inland side of the proposed new roadway extension at the northeast corner of the site nearest Highway One.

The proposed project will need a foundation system that is equipped to address issues with development in a sandy dune environment. Details on the foundation systems have not been provided,¹⁰ though the building elements shown on the project cross-sections and provided by the Applicant's Engineer, show large structural slabs that will need engineered foundations, including to withstand differential settlement, liquefaction, and loading.

Primary Uses

The project includes 184 hotel units that would be clustered along the downcoast portion of the

⁸ NGVD, or National Geodetic Vertical Datum, is not to be confused with Mean Sea Level (MSL). MSL is the local mean sea level whereas NGVD is a fixed datum adopted as a standard reference for heights (where MSL was held fixed as observed at 26 stations in the U.S. and Canada). NGVD for the Monterey Bay area was adjusted in 1961 and revised in 1986. For the Monterey Bay area, MSL is +0.03 feet NGVD, or about a third of an inch above NGVD. Unless noted otherwise, NGVD is used in this report to describe elevations, with a "+" indicating that the elevation in question is that much above NGVD (i.e., +120' is the same as saying 120 feet above NGVD).

⁹ Id (based on over ten-year-old topographic survey and not current).

¹⁰ The Commission requested such information from the Applicant, but the Applicant has indicated that the proposed project would be constructed atop a deep caisson type of system, although no details on such a system have been provided.

development arranged around a courtyard and garden on the first three levels. There would also be 92 condo-hotel units inland of the hotel courtyard and above the hotel unit elevation (i.e., beginning at +62' and extending to roughly +125') to the south of the main entry. These condo-hotel units would be individually owned and used by the owners and their guests, but would also be available to the general public on a rental basis for a part of the year. The project also includes 92 traditional residential condominium units which make up the majority of the upcoast half of the project. All told, the proposed project includes approximately 368 units of varying types (see Exhibit 6 for a graphic depiction of proposed program areas).

By unit type, the project is half hotel, one-quarter condo-hotel, and one-quarter straight residential. However, using square feet, the proportionate use of the property is different, with more of the property devoted to residential uses. The project is made up of "modules", each of which appear to be the same size. The Applicant provides module counts by type that differ from the unit counts. For example, although the 184 hotel units are made up of 198 modules, the 92 condo-hotel units are made up of 187 modules, and the 92 residential units are made up of 306 modules. Thus, by module, the allocation is roughly half straight residential, with the hotel and condo-hotel unit space being about one-quarter of the overall total each.¹¹ When the residential and quasi-residential (i.e., condo-hotel units) units are combined, the project is approximately 71% residential by unit space allocation. See site plans, elevations, and space allocations in Exhibits 4, 6, and 7.

Land division

The project includes a land division of the site from a single 39.04-acre¹² parcel into 3 separate parcels,¹³ a 12.76-acre parcel (Parcel 1), a 9.62-acre parcel (Parcel 2), and a 16.67-acre parcel (Parcel 3). All of the proposed hotel, condo-hotel, restaurant, spa, conference rooms and related development would be located on Parcel 1. Parcel 2 would include all of the residential condominiums on the upcoast side of the development, and Parcel 3 would include the beach, public trails, overlook, and all lands seaward of the mean high tide line. Parcel 1 and Parcel 2 would also be further subdivided for the condominium ownership units, for which there are two separate airspace condominium subdivision regimes planned. The 92 condo-hotel units would share common facilities with the hotel courtyard and pool area (32,158 square feet), parking, and other services. The 92 straight residential condominium units would have a common interest in the northern courtyard, pool, and botanical garden (40,100 square feet), as well as other common facilities such as the garage and entryway. Thus, following subdivision, Parcel 1 would be divided into 92 condominium airspace units, common area parcels, and 1 parcel containing the hotel, retail space, and related visitor-serving amenities. When combined with Parcel 2, the overall subdivision thus results in a total of 187 parcels overall at the site (see Exhibit 4, Sheet TM-2).

Roadways and Paving

Access to the site would be gained by extending a roadway from California Avenue (where it meets the southeastern edge of the property near the Fremont Boulevard southbound Highway

¹¹ By module, the allocation is 44% residential, 29% hotel, and 27% condo-hotel.

¹² Id (7.14 acres is under water).

¹³ Id (condo-hotel and straight residential condo parcels would be further divided, so actually more like nearly 200 resultant parcels).

One on-ramp). The new roadway would be fronted at California Avenue by a gate and gatehouse, and would extend along the eastern (inland) edge of the property to the northern end of the property, where the proposed public access trailhead would begin. The project would include three main points of entry roughly perpendicular from the new roadway: one roughly in the middle of the site (consisting of a tunnel through an extended dune feature) to an entry turn-around and Porte Cochere on the seaward side of the dunes, a second garage entry further north, and a third delivery entrance north of that. The new roadway on the site would include surface public access parking on the inland side of the street totaling 46 spaces. The roadway would be striped with a bike lane (i.e., Class 2), except for the area extending through the 46 parking spaces where only signs would be provided (i.e., Class 3). A bike rack would also be installed at the point where the bike lane ends at the north end of the public parking area. Plans submitted by the Applicant indicate that lateral pedestrian access will be provided along the roadway, but the details on such access are unclear. In total, the project includes approximately 38,800 square feet of new roadway and related parking, with another 17,600 square feet in resort driveways and entrances. In addition, the project includes an emergency access road that would extend from the northern edge of the new roadway seaward and then back downcoast in front of the buildings. All told, some 12.19 acres, or roughly 40%, of the dry portion of the site (i.e., above the mean high tide line), would be occupied by buildings, roads, parking areas, and related development.

Grading

Site preparation activities associated with the project include grading, excavation, and recontouring of approximately 88% of the dry portion of the site, and essentially all of the dunes above the beach, totaling about 28 acres. Essentially all of the area above the 20-foot dune contour, including the large dune at the site's southeast corner, would be graded. Primary grading activities would include approximately 680,000 cubic yards of grading¹⁴ that would be necessary to create the area where the proposed primary structures would be constructed. The largest dune feature at the southern edge of the site would be completely recontoured to reduce its height by about 10 feet and flatten its northern exposure to conform it to the buildings to be constructed, the dunes extending upcoast from here would be raised in elevation to about +120', the large dune feature midway on the site would be recontoured and extended some 200 feet to the north at a height of approximately +110'. A tunnel would go through the modified dune feature providing access to the main reception area of the facility. The foredune area seaward of the buildings would be graded from a rolling +35' to +60' NGVD contour to a uniform +30' elevation, and several hillock depressions would be formed in this area.

Utility Development and Lighting

The project includes utility extensions from inland utilities to and across the site to provide utility services to the project (i.e., water, sewer, gas, electricity, etc.) (see Exhibit 4 for utility infrastructure plans). Water is proposed to be provided by Cal-Am, and wastewater would be directed to the regional wastewater treatment plant in Marina. The project would also collect and proposes to filter, and in some cases reuse, runoff (e.g., gray water recycling is proposed for irrigation of some dune restoration areas and other landscaping (i.e., planted roofs, resort grounds, and gardens) (see Exhibit 4, Sheet TM-1 side notes). The project further includes ground, bollard, sign, and overhead lighting, including 7 overhead light standards proposed at 18 feet in height along the eastern edge of the development. Also located on the eastern (Highway

¹⁴ Id (based on previous estimates and ten-year-old survey).

One) side of the development are proposed another 7 project sign lights, 26 entry road bollards, and 2 pathway bollards. A host of pathway bollards and pathway ground lights are proposed along the hotel access paths seaward of the resort.

Public Access Improvements

Public access to the site would be provided along the roadway extension from California Avenue, though the details of the proposed access improvements are unclear. Just beyond the proposed driveway spur at the northeast corner of the site, the road would transition to a boardwalk that would extend perpendicular to Highway One and extend to the shoreline via a public vista point on the bluff edge, then down to the beach and Monterey Bay. Public access is proposed to be limited mainly to daylight hours (5am to one hour past sunset), and would be restricted at the gatehouse and gate at the project entrance. The public access route and the portion of the site seaward of roughly the +20' NGVD contour would be placed in a public access easement for lateral access along the beach (see Exhibit 11b).¹⁵

Dune Restoration/Revegetation

The project also proposes a dune restoration program designed to restore and protect dune habitat on 15.6 acres of the site that would be placed in a conservation easement (see Exhibit 11a). Additional revegetation and gardens will take place on an additional approximately 5.2 acres or so (on tops of building roofs, and for interior landscaped grounds and gardens). The Applicant also has committed to establishing an environmental trust fund that together with a percentage of the transient occupancy tax collected by the City would be used to manage the on-site restoration/recovery of western snowy plover and elsewhere committed to restoring and enhancing habitat values of the Monterey peninsula.

See Exhibits 4 - 7 for project site plans, floor plans, program areas, and renderings.

C. PROJECT PROCEDURAL HISTORY

The Applicant originally proposed a different mixed-use (hotel, residential, retail, etc.) development at this same site in the late 1990s. That previous project proposed a slightly higher level of intensity and scale than the currently proposed project. Specifically, the Applicant previously proposed a 495-unit mixed use development consisting of a 217-room hotel, 100-unit timeshare resort, 45 condo-hotel units, and 133 traditional residential units. See Exhibit 12 for site plans and elevations for the originally proposed project.

On December 14, 2000, and on appeal from a City of Sand City decision approving the originally proposed project, the Commission denied the project due to inconsistencies with LCP provisions related to ESHA, water supply, geologic hazards, visual resources, traffic, and public access, and due to inconsistencies with the Coastal Act's access and recreation policies. The Commission found at that time that given the significant adverse impacts to coastal resources posed by the project, and the absence of an approved method to supply the project with water, the project was inconsistent with the Sand City LCP and the public access and recreation policies

¹⁵ The materials submitted by the Applicant show a gap in the public access easement between the entrance to the site (at the gate/gatehouse) and the portion of the new roadway with the surface parking spaces. The Applicant indicates that this is a mistake, and that the easement proposed would extend all the way from the entrance to the site to and along the ocean, thus including this gap area.

of the Coastal Act.

The Applicant subsequently sued the Commission over the Commission's denial, and a series of lengthy court proceedings followed. Ultimately, on December 2, 2005, the Commission's denial was upheld by the San Francisco County Superior Court. The Applicant appealed the Superior Court's decision to the First District Court of Appeals. On January 25, 2008, the Court of Appeals reversed and held that the Commission had erred in its application of the LCP's ESHA policies. The court held that the site could not be considered ESHA under the LCP, and on May 27, 2008 the court remanded the matter back to the Commission.

A second iteration brought a revised project. Specifically, the Applicant submitted materials in late 2008 and early 2009 in support of a 360,000 square foot 341-unit mixed-use residential and visitor-serving development including 161 hotel rooms, 92 residential condominiums, 88 condo-hotel units, restaurant, conference center, spa, 3 swimming pools, and surface and underground parking for 841 vehicles. Although the number of hotel and residential units were reduced in the 2009 proposal, the overall project was similar in size and scale to the project denied by the Commission in 2000 (see Exhibit 13 for site plans and elevations, and Exhibit 14 for the grading plan from the 2009 proposal). The 2009 project revision also brought a change in architectural design from a series of interconnected rectangular structures between 5 and 7 stories in height, to a curvilinear and modern structure sited into the dunes. On December 11, 2009, after granting two hearing extensions, the Commission again denied the project due primarily to inconsistencies with LCP provisions related to provision of public services, geologic hazards, visual resources, natural resources, and due to inconsistencies with the Coastal Act's access and recreation policies.

In February 2010, the Applicant challenged the Commission's second denial in Superior Court and simultaneously filed an action for inverse condemnation. On May 24, 2013, the Superior Court granted the Applicant's petition for a second writ of mandate and entered a final judgment on June 10, 2013. The Commission appealed the Superior Court decision to the First District Court of Appeals, but the appeal has not yet been heard.

The Commission and Applicant entered into a settlement agreement on December 24, 2013, which provides that staff will prepare a staff report recommending approval of a modified project subject to conditions designed to ensure the project's consistency with the Sand City certified LCP and the public access and recreation policies of the Coastal Act.

As part of the settlement, the Applicant was supposed to provide detailed information supporting the project application, but ultimately only submitted a subset of that information. Although requested, the Applicant did not provide all requested information, such as: details on the proposed foundation for the project, additional cross-sections and elevations keyed to a current topographic survey, additional photo simulations of the proposed project, feasibility information related to siting buildings further into dunes, subdivision details, depiction of different program elements by type (e.g., hotel versus condo-hotel versus residential, etc.), information on how sand would be disposed, etc. (see staff request and Applicant's response in Exhibit 27). This report has evaluated the project as best it can absent the requested information.

Under the terms of the settlement agreement, the Commission retains its full discretion to approve, approve with conditions, or deny the proposed modified project.

D. HAZARDS

1. Applicable Policies

The LCP requires that new development address coastal hazards. In particular, the LCP requires that new development be sited and designed to minimize risk from geologic and flood hazards, including that it be setback sufficiently to protect it for its economic life. In addition, the LCP specifies the circumstances in which shoreline protection can be approved. Applicable LCP LUP and IP policies include:

***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...*

***LUP Policy 4.3.2.** If shoreline protection devices are found to be necessary, require complete geologic and engineering studies to determine the proper design appropriate to identified site conditions. The device should be designed to minimize visual intrusions.*

***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). ...

As discussed below, the most significant hazard constraint for the dune site in question here is the LCP requirement that a project be setback sufficiently from the “most inland extent of erosion” to minimize risk and protect the development for its economic lifetime (i.e., setback from the bluff top or dune/beach scarp, or where those features aren’t identifiable, from the maximum expected storm wave run-up location). All such setbacks must account for at least 50 years of safety and stability. The LCP requires that a geologic report be prepared that addresses existing and potential hazard impacts, and recommends mitigation measures to minimize identified impacts. The LCP further requires that a project be denied if the identified hazards cannot be mitigated.

Further, setbacks must be great enough to protect the proposed development for its economic life, and shoreline protection devices can only be permitted when necessary to protect existing structures, coastal-dependent uses, public beaches and recreational areas, and public works. Thus, the project is not allowed to include shoreline protection components, and must be designed to avoid the need for shoreline protection at any point in the future. As proposed, it is unclear whether shoreline protection components will be included in the initial design of the structure because the foundation design plans have not been completed. Initial geotechnical reports from the Applicant state that a caisson system may be proposed, but that more investigation is necessary before a final recommendation can be made. A memo from the Applicant’s engineer states: “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.”¹⁶ A caisson system may be necessary to protect against seismic and liquefaction hazards (see additional findings below), but such a foundation system could also function as shoreline protection when the beach erodes in the future, potentially creating an inconsistency with the LCP.

2. Site Description

The project site lies entirely within the Monterey Bay Dune Field of Quaternary age. Although underlain at greater depths by sedimentary rocks and granite of the Salinian Block, borings to depths of up to 80 feet reported in the 1987 soil feasibility study by M. Jacobs and Associates encountered only dune sands. These dunes making up the uppermost portions of the dune field are young, active, and poorly consolidated. Older dunes containing paleosols and somewhat more consolidated sands underlie the younger deposits. The coastal bluff at the site is cut into these sand dunes, and reaches heights up to 80 feet.

Prior to 1986, much of the project site was manipulated for sand mining operations. Sand mining ended in 1986, but evidence of these operations remains in the dune landform today, including the large indentation in the center of the site where the primary sand mining occurred. The LCP, which was certified in 1984, acknowledges that at the time of certification the dune area in the northern part of the City had been mined, and was not in a “natural” condition. Nonetheless, in the 30 years that have passed since certification of the LCP, the site has continued to recover to a more natural condition, and the site’s major dune forms, which did exist in 1984 as significant

¹⁶ HKA, Inc. Additional Response letter to SNG dated January 16, 2014.

dune features, remain in place and are active (see also section on Shoreline Erosion below). As discussed in the Wave Run-up and Flooding section, the site also contains significant natural dune ecological values and functions notwithstanding its mining history.

3. Project Economic Lifetime

As stated above, the Sand City LCP requires that new development be setback from shoreline hazards a sufficient distance to assure safety for its economic life, and in all cases for at least 50 years.¹⁷ The LCP, however, does not define the term “economic life,” leading to some ambiguity, and further, the Applicant has not identified a specific economic life for the proposed development. For the purposes of establishing a setback for this proceeding, the Applicant and the Commission have agreed to use an initial setback distance that is based on the Applicant’s estimate of erosion rates for the next 75 years. It is noted, however, that this is an initial setback distance, and not an agreement to allow or provide for 75 years of economic life for the proposed development.

4. Hazards Affecting the Site

A. Sea Level Rise

Coastal hazards at the project site must be assessed with considerations of potential changes due to sea level rise. Sea level, along with seismic uplift and subsidence, is one of the stronger drivers for long-term shoreline change along the California coast, and it needs to be considered in the analysis of bluff retreat, inundation/flooding, and wave impacts. Rising sea levels will cause landward migration of beaches due to the combined effects inundation and loss of sediment due to erosion. This will increase the amount of time that bluffs and dunes are pounded by waves at high tide, causing greater erosion of the dunes inland of the beach (National Research Council (NRC), 2012). Wave impacts and coastal flooding more generally can be some of the more damaging consequences of coastal storms, resulting in damage or destruction of structures, and high amounts of erosion. The increase in the extent and elevation of flood waters will also increase wave impacts and move the wave impacts farther inland.

There is strong evidence that the historic trend of a gradual rise in sea level of 7 inches to 8 inches per century has changed and that future sea level will rise more quickly than it has in the past few centuries. Satellite observations of global sea level have shown sea level changes since 1993 to be almost twice as large as the changes observed by tide gauge records over the past century. Recent observations from the polar regions show rapid loss of some large ice sheets and increases in the discharge of glacial melt. Projections of future sea level rise will continue to be updated as new evidence and scientific analysis is brought to bear. Many believe that projected sea level rise will continue to increase, particularly given the potential melting of glacial and Greenland ice. As stated in the 2009 California Climate Adaptation Strategy:

Over the 20th century, sea level has risen by about seven inches along the California coast. Replacing previous projections of relatively modest increases of sea-level rise for the 21st century, the 2009 Scenarios Project built on scientific findings that became available in the last two years to produce estimates of up to 55 inches (1.4 meters) of sea-level rise under the A2 emissions scenario by the end of this century (Figure 7). This projection accounts for the global growth of dams and reservoirs and how they can affect

¹⁷ LUP Policy 4.3.5. See also, IP Section 2.2.

*surface runoff into the oceans, but it does not account for the possibility of substantial ice melting from Greenland or the West Antarctic Ice Sheet, which would drive sea levels along the California coast even higher. Projections of sea level rise under the B1 scenario are still several times the rate of historical sea-level rise, and would barely differ under a stringent “policy scenario” in which global emissions would be drastically reduced. This suggests that while mitigation will be important to minimize many climatic and ecological impacts, adaptation is the only way to deal with the impacts of sea-level rise during the 21st century. In short, even on a lower emissions trajectory and without the addition of meltwater from the major continental ice sheets, sea levels in the 21st century can be expected to be much higher than sea levels in the 20th century.*¹⁸

The 2013 IPCC Summary for Policy Makers notes on page 25 that “Global mean sea level will continue to rise during the 21st century. Under all RCP scenarios, the rate of sea level rise will very likely exceed that observed during 1971 to 2010 due to increased ocean warming and increased loss of mass from glaciers and ice sheets.” Due to the potential for sea level rise to result in greater flooding, inundation and erosion, coastal managers need to consider sea level rise in proposed project planning and design, and they should apply the best available information on future sea level to decisions that will affect the coast for most of the 21st century.

Extensive research has been focused recently on climate change modeling, and the Commission has followed this research for information on predicted sea level change. While much of the sea level rise science has examined global concerns, several recent reports about sea level rise have focused on the California coast. In 2011, the Ocean Protection Council adopted a resolution on sea-level rise¹⁹ that directed state agencies to incorporate consideration of the risks posed by sea level rise into all decisions, and the resolution provided science-based recommendations and sea-level rise projections that could be used by state agencies. These projections were based upon global sea level rise estimates²⁰ that have been reviewed for their use for California. These projections were recommended for use in planning for the San Francisco Bay Delta by the Blue Ribbon Task Force for the Bay-Delta plan (DeltaVision), and these projections provided the foundation for the 2011 California Climate Action Team’s Climate Change Scenarios for estimating the likely changes range for sea level rise by 2100.²¹

In 2012 NRC issued “Sea Level Rise for the Coasts of California, Oregon and Washington: Past, Present and Future”, (NRC Report) prepared in partial response to then Governor Schwarzenegger’s Executive Order S-13-08 that directed state agencies to plan for sea level rise and coastal impacts. One of the main purposes of the NRC Report is to inform and assist state agencies as they develop approaches for incorporating sea level rise into planning decisions with the most recent and best available science. The NRC Report used a year 2000 baseline and

¹⁸ See <http://www.energy.ca.gov/2009publications/CNRA-1000-2009-027/CNRA-1000-2009-027-F.PDF>, p. 18.

¹⁹ Resolution of the California Ocean Protection Council on Sea-Level Rise, Adopted on March 11, 2011; see http://www.opc.ca.gov/webmaster/ftp/pdf/docs/OPC_SeaLevelRise_Resolution_Adopted031111.pdf.

²⁰ Based upon the sea level rise estimates presented in Martin Vermeer’s and Stefan Rahmstorf’s “Global sea level linked to global temperature”, *Proceedings of the National Academy of Sciences*, published online before print December 7, 2009; doi: 10.1073/pnas.0907765106.

²¹ Cayan et al. 2009. Climate Change Scenarios and Sea Level Estimates for the California 2008 Climate Change Scenarios Assessment; CEC-500-2009-014, 62 pages.

produced sea level rise projection for 2030, 2050 and 2100, taking into account geophysical differences north and south of Cape Mendocino attributed to vertical land movement.²² Table 1 provides the range of projections from the OPC Guidance and the 2012 NRC Report, both based upon 2000 as the base year. Both reports show that sea level rise is very likely to be much higher than it is at present, and both show a large range in future projections. The Coastal Commission's Draft Sea Level Rise Policy Guidance document recommends using the NRC Report as the current best available science for sea level rise. Other state agencies have also adopted the sea level rise projections and recommendation of the NRC Report including the Ocean Protection Council (OPC) which adopted the NRC Report's sea level rise projections in March 2013. Based on the NRC Report projections, the range for 2065 and 2090 (appropriate for a 50-year or 75-year project life respectively) can be interpolated between the projections for 2050 and 2100 to be from 7" to 35" (0.19 m to 0.88 m) for 2065 and from 14" to 56" (0.36 m to 1.4m) for 2090.

Table 1. Range of Sea-Level Rise Projections for California from OPC & NRC (2000 base year)

TIME PERIOD	OCEAN PROTECTION COUNCIL 2011	NRC 2012
2000 – 2030	13 – 21 cm (5 – 8 inches)	4 – 30 cm (2 – 12 inches)
2000 – 2050	26 – 43 cm (10 – 17 inches)	12 – 61 cm (5 – 24 inches)
2000 – 2070	43 – 81 cm (17 – 50 inches)	Not Provided
2000 – 2100	78 – 176 cm (31 – 69 inches)	42 – 167 cm (17 – 66 inches)

The observed trend for global sea level has been a long-term, persistent rise, and the reports have considered the 55-66 inches of rise to be useful in encompassing the probable rise that could occur by 2100. This amount of sea level rise does not represent the extreme rise that might occur if the rate of glacial melting accelerates quickly and continues over several decades.²³ It also does not represent the extreme low rise in sea level that might occur if current trends for global temperature flatten or reverse.

The OPC 2013 Sea Level Rise Guidance document recommends that decision makers consider timeframes, adaptive strategies, and risk tolerance when selecting estimates of sea level rise.

The consequences of failing to adequately address sea level rise for a particular project will depend on both adaptive capacity and the potential impacts of sea level rise to public health and safety, public investments, and the environment.

Adaptive capacity is the ability of a system to respond to climate change, to moderate potential damages, to take advantage of opportunities, and to cope with the consequences. In most situations, adaptive capacity must be front-loaded, or built into the initial project; it cannot be assumed that adaptive capacity can be developed when

²² North of Cape Mendocino, geologic forces are causing much of the land to uplift, resulting in a lower rise in sea level, relative to the land, than has been observed farther south.

²³ For a discussion of projected sea level rise greater than that projected by Rahmstorf, see, for example, Pfeffer et al. 2008. "Kinematic Constraints on Glacier Contributions to 21st-Century Sea-Level Rise". Science Vol. 321. no. 5894, pp. 1340 – 1343, DOI: 10.1126/science.1159099.

needed unless it has been planned for in advance. A project that has high adaptive capacity and/or low potential impacts will experience fewer consequences. For example, an unpaved trail built within a rolling easement with space to retreat has high adaptive capacity (because the trail and easement can be relocated as sea level rises) and therefore will experience fewer harmful consequences from SLR. In contrast, a new wastewater treatment facility located on a shoreline with no space to relocate inland has low adaptive capacity and high potential impacts from flooding (related to public health and safety, public investments, and the environment). The negative consequences for such a project of failing to consider a large amount of SLR would therefore be high.

The amount of risk involved in a decision depends on both the consequences and the likelihood of realized impacts that may result from SLR. These realized impacts, in turn, depend on the extent to which the project design integrates an accurate projection of SLR. However, current SLR projections provide a range of potential SLR values and lack precision. Therefore, agencies must consider and balance the relative risks associated with under- and/or over-estimating SLR in making decisions.

Figure 2 in Appendix C illustrates this relationship for a project in which underestimating SLR in the project design will result in harmful realized impacts such as flooding. In this case, harmful impacts are more likely to occur if the project design is based upon a low projection of SLR and less likely if higher estimates of SLR are used. In situations with high consequences (high impacts and/or low adaptive capacity), using a low SLR value therefore involves a higher degree of risk.

In terms of establishing coastal erosion setbacks, the old process of simple extrapolation from historic trends is still necessary but no longer sufficient, and any analysis of projected future erosion must take into account potential sea level rise. Since erosion and coastal flooding hazards tend to increase in severity with an increase in sea level, it is prudent planning to examine the consequences from the higher projections for future sea level rise.

In the case of the proposed project, the Applicant analyzed the effects of sea level rise over a 50-year period, assuming future sea level rise rates of 12 inches on the low range and 30 inches at the upper end (approximately 0.3 and 0.76 meters respectively).²⁴ These figures comport with the lower and upper sea level rise projections identified in 2012 NRC Report for 2065. The purpose of this analysis was to determine whether any of these possible sea level trends would result in significant impacts to the proposed development over the over a 50-year period, or if facilities at risk would change significantly with a change in the assumptions for rising sea level. Though the rates used in the analysis are generally consistent with current sea level rise projections, the use of the LCP minimum 50-year period does not fully account for potential hazards to the development over the agreed-upon 75 year period. Special conditions are therefore required to ensure that the proposed development minimizes risks from coastal hazards such as sea level rise, without reliance on shoreline armoring, as required by the LCP.

B. Slope Stability

In establishing LCP-required development setbacks, it is necessary to ensure stability throughout the life of the development. Because coastal bluffs are generally unstable, development must be

²⁴ HKA Geotechnical and Coastal Engineering Update dated October 23, 2013, p.5.

set back a sufficient distance to ensure stability throughout its lifetime. Generally, this is done through applying a quantitative slope stability analysis to the shoreline erosion/retreat analysis. Barring significant geologic differences between the landforms present today and those expected to be present at the end of the lifetime period, the amount of setback necessary to assure stability today can be added to the expected amount of shoreline erosion/retreat to arrive at a total setback that will ensure stability at the end of the development's lifetime.²⁵

Regarding a quantitative slope stability analyses for the project site, the Applicant's consulting engineers, HKA, pointed out that the methodology they used to arrive at a setback line inherently assumes that the bluff will eventually reach and maintain a 2:1 slope, and sets development behind that line. As HKA states:

The projected final 2:1 dune bluff slope as required by the updated methodology has an inherent factor of safety of at least 1.6 and is a very conservative representation of long term, stable sand dune bluff gradients.

The Commission concurs that setting back development behind a projected 2:1 slope measured from the expected bluff toe that is based on expected retreat over the project's lifetime likely offers a more conservative setback than is to be obtained by a slope stability analysis. Accordingly, the Commission finds that the approach to assuring the safety of the development from slope instability as presented in the HKA report is adequate. However, the question of slope stability is just one aspect of determining site stability and the appropriate setback for new development. As shown in the following sections, there are problems with the Applicant's analysis of projected erosion that raise questions with the Applicant's proposal, notwithstanding the adequacy of the Applicant's assumption/methodology for addressing the slope stability question alone. The 2:1 slope concept works to address the slope stability issue only so far as it is based on the appropriate expected amount of erosion/retreat over time. In this case, and as seen below, the identified amount of erosion/retreat to which the 2:1 slope has been applied has underestimated the degree of erosion/retreat, and thus the 2:1 setback based on it is inadequate. Special Conditions are therefore required to minimize threats to the development from hazards and adequately mitigate unavoidable hazards as required by the LCP.

C. Shoreline Erosion/Retreat

Erosion/Retreat Trends

Shoreline erosion and retreat are significant hazards in the Sand City area that must be addressed under the LCP, including through the application of appropriate setbacks (including as dictated by LUP Policy 4.3.5 and IP Section 2.2). Because of the unconsolidated nature of the sandy dunes at the project location, and the exposure of southern Monterey Bay to high wave energy, this region has among the highest long-term bluff retreat rates in the state. The LCP states that average annual erosion rates range between 1.4 and 5 feet per year.²⁶ The United States Geological Survey (USGS) has recently reported long term (70 to 100 years) and short term (30 to 40 years) trends for bluff retreat for the open ocean coast, and the Sand City area is highlighted for its high erosion rates. In addition, there has been substantial erosion of beaches in

²⁵ As discussed later, the height of the future bluff landform is important in establishing the safe setback if the Applicant's proposed method of assuming a certain slope layback is used.

²⁶ LUP Section 4.2.1.

the area, particularly when bluff retreat has been halted by the construction of seawalls and other shoreline protective devices. As USGS indicates in its 2007 report in relation to the Monterey Bay region:

The highest [retreat] rates were measured in Southern Monterey Bay, where bluffs are formed in nitrified Quaternary sand dunes. The erosion rate increases to the south...and was highest (-1.8 m/yr) where there has been a long history of sand-mining of the dunes (Thornton et al. 2006) The amount of retreat [at Stillwell Hall, Fort Ord] measured over the 70-year time period was ~116 m.²⁷

USGS's 2007 analysis and identification of retreat, including 116 meters (382 feet) of retreat at the former Fort Ord military base (now Fort Ord Dunes State Park), was based on a comparison of historic and current cliff edge positions. The historic cliff edge was estimated from 1933 aerial photographs, and the current cliff edge was estimated from a 1998 LIDAR survey.²⁸ The USGS analysis shows an average annual long-term retreat rate of about 1.8 meters per year (or 5.9 feet per year) for the Sand City area, which is a greater erosion rate than is identified in the LCP. In general, substantial bluff erosion and retreat events are episodic and correlated with events when storms and high tides coincide.²⁹

Erosion in the Sand City area cannot be completely analyzed without consideration of historic and ongoing sand mining. The time period of cliff retreat for the USGS analysis includes the time period when drag lines and dredge pond mining were occurring in the Marina (upcoast) and Sand City areas. The Draft Coastal Regional Sediment Management Plan (CRSMP) for Southern Monterey Bay, prepared by Philip Williams and Associates, provided information on sand mining in the area.³⁰ In general, there was about 111,000 cubic yards per year of sand mining at Sand City up until 1990, and 83,000 cubic yards per year from Marina. Most of these operations ceased in the late 1980s and early 1990s, leaving the sand dredge pond in Marina as the only currently active mining effort in the southern Monterey Bay. If sand mining were to decrease or stop, and that sand were allowed to stay in the system, instead of being exported out of the system, erosion rates may decrease. Thus, the identified historic retreat rates of 5.9 feet per year would be expected to be somewhat lower, all things being equal. However, the CRSMP also found that the volumes mined from the Marina dredge pond likely have increased over time to current rates of approximately 200,000 cubic yards per year, thereby reducing or muting the shoreline retreat benefits from closing out the other drag line operations in Sand City and Marina. The CRSMP also documents increased erosion rates since 1984 in Marina, and south of the Salinas River, and finds that this may be related to the increased mining volumes in Marina.³¹

The effects from the possible increased volume of sand extracted at Marina may take several

²⁷ "National Assessment of Shoreline Change, Part 4: Historic Coastal Cliff Retreat along the California Coast" by Cheryl Hapke and David Reid (Open File Report 2007-1133).

²⁸ LIDAR stands for Light Detection and Ranging, and is a process of using pulses from airborne lasers to determine topography.

²⁹ See Thornton et al.

³⁰ Draft Coastal Regional Sediment Management Plan for Southern Monterey Bay, Philip Williams and Associates, November 3, 2008, p.33.

³¹ Id, p. 87.

years to propagate downcoast to Sand City, and the recent trends in shoreline change for the 1984 to 2004 period for Sand City that show a lower, though still significant, rate of bluff erosion, may represent an abnormal lull in erosion once the effects from the increased mining in Marina reach this location. Given the various factors in play, such as long term erosion trends, decreasing and increasing mining at different locations, the episodic nature of erosion correlated to mean sea levels and storm events, there is considerable uncertainty concerning the relationship between sand mining and erosion rates.³²

City Efforts

In 1990, the City of Sand City adopted a resolution (SC-21) accepting a 1989 shoreline erosion study performed by Moffatt and Nichols and directing City staff to consider the findings and projections of the report when reviewing applications for development west of Highway One. In earlier project proposals for development west of Highway One, this 1989 report was helpful in projecting the location of the mean high tide line under low-, medium-, and high-risk scenarios. However, it is bluff erosion, not the location of the mean high tide line per se that most directly threatens development in this area. Although the level of wave run-up and flooding must be considered, where high bluffs occur, it is more likely that bluff retreat and slope stability will determine when development is threatened.

Accordingly, in 2003 the City hired HKA to prepare a “Coastal Recession Evaluation” which, by estimating typical equilibrium beach and dune profiles, developed an estimate of future bluff edge positions. This was not based solely on analysis of historical bluff retreat, but also accounted for sea level rise and slope flattening through time. HKA’s methodology was essentially as follows:

- Multiply the historic long-term bluff retreat rate calculated from examination of aerial photographs (2.4 feet per year) by 50 years to establish the amount of shoreline retreat expected in 50 years (120 feet).
- Add to this the amount of shoreline retreat expected due to 0.6 feet (7”) of sea level rise.³³ Using the Bruun Rule (see below) and an estimated 0.6 feet of sea level rise over the next 50 years, together with assumptions about the closure depth of the shore profile, they calculated an additional 7 feet of shoreline retreat due to sea level rise.
- Assume an equilibrium condition in which beach width remains constant as the shoreline moves landward. The equilibrium beach, based on measurements taken in 2003, was assumed to have a slope of 7:1 and a depth of 105 feet. The landward end of the beach, measured from the estimated 2053 mean high tide position, is taken to be the 2053 toe-of-bluff.
- Assume bluff slope stability could be established by a 2:1 slope of the bluff face, an assumed worst-case for slope flattening through time. Where this 2:1 slope intersects current

³² Thornton et al conclude that cessation of sand mining in Sand City is a “possible reason” that erosion rates decrease between Monterey and Sand City after 1984, but they also observe that their analysis is based on only 4 data points between 1984 and 2004, and that “the highly episodic wave climate complicates relating the volume of sand extracted by mining operations with volumes of sand eroded along the coast”. Id, p. 57.

³³ Current sea level rise guidance from the 2012 NRC Report provides a range of estimates of 7” to 35” of sea level rise by 2065, and the 7” used here is at the lowest end of the range.

topography is assumed to be the position of the 2053 top of slope and is taken to be a development setback line.

Using this methodology, HKA established a 2053 bluff crest recession line for all of Sand City, including most of the project site.

Applicant's 2008 Estimates

The Applicant's engineers, Bestor Engineers, used the same methodology as HKA did for the City to identify an estimated 2058 bluff recession line across the project area. They used similar methods to also identify an estimated 2083 bluff recession line. These lines were reviewed and reanalyzed by HKA, who concluded in their memo dated June 19, 2008 that:

Based on our reanalysis, we determined that the setback line labeled by Bestor as an approximate 2083 bluff crest recession line (a 75-year estimated setback line) is probably at least a 70 year or greater setback line. Our reanalysis included an added factor of safety, an increase in estimated setback due to Bruun Rule recalculations and a higher estimate of sea level rise during the 75 years compared to 50 years.

Some of the information and methodology used to develop these setback lines, however, are inconsistent with other studies. For example, the historic erosion rate of 2.4 feet/year that was used is less than half the 5.9 feet/year erosion rate calculated in the USGS (2007) report. In addition, the analysis of sea level rise impacts used a low rate of sea level rise (0.6mm/year). As discussed above, the 2012 NRC Report adopted by the OPC and other state agencies estimates a range of 4.7" – 24" for sea level rise projections by 2050. As compared to the 2012 NRC forecasts, the 0.6 feet (7.2") figure used by HKA in its 2008 Geotechnical update is on the very low end of the range (the NRC Report estimates a range of 7" to 35" by the year 2065). Finally, the slope stability analysis was not quantitative in nature, limiting its usefulness for accurately determining the future location of the blufftop edge.

HKA analyzed the effects of various scenarios for future sea level rise on bluff recession, using the Bruun Rule to allocate an additional the amount of bluff retreat that would occur due to sea level rise. According to the U.S. Army Corp of Engineers' (ACOE's) Coastal Engineering Manual:

The basic assumption behind Bruun's model is that with a rise in sea level, the equilibrium profile of the beach and the shallow offshore moves upward and landward. Bruun made several assumptions in his two-dimensional analysis:

- *The upper beach erodes because of a landward translation of the profile.*
- *Sediment eroded from the upper beach is deposited immediately offshore; the eroded and deposited volumes are equal (i.e., longshore transport is not a factor).*
- *The rise in the seafloor offshore is equal to the rise in sea level.*

These limitations, particularly the assumptions of the maintenance of an equilibrium profile and the requirement that longshore transport is not a factor, place severe limitations on the application of the Bruun Rule. Thus, values of bluff retreat arrived at by application of the Bruun Rule can be thought of as long-term values to which the beach and bluff system will trend, over

some unspecified amount of time. Further, these values are only rough approximations due to uncertainty in longshore transport and the horizontal and vertical limits of the equilibrium beach/shore profile. Despite its possible shortcomings, the Bruun Rule is still the most commonly accepted method for estimating how sea level rise will affect erosion.

The analysis of sea level rise by HKA provides a table that shows some of the more referenced sea level projections and includes the projections in the 2007 Rahmstorf Report for consideration. The report analyzed changes in bluff retreat for the various trends in sea level using the same modified Bruun rule methodology described above and found that bluff retreat would increase with a rise in sea level. The analysis attempted to isolate the influence of sea level rise from other erosive forces, using a simple, geometric shoreline change model. With this compartmentalized analysis, the HKA report found that the baseline trend of 0.6 feet (0.18m) of sea level rise in 50 years was expected to result in 7 feet of retreat in addition to the retreat previously determined from historic trends; 0.8 feet (0.25m) of sea level rise in 50 years would result in an additional 23 feet of retreat ; 1.6 feet (0.5m) of sea level rise in 50 years would result in an additional 39 feet of retreat; and 2.5 feet (0.75 m) of sea level rise in 50 years would result in an additional 58 feet of retreat. These additional bluff retreat estimates attributed to sea level rise were added to the total shoreline recession from the 2003 Sand City Report to show the 2058 blufftop position roughly 152 to 203 feet landward of the 2003 blufftop. The large variation in bluff retreat (from 152 to 203 feet) in 50 years, depending on sea level rise, with the low retreat based upon only 0.6 feet of sea level rise in 50 years and the high retreat based upon 2.5 feet of sea level rise. If estimated bluff retreat (and associated proposed bluff setbacks) underestimates future sea level rise, they likely also greatly underestimate the necessary safe bluff setback.

2013 Settlement Agreement

The proposed 75-year development setback associated with the 2013 Settlement Agreement (see Exhibit 9) piggybacks on the previous work (i.e., Moffit and Nichols (1989) as updated by HKA in 2003 and 2008 to assess the position of development setbacks where no coastal protection would be needed for 50 years. They plotted the 50-year (2063) and 75-year (2088) bluff crest recession lines, using the methodology developed from the HKA 2003 and 2008 reports, on the vesting tentative map and sited all development landward of the 2088 bluff crest recession line (i.e., proposed development setback line).³⁴ These setback lines consider 1 to 2.5 feet of sea level rise over a period of 50 years.

HKA reviewed surveys of the Mean High Tide Line (MHTL) prepared by Bestor Engineers in 1995, 2003, and again in 2013, and found that the position of the 2013 MHTL had moved approximately 80-feet seaward of its previous position in 1995 in one location. Prior aerial surveys had shown the MHTL location to be in the same relative position over the 1995 to 2003 period. HKA also reviewed a survey of the ± 20 foot elevation contour across the site to determine the location of the toe of the bluff relative to past surveys and concluded that there had been less-than-expected bluff recession over the same 18 year period (1995 – 2013). HKA notes that while other models predicted far greater annual erosion rates and shoreline retreat, the actual amounts over the 18-year period was far less. They state in the Geotechnical and Coastal

³⁴ HKA assumed that the positions of the 2063 and 2088 bluff crest recession lines approximated the bluff crest recession lines developed by HKA in 2003 and used in the analysis of the Commission's review of the Applicant's 2009 project proposal (i.e., 2058 and 2083 respectively).

Engineering Update report dated October 23, 2013:

The Sand City method uses 2.4 feet per year as a historical bases for predicting future shoreline recession; others researchers use between 2.6 to 6.4 feet per year. Thus these methods would predict 45 to 120 feet of recession within the 1995 to 2013 period, when only an average of 7 feet of recession actually occurred, as measured at the base of the bluff.

In evaluating the influence of sea level rise, HKA estimated that between 0 and 51 feet of projected bluff retreat might occur at the property in the next 50 years in addition to the 50 year recession estimated in accordance with the methodology developed previously by HKA in 2003. HKA points out that the proposed development setback line (2088 bluff crest recession line) is still landward of the 50 year recession line plus the resultant additional 51 feet of recession due to accelerated sea level rise. They state in the 2013 report:

In our opinion, given that it has been clearly documented that much slower bluff recession occurred between 1995 and 2013, than has been previously predicted by various models that were based on historical recession rates, these recession lines are appropriate. Utilizing a worst case projection of 2.5 feet of future sea level rise in 50 years and including the resultant additional 51 feet of recession due to this high level of accelerated sea level rise, the approximate 2063 bluff crest recession line (50 year recession line) would be located landward an additional 51 feet. Using a more commonly expected projection of 1.0 feet of future sea level rise in 50 years and including the resultant additional 16 feet of recession due to this high level of accelerated sea level rise, the approximate 2063 bluff crest recession line (50 year recession line) would be located landward an additional 16 feet. Both of these locations are still seaward of the 75 year bluff crest recession line at elevation 32, demarcated as the development setback line for the project.

Therefore, given this analysis, the Applicant's consultant determined that the proposed setback line, is considered sufficient for at least 50 years. HKA also reviewed surveys of the mean high tide prepared by Bestor Engineers over an 18-year period between 1995, 2003, and 2013. The survey methods were standardized during the 1995 and 2003 fieldwork which included photogrammetric review of aerial photographs to estimate the location of the MHTL. After reviewing the 2003 survey, HKA asserted that the MHTL had varied little from the previous survey eight years prior. In 2013, a topographic survey was employed and was used to compare the location of the MHTL from the previous two surveys. Comparisons of the different survey methods may be useful provided that the scale (photographic and/or temporal) are similar. The aerial photographs used in the 2003 survey were taken in January of 2003, when the beach profile could be expected to be at its seasonal low point. The 2013 survey was taken during the early part of October when the beach profile could be expected to be at, or near, its widest.³⁵ Comparing the two surveys (2003 and 2013), HKA concluded in its 2013 update that the MHTL actually migrated seaward up to 80 feet in one location, and used this one observation to further draw conclusions regarding the long-term erosion rate along the Sand City shoreline and to

³⁵ October 15th is typically considered the beginning of the rainy season (i.e., long-term observations indicate a greater chance for winter storms and higher swells after this date).

determine that the proposed development setbacks are adequate.

It should be noted that in its 2003 city-wide report on coastal recession, HKA reported that the seasonal average shoreline position varies 50 feet from extreme winter to summer conditions in Sand City. The surveys used for estimating the location of the MHTL, however, do not appear to have taken into account the effects of short-term seasonal variation. As such, a portion of the reported 80 feet of beach accretion may actually be attributed to seasonal differences in the surveys. A review of the plotted surveys also indicates that in several locations, the 2003 and 2013 MHTL estimates are within roughly 20 feet of one another, suggesting that when seasonal variation is accounted for, the actual location of the 2013 MHTL would be 30 feet landward of prior positions. Thus, it is difficult to rely on this analysis without accounting for seasonal and yearly variations. As noted above, several studies have predicted far greater erosion and far more sea level rise, particularly in the longer 75 – 100 year timeframe, than is being used by the Applicant in this project.

In its 2003 Coastal Recession Evaluation, HKA observed that severe erosion of this stretch of coastal dunes was evident in the late 1970's, again in 1983, and in December 2002, and HKA suggests that coastal erosion processes commonly occur to some degree each winter, though they are much more severe during some winters. A case in point is the El Nino winter of 1983. During that winter a combination of persistent ocean storms lowered beach elevations and were followed by concurrent very high ocean swells during periods of high tides, which allowed waves to break closer to the dunes and bluffs. Increased wave energy at the base of the cohesion-less dune sand and bluffs caused substantial rapid bluff and dune recession. Similarly, in 2002, during periods of large ocean swells and high tide, HKA observed a significant "scour hole" adjacent to the Monterey Beach Hotel (aka Best Western Monterey Beach). Persistent wave attack and the formation of a large rip channel in the surf zone formed directly in front of the hotel and deepened against the face of the hotel seawall until the beach was at an elevation of 2.5 below mean sea level. For a significant period of time (roughly 6 months), the water's edge was against the seawall preventing lateral beach access in front of the hotel. These extreme events, though infrequent, are recurring and by some accounts increasing in intensity and duration. As a result, catastrophic bluff failure can be expected in the future. HKA notes on page 7 of the 2003 report:

Because of the extreme susceptibility of the soils to erosion, a single severe ocean storm season has the potential to cause 50 feet of bluff recession anywhere on this section of coastline.

Further, as described in a March 2014 memo from the Commission's Staff Geologist, Dr. Mark Johnsson (attached as Exhibit 10), episodic erosion of the bluffs adjacent to the proposed development is subject to erosion of as much as 49 feet over a single winter storm season. Dr. Johnsson's determination is based on a recent analysis of the 1997-1998 El Nino event, and is consistent with HKA's estimate of 50 feet of bluff recession in a single storm season (see Exhibit 15).

Thus, there are inherent uncertainties in predicting future erosion rates for this site, including divergent scientific opinions, and even in the most optimistic of retreat scenarios at this location, the site still presents significant hazard constraints that would affect the proposed project. Overall, the building setback line proposed by the Applicant is based on a minimal erosion rate

of 2.6 feet/year over 75 years. There is no possible development setback for the site that eliminates all erosion risk, but the greater the setback, the lower the risk. Special conditions are therefore needed to ensure that hazard risks are minimized, consistent with the LCP. Special Conditions 8 and 9 address the uncertainties raised by the different analyses of appropriate setbacks by ensuring that development is removed in the future, if it is threatened by erosion and other coastal hazards. The proposed setback therefore does not eliminate such risk either, but in combination with the special conditions and the specific features of the project as currently proposed, it minimizes the risks, consistent with the LCP.

D. Wave Run-Up/Flooding

LUP Policy 4.3.4 and IP Section 2.2 require that all development be sited and designed to minimize risk from geologic, flood or fire hazard. These LCP provisions do not limit the source or sources of the flooding risk that must be minimized. Oftentimes for projects adjacent to the coast, it is the flooding from waves and wave run-up that is the most critical flood concern. Flooding from surface runoff and sheet flow can be significant, but in most situations it can be addressed with proper site design and drainage. Flooding by wave run-up, however, is a different phenomenon, and is less easily addressed through site design. Such flooding is explicitly identified as a core hazard avoidance criterion by the LCP, including requiring setbacks to be based on the maximum expected storm wave run-up (LUP Policy 4.3.5 and IP Section 2.2).

In general, the evaluation of wave run-up combines both changes to the beach or dunes with the changes in water conditions to determine the wave run-up. Since concern for wave run-up and flooding can occur any time during the project life, the analysis of wave run-up is based on long-term erosion of the beach and dune and seasonal recession of the beach. The wave conditions are assumed to be from a storm comparable to the 100-year event (or the storm which has a 1% annual chance of occurrence, a large but not improbable event) during a high water level condition. Since storms can last for several hours, it is highly likely that part of a storm event will coincide with high tide. And, as with erosion, the storm event could occur anytime or several times during the project life, so sea level should be increased in this analysis by the sea level that could occur over the project life. Thus, the beach conditions for determining flooding from a 100-year storm event include both long-term erosion and seasonal erosion and the water conditions include high tide and sea level rise.

There have been several different studies of wave run-up for this property; one study was prepared for the Sterling Environmental Center (APN 11-012-05; a project proposed previously for this site) and the Applicant's consultant (HKA) provided an analysis of this report.³⁶ In addition, the Applicant's consultant has analyzed wave run-up for a range of wave conditions.³⁷ These analyses are summarized below.

- Sterling Environmental Center wave run-up analysis by Dr. Thompson (reports not provided,

³⁶ Haro, Kasunich and Associated, Inc. August 12, 1997 Letter Report to Mr. Ed Ghandour "Response to Additional Information Requested by David Powers Associates, San Jose, To Prepare and EIR for the Monterey Bay Shore Project", (Project No. M5613) Cover page shows date to be August 12, 1997; pages 2 and 3 of report show date to be September 12, 1997.

³⁷ Haro, Kasunich and Associates, Inc. February 3, 2009 Letter Report to Mr. Ed Ghandour, concerning Coastal and Geotechnical Hazards, Monterey Bay Shores Resort, Sand City, Monterey County, CA, and HKA August 12, 1997 Letter Report to Mr. Ed Ghandour concerning Monterey Bay Shores, Sand City, CA.

only summarized in HKA's August 12, 1997 report) predicts +27-foot NGVD average run-up, +30 to +31-foot NGVD for 20% inundation and +32 to +34-foot NGVD maximum run-up. Wave analysis was prepared for the 50-year storm event, and based on 65 years of historic observations. Since this analysis was based on historic observations, the analysis would include tide conditions, but would not include effects of future sea level rise. The analysis was only for a 50-year storm event and, while the observations indicate the elevation of the dunes that could be subject to flooding, they do not indicate the inland locations that would be subject to flooding after the dunes have been altered by seasonal or long-term erosion (and/or by project design, as proposed with the foredune grading and lowering). Thus, the analysis only considers flooding that would take place over time if the existing dunes were not altered as part of the project or due to erosion. This analysis was not revised for the development currently proposed for the site, but it was presented by HKA to show that their analysis was in line with previous work for the same location.

- The August 12, 1997 HKA letter report predicts an extreme storm wave run-up elevation of +35 to +48 feet NGVD, but recommends that wave run-up of +30 feet NGVD for a 100-year storm is acceptable, based on the work done previously by Dr. Thompson and on their experience with computer generated wave run-up in the region. Neither the quantitative analysis for this value nor the assumptions for tide conditions or sea level rise that were used in this analysis were provided. The recommendation covers only the elevation of the dunes that could be subject to flooding and does not indicate the inland locations that would be subject to flooding after the dunes have been altered by seasonal or long-term erosion or by the proposed project. The changes to the dunes are addressed in the analysis of bluff retreat in Section C above.
- In October 2000, HKA prepared an Update Geotechnical Engineering Report for Monterey Bay Shores Mixed Use Resort³⁸ that examined wave run-up as part of the bluff retreat study. In this report, high tide and atmospheric forcing conditions were included in the water elevation, along with a projected long-term sea level rise of 1-foot to provide a recommended design wave run-up elevation of +30 feet NGVD, similar to the recommendation from their 1997 report. As with the other recommendations for wave run-up, the +30-foot NGVD run-up estimate only addressed the elevation of the dunes that could be subject to flooding, and it does not indicate the inland locations that would be subject to flooding after the dunes have been altered by seasonal or long-term erosion or by the Applicant. The changes to the dunes are addressed in the analysis of bluff retreat in Section C above.
- The October 2000 HKA report also estimates the run-up that could be expected if a tsunami were to occur at the same time as a major ocean storm run-up event by adding 3.5 feet to the recommended +30-foot NGVD design wave run-up. This combined event is not regularly part of an analysis of wave run-up. However, there are synergistic interactions between these two events that would require a more detailed modeling effort than the mere addition of two independent elevations. The combined tsunami and major storm run-up analysis may include consideration of high tide and a 1-foot increase in sea level, but the omission of any consideration for the synergistic interactions between the two events is a flaw in this analysis.

³⁸ Haro, Kasunich and Associates Inc. (October 2000) Update Geotechnical Engineering Report for Monterey Bay Shores Mixed Use Resort, Project No. M5613.

- The February 3, 2009 HKA report³⁹ was prepared in response to requests from the Coastal Commission staff to examine wave run-up for a range of possible future sea levels (from 1.6 to 5.5 feet in 100 years). The expanded analysis by HKA examined wave run up for sea level rise of 3.3 feet and 5 feet in 100 years, and includes this rise by adding it to the current flood elevation, stating, “(if) future sea level rises at 10mm/yr for 100 years (3.3 feet total) or 15 mm/yr for 100 years (5 feet total) then the Base Flood Elevations at the time would be at least 3.3 to 5 feet respectively higher than they are now, and we expect the MBSR buildings will be flooded during a 100 year flood event” (HKA 2009, page 7).
- In its December 23, 2013 letter to the Applicant, HKA estimates a potential maximum wave run-up elevation of 31.7 feet in 2063 given 20” (1.7 feet) of sea level rise and a maximum wave run-up elevation of 33.1 feet in 2088 assuming 37” (3.1 feet) of sea level rise. The 50 and 75 year figures (1.7 feet and 3.1 feet respectively) are based on interpolations from 2012 NRC sea level rise projections using the “medium” model and an averaging of the high and low estimates within that range.

Normally an analysis for wave run-up examines both the changes to beach and dune conditions and the changes to the water levels. For this project, the analyses of the changes to the beach conditions were included in the analysis of bluff retreat and have been separated from the run-up analysis. The wave run-up analyses that were prepared for this project thus looked only at the expected run-up elevation on the existing dune slope without taking into account how this analysis would change as the existing bluffs retreat and/or they are graded down/leveled out as proposed by the Applicant. The analyses find that wave run-up can be up to +48 feet NGVD for extreme conditions, and approximately +32 feet NGVD for the 100-year storm event (the event typically used for design conditions). This elevation included high tide conditions, elevated water conditions due to atmospheric forcing and 20” (1.7-feet) rise in sea level. FEMA has revised its flood maps for this area and the maps recommend +27 feet NGVD as the 100-year Base Flood Elevation. The FEMA flood elevations do not take sea level rise or atmospheric forcing into account and are not used in place of site-specific analysis for coastal designs, but the 100-year flood elevation from FEMA is in general agreement with the 100-year wave run-up elevation. The HKA analysis appropriately estimates the 100-year storm wave run-up to be +32 feet NGVD, given the assumptions that there will be only 20” (1.7-feet) of sea level rise in by 2065 (for a project life of 50 years), and assuming that the effects of shoreline modifications (retreat and/or Applicant manipulation) are not a factor.

However, when sea level increases more than the modeled 1.7 feet of rise, or the timeframe is extended beyond the minimum 50 years analyzed, the flooding risks increase. The 2013 HKA letter found that a 3.1-foot rise in sea level (75 years) would result in a wave run-up elevation of +33 feet NGVD, approximately 11 feet above the garage level floor elevation and a full foot above the resort and residence (+32’ NGVD finished floor) elevation. Staff notes that the chosen underlying model assumptions (“medium” model and average of range) enhances the risk of under-estimating potential future wave run-up. Additionally, the analysis does not account for the proposed grading down of the foredune from an elevation of roughly 60 feet down to 32 feet, which is at or below the maximum modeled wave run-up. The proposed grading will reduce the

³⁹ Haro, Kasunich and Associates Inc. February 3, 2009 Letter Report to Mr. Ed Ghandour concerning “Coastal and Geotechnical Hazards, Monterey Bay Shores Resort, Sand City, Monterey County, CA” (Project No. M.5613).

bluff's ability to forestall wave run-up and may actually result in water ponding in and around the buildings and structures. Storm frequency, and in particular large prolonged periods of storminess (i.e., El Nino events) are forecast to increase in intensity and frequency in the future along with the potential for synergistic effects of high tides, large waves, wind and rain. HKA suggests that the impacts associated with wave run-up may be mitigated by temporary waterproofing, such as installing sand bags in accordance with forecasted high tide and swell events. While these measures may work on a temporary basis, they may not fully protect the proposed development in the future, so a special condition requiring removal of development, rather than shoreline armoring, is required.

The analysis by HKA of flooding sensitivity to sea level rise shows that it is only a matter of time until the proposed development could be flooded. The proposed grading of the dune crest will hasten the period of time that the proposed development and some adjacent properties will be at risk from flooding. HKA's findings support a conclusion that the proposed development is likely to be safe from significant flooding through 2065. The analysis does not support a conclusion that the proposed buildings will be safe for any period of time beyond the 50-year time period, or even for the proposed 50-year time period if sea level rise exceeds the projected rise of only 20" (1.7 feet) by 2065. And, while the wave run-up analysis identified the expected inundation elevation at fifty years, it does not provide information on the safe inland building envelope location that derives from such an analysis, nor does it extend such analysis beyond fifty years. The current +32-foot NGVD contour will retreat significantly over time, and the safe inundation condition needs to be considered in conjunction with the altered dune crest proposed by the Applicant, the safe bluff setback area that takes into account beach erosion and long-term bluff retreat, and the project lifetime.

Based on analysis of current and future flood risks, the proposed project has some vulnerabilities to risks from flood hazards. Special conditions discussed below are designed to ensure that the project minimizes these hazards, consistent with LUP Policy 4.3.4 and IP Section 2.2. In addition, special conditions are needed to ensure the proposed project is consistent with LUP Policies 4.3.6 and 4.3.8 because it cannot otherwise be assured that development will be moved out of potentially hazardous areas or that all natural hazards have been mitigated with respect to wave run-up/flooding.

E. Seismicity and Liquefaction

Most of the soils at the site consist of unconsolidated sands. Such soils are susceptible to liquefaction given a sufficiently high water table. During the winter season, it is reasonable to assume that the water table could reach potentially liquefiable soils and the soils could liquefy during major ground shaking associated with an earthquake. The site is located in a seismically active area and there is a high probability that the site will be subject to strong ground motion during the life of the development. There are no active faults on the site, but several, including the San Andreas, San Gregorio, Tularcitos, King City, and Chupines Faults pass within 25 miles of the site. In a letter report dated February 10, 1998, HKA estimates an average maximum horizontal peak acceleration for the soils making up the site to range from 0.1 to 1.0 times the force of gravity.

In its January 16, 2014 letter responding to Commission staff, HKA indicated that a major earthquake is likely within the next 50 years and that due to the young depositional characteristics of the dune sands, deep piers or caissons may be necessary 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.”

Cross-sections prepared for the project illustrate the ground floor garage at an elevation of +22 feet NGVD, suggesting that if they are used, caissons could extend significantly more than 25 feet below the finished floor elevation of the lowest portion of the proposed development, and further for portions of the development where the finished floor is at higher elevations. Although designed to withstand differential settlement associated with earthquakes and liquefaction, the deep caisson foundation would also serve to act as a shoreline protection device which could withstand many years of erosion and bluff loss, and ultimately extend out onto the public beach or Monterey Bay. The LCP requires that new development be sited and designed to minimize risk from flood or geologic hazards, without reliance on shoreline armoring, and that new development be sufficiently setback from geologic hazards over the life of the development.

The Applicant has not yet submitted foundation design criteria, but it does not appear that there are any extraordinary design considerations that would significantly affect siting and design to meet fault criteria as required by LUP Policy 4.3.9, and to withstand expected ground shaking during a major earthquake as required by LUP Policies 4.3.5 and 4.3.10. The Applicant's Engineer indicates that a site specific design level geotechnical investigation will be necessary to identify the final building position, design and loads, and that the detailed foundation plans will be prepared after the coastal permit is approved. HKA anticipates that the buildings may need to be constructed on large structural concrete slabs with caissons that penetrate below the surface of the sand to withstand ground shaking. Another potential option for foundation designs includes a shallow mat foundation, although without a more detailed analysis, it is unclear if such a foundation is feasible for the proposed development. HKA indicates that the foundation elements will be designed to be removable when threatened. The numbers, size, and location of these elements has not yet been determined, but the Applicant has indicated that the proposed foundation system and retaining walls will be sited in accordance with standard engineering construction practices that comply with current building codes. In any case, Special Condition 1q provides that the foundation or foundations for the project must be the least environmentally damaging feasible alternative that still complies with current California Building Code requirements. In sum, there are engineered foundations capable of withstanding anticipated hazards from seismicity and liquefaction, although any constructed caisson system would need to be conditioned to ensure that it not function as a shoreline protective device in the future. Special Conditions 8 and 9 account for this possibility, including requiring removal of project elements before they start to function as shoreline protective devices.

F. Tsunami

LCP Policy 4.3.7 prohibits development in a tsunami run-up zone unless it includes adequate mitigation of the tsunami threat. A February 3, 2009 HKA letter report applicable to the site notes on page 6 that a 1984 report by Dr. Warren Thompson has indicated that “the 100-year tsunami run-up elevation for the shoreline of Sand City is 6 feet NGVD and the predicted 500 year tsunami run-up elevation for the shoreline of Sand City is 11.7 feet NGVD.” However, as discussed below, it does not appear that this 1984 assertion remains current and up to date, nor can it be used as a baseline from which to measure consistency with LCP tsunami requirements. In fact, tsunami awareness and information on triggering mechanisms has increased greatly over

the past 25 years, stimulated in part by the Indian Ocean tsunami, the tsunami generated by the Tohoku earthquake off Japan, and for California coastal areas in particular, by the increased understanding of the Cascadia subduction zone and its potential for generating tsunami waves that could be comparable to those experienced in Sumatra in 2004 and Japan in 2011. In addition, the potential for submarine landslides to generate tsunamis has gained or regained recognition following a large landslide-triggered tsunami in Papua New Guinea in 1998. The awareness of a large tsunamigenic source off the California Coast, the improved understanding of landslide generated tsunamis, and the experiences, eye-witness accounts, and post-disaster surveys from the Indian Ocean, have all contributed to an interest by the State of California in having a more up-to-date evaluation of tsunami risks along the coast.

The Monterey County Operational Area Tsunami Incident Response Plan, last revised in June 2008, recognizes that tsunamis pose a regional risk. For Sand City, the main areas at risk are identified as the beaches, noting, “In the event of a tsunami warning, the beach will need to be evacuated, to include swimmers and surfers, and entrance to the beach will be prohibited. Also, the Monterey Regional Water Pollution Control Agency (MWRPCA) pumping plant on Bay Street may also need to be evacuated and its emergency operations plan implemented.” The area east of Fremont Avenue has been identified as a location sufficiently inland of the tsunami risk area to be safe for evacuation. More recently, the County of Monterey has released Draft Tsunami Inundation Maps for the proposed project site, and these maps show that the inundation zone could extend mid-way onto the dune face, up to about +16 feet MSL and well above the 6 to 11.7 feet NGVD that was used in the Applicant’s analysis of tsunami hazard. Based on the tsunami risk information from Monterey County, the proposed hotel development would not be at risk from tsunami inundation, but some of the trails and visitor amenities and ancillary facilities are potentially at risk from tsunami inundation.

The tsunami risk may be exacerbated by the proposed grading and dune contouring that is part of the proposed project. The Tsunami Inundation Maps are based upon the current site topography. The proposed project would lower some of the foredunes, thus increasing the possible zone of tsunami inundation. The best mitigation steps for tsunami risk are to increase the setback distance and building elevation. The proposed re-grading of the fronting dunes would reduce the primary tsunami protection for this property and could potentially result in an expansion of the tsunami inundation zone into the back dune area.

The Tsunami Inundation Maps also do not consider any future shoreline changes due to erosion or changes in sea level due to sea level rise. Shoreline erosion may move the inundation zone farther inland, exposing new areas to risk from tsunami inundation. A rise in sea level will increase the inundation elevation and also expand the potential future inundation zone. Over the life of the project, there will be shoreline erosion and some rise of sea level. Therefore, Special Conditions 8 and 9 require all coastal hazards, including tsunami hazards, to be avoided and minimized, as required by the LCP.

G. Addressing Site Hazards

As discussed in Sections A – H above, the project site is subject to coastal hazards that will become increasingly significant over time. Specifically, the proposed development may be threatened by shoreline erosion, or flooding from wave run-up or tsunamis. Each of these hazards will be exacerbated by rising sea levels. Policies 4.3.2 – 4.3.12 and IP Section 2.2 require that the Commission minimize the risks to a project from these hazards.

Shoreline Erosion

Minimizing risk from shoreline erosion is typically accomplished through the establishment of an appropriate setback line. LUP Policy 4.3.5 requires a setback based on the economic life of a project. This policy is, however, unclear as to what the economic life of a project is, so the Applicant and Commission have agreed to use 75 years for purposes of establishing a setback. Special Condition 1(kj) therefore requires that all development, except (1) public access pathways, overlooks, and stairways, (2) resort pathways, (3) foredune grading down to +32' NGVD, and (4) dune restoration, be located inland of the 75 year at 2.6 feet per year setback line shown on Exhibit 9.

As described in detail above, there is some scientific uncertainty surrounding the degree to which the project may be subject to coastal hazards, even with the required setback. For example, given sea level rise and potential increasing erosion rates on-site, the development may be threatened by erosion long before the end of its life (whether that be 75 years or longer). Special Condition 9(b) prohibits all shoreline protective structures including but not limited to seawalls, revetments, groins, etc. in the event the development is threatened, despite the required setback. Special Condition 9(d) requires the relocation/reconstruction of any public access amenity damaged or threatened by hazards, both to minimize the risk to the public of using these amenities and to ensure continued access.

In order to ensure that the potential impacts to coastal hazards are minimized, given where the development is sited, Special Condition 9 is imposed to ensure that the Applicant's response to any future coastal hazard risk is consistent with LCP policies requiring minimization of hazards risk and landform alteration (LUP Policies 4.3.4 and 4.3.5).

Special Condition 9(a) ensures that the development will only be allowed to remain onsite if it is safe for occupancy and use without additional measures beyond ordinary repair and maintenance. It is designed to require the Applicant to monitor the location of the blufftop edge to determine whether it is eroding and at what rate. Although the LCP does not specifically define the "blufftop edge," the Coastal Commission regulations do define the term in 14 CCR Section 13577(h)(2). This definition is commonly used in determining the blufftop edge in areas where there is not a more specific LCP definition of the term, and so this definition should be used by the Applicant when implementing this Special Condition. Special Condition 9(f) requires the Applicant to monitor the blufftop edge annually immediately after any event that results in the blufftop edge eroding inland 10 feet or more, or any combination of events that total 10 feet since the last measurement episode, or no less than every five years, and to submit reports to the Commission after every measurement episode every five years or if there is an erosion event of 10 feet or more, so that the Applicant and Commission can monitor the future erosion rates on-site and assess when the development may be subject to coastal hazards as the result of this erosion.

In addition, Special Condition 9(g) requires the Applicant to submit a plan for removal of development if any of four triggers is met: (1) if a government agency has ordered that any portion of the approved development (including but not limited to buildings, roads, utility infrastructure, subsurface elements, etc.) are not to be occupied or used due to one or more coastal hazards, and such government agency concerns cannot be abated by ordinary repair and/or maintenance; (2) if the blufftop edge erodes to within 50 feet of any portion of the

approved development, other than the two resort pathways providing access toward the ocean and the public access amenities; (3) if any portion of the approved development other than the two resort pathways providing access toward the ocean and the public access amenities encroaches into the ambulatory public access easement area; or (4) if any portion of the approved foundation and/or subsurface elements (including but not limited to mat foundations, caissons, piers, pilings, grade beams, retaining walls, etc.) become visible at or below +22 feet NGVD,

The removal plan is required to identify how much space is needed between the blufftop edge and development to safely remove such development (Special Condition 9(g)(2)). Removal of development is required either when that threshold is met – when the blufftop edge is within as many feet as the removal plan has identified is necessary for removal of development – or when the blufftop edge is within 10 feet of development, whichever comes first. Because past observations of the Sand City shoreline have shown that as much as 50 feet of bluff may be lost in a single winter storm season, Special Condition 9(g) requires that enough development be removed to re-establish a 50 foot buffer between the blufftop edge and the edge of development.

With these conditions, although long-term stability cannot be assured, new development would not require additional, more substantial protective measures in the future inconsistent with the LCP policies requiring hazards to be avoided, because the development would be removed when it is in danger. Therefore, with respect to shoreline erosion and related coastal hazards, the project, as conditioned, can be found consistent with applicable LCP hazard policies.

In terms of recognizing and assuming the hazard risks for shoreline development, the Commission's experience in evaluating proposed developments in areas subject to hazards has been that development has continued to occur despite periodic episodes of heavy storm damage and other such occurrences. Development in such dynamic environments is susceptible to damage due to such long-term and episodic processes. Past occurrences statewide have resulted in public costs (through low interest loans, grants, subsidies, direct assistance, etc.) in the millions of dollars. As a means of allowing continued development in areas subject to these hazards while avoiding placing the economic burden for damages onto the people of the State of California, Applicants are regularly required to acknowledge site hazards and agree to waive any claims of liability on the part of the Commission for allowing the development to proceed. Accordingly, this approval is conditioned for the Applicant to assume all risks for developing at this location (see Special Condition 8(b): ~~Assumption of Risk, Waiver of Liability, and Indemnity Agreement~~).

As noted above, a natural disaster could result in destruction or partial destruction of the proposed development. In addition, the development itself and its maintenance may cause future problems that were not anticipated. When such an event takes place, public funds are often sought for the clean-up of structural debris that winds up on the shore or on an adjacent property. Therefore, the Commission attaches Special Conditions 8 and 9, which require the landowner to accept sole responsibility for the removal of any structural debris resulting from coastal hazards that impact the site, and agree to remove the structures should the threat from coastal hazards reach the point where a government agency has ordered that the structure not be occupied.

As noted above, setbacks must be great enough to protect the proposed development for its lifetime without the need for shoreline protection and its attendant negative impacts on natural shoreline processes. Thus, in addition to prohibiting future shoreline protective devices, the

project must be designed to not include shoreline protection components. As proposed, it is unclear whether shoreline protection components will be included in the initial design of the structure because the foundation design plans have not been completed. Initial geotechnical reports from the Applicant state that a caisson system may be required, but that more investigation is necessary before a final recommendation can be made. A memo from the Applicant's engineer states:

*"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."*⁴⁰

The Commission's coastal engineer has evaluated the evidence that has been presented to date, however, and concludes that there is insufficient evidence to determine at this time that deep piers or piles are required foundation designs for all of the proposed structures.

A caisson system would be considered shoreline protection as soon as it is functioning in this way (e.g., when reached by shoreline erosion), and therefore, could not be allowed when it functions this way consistent with the LCP. Further, it is not clear that a caisson system is the least environmentally damaging feasible alternative for this site. Special Condition 1(¶) therefore requires the submittal of final foundation and retaining wall plans prepared in consultation with a licensed civil and structural engineer(s). This condition requires a shallow mat the final foundation design, as opposed to a pier or caisson foundation, which the Applicant's engineer has suggested may be necessary, as described above, as long as the mat foundation could be designed and constructed to be the least environmentally damaging feasible alternative that is consistent with California Building Code requirements, and specifies that the foundation system cannot be designed or engineered to address ocean and related forces (e.g., wave attack, ocean flooding, erosion, etc.). As conditioned, the ultimate foundation design could be a caisson foundation, a mat foundation, another foundation design, or a combination of designs (e.g., a mat foundation for the lower-profile seaward buildings, and a caisson foundation for the larger landward buildings). A mat foundation would not function as much as a shoreline protective device in the event that the shoreline erodes to the building location, and therefore, a mat foundation would be more consistent with LCP requirements, including because it could provide the same structural stability and integrity of a deep caisson system, but can be more readily removed and disposed with fewer impacts to the bluffs and surrounding dunes, unlike the more substantial deep caisson foundation system. Special Condition 1(¶) does allow for the Applicant to use different types of foundations for different project elements, so if a mat foundation were feasible in one location but not another, a portion of the project could be built on a caisson foundation while a different portion would use a mat foundation.

Special Conditions 1(¶) and 9 also require the plans to clearly demonstrate ~~a) the size and scope of the concrete slabs; and b) the ability to remove building and foundation elements as necessary to maintain at least a 50-foot blufftop setback area free of development in response to an eroding shoreline and other coastal hazards.~~ A number of alternative ~~Other~~ foundation systems, including a caisson foundation, may be authorized upon submittal of evidence that ~~a mat foundation system is infeasible, that~~ the proposed design represents the least environmentally damaging

⁴⁰ HKA, Inc. Additional Response letter to SNG dated January 16, 2014.

alternative that is consistent with the California Building Code, and that the foundation has been designed to withstand seismic and other non-coastal hazards, but has not been designed to protect against coastal hazards. ~~If a caisson foundation can be approved~~ Further, regardless of the ultimate foundation system that is approved, consistent with Special Condition 1(~~h~~g), all other aspects of Special Condition 9(g)(2) (minimum 50-foot blufftop setback, etc.) continue to apply.

Flooding and Tsunami Risk

Depending on many factors, such as sea level rise or the impact of lowering the foredunes on the site, the proposed project may not be designed to minimize risks from wave run-up and coastal flooding, as required by the LCP. This future risk can be mitigated through a requirement to remove the proposed structures when they are threatened (Special Condition 9(a)). The threat of wave run-up and other flooding is also reduced if the existing foredunes on-site are maintained. Special Condition 1(~~h~~g) therefore limits foredune grading so that these dunes remain at least 32 feet above NGVD.

In addition, Special Conditions 1(a) and 1(~~j~~i)(4) require grading and landform alteration to be minimized, consistent with the LUP, and Special Condition 1(~~s~~t) requires Executive Director review of the final geotechnical reports.

Finally, to ensure that future property owners are properly informed regarding the terms and conditions of this approval, this approval is also conditioned for a deed restriction to be recorded against the properties involved in the application (see Special Condition 20: Deed Restriction), as required by LUP Policy 4.3.11. This deed restriction will record the conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the property.

5. Hazards Conclusion

The site is subject to significant coastal hazards including but not limited to shoreline erosion/retreat, wave run-up/flooding, and tsunami events, all of which are exacerbated by sea level rise. The Special Conditions described above are therefore imposed to ensure that the development can be found consistent with the coastal hazards policies of the certified LCP.

E. VISUAL RESOURCES

1. Applicable Policies

A. LCP Policies

The LCP protects visual resources and coastal views of Sand City, including those to and along the shoreline and from significant public viewing locations (e.g., from along Highway One.). The LCP also requires that new development be sited and designed to enhance and protect public views, including certain specific public views; that the degradation of visual resources be minimized; and encourages new development to be compatible with its natural surroundings. Applicable LCP LUP and IP policies include:

***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); ...
- b) "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. *... For the portion of Assessor's Parcel Number (APN) 011-501-014 [subject site] other than the 7.44 acre Public Recreation Area designated on the Land Use Map, allow permitted land use designations as shown on the Land Use Plan Map, to be intermixed, subject to an overall development plan for the entire parcel, in unit densities that do not exceed the maximum visitor serving and residential density limits established by the amount of acreage indicated below:*

Visitor-Serving Commercial. 17 acres; 375 unit hotel/vacation club/timeshare (maximum); other visitor serving commercial uses shall be limited to the maximum densities identified by Appendix F, and are allowed subject to Planned Unit Development (PUD) approval.

Visitor-Serving Residential. 4 acres, 100 units (maximum) at a maximum density of 25 units per acre.

Medium Density Residential. 7 acres, 175 units (maximum) at a maximum density of 25 units per acre. A minimum of three visitor serving units (i.e., hotel or visitor serving residential) must be provided for every residential unit to be developed, and must be in operation prior to the development of the residential units or available for transient occupancy use concurrent with the occupancy of the residences.

Public Recreation. 7.44 acres. In addition to this area, public recreation uses may also be located within the other land use designations for the site.

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 6.4.5. *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;*
- 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 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-R2 Coastal Zone Residential, Medium Density, Permitted Uses, Subsection (a). *Clustered multiple family attached structures at medium density, subject to Planned Unit Development (P.U.D.) application and approval, and public recreation areas. For APN 011-501-014 [subject site], allow all permitted uses in the medium density designation to be intermixed with other types of units or uses allowed on the parcel under the Visitor Serving Commercial and Visitor Serving Residential zoning designations, subject to an overall site development plan for the entire parcel, such that the proportion of residential uses relative to the specified acreage in the LCP Land Use Plan is not increased, but encourage clustered multifamily attached structures at medium density. For Assessor's Parcel Number (APN) 011-501-014[subject site], Medium Density residential development shall not exceed 175 units at a maximum of 25 units per acre on 7 acres.*

IP Section 3.2, CZ-R2 Coastal Zone Residential, Medium Density, Height Regulations: *No building shall exceed thirty-six (36) feet as measured from the existing grade. ... 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, Permitted Uses, Subsection (a). *... For APN 011-501-014 [subject site], where other uses are allowed, those uses under the Visitor Serving Residential and Residential Medium Density zoning designations may be intermixed, subject to an overall site development plan for the entire parcel, such that the proportion of visitor-serving uses relative to the specified acreage in the LCP Land Use Plan is not decreased. ...For Assessor's Parcel Number (APN) 011-*

50-014 [subject site] Visitor-Serving Commercial development shall not exceed a maximum of 375 hotel/vacation club/timeshare units on 17 acres. All other visitor-serving commercial uses shall be limited according to the water allocation presented in Appendix F of the LUP

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-D is 375 rooms] ...*
- (b) The following minimum requirements shall be observed. (1) Require P.U.D. application for visitor serving commercial developments. [PUD requirements include the following: “Before a planned unit development permit shall be granted, the city council shall find:... D. Appropriate environmental review has been performed with proper mitigation and the project meets the requirements of the California Environmental Quality Act, as amended...]*

IP Section 3.2, CZ VS R-2 Coastal Zone Visitor Serving Residential, Medium Density, Permitted Uses, Subsection (a). *Clustered multiple family structures, with a rental pool, at medium density, subject to Planned Unit Development (P.U.D.) application and approval and public recreation areas. For APN 011-501-014 [subject site], allow all permitted uses in the Visitor-Serving Residential Medium Density designation to be intermixed with other types of units or uses permitted on the parcel under the Visitor Serving Commercial and Residential Medium Density zoning designations, subject to an overall site development plan for the entire parcel, such that the proportion of residential uses relative to the specified acreage in the LCP Land Use Plan is not increased. ...For Assessor’s Parcel Number (APN) 011-501-014 [subject site] Visitor-Serving Residential, Medium Density development shall not exceed 100 units (maximum) at a maximum density of 25 units per acre on 4 acres.*

IP Section 3.2, CZ VS R-2 Coastal Zone Visitor Serving Residential, Medium Density, Height Regulations: *No building shall exceed thirty-six (36) feet as measured from the existing grade. ...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, 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: ... (6) Provision of view corridors and vista points pursuant to the Local Coastal Land Use Plan.... (7) Approval by City Design Committee of project design, siting, landscaping and provision of view corridors from Highway One to the ocean

B. Policy Summary

The LCP's visual resource policies state a clear intent to protect, enhance and minimize the loss of the significant public visual resources in and around Sand City, including those specifically related to the project site. Perhaps most important in this respect are the views of Highway One motorists of and across the site to the Monterey Bay and peninsula. Other important public views include those from a closer perspective from the Monterey Bay recreational trail that runs between Highway One and the site, and from Fort Ord Dunes State Park immediately adjacent and upcoast.⁴¹ In addition, the site is prominent in public views from the sandy beach area, both above and below mean high tide. Finally, the site is part of the more distant, but still important, public view back towards the site across the Bay from points along the Monterey peninsula, including predominantly in and around Cannery Row in the City of Monterey. The vista here from across the Bay is of and across a relatively undeveloped continuous dune foreground panorama of which the project site is a part.

The LCP policies protect the visual resources of Sand City in general terms and also provide specific, more detailed, protections for identified "major designated view corridors." The background section of the LUP visual resources section states:⁴²

Sand City's coastal zone is separated by Highway One, which forms a distinguishing boundary between the City's visual resources. The area west of Highway One is characterized by shifting sands, non-native ice plant, beaches, coastal bluffs and views of Monterey Bay. The area east of Highway One is characterized as primarily industrial due to the existing land uses outside of the coastal zone.

Sand City's viewshed consists of coastal views and views of the Monterey Peninsula from Highway One, Sand Dunes Drive, Tioga and Bay Avenues, and existing developed portions of Sand City and Seaside (the area east of Highway One). In addition, views of Monterey Bay and portions of Sand City can be seen from areas on the Monterey Peninsula. Generally, Sand City's coastal zone is highly visible from Highway One.

Views of Monterey Bay and Monterey Peninsula can be seen while traveling along Highway One. These views are broken and obstructed by dunes and, to a lesser extent, by existing uses. However, at several points in Sand City along Highway One, view corridors do exist.

These corridors were evaluated according to significance of views and relationship to existing dunes. As a result, view corridors and vista points requiring protection have been designated in general locations as shown on Figure 9. In some cases, where the elevation of Highway One is much greater than properties to the west of it, view corridors are established over development, so the line of sight from Highway One is not

⁴¹ Views from the MPRPD park just downcoast of the site are mostly blocked by the large dune feature on the site.

⁴² LUP Section 5.2.1 ("Coastal Visual Resources, Existing Visual Resources").

obstructed. Other corridors are generally established to be free of structures except for parking, public facilities or public recreation.

The evaluation of view corridors concluded that visual corridors could be established in various locations throughout the City, based on open views to the ocean and the Peninsula. However, many areas could not be established as view corridors due to location of existing industrial development and potential future developments. The visual analysis also concluded that stationary views, such as at vista points, are a valuable alternative to view corridors for the protection of visual resources.

This introductory text identifies the important views described above, including views of the Bay and peninsula, and views back from the peninsula. It also introduces the concept of specifically identified view corridors from Highway One. Certain view corridors are identified as major designated view corridors in LUP Policy 5.3.2 and Figure 9 of the LUP. These views are intended to be protected through the provision of view corridors, vista points, development height limits and dune restoration areas. There are two primary areas on the project site that are identified as requiring this heightened level of view protection. The first is an “open view corridor” area generally represented as a large triangular portion of the northwest corner of the property (see Exhibit 3). The second is a “dune preservation, stabilization and restoration area” located in an “L” shape in the southeastern portion of the property and extending approximately just more than half way along the western edge of the property line.

In addition to the specific view protections identified through LUP Figure 9, the LCP provides more general protection for other visual resources in the City’s coastal zone. For example, Policy 5.3.1 requires enhancement and protection of views in the City’s coastal zone, in order to minimize the loss of visual resources. Policy 3.3.1 requires development west of Highway One to be consistent with the protection of visual resources, and additional view corridors from Highway One to the ocean are to be encouraged as part of new development (see Policy 5.3.8).⁴³

Overall the LCP provides a broad vision for visual resource protection. The LUP visual resource text indicates that “view enhancement is an important aspect of Sand City’s LCP”⁴⁴, and the LUP identifies the following five guiding principles for the LCP’s visual resource policies:⁴⁵

- 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;*

⁴³ The Applicant has argued that the only views protected in the LCP are those identified in LUP Figure 9. However, Policy 5.3.8 specifically applies to view corridors “in addition to view corridors designated on Figure 9,” and there is nothing in the other policies listed above that would suggest that they are intended to apply solely to the major designated view corridors identified in Policy 5.3.2. Moreover, while Policy 5.3.2 focuses on specific views, LUP policies such as 3.3.1 and 5.3.1 describe protection of Sand City’s visual resources as a whole, rather than focusing solely on view corridors.

⁴⁴ LUP Section 5.2.2 (“Coastal Visual Resources, Future Design Considerations”).

⁴⁵ Id (Section 5.2.2).

4. *the protection and/or utilization of significant landforms; and*
5. *improvement and upgrading of the image of the City as a whole.*

The concept of “view enhancement” and “protection and enhancement of visual access, views and scenic areas” describes a broad and fundamentally protective visual resource policy context.

These objectives speak broadly to the LCP’s fundamental intent to protect and enhance views and visual access, including both those areas designated for particular prescriptions (e.g., those called out in LUP Figure 9) and those areas to which the broader policy protections apply.

As described in these background principles, and in Policies 5.3.2, 5.3.4 and 5.3.10, the LCP also encourages the use of dunes to enhance the visual resources of the City. Existing dunes must be protected (see, for example, Policies 3.3.1, 5.3.4.f and 5.3.10) and can be used to screen new development. Certain existing dunes have an added layer of protection wherein grading of them is only allowed in conjunction with habitat restoration activities (e.g., as applies to the “L” shaped designated dune stabilization/preservation area on the site), with an intent being to protect these landforms as visual amenities.⁴⁶ The creation of new dune formations (e.g., through grading sand to create hillocks) is allowed as long as the development of new dunes is otherwise compatible with LCP policies, including public view and viewshed protection.

Thus, a primary intent of the LCP is to protect existing dunes, to strictly limit manipulation of designated dune stabilization/preservation dunes (including the “L” shaped protected dune landform on the site designated on LUP Figure 9), and to seamlessly integrate approvable development, including created dunes, within and around them in a way that protects and enhances “visual access, views and scenic areas”.⁴⁷

The proposed project includes significant dune manipulation, including of the protected dune landform identified in Figure 9. Read as a group, the LCP’s policies suggest that dunes can be manipulated so long as visual resources are protected and enhanced. As applied to this site, the LCP can be read to allow a project with fairly significant landform alteration so long as the fundamental LCP objective requiring “the protection and enhancement of visual access, views and scenic areas” is achieved at the same time.

Finally, the LCP includes a number of very specific requirements for development in the zone districts that apply to the site. For the portion of the site designated public recreation (i.e., that area along the upcoast property line and along the beach; see Exhibit 3), the LCP does not allow development other than for public recreational uses. Also, the “open view corridor” on Figure 9, which corresponds to the public recreation designation, does not allow any structures in this area, pursuant to LUP policy 5.3.3. For the remainder of the site, the LCP limits hotel densities to a maximum of 375 hotel/vacation club/timeshare units on 17 acres for this site, and limits

⁴⁶ As the Commission found when certifying the LUP in 1982: “...this revised policy [5.3.2] designates dune restoration/preservation areas recognizing that these areas also will be visual amenities as they will reflect the dune landforms through which the Highway was constructed and will also reduce the visual impact of new structures between the Highway and the sea.”

⁴⁷ Section 5.2.2.

residential density to a maximum of 275 units at a maximum of 25 units per acre on 11 acres.⁴⁸

Although the non-public recreation portion of the site is broken up into three different zone districts, the LCP specifically allows these unit counts and types to be intermixed for these areas, so long as the visitor-serving to residential proportions are maintained. Development heights for the site are limited to a maximum of 45 feet above existing grade for hotel uses, and are limited to a maximum of 36 feet above existing grade for all other uses and development. As indicated in LUP Section 6.4.1, such maximums are not entitlements, but rather upper thresholds that can be considered but that must be applied consistent with the site constraints that affect development (including explicitly protecting natural landforms and views to the Bay) and that limit allowable densities and scale otherwise. Development of the uses identified requires a planned unit development (PUD) approval, and that approval requires the project to be consistent with CEQA.

In conclusion, the LCP visual resource policies as they apply to this specific site require that approvable development be sited and designed to ensure that views are protected and enhanced, and the loss of visual resources minimized. These policies include specific maximum heights, densities and intensities of use subject to a resource constraint analysis, including protecting natural landforms and views towards the Bay. The policies also recognize the unique dune landforms as an important component of the visual resource setting, allowing for manipulation of protected dunes only for habitat restoration, and allowing other dunes to be manipulated where they enhance and protect visual resources.

2. Visual Resource Setting

The project is located along a particularly scenic section of shoreline connected to and visually indistinguishable from up and downcoast dune landforms. The site also includes the previously described very tall dune feature that is a landmark for this stretch of coast.⁴⁹ The primary public view of the site is the view from Highway One. This is the way that most people view the site and the Monterey Bay/Monterey peninsula beyond the site. The view from the Highway changes depending on one's location, and ranges from a clear view of the Bay and the Monterey peninsula to a more broken view due to both intervening vegetation in places and the dune topography itself (see Highway One view photos and figures in Exhibit 16). The northern portion of the site, which is near the Highway elevation and lacks significant dune hillocks nearest the highway, provides greater through views, both when seen from northbound and from southbound Highway One. In general, however, the site is extremely visible from Highway One, and views of it and across it are significant.

The Monterey Bay recreational trail and bikepath that runs between Highway One and the site provides similar vistas as that from Highway One for pedestrians and cyclists. Because the recreational trail is at a slightly lower elevation than the Highway, the view from this location is less expansive. In addition, far fewer people view the site from the recreational trail as compared with the Highway, but this is still a significant public recreational feature that is highly used, and views from this location are likewise significant.

⁴⁸ For the CZ-R2 (Residential, Medium Density) portion, 175 units maximum and 25 units per acre on 7 acres, and for the CZ VS R-2 (Visitor Serving Residential, Medium Density) portion, 100 units maximum and 25 units per acre on 4 acres.

⁴⁹ Including having been used historically as a blank canvas for the creation of large-scale messages along the side of the dune for viewing from Highway One given its prominence in this viewshed.

A different vista of and across the site is provided upcoast, from Fort Ord Dunes State Park. The project site shares a common boundary with the State Park, and the site is prominent in views from the Park. This is perhaps most obviously the case for the State Park trail to the beach that extends toward the site from near the recreational trail and then towards the Bay. In this view, the site is extremely prominent in the immediate foreground (see Exhibit 17).

For the MPRPD park site immediately downcoast of the site, the tall dune feature on the site essentially blocks any views of or across the site from this vantage point. In addition, this park area is limited to sand dunes with limited access amenities, and thus it is not heavily used for direct recreational access, it instead mostly provides visual dune continuity and open space for users of the adjacent recreational trail segment, the beach, and from vantages across the water on the Monterey peninsula.

The unbroken stretch of sand between Monterey and the Salinas River, a stretch of approximately 13 miles, includes the site. The site is thus on the inland dune slope for walkers making use of the sandy beach, and is prominent in this pedestrian view. The site is currently indistinguishable in this respect from the surrounding park uses, as the dunes are similar up and downcoast.

Finally, the site figures in the view back toward this side of the Bay from locations in and around Monterey, including vistas from the public recreational trail as it winds through Monterey and Pacific Grove, from Cannery Row, and from the Monterey Bay Aquarium. There are a series of existing developments that are prominently visible and that detract from this vantage (e.g., the Embassy Suites Hotel, Best Western Beach Resort hotel, and Ocean Harbor House condominiums). These developments are located further south of the site. The site is thus part of the existing unbroken strand of coastal dune bluffs seen in this view that extend roughly from Bay Avenue downcoast of the site north through the Fort Ord dunes and to the Salinas River, some 13 miles to the north.

3. Landform Alteration

The project proposes to grade almost 100% of the site, including grading, excavation, and re-contouring across approximately 22.5 acres. Essentially all of the area of the site above the 25-foot dune contour would be graded. The protected dune area would be completely reconfigured. Specifically, the tallest portion at the southern edge of the site would be re-contoured to round it off and flatten its northern exposure, and the portion of the protected dune extending to the north would be re-contoured, increasing its height nearest the tallest dune by up to approximately 25 feet (up to elevation +120 NGVD in this area) and increasing its height at its northern edge by approximately 40 feet (to elevation +110 NGVD in this area). The dune would also be extended to the north an additional 100 feet or so, where it would then taper down to grade (i.e. from the expanded section height of about +110 NGVD down to about elevation +70 NGVD). Where the tunnel through the projected dune is proposed, the increased elevation would extend to about elevation +100 NGVD. In other words, the protected dune area extending along the inland side of the site would be increased in height and extended to the north with a 'dip' near the middle where the tunnel is proposed.

In terms of the rest of the site, the fore dune area seaward of the proposed buildings would be graded from a rolling +35-foot to +60-foot NGVD contour to a uniform +30-foot NGVD elevation, and several hillock depressions would be formed in this area. Overall, the Applicant

proposes to export approximately 385,000 cubic yards of excess sand from the site to private parties for commercial and private use, or have it taken to the dump.⁵⁰

The recontouring or “flattening” of the fore dunes along the western edge of the proposed development would be inconsistent with the LCP visual resource policies, unless the project resulted in view enhancement and protection overall (see below). This grading would likely enhance resort guests’ views of the ocean, but it would degrade public views from the beach and across the bay by changing the natural landform in relation to adjacent topography and by making more of the development as proposed, visible from the beach and from across the bay . Some southbound Highway One views might possibly be opened up by such grading, but that is tempered by the increased dune heights nearest the highway, as well as the buildings that would be developed between that feature and the ocean. LUP policies require the protection of visual resources (e.g., LUP Policies 3.3.1 and 5.3.1, and IP Policy 2.2) as well as the use of existing and manmade dunes to enhance visual resources and to provide visual barriers from development (LUP Policies 5.3.4.f and 5.3.10). The Applicant’s proposal to remove the top 5-30 feet of each of these dunes will only serve to emphasize the prominence of the proposed buildings as seen from the beach and from vantages across the water on the peninsula, rather than screening such development. Such dune alteration can only be found consistent with the LCP if it is part of a package of improvements that together enhance and protect views overall.

In addition, the grading proposed nearest the Highway is problematic under the LCP because it will block off portions of the existing view across the center and upcoast portion of the property, blocking both blue water and Monterey peninsula views from the Highway and the recreational trail.⁵¹ Such landform alteration has been proposed in an attempt to hide the proposed building as seen from Highway One, which is a goal of LUP Policy 5.3.10. This policy must be read consistent with other LCP policies, however, such as those protecting visual resources, like views of Monterey Bay. Therefore, the only way such changes could be found LCP consistent is if the project as a whole enhances visual resources. Absent such finding, this proposed near Highway grading would detract from the viewshed because its location would block existing views. While the goal of using dunes to enhance visual resource is laudable, any such project should ensure that any such proposal is accomplished in a way that screens new development without detracting from existing visual resources.

The issue of potentially blocking the blue water views from Highway One was a specific concern in the Commission’s previous review of a project for this site. Moreover, in 1997 the City of Sand City, at the request of the project Applicant, specifically considered an LCP amendment of LUP Figure 9 in order to provide both for the new dune landform creation currently proposed, and the breaks in the existing mapped landform to provide for the project proposed in 1997. However, the City noted that Coastal Commission staff and the Sierra Club had raised concerns about the blocking of existing ocean views from Highway One by such a proposal, and that a

⁵⁰ The Applicant has also indicated a willingness to allow the sand to be used for sand replenishment if a suitable partner could be found for such effort. Sand replenishment has been identified as a significant alternative to potentially address the serious shoreline erosion along southern Monterey Bay.

⁵¹ The new dune crest in the upcoast area would be about 25 feet higher than the Highway One roadway elevation, and the portion of the view blocked by the existing tall dune would be extended upcoast to the new proposed resort entrance. In addition, the dune would be extended at a height of 110 feet for about 200 feet to the north, also blocking some portions of the existing view.

visual analysis would need to be completed by the Applicant. It appears that such analysis was not presented to the City, however, and subsequently the City, at the Applicant's request, removed the proposed amendment of Figure 9 that would provide for the new created dune form and the grading of the currently protected dune from its LCP amendment.⁵² Notwithstanding this history, the Applicant has represented in its application materials, that Figure 9 was amended by the Commission in LCP Amendment 2-97. However, no such change was ever approved by the Commission.

Dune manipulation and the creation of large land forms that themselves would block significant views raises significant concerns under the LCP's visual protection policies. It could be argued that, as proposed, with respect to the grading of existing dune features on the site, the proposed project has not been designed or sited to protect and enhance visual resources, including existing view corridors, and the project would result in the loss of existing views. The project can be modified from its proposed state, however, to be found LCP consistent. The following special conditions are designed to ensure that existing views are protected and enhanced as much as possible, including through limiting project visibility, and that the overall project leads to an as-built condition that achieves the LCP's viewshed protection goals. Specifically, the conditions require:

- Dune field manipulation north and northwest of the extended dune view line (see Exhibit 8) must be limited to a finished elevation generally equal to existing grade except that undulations in height may go up to a maximum of 3 feet greater than existing grade to allow for replicated dune landscaping. Dune manipulation can vary from existing grade to the extent required to provide for required fire road access around the north of the buildings. All such dune manipulation must be designed to replicate natural dune landforms and integrate into the surrounding dunes to the maximum extent feasible. This will ensure that alterations of existing dune features will result in dunes that look as natural as they can be after the alterations, thereby protecting the visual resources of the site as much as possible consistent with the conditions of approval.
- All building and related development must be required to be sited and designed so that views of the project from either southbound or northbound Highway One (from a height of 5 feet above the roadway) are blocked by existing and/or modified dune features (including through extending dune areas over the top of such development, as applicable) in such a way that such views are of dunes and not of buildings and related development as much as possible consistent with the conditions of approval. Some buildings and related development can be visible in the southbound Highway One view, however, if located inland of ~~a line between the seaward portion of the protected dune and the northern edge of the extended dune at an elevation of about 80 to match a point 5 feet above the Highway (the "dune view line",~~ the dune view line (see Exhibit 8). Other buildings and related development can also be visible in the southbound Highway One view north of the dune view line to the extent required to provide for required fire road access around the north of the buildings, provided such buildings and related development are sited and designed in such a way as to minimize their visibility in Highway One views to the maximum extent feasible (including through dune field

⁵² See March 26 and April 10, 1997 memorandums from Sand City Community Development Director to City Council.

manipulation, use of dune roofs, etc.). This assures the primary Highway One views will extend over dunes in the foreground, and buildings, other than in the far view, will not be visible in these critical views. Although, some existing blue water and dune views will be blocked by manipulated dune features and buildings, including from both north and southbound views, the overall revised development (including as required to be revised per all of the conditions), can be found compatible with adequately protecting and enhancing views in this case.

- Views of all other development located inland of buildings and related development (e.g., road access, tunnel access, parking areas, pathways, etc.) must be sited, designed, and screened in such a way as to minimize its visibility in Highway One views to the maximum extent feasible, including through utilizing below grade development as appropriate to meet such standard. All development that is visible (including any retaining walls) must be sited and designed to blend into the dune aesthetic to the maximum extent feasible (including through colorization, natural materials, non-linear and curvilinear contouring, surface roughness, etc.). This will ensure that views from the Highway will be protected as much as feasible.
- All road development (providing access to the project through the tunnel as well as ~~secondary~~ access to the project to the north) must be minimized consistent with the Applicant's Vesting Tentative Map. ~~to the maximum extent feasible. Access to the resort must be limited to the main tunnel access if feasible (thus eliminating the two additional tunnel accessways to the north), with the secondary emergency access being the fire road access, provided it is limited to the maximum extent feasible in scale and scope, and sited and designed similarly to blend into the dune aesthetic as seen in public views to the maximum extent feasible. This will eliminate two roads in the foreground of the Highway One view that would be difficult to hide and/or modify so as to integrate into the dune aesthetic, and allows the foreground north of the extended dune to be left alone, other than for one emergency access and trails, that themselves~~ All road development must be sited, designed, and screened in such a way as to minimize its visibility in Highway One views to the maximum extent feasible, including through utilizing below grade development as appropriate to meet such standard, and including using dune field manipulation and other means ~~would need to be made as dune consistent as possible so as to camouflage them in the view.~~
- In no case can development exceed 45 feet above existing grade for hotel and condominium-hotel components (including restaurants, meeting rooms, shops for hotel guests, and spa facilities), and 36 feet above existing grade for all other development.
- Foredune grading will be allowed as low as +32 feet NGVD only in areas directly seaward of buildings and for the fire access road, and only where such grading is designed to: (1) replicate natural dune landforms and integrate into the surrounding dunes to the maximum extent feasible; and (2) meet the other requirements of the permit. Other foredune grading, other than for approved dune restoration and/or public access purposes, will be prohibited. Although such foredune grading seaward of the buildings will make the development much more visible from the beach and from across the bay than if it weren't allowed, ~~it~~ foredune grading seaward of the buildings will not have a significant

effect on the Highway One view, ~~with one exception. Limiting the area in which this grading is allowed to that only seaward of buildings is critical to ensure that buildings in the southbound view do not protrude above the finished dune elevation, as is currently proposed.~~ Grading for the fire road along the north of the buildings to allow it to connect and loop around to the seaward side of the buildings will, however, expose the buildings in that area in the southbound Highway One view. Thus it is critical that the fire road be sited and designed in such a way as to minimize building visibility in Highway One views to the maximum extent feasible, and to ensure that the fire road and any unavoidably visible buildings are sited, designed, and screened in such a way as to blend with the dune aesthetic as much as possible, including through utilizing below grade development as appropriate to meet such standard, and including using dune field manipulation and other means.

- All non-native and/or invasive plants on the site, including iceplant, must be removed and the site kept free of such plants for as long as any portion of the approved development exists at this site. All landscaping, other than decorative landscaping within interior courtyards and similar areas (such as the port cochere area), must consist of only non-invasive dune species native to the Sand City and southern Monterey Bay dune systems (see also Special Condition 3). All landscaped areas on the project site must be maintained in a litter-free, weed-free, and healthy growing condition. No problematic or invasive plant species may be planted or allowed to naturalize or persist on the site. This will ensure that the areas outside of the building footprints appears as predominantly dune, helping to protect the view.
- Exterior lighting must be limited to the minimum lighting necessary for pedestrian and vehicular safety purposes. All lighting (exterior and interior) must be sited and designed so that it limits the amount of light or glare visible from public viewing areas (including but not limited to views from Highway One, Fort Ord Dunes State Park, the recreational trail, the public access amenities, the beach, and areas across Monterey Bay (e.g., Cannery Row) to the maximum extent feasible (including through uses of lowest luminosity possible, directing lighting downward, directing lighting away from windows, etc.). Lighting upcoast of the main tunnel entrance (i.e., along the pathways, parking lot, and fire road access), must be prohibited, unless it is necessary for pedestrian or vehicular safety purposes. Otherwise allowable lighting from the public road to the main tunnel entrance must be limited to pathway and roadway bollards 48 inches or less in height. Overhead light standards and decorative pole lights must be prohibited. This will help the allowed development maintain the character of the site as much as possible, including maintaining nighttime darkness as much as possible.
- All windows shall be non-glare glass, and all other surfaces must be similarly treated to avoid reflecting light, and all windows shall ~~be birdsafe (i.e., windows shall be frosted, partially frosted, or otherwise treated with visually permeable barriers that are designed to prevent bird strikes)~~ have ultraviolet-light reflective coating or have pigmentations or tints specially designed to reduce bird strikes. This will help protect birds and offset view impacts from Fort Ord, the beach, across the bay, and the long view from Highway One southbound.

- All utilities must be located underground, and all existing overhead utilities on the site need to be undergrounded as well. This will avoid impacts from utilities, and the undergrounding of existing utilities will help offset visual impacts.
- All signs must be sited and designed: (1) to minimize their visibility in public views; (2) to seamlessly integrate into the dune landform to the maximum extent feasible (including using natural materials, earth tone colors and graphics, avoiding lighted signs as much as feasible, directing any allowed sign lighting downward, etc.); and (3) to be subordinate to the dune setting. This will limit the effect that signs have on the dune landscape view.
- All existing site fencing must be removed and replaced with the minimum amount of fencing necessary to meet project objectives, and where such replacement fencing is minimized, sited and designed to be compatible with the dune landscape (e.g., rough-hewn wooden split rail, low rope and pole barriers for restoration areas as needed, etc.) and to minimize public view impacts to the maximum extent feasible. This will help protect the dune aesthetic as well.
- Overall, all development must be sited, designed, colored, screened, and camouflaged (including making maximum use of integrated dune screening and natural landscaping and screening elements to the maximum extent feasible) to minimize visual incompatibility with the existing dune landscape and public views.

Of course, there are other tools that could be used to reduce project impacts further. For example, eliminating tunnel access to reduce grading of the protected dune landform and further reducing building heights (including only allowing straight hotel components to extend to 45 feet) and numbers of stories. Taken as a whole, though, the project with the conditions outlined above generally adequately protects the views from Highway One to the degree feasible for a development of this size, scale, and scope. Although there will be significant landform alteration as part of this project, it screens proposed buildings from Highway One views, thereby helping to limit impacts to those views. This is accomplished through the special conditions, where the overall objective is to minimize the visibility of the project in Highway One views to the maximum extent feasible, and to otherwise site, design, color, screen, and camouflage the project (including making maximum use of integrated dune screening and natural landscaping and screening elements to the maximum extent feasible) to minimize visual incompatibility with the existing dune landscape and public views.

With these conditions, and the other conditions that affect the overall project's consistency with the LCP's visual resource policies, the Commission finds that the proposed project can be found consistent with the applicable LCP visual resource provisions.

4. Buildings and Other Development Issues

With respect to the buildings and related development, as described above, a ~~good~~ portion of the proposed development would be blocked from view as seen from Highway One by the above-described landform alteration. Nonetheless, at least some of the proposed buildings and development would be plainly visible in multiple public views.

From Highway One, new road extension and parking areas would be located in the foreground of the view between the Highway and the realigned dune landform, and the degree to which they

could be shielded from view by the dune landforms is limited by available space and topography. This road and related development slopes gradually from downcoast to upcoast from an elevation of about 90 nearest the existing road, gradually sloping down to an elevation of about 60 feet near the inland and upcoast corner of the site, and then down to an elevation of about 50 as the two roads extends vertically toward the ocean and enter a garage building (see site plan in Exhibit 4). These roads will be prominent in both northbound and southbound views, and will significantly alter the existing character of the view from one of a dune viewshed to one of a frontage road extending about a quarter mile along and out into the dunes. In the upcoast portion of this road extension, 46 parking spaces would also be provided and vehicles parked in this area will further detract from the dune viewshed.

To address these visual impacts, Special Condition 1(d) requires ~~that, if feasible, the development be served by just one road (in addition to the emergency access road). It also requires~~ that all road development be minimized consistent with the Vesting Tentative Map. ~~This condition will eliminate two roads in the foreground of the Highway One view that would be difficult to hide and/or modify so as~~ Such roads will need to integrate into the dune aesthetic, and ~~allows the foreground north of the extended dune to be left alone, other than for one emergency access and trails, that themselves would need to be made as dune consistent as possible so as to camouflage them in the view.~~ Special Condition 1(c) requires that this development be sited, designed, and screened in such a way as to minimize its visibility in Highway One views. ~~In addition, LUP Policy 5.3.9 requires that new development soften the appearance of parking areas from Highway One. Special Condition 1(e) therefore requires the parking lot to be shifted to the south. This will minimize development in the foreground of the primary southbound view, and keep it roughly to the edge of extended dune feature, where better camouflaging tools can be applied.~~ Grading for the fire road along the north of the buildings (to allow it to connect and loop around to the seaward side of the buildings) will expose the buildings in that area in the southbound Highway One view. Thus it is critical that the fire road be sited and designed in such a way as to minimize building visibility in Highway One views to the maximum extent feasible, and to ensure that the fire road and any unavoidably visible buildings are sited, designed, and screened in such a way as to blend with the dune aesthetic as much as possible, including through utilizing below grade development as appropriate to meet such standard, and including using dune field manipulation and other means. Finally, Special Conditions 1(~~pp~~) and 1(~~vu~~) limit the type of fencing and signs that can be associated with the project to limit its impact on the viewshed from Highway One.

It is noted here that the Applicant has attempted to reduce certain view impacts through building design. For example, view impacts associated with buildings can be somewhat reduced by the proposed landscaped roofs, but these kinds of roofs can't camouflage the buildings themselves. They can help to provide some reduction in impacts when buildings themselves are unavoidably visible (e.g., as will be the case in views of the site from Fort Ord Dunes State Park). The degree to which such mitigation can reduce impacts depends on how successful such landscaping can perform over the long term. Thus, Special Condition 1(~~lk~~) requires all landscaped areas to be properly maintained with dune species consistent with the surrounding dunes. The Commission recognizes that development that incorporates design features such as landscaped roofs and more natural, curvilinear designs, is more in keeping with LCP requirements than a large boxy structure, and should be encouraged, and to ensure that the structures are designed to minimize visual impacts, Special Condition 1(~~wv~~) requires that all development must be sited, designed,

colored, screened, and camouflaged to minimize the project's visual incompatibility with the dune environment.

In terms of impacts on views from the recreational trail, such impacts will be similar to those from Highway One, but to a lesser degree, given that the elevation is lower and, when traversing directly along the frontage for the site, the modified dune features would ~~mostly~~ block views of some of the buildings from view. These views would, however, be similarly redefined from an undeveloped dune landscape to a substantially more urban landscape, including adding the road, tunnel and parking areas, and most upcoast buildings along the fire road access, that would be located closer to the recreational trail than the Highway. As described above, Special Conditions 1(d) ~~and 1(e) reduce the number of roads associated with~~ requires the road development to be sited and designed to minimize visual impacts. For the fire road in particular, this must be sited and designed in such a way as to minimize building visibility in Highway One views to the maximum extent feasible, and to ensure that the fire road and any unavoidably visible buildings are sited, designed, and screened in such a way as to blend with the dune aesthetic as much as possible, including through utilizing below grade development as appropriate to meet such standard, and including using dune field manipulation and other means. Other conditions, such as requirements for landscaping, minimizing landform alteration and fencing, minimizing impacts from signs, and overall protecting views will help screen and otherwise minimize visual incompatibility with the dune landscape, ~~the project~~ and ensure that the roads, tunnel, parking lot and related development are designed so that their visual impacts are ~~reduced~~ minimized to the maximum extent feasible.

With respect to views from adjacent Fort Ord Dunes State Park, the new road and buildings would be located prominently in the foreground of the view of and across the site from the existing beach access trail (see photos of this view in Exhibit 17). The dune grading proposed is not going to hide these features from this view. Rather, the project will appear as a very large set of buildings backed by dunes and fronted by a road in this view. Should additional trails and amenities be developed in this area, these, too, would be impacted in the same manner. This protected park area, and its value as a recreational area encompassing the dunes, would thus be adversely affected.

Similarly, the view from the lateral beach access area would be significantly impacted. In place of a rolling dune landform, the fore dune would be graded down to expose a series of large buildings extending up to elevations of approximately 125 feet above sea level in places.⁵³ Currently, this view is of tall dunes extending away from the ocean. The new view would be of a much lower dune feature with a large scale resort behind it (see renderings in Exhibit 7), extending some 8 - 10 stories in this view. In short, this view would be changed from a dune backbeach to a resort complex.

To allow a development of this scale means that both the views from Fort Ord and the beach in front of the development would be significantly degraded. Special Condition 1(f~~e~~) limits the heights of structures to that allowed in the LCP for this site, 1(e~~n~~) requires that all utilities be undergrounded, ensuring that they cannot be seen in these viewsheds, 1(h~~g~~) limits the amount of

⁵³ Submitted plans show the finished roof height to be 122 feet in places. When about 3 feet are added for the landscaped roofs, this becomes roughly 125 feet.

foredune grading allowed to ensure that the foredunes continue to provide some visual softening of the project, and Special Condition 1(~~wy~~) ensures that all development is sited, designed, colored, screened and camouflaged to minimize visual incompatibility with the existing dune landscape and public views. In addition, as a whole, the project adequately protects the priority views of the site from Highway One. With these conditions, the project at this site can be found consistent with the visual resource policies of the LCP as they apply to the views from Fort Ord and the beach when the project is considered as a whole.

The view from across the Bay on the peninsula would be impacted in a manner similar to the lateral beach access viewshed, albeit at greater distance and varying degrees, depending on the view angle. The new buildings would be highly visible from some of these vantage points. The existing impacts of shoreline development located in this viewshed and downcoast of the site provide a good reference point and barometer in this respect. One example often cited is the Embassy Suites hotel in Seaside (12+ stories). This hotel is a very large structure that appears prominent against the skyline in this view. It is, however, located inland of Highway One and has very little backdrop that would disguise it. Thus, its relevance in this respect for understanding the view impact of the proposed project is primarily one of scale.

More similar in terms of location in this view are the Best Western Beach Resort hotel and the Ocean Harbor House condominiums located downcoast of the site. These facilities are both located directly on the shoreline, and although somewhat integrated into the surrounding built environment from this vantage, they appear overly large and massive in relation to the immediate shoreline view. As indicated before, this site is located within the undeveloped dune shoreline extending upcoast through Fort Ord Dunes State Park and beyond, and thus the degree to which it can “integrate” with its environment is limited. In fact, although it would integrate to a certain degree into the viewshed with respect to development located outside of the coastal zone and above the site in this view, it would serve to connect that urban development visually to the shoreline, and it would remove the swath of dune in this view that currently helps soften the visual impact of this existing built environment. In its place, it would introduce the large buildings previously described. From this vantage point, there would be little that could be done to disguise the development, and the buildings would appear as a very large structure in the dunes. Such a large structure would significantly alter this view. Again, several special conditions (including 1(~~fe~~), 1(~~hg~~), and 1(~~wy~~)) are required to ensure that the visual impacts of the project as seen from across Monterey Bay are addressed as much as possible for a development of this scale. In addition Special Conditions 1(~~ml~~) and 1(~~mm~~) limit lighting associated with the project and require non-glare glass, respectively, which will reduce the project’s visual impacts.

Thus, as proposed with respect to other views (as distinct from view impacts caused by the proposed grading, as previously discussed), the proposed project is conditioned to be able to be found consistent with LUP Policies 3.3.1, 5.3.1, 5.3.2, 5.3.3, 5.3.4a, 5.3.6, 5.3.9, 5.3.10, and 6.4.5, LUP Section 5.2.2, and IP Sections 2.2 and 3.2. As conditioned, the overall project leads to an as-built condition that achieves the LCP’s viewshed protection goals.

5. Structures in mapped view corridor not allowed

LUP policy 5.3.2 requires that views of Sand City’s coastal zone, Monterey Bay, and Monterey peninsula be protected, in part by protecting the mapped view corridors shown on Figure 9. The project site has a mapped “major” view corridor on it (Exhibit 3). This view is defined as the

“southbound view across the northern city boundary consistent with the public recreation designation.” LUP policy 5.3.3(a) requires that this view be protected by “retaining the view corridor free of new structures.” The Commission believes, and has previously found and applied, that this view corridor is meant to apply to the generalized view across this portion of the site from Highway One. The Applicant disputes that understanding, stating that only that area explicitly depicted on the map constitutes the protected view corridor. The question of which LCP interpretation is accurate is currently being litigated. For purposes of this report, and to resolve the uncertainty presented by the litigation, the Commission applies conditions that are consistent with protecting both interpretations of the view corridor. Thus, as conditioned, the project is consistent with the protection of that view corridor.

6. Building Heights

The LCP allows building heights up to 45 feet above existing grade for hotels, and 36 feet above existing grade for other development. The LCP is somewhat unclear whether the 45-foot limit should also apply to condominium hotels, as it only refers to hotels as appropriate for such increased height. Here, the Commission is allowing a 45-foot height for both hotels and condo-hotels (see Special Condition 1(f)). As proposed, portions of the development extend to as high as 58 feet above existing grade in the tallest portion of the structure nearest the big dune. Special Conditions are therefore applied to limit all development to 45 and 36 feet above existing grade, including requiring a current topographic survey to determine existing grade, rather than the ten-year-old topographic map provided with the proposed project plans.

In addition, as indicated before, the project as it presents against finished grade would be substantially higher than the 45 and 36-foot maximum heights. As proposed, building elevations would range from 20 feet up to 100 feet above finished grade, and would appear as up to 10 stories as seen from the seaward side. All told, the hotel/condominium-hotel structures would extend as high as nearly 100 feet from the finished floor to the roof. As conditioned, these buildings will be technically consistent with the LCP, which just limits heights from existing grade, but only because the currently existing grade elevation is significantly higher than the proposed finished grade. It is because of this that the roughly 100-foot building elevations can be found consistent with the stated maximum height policies, even as they present as much taller buildings than a 45-foot or 36-foot building might. The Commission here interprets the LCP maximum height limits to apply to buildings only above formerly existing grade.

7. Program Elements

The LCP includes specific visitor-serving use requirements and densities for the site. In general, the applicable permitted uses include a hotel (up to 375 units maximum), residential timeshare units (up to 100 units maximum), residential units (up to 175 units maximum), and parks and recreation facilities. The LCP allows these uses to be intermixed on the site; however, such a mixed use scenario is only allowed provided that the visitor-serving residential and residential uses do not decrease the proportion of visitor-serving commercial (hotel) uses on the site. In other words, the LCP protects the strictly visitor-serving uses envisioned for this site and prioritizes them over quasi- and purely residential uses.

By unit type, the project is half hotel, one-quarter condo-hotel, and one-quarter straight residential. Using square feet, however, the proportionate use of the property is different, with more of the property devoted to residential uses. The project is made up of “modules”, each of

which appear to be the same size. The Applicant provides module counts by type that differ from the unit counts. For example, although the 184 hotel units are made up of 198 modules, the 92 condo-hotel units are made up of 187 modules, and the 92 residential units are made up of 306 modules. Thus, by module, the allocation is roughly half straight residential, with the hotel and condo-hotel unit space being about one-quarter of the overall total each.⁵⁴ When the residential and quasi-residential (i.e., condo-hotel units) units are combined, the project is approximately 71% residential by unit space allocation. When conceptualized in this way, most of the project massing that leads to public view impacts is for residential components that have a lesser priority under the Coastal Act and the LCP. The LCP, however, appears to designate usage ratios based on units, rather than square feet, so under this interpretation of the LCP, the proposed mix of visitor-serving versus residential units can be found consistent with the LCP.

8. Conclusion

It is clear that the project site is part of a significant public viewshed dominated by a relatively undeveloped dune and beach environment. The Applicant proposes to alter the existing dune landforms to accommodate the proposed mixed use development. In addition to proposing extensive grading of protected dune landforms, such dune manipulation blocks significant public views in an effort to screen the development from views from Highway One. In addition, the proposed roads, structures, and related development themselves also block and impair significant public views, transforming the existing open space dune aesthetic and character into a substantially built environment. Although the project includes significant landscaping, including landscaping some roof areas, the project is proposed on such a scale that even the proposed screening (if it were successfully established) cannot change the fact that the new view at this location will be of a series of large structures in the dunes.

In short, the proposed project would result in significant adverse public view impacts. Fortunately, the project's conceptual design lends itself to a series of modifications that can ensure that the project as a whole enhances and protects views to the extent feasible for a project of this general scale and magnitude. With Special Conditions, including Special Conditions 1(a-f), 1(h), 1(l-o), 1(q), and 1(v-w), the project will adequately protect and enhance visual resources overall. Thus, as conditioned, the project can be found consistent with the applicable LCP visual resource provisions.

F. NATURAL RESOURCES

1. Applicable Policies

The certified Sand City LCP states that there are no Environmentally Sensitive Habitat Areas (ESHA) west of Highway One – an area that includes the project site. This conclusion was affirmed as a matter of law by the Court of Appeals decision of *Security National Guaranty Inc. v. California Coastal Commission* (2008) 159 Cal.App.4th 402. Although the LCP's ESHA policies do not apply to the proposed project, there are other LCP policies and ordinances that specifically address the protection of dune landforms and natural resource areas that do not necessarily constitute ESHA under the City of Sand City LCP, and these policies do apply to the proposed project. The subject policies include requirements to implement dune stabilization and restoration, and a habitat protection plan for a specific dune landform that is mapped on the

⁵⁴ By module, the allocation is 44% residential, 29% hotel, and 27% condo-hotel.

project site. The LCP also requires that any development be consistent with the protection of natural resources on the site.

A. Protection of Natural Dune Resources and Landforms

The LCP contains various development standards to ensure the preservation and maintenance of certain identified sand dune areas, including a major sand dune landform on the project site. LUP Policy 4.3.20 requires the designation of the large dune landform on the project site as an area suitable for dune habitat restoration, and requires this area to be kept in open space; grading is prohibited in this area except in conjunction with habitat restoration:

***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.

Exhibit 22 reproduces LCP Figure 7, referenced in LUP Policy 4.3.20, and shows the mapped dune landform on the project site. Figure 7 indicates that this area is designated for “dune stabilization/restoration” within future developments. As discussed in the visual resource finding, this dune area is also identified on the Visual Resources Figure 9 as a “dune preservation, stabilization and restoration area” (see Exhibit 3).

LUP Policies 4.3.19, and 4.3.18a specify the policy standards that must be applied to the mapped dune feature on the project site:

***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.;*

These LUP requirements are implemented through various provisions of the certified LCP Implementation Plan. First, following the LUP, the IP calls for the “protection and preservation . . . of dune stabilization/restoration areas required as a part of new development” (IP, p. 19). The underlying implementation mechanism for this requirement is a “Habitat Restoration Overlay District” that corresponds to the mapped large dune landform on the project site (see IP Figure 4, Exhibit 3). The requirements in this overlay district are as follows:

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.*

Significantly, the permitted uses in this overlay district are strictly limited to restoration or enhancement of dune habitat, establishment of new habitat for rare and endangered species, grading and other activities necessary to implement habitat restoration, and native plant relocation.

This overlay district also requires that a biological field survey and habitat protection plan be prepared for the area to implement LUP Policy 4.3.19. In addition, it requires the permanent protection of the area through easements or dedications, consistent with the LUP policy 4.3.20 open space requirement. And following LUP policies 4.3.19 and 4.3.18a, the IP includes various specific requirements for the area and the required survey and habitat protection plan:

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 involve habitat relocation:

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.*

B. Protection of Other Natural Resources

In addition to the specific requirements for the large dune landform on the project site, the LCP also requires that new visitor-serving development be consistent with the protection of natural resources. LCP Policy 3.3.1 provides:

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.

Similarly, in discussing appropriate development densities for the Monterey Bay Shores site, LCP Policy 6.4.1 states in part:

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.

Thus, at a minimum the proposed development density must adequately address any natural resource constraints on the site, and the identified dune landform that must be restored, including any appropriate buffer to assure its protection as restored habitat.

Finally, the LUP also contains policies to assure more general protection of the dune environments in Sand City:

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.

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.

2. Natural Resources Description

A. Background on the Monterey Bay Dunes System

The project site is located in the Monterey Bay Dunes Complex (also known as the Seaside dune system). Geologists (Cooper et al) describe the dune system as having three main components, each layered upon one another with the oldest layers on the bottom: youngest are the Recent dunes, such as those found around Moss Landing and which are still in the process of building. The most ancient are the pre-Flandrian dunes, mostly located inland from Highway One outside the coastal zone.

The highest and most dramatic component of the system is the strand of Flandrian-era dunes, named for an Ice Age event known as the Flandrian Transgression. These high dunes run as a narrow but continuous formation along the shoreline of Monterey Bay, beginning at the Salinas River and extending approximately 13 miles to Monterey Harbor. The dune system traverses a variety of governmental jurisdictions: Monterey County, the City of Marina, California State Parks, City of Sand City, Monterey Peninsula Regional Park District, City of Seaside, the City of Monterey and the U.S. Naval Postgraduate School. The coastal zone boundary through this region primarily follows Highway One which, for the most part, and in the case of this project, is the first public road paralleling the sea. The remnant pre-Flandrian dunes inland of Highway One in the cities of Seaside and Sand City have suffered severe impacts and are mostly developed. While the high Flandrian dunes are also impacted, at present several largely undeveloped, albeit degraded, sections remain along the shoreline (including the project site).

The project site is located within the Flandrian component of the Monterey dune complex. Coastal dunes are an extremely limited natural resource of statewide significance. Oceanfront dunes provide unique habitat values. Throughout its history, the Commission has placed high priority on the protection and preservation of dune systems. On the Central coast, this includes the Nipomo dunes, Asilomar Dunes, and the Del Monte Dunes (also within the Monterey Dunes complex). At 40 square miles, the Monterey Bay dune complex is one of the largest remaining coastal dune fields in California. However, less than half of the dune field has survived urbanization, conversion to military or agricultural uses, sand mining, and shoreline erosion. According to the Technical Review Draft for the Smith's Blue Butterfly Recovery Plan, U.S. Fish and Wildlife Service (USFWS):

*More than 50 percent of the Seaside [Monterey Bay] dune system has been destroyed or altered significantly by sand mining, urbanization, military activities, construction, and the introduction of two aggressive exotic plants, European marram grass (*Ammophila arenaria*), and iceplant (*Mesembryanthemum* spp.). Even considering this, these dunes are the largest and best preserved of any of the central California dune systems except for the Oso Flaco Dunes near San Luis Obispo. The dune system at San Francisco has*

been almost totally destroyed (Powell, 1981).

The significance of the natural resource values of the Monterey Bay dunes – particularly the Flandrian component along the shoreline – is well recognized, as is the potential to restore and enhance these values in degraded areas (see more detail below). This is summarized in the Sand City LCP:⁵⁵

One of the most distinctive coastal landforms in the Monterey Bay region is that of the Monterey Sand Dune complex, which extends from the Salinas River south to Canyon del Rey. The State and previous Coastal Commission decisions have identified the Monterey Sand Dune complex as one of the largest dune complexes on the west coast, and therefore, as a whole, is characterized as a unique resource.

More generally, the active coastal dune community (code G3 S2.2; Sawyer and Keeler-Wolf 1995) is considered threatened, having a moderately limited distribution throughout its range, with a limited distribution in California.

Several major dune restoration programs are underway in the vicinity of Sand City. A significant restoration effort has taken place immediately south of the proposed project, on a former dump site that was acquired and remediated by the Monterey Peninsula Regional Park District. To the north of the project site, State Parks intends to protect and restore 700 acres of dune habitat on dunes of the former Fort Ord seaward of Highway One. Other notable restoration areas within the dune system include State Park's restoration efforts at Monterey, Seaside, Marina, and Moss Landing State Beaches, and the Navy's restoration of 44 acres of beach area at the Naval Post Graduate School in the City of Monterey.

One of the more critical functions of the dune system is its role as habitat for a very unique flora and fauna. These are species that are specially adapted to the conditions and opportunities found in the dunes. Dune plants, in particular, play a special role by both stabilizing the dunes from the effects of wind erosion, and hosting rare fauna. However, as the natural dune system has been reduced and fragmented, the risk of extinction has increased for several species. Thus, each new impact within the dunes system has and will continue to contribute to the cumulative decline of these species.

Specifically, several native plants known to occur in the dunes are either already listed, or are on the candidate list for the federal register of endangered and threatened species. These include the Seaside bird's beak (*Cordulanthus rigidus littoralis*), sand gilia (*Gilia tenuiflora arenaria*), Sandmat manzanita (*Arctostaphylos pumila*), Eastwood's ericameria (*Ericameria fasciculata*), coast wallflower (*Erysimum ammophilum*), Menzies wallflower (*Erysimum menziesii*) and Monterey ceanothus (*Ceanothus rigidus*). The Seaside bird's beak is protected under the California Plant Protection Act of 1977. All seven species are recognized as rare by the California Native Plant Society. The sand gilia is both state-listed and federal-listed. Another sand-stabilizing plant species, the Monterey spineflower (*Chorizanthe pungens var. pungens*), is also found in the Monterey Bay dunes, and has been listed in the Federal Register as a threatened species (USFWS notice of February 14, 1994).

⁵⁵ LCP Section 4.2.4.

USFWS has also listed the western snowy plover as a threatened species. These birds forage along the shoreline and nest in the foredunes of the Flandrian system. The plovers are known to nest in various areas of the dunes, and have been the focus of significant conservation efforts by the State Department of Parks and Recreation (see below for more detail). Another species of concern existing within the dune system is the Smith's blue butterfly (*Euphilotes enoptes smithi*), a federally protected animal species listed as endangered by the U.S. Fish and Wildlife Service. Coast buckwheat (*Eriogonum parvifolium* and *E. latifolium*), are host plants to the Smith's blue butterfly, and occur in clusters that support localized populations of the butterfly. The black legless lizard (*Anniella pulchra nigra*), another native species of the Monterey Bay dunes, has previously been a candidate for federal listing as endangered, and is considered a Species of Concern by the California Department of Fish and Wildlife (CDFW) because of its limited distribution.

The distribution of these dune plants and animals can appear sparse, but over time the entire available dune surface is important to their survival. This is because the Flandrian component of the dunes complex is a dynamic system. The dunes present a rather harsh and difficult growing environment, where the wind keeps shifting the shape of the ground, rainfall rapidly percolates out of reach, and, lacking a distinct topsoil horizon, nutrients are quickly exhausted. Thus, a plant like Monterey spineflower may, over a year or two, use up the available moisture and nutrients at a particular site, and by means of wind-blown seed “move” to a neighboring area. In this simplified model, the original site remains a bare sand surface until life’s necessities again accumulate at the original site, thereby allowing recolonization and repeating of the cycle. Therefore, the overall growing area (“habitat”) needed over the long run is vastly larger than the area occupied by the plants at any one “snapshot” in time.

B. Natural Dune Resources on and adjacent to the Project Site

As discussed above, the project site is located within the Flandrian component of the Monterey Bay dunes complex. However, the LCP concludes that no sites seaward of Highway One can be considered ESHA, including this site. This conclusion derives in part from the fact that the project site was substantially degraded by historic sand mining at the time of LCP certification. As summarized in LCP section 4.2.4:

Sand City's Coastal Zone has two distinct dune areas: the area west of State Highway One and the area east of State Highway One. An ecological survey performed in Sand City found that, generally, all dune areas have been highly degraded and are in a disturbed state, especially in the area west of State Highway One. As such, the City's dunes are probably the most degraded within the regional Monterey dune complex.

The remaining dune areas also comprise a large portion of the City's vacant land. As such, they are left to compete with other land uses and resource demands such as recreation, potential residential/urban development, habitat areas, potential storm protection, and visual resources.

The dunes west of State Highway One are in a severely disturbed state. Due to human uses over time, the original dune landform in this area is generally absent. The majority of the dunes are active, characterized by shifting sand. Little plant life has established itself on these dunes, and where there is vegetation, it is dominated by non-native invasive vegetation. The area provides no natural habitats, although some native species

are found. The dunes have other valuable qualities, however, including visual qualities and the potential for wind and, erosion protection when stabilized with vegetation.

...

Future development west of Highway One (where no environmentally sensitive habitats exist) should consider dune management programs as part of the development. Future dune management programs can take the form of stabilization and/or restoration. Dune restoration means that the dunes are restored to their native plant condition. This is a long-range, laborious process which generally cannot be applied on a large scale, and requires rigid control of human access in order to be effective. It appears that dune stabilization is a more practical process than dune restoration; however, it involves utilization of exotic species. While stabilization provides an immediate solution to the problems of active sand dunes, it often leads to long-range elimination of native plant communities. ...

Although the LCP does not identify ESHA west of Highway One, it does require protection of natural resources in conjunction with development of visitor-serving development west of Highway One (LUP Policy 3.3.1). It also requires protection of dune habitats (LUP Policy 6.4.1) generally and one dune landform in particular. The project site contains one of the more significant dune landforms of the Monterey Bay dunes system, which is specifically mapped by LCP Figure 7 (Exhibit 3). As detailed below, specific dune stabilization, restoration, and protection requirements apply to this mapped dune area. Biological evaluations have documented that the project site contains significant other natural dune resources, and it lies immediately adjacent to Fort Ord Dunes State Park, which contains significant dune habitat resources as well.

C. Identified Dune Landforms on the Project Site

The project site contains a significant dune landform that is mapped in LCP Figures 7 and 9 and IP Figure 4. According to U.S Geological Survey (USGS) data, the crest of this mapped dune, which rises from sea level to 160 feet, is the highest point within the Flandrian dune component of the Monterey Bay dune system. Although this dune feature has undoubtedly been altered over time by historic sand mining, it has become an important feature of the historic dune landforms along this stretch of coast. USGS maps show that there were significant dunes along this stretch coast in the early 1900s, including at the project site.

When the LCP was certified, the Commission recognized the significance of this dune feature on the project site, along with four other dune areas in the City. As described above, the purpose of mapping the dune features was to protect them for both habitat restoration purposes and visual/landform protection. In protecting these “substantial dune areas” the Commission found:⁵⁶

[d]une stabilization and restoration areas offer a high level of public benefit through landform protection, habitat enhancement, and visual amenities.

Recent topographical mapping indicates the large dune form on the project site is essentially in the same location as was generally mapped in the LCP in the early 1980s, though the precise contours have undoubtedly changed due to changing environmental conditions over time, and

⁵⁶ LUP findings, November 19, 1982, p. 8.

due to the fact that sand mining of the site ceased in 1986. With respect to vegetation, recent mapping conducted by the Applicant indicates that the dune feature is comprised of substantial unvegetated sand areas, coastal scrub/ice plant mix, ice plant dominated areas, some pioneer dune vegetation, a small amount of ruderal/disturbed area, and some patches of high density Monterey Spineflower (see Exhibit 19, p. 2-5).

D. Other Natural Dune Resources on the Project Site

As summarized above, the dune system on the site has been substantially degraded by sand mining. Nonetheless, biological evaluations conducted over the last several decades document significant natural dune resource values, including evidence of self-restoration of the site to a more natural dune setting. Despite its past history of sand mining, the fact that the site is large and has no existing roads, buildings or other solid surfaces, and that all portions of the site are comprised of sandy surfaces, provides the potential for various natural dune habitat resources to reestablish themselves, which they have in many cases. These sandy surfaces provide habitat that may be recolonized by the dune dwellers that are found in the Flandrian-era dunes.

The EIR and the Habitat Protection Plan (HPP) prepared for this site by the Applicant document various dune plant and animal species on the site, including some recognized sensitive species. Figure 5 of the HPP prepared by EMC Planning Group, Inc., identifies the current location and densities of plant species occupying the site.⁵⁷ This updated vegetation mapping from 2013 characterizes the approximately 32 acres above mean high tide as including 11 acres of bare sand, 9 acres of pioneer dune vegetation, 7.9 acres of iceplant dominated vegetation, 3.9 acres of coastal strand, 0.5 acres of coastal scrub, and 0.2 acres of ruderal/disturbed area (see Exhibit 20, 2-5). Within the areas of pioneer dune vegetation and iceplant, surveys documented approximately 3.4 acres of Monterey spineflower and a small area containing roughly 58 seaciff buckwheat plants. The HPP further documents the history and presence of two sensitive animal species, along with the spineflower (detailed below). The HPP summarizes:

Notwithstanding the site's degraded condition, portions of the site have served as actual or potential habitat for the Smith's blue butterfly, western snowy plover, and Monterey spineflower.

This general observation about the presence of sensitive natural resources on the site is also supported by USFWS's 2009 correspondence regarding the site:

*The project site includes known occupied habitat for the federally endangered Smith's blue butterfly (*Euphilotes enoptes smithi*) and the federally threatened western snowy plover (*Charadrius alexandrinus nivosus*) and Monterey spineflower (*Chorizanthe pungens* var. *pungens*). All of these species have been documented in recent surveys, including nesting western snowy plovers during the 2008 breeding season. (Exhibit 25)*

The EIR and HPP also describe the various natural habitat resources of the site that have not been specifically listed as sensitive by the state or federal government. This includes the presence of beach and coastal strand species, such as sea rocket and beach bur (HPP, 2-2); habitat for feeding and nesting of marine and shore birds, including foraging waters for Pacific

⁵⁷ EMC Planning Group completed new vegetation mapping of the site in 2013 and in 2008 conducted surveys for Monterey spineflower and coast buckwheat.

loons, willets, sanderlings and caspian terns and resting/preening areas for gulls on the beach (HPP 2-7); foraging and nesting habitat for small birds in the coastal scrub; and wildlife habitat for the western fence lizard and small mammals such as the deer mouse (HPP 2-8).

Finally, the HPP also states that the site has the potential to support additional rare native animal and plant species of the Monterey Dunes, including the black legless lizard, the California burrowing owl, sand gilia, sandmat manzanita, Monterey ceanothus, and coast wallflower. More detail on the known sensitive species on site follows.

Snowy Plover. One of the most important natural resource values provided by the site is the documented and potential nesting area it provides for the federally threatened western snowy plover. In fact, the approximately 959 acres from Moss Landing to Monterey has been identified by USFWS as a “critical habitat area” for this species – including the entire coastal strand from the toe of the bluff to below the MHTL on the project site. The western snowy plover is a small shorebird, about 6 inches long, with a thin dark bill, pale brown to gray upper parts, white or buff colored belly, and darker patches on its shoulders and head. The Pacific coast population of the snowy plover nest adjacent to tidal waters of the Pacific Ocean, including on the southern Monterey Bay and Sand City beaches. The nesting season extends from early March through late September. Nests typically occur in flat, open areas with sandy or saline substrates where vegetation and driftwood are usually sparse or absent. The typical clutch size is three eggs but can range from two, and in rare cases, up to six eggs. Plovers lay their eggs in shallow depressions in sandy or salty areas and often return to the same breeding sites year after year.

Smith’s Blue Butterfly. The project site currently provides habitat for Smith’s blue butterfly, listed by the federal government as endangered. The habitat is located within the northeast corner of the site, and along the swale at the northern border with the former Fort Ord. The current butterfly habitat is directly related to the existence of approximately 40 coast buckwheat plants in this area. A 1995 survey prepared by Zander Associates documented approximately 58 host plants on the Monterey Bay Shores site, and 78 additional buckwheat plants immediately adjacent to the northeast corner of the project site. Additional surveys, including in 2008, demonstrated that the extent and distribution of buckwheat plants on the Monterey Bay Shores site had not significantly changed, though the expansion of iceplant was threatening to overtake them. The HPP observed, based on a 2006 survey and update prepared by Richard Arnold, that the presence of good quality habitat on the immediately adjacent Fort Ord Dunes State Park property increased the likelihood that the butterfly would continue to inhabit the northeastern boundary of the Monterey Bay Shores project site.

Monterey Spineflower. The Monterey spineflower, listed by the federal government as threatened, was first identified on the project site during site surveys conducted in 1997 by the project biologist. According to the HPP prepared by Zander Associates, “the number of spineflower plants on the project site is not extensive. There are approximately 2.5 acres of low density Monterey spineflower habitat and 0.3 acre of high density habitat in the southeastern and eastern portion of the project site” (page 14). In 2008 approximately 3.4 acres of the project area contained Monterey spineflower, including 2.9 acres of low density Monterey spineflower, 0.16 acres of medium density, and 0.33 acres of high density (EMC Planning Group Inc. 2008). This 3.4 acres represents an approximate 21% increase over the 2.8 acres documented in 1997. In addition, a 2008 botanical survey update shows the dynamic character of the spineflower in the

dune setting, with approximately the same amount of plant coverage albeit in different areas of the site from the plants documented in 2000. When considered together, the “active” spineflower area may be closer to six or seven acres of the site. This on-going and potentially expanded use of the site by the Monterey spineflower may be an illustration of the self-restoration of the site that is taking place.

Natural Resource Values of Degraded Dune Areas. A significant portion - roughly 15 acres - of the site, including the beach area, is bare sand. Besides providing nesting habitat for the Western snowy plover, bare sand areas are potentially restorable dune habitat areas that contribute to the long-term survival of the rare plant and animal species unique to the Monterey Dune ecosystem. Similarly, the approximately 8 acres of the site that is currently dominated by non-native iceplant, also represents restorable dune habitat. Removal of the iceplant, which can occur naturally (via heavy frost or disease) or with human intervention, would enhance the native dune resources currently provided by the site, and assist in the recovery of this resource throughout the dune system. Recovery and expansion of native dune habitats on the project site is facilitated by the absence of European beach grass, a non-native invasive species that has degraded native habitats elsewhere in the Monterey Bay Dunes and which is difficult to eradicate.

E. Proposed Natural Resources Protection Measures

The Applicant has proposed various measures to protect natural resources on the site and comply with the LCP, including preparing a Habitat Protection Plan (HPP). The HPP proposes four management areas for the site: the beach and strand; foredune and secondary dune; back dune; and developed areas. As presented in the HPP, measures to protect resources in these areas include: avoidance of certain habitat areas, including potential habitat areas for the western snowy plover and all the currently identified Smith’s blue butterfly habitat; dune creation and stabilization; control of exotic species; revegetation and habitat enhancement; salvage of plants prior to disturbance of the site and transplantation to restoration areas; pre-construction surveys; habitat protection during construction, including use of a biological monitor; post-construction management measures, including establishment of a “dynamic 2-acre nesting protection zone” for snowy plovers; and permanent protection of restored habitat areas. Overall, the project includes a dune restoration program designed to restore and protect dune habitats on 15.6 acres of the site that would be placed in a conservation easement (see Exhibit 21). Additional dune species revegetation will take place on an additional 5.2 acres or so (on tops of building roofs, and for landscaped grounds and gardens). The Applicant also has committed to an environmental trust fund that would include an endowment to manage the restoration and revegetation areas.

3. Consistency Analysis

A. Protection and Restoration of Designated Dune Landforms

As detailed previously, the project site contains a mapped dune landform that must be protected and restored pursuant to the LCP. Exhibit 22 reproduces LCP Figure 7, referenced in LUP Policy 4.3.20, and shows the mapped dune landform on the project site. Figure 7 indicates that this area is designated for “dune stabilization/restoration” within future developments. As discussed in the visual resource finding, this dune area is also identified on the Visual Resources Figure 9 as a “dune preservation, stabilization and restoration area” (see Exhibit 3). This mapped dune is also protected by the IP’s corresponding habitat restoration overlay district (Exhibit 3). Significantly, the permitted uses in this overlay district are strictly limited to restoration or enhancement of dune habitat, establishment of new habitat for rare and endangered species, grading and other

activities necessary to implement habitat restoration, and native plant relocation. The creation of new dune formations (e.g., through grading sand to create hillocks) is allowed as long as the development of new dunes is otherwise compatible with LCP policies, including public view and viewshed protection.

Thus, a primary intent of the LCP is to protect existing dunes, to limit manipulation of designated dune stabilization/preservation dunes (including the “L” shaped protected dune landform on the site designated on LUP Figure 7), and to restore degraded dune areas. Although the precise edges of this dune feature, as well as its general morphology, have undoubtedly changed somewhat since LCP certification, recent topographic mapping show that the land form is generally in the same location as when it was originally mapped in the LCP.⁵⁸ The Applicant has proposed various measures to restore and protect portions of the dune form (see Exhibit 20, section 4.3.3). Exhibit 22 illustrates the roughly approximated location of the dune feature based on current topographical conditions. Construction of the proposed project will require grading of the protected dune and an extension of this dune in order to further other LCP goals such as reducing view impacts from Highway One. The LCP allows existing or created dunes to be ‘utilized’ to enhance visual resources, and where they would stabilize an unconsolidated dune, and/or reduce views of the development from Highway One.

B. Protection of Other Natural Resources on site

Impacts to Dunes, including Monterey spineflower

As described above, the project site contains a variety of natural dune resources that must be protected pursuant to LUP policy 3.3.1. Although substantially degraded, the site supports various dune plant and animal species, including several sensitive species. The Applicant has prepared an HPP for the site. In general, the Applicant has evaluated the significance of the project impacts to the natural resources at the site. As indicated by the proposed grading and construction for the site, the project will initially impact almost all of the site, including removing most of the native vegetation. Including the dune restoration area discussed above, the proposed project includes 680,000 cubic yards of grading. Nearly 73% of the site (23.4 acres) above the mean high tide is proposed to be removed or directly affected. This includes a significant amount of grading seaward of the proposed development, and the removal of all but one acre of vegetation on site.⁵⁹ As a consequence, all of the foredune vegetation used by nesting shorebirds, including “historic nesting habitat” for the western snowy plover, will be removed. The entire seed-bank for native coastal dune plants, including rare and endangered plant species, will be displaced. The currently documented 3.4 acres of Monterey spineflower will likewise be completely removed.

Proposed methods of minimizing and mitigating these impacts are included in the HPP. In summary, the graded and recontoured dune topography outside of the proposed development envelope would be replanted with native dune plant species. Approximately 15.6 acres of the 32 acres of the project site above the mean high tide line would be placed in a conservation

⁵⁸ The dune has remained fairly stable over time – that is its present shape does not differ significantly from that of over 25 years ago. It has enlarged and broadened somewhat, as would be expected from a quarter-century of wind-driven sand transport onto its steep slopes.

⁵⁹ Approximately one acre of sand dunes along the northern boundary containing dune buckwheat plants would be retained to preserve the host plants for the federally protected Smith’s blue butterfly.

easement and protected/restored as dune habitat, including a portion of the dune habitat restoration area in the southeast corner of the site. Approximately 4 acres seaward of the conservation area would be placed in a “floating” public access easement area; and approximately 5 acres of “green landscaping” would be installed within the 14-acre footprint of the resort development, including on some of its roofs. The HPP also proposes an adaptive “floating” plover management area suitable for nesting habitat, with monitoring and potential exclusionary fencing for any nests that may be found year-to-year. Other notable mitigation measures include avoidance of existing buckwheat plants and provision for re-creating 3.4 acres of Monterey spineflower habitat through restoration measures.

The specific provisions of the HPP are intended to minimize the impacts of project construction on existing dune habitats and sensitive species, and to facilitate the enhancement of native dune habitat values on the 15.6 acres of the site outside of the development footprint. A particular emphasis is placed on establishment of habitat that will benefit the rare plants and animals of the Monterey dune system. In April 2014, USFWS commented on the project and on the Applicant’s most recent HPP, raising concerns related to the HPP’s adequacy related to Monterey spineflower protection (as well as other protected resources (see also below)), see USFWS April 7, 2014 letter addressed to Mike Watson of the Coastal Commission). The Commission shares the concerns of USFWS, and the Applicant’s HPP must be modified to incorporate standards that address the concerns for Monterey spineflower that were laid out in the letter. In addition, any changes to other plans for the project that are necessary to comply with standards included in the approved modified HPP must be made as well (see Special Condition 15).

Impacts to Snowy Plover

To reduce project impacts on the western snowy plover, the addendum to the Final EIR requires: pre-construction surveys for active breeding/nesting on the project site to avoid disturbance of nesting plovers during the plover nesting season; a qualified biologist be on-site to monitor Western snowy plover activity and construction activities; pre-construction conference with equipment operators and field supervisors; establishment of a 2-acre nesting protection zone; adaptive management and access plan; conservation easements; annual review of biological conditions; predator management plan; coordination with Sand City and State Parks; and an Environmental Trust Fund contribution.

The entire southern Monterey Bay shoreline including the beach and foredunes fronting the project site is designated as critical habitat and Western snowy plover have been observed using the project site for nesting, foraging, and over-wintering for more than 25 years. The habitat in and around the vicinity of the project site provides the physical and/or biological features essential to plover recovery efforts and the success of the species. Construction activities have the potential to significantly alter the patterns of use of the Western snowy plover during the multi-year construction period, and ongoing changes and urbanization of the site have the potential to forever displace plover which have been returning to this site for nesting and foraging for more than two decades.

The USFWS ~~has~~ submitted a comment letter⁶⁰ in 2009 raising significant questions with respect to the adequacy of the HPP prepared by the Applicant to meet the requirements under the Endangered Species Act of 1973, as amended, prohibiting take of listed species.⁶¹ This includes concerns with respect to proposed measures to protect the snowy plover. The letter identifies a number of deficiencies with the HPP and calls into question whether take of listed species can truly be avoided and therefore recommends that if “take” can only be minimized, as is suggested by the HPP measures, then the Applicant should pursue an incidental take permit in consultation with USFWS. An HCP is a required component of any application for an incidental take permit (see Exhibit 25). In its April 7, 2014 letter referred to above, USFWS raised a series of concerns related to the project and the Applicant’s most recent HPP with respect to snowy plover protection.

It is unclear whether the proposed Habitat Protection Plan is adequate to protect this species consistent with the goals of the LCP. Accordingly, Special Condition 2(d) requires the presence of a qualified biological monitor during all construction activities to ensure that dune areas and sensitive species are protected during construction. Special Condition 2(e) requires per-construction surveys for nesting plovers and further requires consultation with appropriate agencies and implementation of approved mitigation measures if the sensitive species is identified in the project area. Special Condition 3(d) requires explicit habitat enhancements for sensitive species including Western snowy plover as part of any dune restoration activities. In addition, the Commission shares the concerns USFWS laid out in its 2014 letter, so Special Condition 15 requires the Applicant to modify its HPP to incorporate standards that ensure adequate protection of snowy plovers by addressing the eight concerns for western snowy plover identified in the USFWS April 7, 2014 letter. In addition, any changes to other plans for the project that are necessary to comply with the approved modified HPP must be made as well. Finally, Special Condition 15 also requires the Applicant to obtain any legally required ~~necessary~~ CDFW and USFWS approvals.

Impacts to Smith’s Blue Butterfly

As discussed, the proposed project includes grading over approximately 84% of the project site with the exception of the beach area below 20’ mean sea level, and the sand dunes containing seacliff buckwheat plants growing adjacent to the northern property boundary. The HPP estimates that these plants currently provide habitat for between 4-12 individuals of Smith’s blue butterfly. The project proposes to restore about 1.4 acres of coastal dune habitat suitable for use by Smith’s blue butterfly. The restoration of this habitat is primarily associated with the proposed re-contouring of the site; a new dune formation intended to provide restored habitat and to hide the development from the view of motorists traveling along Highway One would be created in the northeast corner of the site. Following grading and construction of the project, 400 seacliff buckwheat plants would be planted.

⁶⁰ USFWS letter from David M. Pereksta dated May 6, 2009. The 2013 HPP and recommendations prepared by EMC Planning Group, is fundamentally unchanged from the 2008 HPP prepared by same.

⁶¹ Section 318 of the Endangered Species Act of 1973 defines take to mean to harass, harm, pursue, hunt shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. Service regulations (50 CFR 17.3) define harm to include significant habitat modification or degradation which actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering. Harassment is defined by the Service as an intentional or negligent action that creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding, or sheltering,

While restoration efforts in other areas of the Monterey Dunes have demonstrated that the revegetation of dunes with buckwheat can be accomplished, it remains unclear whether this proposal will provide productive habitat for the Smith's blue butterfly. Of primary concern is the grading and disturbance of all surrounding native dunes, and the associated impacts to the existing butterfly population resulting from altering the existing topography which currently provides the right combination of sun exposure and shelter from the predominant northwest winds that are favored by this species. Therefore, to reduce these potential impacts, Special Condition 1(hg) limits grading to the foredune directly seaward of buildings and for the fire road, and only where such grading is designed to replicate natural dune landforms and integrate into the surrounding dunes to the extent feasible. Further, Special Condition 2(d) requires a biological monitor to be present during all grading and construction activities to ensure that dune areas and sensitive species are protected. And finally, Special Condition 2(e) requires pre-construction surveys for sensitive species, and consultation with the biological monitor and CDFW, the USFWS, and the Executive Director to develop appropriate implementation of mitigation measures consistent with the revised HPP required by Special Condition 15 and any other state or federal agency requirements. In addition, the USFWS 2014 letter also raised concerns that the Applicant's proposed HPP was inadequate to protect Smith's blue butterfly. The Commission shares these concerns, so it is also requiring in Special Condition 15 that the Applicant's HPP be modified to incorporate standards that protect Smith's blue butterfly by addressing the concerns for Smiths blue butterfly identified in the USFWS April 7, 2014 letter. In addition, any changes to other plans for the project that are necessary to comply with standards included in the approved modified HPP must be made as well (see Special Condition 15). As conditioned, impacts to Smith's blue butterfly, a key feature of the dunes that are protected by the LCP, will be minimized.

Habitat Protection Plan

The Commission's senior ecologist, Dr. John Dixon, reviewed the HPP and concluded that, as proposed, it does not provide sufficient detail to ensure that the Plan will be effective in ensuring restoration of the dune area, as required by the LCP (see Exhibit 26). For example, the HPP indicates that the Landscape Plan contains biological objectives, cover goals, seed mixes, and installation recommendations. However the Landscape Plan is conceptual and lacks specificity. The HPP provides general "biological objectives" for each management area as opposed to more specific enforceable success criteria, and there does not appear to be any contingency requirements in the event that the restoration goals are not met. These metrics are essential to successful restoration of the site and are at this time lacking. Accordingly, Special Condition 3 is attached that requires submittal of a revised HPP that includes detailed guidance on plant propagation, planting methods, and irrigation. Performance standards (success criteria) for biodiversity and vegetative cover are required to be provided for each vegetation type (as characterized by a specific plant palette and planting plan and any modifications based on slope and aspect) rather than on management areas. Special Condition 3 further requires regular maintenance and monitoring of the restored dune area, and that cover criteria be assessed based on the analysis of high resolution aerial photographs coupled with on-the-ground observation. Performance standards must be assessed every year for the first five years and then every 10 years henceforth. To ensure that the habitat restoration is carried out consistent with the approved Dune Restoration Plan including over the life of the proposed development, Special Condition 4 requires the applicant to place the entire restored dune area into a dune conservation easement and to offer to dedicate said easement to an acceptable public agency or private

association. All future development within the easement area, other than for restoration purposes, public access, resort pathways, and initial foredune grading is prohibited.

In addition, the Commission shares the concerns of USFWS, so it is requiring that the Applicant's HPP be modified to incorporate standards that address the eight concerns for snowy plover, and each of the concerns for Smiths blue butterfly and Monterey spineflower identified in the USFWS April 7, 2014 letter. In addition, any changes to other plans for the project that are necessary to comply with standards included in the approved modified HPP must be made as well (see Special Condition 15).

Finally, the HPP indicates that more than 23 acres of the site will be restored to native dune habitat – including roughly 5 acres on the development grounds. There are benefits to planting native vegetation in, and around the development grounds, rooftops, gardens, etc., as it helps blend the development into the environment, adds natural ambience, and provides modest ecological benefits. Special Conditions 1(k) and 3(c) clarify the Applicant's proposal and require that all landscaping, other than decorative landscaping within the interior courtyards and similar areas (such as the port cochere area), consist of only non-invasive dune species native to Sand City and the southern Monterey Bay dune systems. This condition is necessary to ensure that all dune areas adjacent to development are planted with species that will protect the restored dune areas, consistent with LCP requirements.

Finally, the proposed project, after completion, has the potential to adversely impact the required dune restoration by adding a significant amount of lighting. Lighting can adversely impact both visual and biological resources, including the biological resources that will be present within the restored dune area. Therefore, as described previously in the visual resources section, Special Condition 1(m) requires lighting to be minimized, and requires light fixtures to be sited and designed so that they only illuminate areas that are intended to be illuminated. It also requires that lighting be wildlife-friendly and should use lamps that minimize the blue end of the spectrum and are as low intensity as is compatible with safety.

4. Conclusion

As proposed and conditioned, including as discussed herein, the project will protect the natural resources of the site, including the dune landforms, vegetation and habitats. Accordingly, as conditioned, the Commission finds that the proposed project is consistent with the applicable LCP natural resource provisions.

G. TRAFFIC AND CIRCULATION

1. Applicable Policies

LCP Policies

The LCP requires adequate circulation and parking as part of new development projects. Development within the CZ-VSC, CZ VS R-2, and CZ-R2 zone districts applicable to the subject site also requires a planned unit development permit,⁶² approval of which requires that such development not create traffic congestion. Applicable LCP policies and IP standards include:

⁶² Per IP Section 3.2 (previously cited and not cited again here).

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

As described above, because the proposed project is located seaward of the first through public road and the sea, the Coastal Act's public access and recreation policies also apply to any proposed development at this location. Coastal Act access policies that are applicable for traffic and circulation analysis include:

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.*

2. Traffic and Circulation Patterns

The Sand City coastal zone is bisected by Highway One, which is the primary shoreline access route through this part of the coast. The project site is located just seaward of the southbound Fremont Boulevard off-ramp from Highway One.⁶³ The Fremont Boulevard off-ramp delivers vehicles to the area inland of the Highway where the majority of developed Sand City is located, including major commercial development located immediately east of Highway One, and other roads providing circulation through Sand City proper (including Fremont Boulevard itself, California Avenue, Ord Avenue, Monterey Road, and Del Monte Boulevard). Access to the site from the Fremont Boulevard off-ramp requires a turn onto California Avenue, which extends under the highway to the sand dune area west of the highway and then turns abruptly downcoast (paralleling the highway) at the project site, where a dead-end stub of the road stops at the project site. Local streets that would also provide access to and from the project site include, but are not limited to, California Avenue, Ord Avenue, Monterey Road, Fremont Boulevard and Monterey Boulevard. See Exhibit 1 for a location map applicable to the site and the immediate surrounding area.

3. Traffic Analysis

Highway One in the project area is heavily used, and during peak traffic times operates at level of service (LOS) C or lower for most of the stretch of highway fronting the site, and at levels D

⁶³ The next nearby Highway One off ramps are at the Fort Ord Main Gate (upcoast), and at Highway 218 (downcoast).

and E for certain segments.⁶⁴ When traffic volumes associated with existing approved but not yet constructed projects in the vicinity are accounted for, Highway One traffic is even worse, reaching LOS level F for northbound evening peak trips approaching the site from the Monterey side and LOS level E for southbound morning peak trips towards the site (volumes of 4,513 and 4,053 respectively).⁶⁵ Similar traffic congestion is found at many of the interchanges in the near vicinity, including in areas where approved projects have not yet been constructed, with most of the intersections in the area operating at LOS level C or worse, and several intersections operating at LOS D, E, or F at peak traffic times.⁶⁶ In terms of the primary intersection in relation to the subject site (i.e. the intersection of Fremont Boulevard with the Highway One on and off ramps), this intersection currently operates at LOS D and F during peak times, and operates at LOS F when the traffic from approved projects not yet constructed are accounted for.⁶⁷

Thus, based on peak time level-of-service calculations, Highway One and surface street intersections through which traffic directed to the project site must move are currently heavily impacted by excessive traffic, resulting in unacceptable levels of service, as determined by Caltrans.⁶⁸ The EIR found that project-generated traffic will degrade the traffic conditions of the California Avenue/Highway One Northbound off-ramp to Monterey Road from LOS C to D. The Applicant included mitigation in the project that would reduce the impact at this ramp back to LOS C. Such mitigation includes reconfiguration of the approach to the off-ramp to provide a southbound left-turn lane, and an alternative transportation plan to reduce the overall number of vehicle trips generated by the project, particularly during peak hours (see below for more discussion of these mitigations).

In addition, according to the study done by Fehr & Peer for the Addendum to the EIR,⁶⁹ the updated 2008 analysis results in project-specific impacts that were not identified in the 1998 FEIR at the following intersections:

- Fremont Boulevard/Highway One southbound off-ramp/northbound on-ramp
- California Avenue/Playa Avenue
- Fremont Boulevard/Military Avenue-Del Monte Boulevard

The intersection at Fremont Boulevard/Highway One would be projected to operate at LOS E during the AM hours and at LOS F during the PM peak hours, with delays of 86.1 seconds and

⁶⁴ Southbound AM and northbound PM trips (Addendum to the Final EIR, p. 95). Per the Addendum, Highway LOS ranges from A (free flow speeds) to F (unacceptable delays) where level C is generally considered average traffic (i.e., average delays).

⁶⁵ Id, p. 95.

⁶⁶ Id, p. 94. Intersection LOS uses a similar rating methodology as highway LOS, ranging from little/no delay (A) to unacceptable (F).

⁶⁷ Id, p. 94.

⁶⁸ As indicated in the Addendum document, Caltrans indicates that a significant impact in Sand City would occur if the level of service D threshold is exceeded due to project traffic on a roadway segment.

⁶⁹ Memorandum re: Focused Transportation Impact Analysis dated August 1, 2009 to Will Burns from Franziska Holtzman & Sohrab Rushid, Fehr & Peers at pages 31 to 37.

169.2 seconds respectively. The intersection at California Avenue/Playa Avenue would operate at LOS E during the PM peak hours, with a delay of 49 seconds. The intersection at Fremont Boulevard/Military Avenue - Del Monte Boulevard would operate at LOS F during the PM peak hours with a delay of 393.9 seconds for worst traffic movement, and with an average intersection delay of 80.6 seconds.

The cumulative impact analysis in the Addendum identifies one new significant intersection impact and two new freeway segment impacts that were not previously identified in the EIR:

- Fremont Boulevard/Military Avenue-Del Monte Boulevard
- Highway 1 from Highway 218 to Fremont Boulevard (Northbound, PM peak)
- Highway 1 from Highway 218 to Fremont Boulevard (Southbound, AM peak)

The Fremont Boulevard/Military Avenue-Del Monte Boulevard intersection would operate at LOS F during both the AM and PM peak hours, with a delay of 242.3 seconds for worst traffic movement, and with an average intersection delay of 34.1 seconds. Highway 1 from Highway 218 to Fremont Boulevard (northbound) would operate at LOS F during the PM peak hours, and this same stretch of Highway (southbound) would operate at LOS E in the AM peak hours.^{70,71}

4. Project Transportation Analysis

The proposed project is estimated to add 2,032 daily trips to the traffic mix, including 272 trips during the peak traffic times.⁷² These trips would increase traffic on Highway One, including during peak use periods, and would likewise increase traffic along local streets and intersections in the area, including the primary Fremont Street/Highway One off and on-ramp intersection. The EIR identifies mitigation measures that it asserts would reduce project traffic impacts to less than significant levels, and the Addendum proposes mitigation measures for the new impacts identified.

In particular, the EIR identifies a mitigation measure for vehicle trip reduction and indicates that such trips can be reduced by 15% through implementation of an alternative transportation program (also known as Transportation Demand Management or TDM), targeted to reduce employee trips. The proposed program discussed in the EIR involves adding a new bus stop adjacent to the project (dependent on Monterey - Salinas Transit extending bus Line 20), incorporating a bicycle trail into the project, and developing off-peak work hours for employees, deliveries, and maintenance workers. While the EIR estimates that this can achieve an overall reduction in project trip generation of 15%, it is not expected to improve the LOS at the Fremont Boulevard/Highway One intersection. In addition, the Addendum to the Final EIR includes additional mitigations that require the Applicant to contribute a fair-share to the Transportation

⁷⁰ Fehr & Peers Memo at pp. 34 and 36 in Appendix F of the Addendum to the Final EIR.

⁷¹ For freeways, LOS E is defined as "Operation at capacity. There are virtually no usable gaps within the traffic stream, leaving little room to maneuver. Any disruption can be expected to produce a breakdown with queuing." LOS F is defined as "Represents a breakdown in flow; demand flow exceeds capacity."

⁷² Addendum to the Final EIR, pp. 98-99.

Agency for Monterey County's (TAMC) regional development impact fee program,⁷³ and install a signal at the California Avenue/Playa Avenue intersection.

The LCP requires that there be adequate circulation and that the project not create traffic congestion. As described above, the existing circulation system is at or beyond capacity in the vicinity of the project site. In addition, the proposed project will add traffic to already congested Highway One, and to already congested local roads and intersections, some of which already function at LOS C or lower during peak periods. Thus, as proposed, there is inadequate circulation capacity available at certain times to satisfy the proposed project's needs, and this inadequate circulation capacity can impact the public's ability to access the coast. In addition, Coastal Act Section 30252 requires, among other things, that the amount and location of new development should maintain and enhance public access to the coast, facilitate the provision or extension of transit service, and provide non-automobile circulation within the development.

The Applicant has eliminated the proposed public transit access stop that was included in the EIR as project mitigation, which means, as now proposed, the project includes less mitigation for traffic impacts than was originally included in the EIR. Furthermore, the Applicant has not provided specific proposals to implement access or transit services such as employee shuttles, visitor shuttles to nearby attractions, or other measures that would reduce the project's traffic impacts to ensure that the project is consistent with Coastal Act requirements to maximize public access to the coast and ensure that new development maintains and enhances public access to the coast. Thus Special Conditions are required to mitigate these impacts to ensure that the project is consistent with the Coastal Act's public access and recreation policies, specifically Sections 30210, 30211, 30212.5, and 30214, as well as Sections 30252 and 30253(e).

As discussed above, the project EIR recommends traffic mitigations, including a comprehensive TDM program, which, as described above, is intended to reduce traffic demand by 15%. If such a reduction were achieved, the proposed project would generate about 305 fewer daily trips, which should help to mitigate the project's traffic impacts. However, as discussed above, the Applicant has eliminated the proposed public transit access stop that was described in the EIR, and the Applicant has not provided a specific alternative transportation plan for employee shuttles, off-peak work schedules, car pools, etc. Therefore, Special Condition 16 requires the EIR mitigations to be carried out, which include: 1) payment of a fair-share contribution to TAMC's regional development impact fee program; 2) reconfiguring the approach to the California Avenue/Highway One Northbound off-ramp to provide a southbound left-turn lane; 3) installing a signal at the intersection of California Avenue/Playa Avenue, and; 4) implementation of a TDM program (see below for specific requirements of the TDM).

As discussed above, the EIR included traffic impact mitigations to include the addition of a bus stop adjacent to the project site, as well as other alternative transportation programs to reduce the project's traffic impacts. To further minimize vehicle miles traveled and traffic congestion and ensure that the EIR's requirements for an alternative transportation plan or TDM are met, Special Condition 17 requires the preparation and implementation of a Transportation Demand Management Program (TDM). The program would be composed of the following components:

⁷³ TAMC's regional development impact fee program is intended to reduce traffic congestion, improve the level of service, and mitigate regional and cumulative traffic impacts created by new development. TAMC undertakes studies to determine future traffic conditions and to develop the program's traffic improvement project list.

participation in shuttle systems to the Monterey Regional Airport and Monterey Transit Plaza; transit incentives for employees to promote the use of public transportation, including fare/monthly pass subsidies; bicycle storage; on-site shower facilities available to all employees; carpool plan with notices of the program posted in the employee work areas; and provision of TDM program information to all employees and included in any employment paperwork for new employees.

The site is currently on the route served by the Monterey-Salinas Transportation District (MST) Route Jazz C along Fremont Boulevard. Special Condition 17a requires the Applicant to agree to work with MST to encourage increased bus service to and from the development site. This condition would address, in part, the project's impact on traffic congestion by reducing vehicle miles traveled by both employees and visitors to the hotel development.

In an effort to further reduce traffic impacts and reduce the need for guests to rent cars during their visits and thereby reduce vehicle miles traveled, Special Condition 17b also requires the Applicant to participate in shuttle services to the Monterey Regional Airport and the Monterey Transit Plaza. The Monterey Transit Plaza is a transit hub that provides direct linkages to major local attractions such as the Monterey Fisherman's Wharf, Carmel, Cannery Row, Big Sur, the Monterey Bay Aquarium, and other area attractions, both local and regional. The transit center offers visitors a variety of travel modes (bus, trolley, and light rail in the future) to access other coastal communities and the greater southern Monterey Bay area without the need to rent a car.

As conditioned, the project's traffic impacts can be mitigated adequately such that public access to the coast is maintained, enhanced, and maximized. Thus, as conditioned, the proposed project can be found consistent with the LCP's traffic and circulation policies and with the Coastal Act policies that require the maintenance, enhancement, and maximization of public access to the coast.

6. Traffic Conclusion

The LCP requires that there be adequate circulation and that the project not contribute to traffic congestion, and that adequate public parking be provided. The identified traffic and circulation and parking deficiencies associated with the proposed project can be addressed through the imposition of conditions. The Commission is recommending appropriate project-specific mitigations, including a well-designed TDM program, enhancement of transit services, signalization, a contribution to TAMC's regional traffic impact fund, and an in-lieu payment in to a fund to create additional public parking spaces. As conditioned, the proposed project can be found consistent with the Coastal Act requirements to maintain and enhance public access to the coast and provide adequate parking facilities, and with the transit and parking requirements of the certified LCP.

H. LOWER COST VISITOR SERVING FACILITIES

1. Applicable Policies

The LCP encourages development of visitor-serving facilities to serve a wide range of visitor needs, including lower cost visitor serving facilities. The applicable Sand City LCP policy states:

***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 shoreline development project. Lower-cost visitor serving facilities such as campgrounds are encouraged.

Because the proposed project is located seaward of the first through public road and the sea, the Coastal Act's access and recreation policies also apply to any proposed development at this location. Section 30213 of the Coastal Act protects lower cost visitor-serving facilities and states:

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

2. Background

Coastal Act Section 30213, which protects lower cost visitor-serving recreational land uses and facilities, has its genesis in the 1975 California Coastal Plan. Based on extensive public input in the early 1970s, the Coastal Plan found that few tourist facilities for persons of low and moderate income were being built in many parts of the coastal zone, and that many such low and moderate cost facilities were being replaced by facilities that had higher costs, including particularly in terms of overnight accommodations (i.e., by higher-cost apartments, condominiums, and hotels). The Coastal Act addressed these findings in part by including the specific Section 30213 mandate to protect, encourage, and where feasible provide lower cost visitor and recreational facilities.

Over the years, the low-cost facilities issue has been primarily focused on overnight accommodations because permit applicants have typically requested that the Coastal Commission and LCP-certified local governments approve higher-end overnight facilities on land zoned for visitor-serving uses, and in some cases on land already containing lower cost accommodations, rather than pursuing lower cost accommodations. Other applicants have proposed non-visitor-serving accommodation uses on sites of existing lower cost accommodations. Additionally, applications for the conversion of hotels and motels to, or the construction of hotels and motels as time shares, condominium ownership, and similar ownership frameworks and combinations have generally increased. Often such facilities are more akin to residential uses – sometimes they are categorized as “quasi-visitor-serving” or “quasi-residential” or “limited use overnight visitor accommodation” or “visitor serving residential” – and thus these types of developments can reduce opportunities for publicly available overnight accommodations, especially lower cost facilities. Overall, the Commission's permit experience confirms the need to guard against the loss or preclusion of lower cost overnight accommodations along the coast.

One way that the Commission has implemented Section 30213 is by requiring that lower cost accommodations be provided as part of a project or by requiring funds to be paid for new lower cost accommodations to be constructed elsewhere.

The Commission has also addressed the changing marketplace for visitor-serving and residential land uses. By the 2000s, the concern for the impact of condominium hotels and hotel conversions was growing. On August 9, 2006 the Commission held a workshop on condo-hotel construction

and conversion that encompassed the topic of overnight visitor affordability. Background research for the workshop showed that only 7.9% of the overnight accommodations in nine popular coastal counties were considered lower cost, affirming the ongoing need for more effective implementation of Coastal Act Section 30213. The increased attention on this issue also generated a more detailed examination of the methods for determining when and to what degree the protection or provision of lower cost overnight accommodations was necessary in any specific case. In a July 2008 report on a proposed LCP amendment, the Commission applied a quantitative methodology for determining what is considered “lower cost” in the geographic area in question.

In a constantly changing market, it can be difficult to define what price point constitutes low-cost and high-cost accommodations for a given area. In its previous actions, the Commission has addressed what are appropriate terms for defining low-cost and high-cost hotels.⁷⁴ More recent Commission actions have used a formula to determine low and high-cost overnight accommodations for a specific part of the coast.⁷⁵ The formula is based on California hotel and motel accommodations (single room up to double occupancy), and does not incorporate hostels, RV parks, campgrounds or other alternative accommodations into the equation, as these facilities do not typically provide the same level of accommodation as hotels and motels. Rather, hostels, RV parks and campgrounds are generally inherently lower cost, and are the type of facilities that a mitigation charge for the loss of affordable overnight accommodations would generally support.

The formula compares the average daily rate of lower cost hotels and motels in a specific coastal zone area (e.g., a city or defined urban area) with the average daily rates of hotels and motels across the entire State of California. Under this formula, low-cost is defined as the average daily room rate for all hotels within a specific area that have a room rate less than the statewide average daily room rate.

To determine the statewide average daily room rate, Commission staff surveyed average daily room rates for hotels and motels in California. Statewide average daily room rates are collected monthly by Smith Travel Research,⁷⁶ and are available on the California Travel and Tourism Commission’s website under the heading “California Lodging Reports.”⁷⁷ To be most meaningful, peak season (summer) rates were utilized for the formula. To ensure that the lower cost hotels and motels surveyed meet an acceptable level of quality, including safety and cleanliness, only AAA Auto Club rated properties were included in the survey. According to the AAA website, “to apply for (AAA) evaluation, properties must first meet 27 essential requirements based on member expectations – cleanliness, comfort, security and safety.” AAA assigns hotels ratings of one through five diamonds.

When referring to any overnight visitor accommodations, the Commission has typically defined lower cost overnight facilities as any facility with room rates that are below 75% of the

⁷⁴ Including CDPs 5-04-291, 5-88-062, 5-84-866, 5-81-554, 5-94-172, 5-06-328, A-253-80, A-69-76, A-6-IMB-07-131, 3-07-002, and 3-07-003.

⁷⁵ Including LCP amendment SBV-MAJ-2-08 and CDP amendment 5-98-156-A17.

⁷⁶ Smith Travel Research data is widely used by public and private organizations.

⁷⁷ See <http://www.visitcalifornia.com>.

Statewide average room rate, and higher cost facilities as any facility with room rates that are 125% above the Statewide average room rate.⁷⁸ The Statewide average daily room rate in California in 2011 for the month of July was \$124.66, and 75% of \$124.66 is \$93.50.

3. Lower Cost Visitor-Serving Facilities Analysis

The Applicant has not provided room rate information for the proposed hotel rooms or condominium visitor-serving units. However, the Applicant has indicated that the project will be a boutique resort hotel, and given the beachfront location, proposed amenities, spa and wellness center, valet parking, etc., the Commission understands that the development will be a high end resort facility. Nightly room rates at similar high end resort facilities in the southern Monterey Bay region, including Sanctuary Beach Resort, Monterey Plaza Hotel, and The Clement Monterey range from \$259 to \$1,159. Room rates for similar facilities in Pebble Beach start in the low \$2,000 range. The proposed project includes design and amenities similar to these developments and therefore the Commission considers the proposed project to be a high-cost resort.

The Monterey Bay and the Monterey Peninsula are widely visited by persons of all economic backgrounds for their beauty, spectacular coastline, and regional attractions such as the Monterey Bay Aquarium, 17-Mile Drive in Pebble Beach, Point Lobos, City of Carmel-by-the-Sea, and the Big Sur coast. Because no overnight accommodations exist in Sand City (lower cost or otherwise), the site of the proposed hotel is a location along the Monterey Bay shoreline that could be used to provide more affordable accommodations to a wider range of the public. Thus, the proposed project raises the issue of whether it adequately protects, encourages, and feasibly provides lower cost overnight accommodations.

As stated above, Section 30213 of the Coastal Act provides for the protection and provision of lower cost visitor and recreational facilities. Generally, the few remaining low to moderately priced hotel and motel accommodations in the coastal zone tend to be older structures that become less economically viable as time passes. As more redevelopment occurs, the stock of low-cost overnight accommodations tends to be reduced, since it is generally not economically feasible to replace these structures with accommodations that will maintain the same lower rates. As a result, the Commission sees more proposals for higher-cost accommodations, including limited-use overnight accommodations. If this development trend continues, the stock of affordable overnight accommodations will eventually be depleted.

The loss of affordable overnight accommodations within the coastal zone is also an important issue for the Commission because lodging opportunities for more budget-conscious visitors to the coast are increasingly limited. As the trend to demolish or convert low-cost hotels/motels continues, and primarily new first-class luxury hotels are being built, persons of low and moderate incomes will make up fewer of the guests staying overnight in the coastal zone. Without low-cost lodging facilities, a large segment of the population will be excluded from overnight stays at the coast. By forcing this economic group to lodge elsewhere (or to stay at home), there will be an adverse impact on the public's ability to access beach and coastal recreational areas. Therefore, by protecting and providing lower cost lodging, a larger segment of the population will have the opportunity to visit the coast. Access to coastal recreational

⁷⁸ Statewide average room rates can be calculated by the Smith Travel Research website (www.visitcalifornia.com) or other analogous method used to arrive at an average Statewide room rate value.

facilities, such as the beaches, harbor, piers, and other coastal points of interest, is enhanced when affordable overnight lodging facilities exist to serve a broad segment of the population.

In light of the above-described trends in the marketplace and along the coast, the Commission is faced with increasing responsibility to protect and to provide lower cost overnight accommodations as required by Section 30213 of the Coastal Act. Although statewide demand for lower cost accommodations in the coastal zone is difficult to quantify, there is no question that camping and hostel opportunities are in high demand in coastal areas, and that there is an ongoing need to provide more lower cost opportunities along California's coast. For example, the Santa Monica hostel occupancy rate was 96% in 2005, with the hostel being full more than half of the year, and the California Department of Parks and Recreation estimates that demand for camping increased 13% between 2000 and 2005 with nine of the ten most popular State Park campgrounds being on the coast.⁷⁹

Historically, the Commission has approved new hotel developments along the coastline because they are visitor-serving facilities. These hotels, however, are often exclusive because of their high room rates, particularly in recent years. Typically, the Commission has also secured public amenities when approving these hotels (e.g., public accessways, public parking, open space dedications, etc.) to address Coastal Act priorities for public access and visitor support facilities. The Commission has also required mitigation for the use of land that would have been available for lower cost and visitor serving facilities (e.g., see LCP amendment NPB-MAJ-1-06A). The expectation of the Commission, based upon several recent decisions, is that developers of sites suitable for overnight accommodations will provide facilities which serve the public with a range of incomes.⁸⁰ If the development cannot provide for a range of affordability on-site, the Commission has required off-site mitigation, such as payment of funds to construct lower cost overnight accommodations, such as hostels and campgrounds.

Although the actual provision of lower cost accommodations in conjunction with a specific project is preferable, in past action the Commission has also found that when this approach is infeasible, the requirement to provide funds to construct new lower cost accommodations constitutes adequate mitigation for the loss, reduction, and/or lack of provision of affordable overnight accommodations. Recent Commission decisions for individual development projects have required the payment of \$30,000 for each required replacement room as a part of the mitigation package.⁸¹ In other cases, the Commission has required smaller amounts of mitigation payments based on the particular fact set, including the type of lower cost facilities to be provided by the mitigation payment.⁸² For high-cost overnight visitor accommodations where

⁷⁹ See City of Long Beach LCP Amendment LOB-MAJ-1-10.

⁸⁰ See, for example, LCP amendments HNB-MAJ-2-06 (Huntington Beach Timeshares), SBV-MAJ-2-08 (Ventura), RDB-MAJ-2-08 (Redondo Beach), and LOB-MAJ-1-10 (Downtown Shoreline), and CDPs A-6-PSD-8-004/101 (Lane Field), A-5-RPV-2-324 (Long Point), and 5-98-156-A17 (Long Beach Pike).

⁸¹ See, for example, CDPs 6-92-203-A4 and A-6-ENC-07-51, and LCP amendments Oceanside 1-07 and Redondo Beach 2-08.

⁸² For example, in 2007 in Pismo Beach and Morro Bay, the Commission required a mitigation payment based on applying \$13,860 to 25% of the new rooms in Morro Bay and to 10% of the new rooms in Pismo Beach (see CDPs 3-07-002, 3-07-003, and A-3-PSB-06-001), where the \$13,860 was based on the projected costs of constructing new campground facilities (at the Harbor Terrace site in Port San Luis) including the extension of necessary utilities and the construction of restrooms and other campground amenities. The Port estimated the cost of each new tent campsite at roughly \$13,860 per site in 2002 (San Luis Obispo County LCP Amendment 1-05 (Part 1)).

low-cost alternatives are not included onsite, a mitigation charge of \$30,000 per room has typically been required for twenty-five percent (25%) of the high-cost rooms constructed.⁸³ Most recently on the Monterey Peninsula, the Commission required, using this formula, a \$1.8 million mitigation payment from the Pebble Beach Company for the development of a new high-end resort hotel and additional rooms at the existing Inn at Spanish Bay and Lodge at Pebble Beach.

The \$30,000 per room amount was established based on figures provided by Hostelling International in a letter to the Commission dated October 26, 2007. The figures provided are based on two models for a 100-bed, 15,000-square-foot hostel facility in the coastal zone, and utilize experience from the existing 153-bed Hostelling International San Diego Downtown Hostel. Both models include construction costs for the rehabilitation of an existing structure and factor in both direct and “soft” construction and startup costs, but do not include costs associated with ongoing operations.⁸⁴ Based on these figures, the total cost per bed ranged from \$18,300 for a leased facility to \$44,989 for a facility on purchased land. This model is not based on an actual project, and therefore the actual cost of the land/building could vary significantly, and therefore the higher-cost scenario could represent an inflated estimate. In order to take this into account, the Commission has found that a cost per bed located between the two model results is most supportable and conservative, and has consistently used the \$30,000 per room estimate for this purpose.

In this case, specific costs for the nearby planned Fort Ord Hostel were provided by Hostelling International (HI), which identified both direct and “soft” costs to develop a 36 bed Eco-Hostel on 4.6 acres of the former Fort Ord property (now in the City of Seaside). The proposal involves reuse of 4 existing former army buildings that would be retrofitted into a hostel. According to HI, the total development cost of the hostel is \$925,300 and includes such things as permit fees, architectural drawings, actual construction and remodeling costs, landscaping, and furnishings. HI received a 30-year lease renewable in-perpetuity at \$1 per year from the City, hence there aren’t costs associated with acquiring land, significantly reducing the per-unit cost of the hostel. Based on the estimate provided by HI, the per-unit cost for construction of a 36-bed hostel at this location is \$25,700.⁸⁵ Per-unit costs for construction of hostel beds at other locations and where the land cost is a consideration could be expected to be greater than at the former Fort Ord.

As described above, the proposed hotel will be a high cost boutique resort. The Applicant did not provide the Commission with information regarding the feasibility of some portion of the proposed hotel to be offered as lower cost and is not proposing to include any onsite lower cost overnight accommodations. As such, the project as proposed is inconsistent with both LUP Policy 3.3.2 and Coastal Act Section 30213, and thus it is appropriate in this case to apply a mitigation charge because lower cost accommodations would be precluded as a result of the proposed project. Special Condition 14 requires the Applicant to deposit \$1,773,300 into an interest bearing account, to be established and managed by one of the following entities as approved by the Executive Director: the City of Sand City, Monterey County, the California

⁸³ See, for example, CDP amendment 5-98-156-A17 and LCP amendment LOB-MAJ-1-10.

⁸⁴ Where “hard” costs include, among other things, the costs of purchasing the building and land and construction costs, and “soft” costs include closing costs, architectural and engineering contracts, construction management, permitting fees, legal fees, furniture and other equipment costs.

⁸⁵ \$925,300 divided by 36 rooms equals \$25,700 per room.

Department of Parks and Recreation, Hostelling International, or similar entity. The amount is equivalent to \$25,700 (the per-unit cost of construction of a hostel at Fort Ord, as previously described), multiplied by 25% of the total number of units (i.e., 184 hotel units and 92 condo-hotel units total 276 units). This payment will ensure that the Applicant is responsible for mitigating for the lack of low-cost visitor-serving accommodation opportunities in the proposed project.⁸⁶ Further, to ensure that the in-lieu payment results in the provision of lower cost overnight visitor accommodations within Monterey County, Special Condition 14 also gives priority for use of the funds to the establishment of a local hostel, potentially for the construction of a future hostel on the nearby former Fort Ord property.

This approach is consistent with the Coastal Act as it applies the concept of a mitigation payment as has been applied by the Commission in the past for this issue, and because it can ensure that adequate lower cost overnight accommodations are accounted for. The \$1,773,300 million mitigation payment is consistent with what the Commission has typically required in past recent cases, and such payment is appropriate in this case. In tandem with the ways that the proposed project will provide other lower cost public recreational access facilities (including the vertical and lateral access areas, public beach access parking, accessway improvements, overall funding and management in perpetuity, etc.), the proposed project protects and provides lower cost visitor and recreational facilities and can be found consistent with LCP Policy 3.3.2 and Coastal Act Section 30213.

I. PUBLIC ACCESS AND RECREATION

1. Applicable Policies

A. LCP Policies

The LCP provides detailed direction with respect to protecting and providing for public recreational access. Applicable LCP LUP and IP policies include:

***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 easement 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*

⁸⁶ The per-unit charge (\$25,700) is applied to 25% of the total number of rooms in the high-cost hotel (184) and high cost condominium hotel units (92) to mitigate for the lack of lower cost visitor accommodations in the proposed project ($0.25 \times 276 \times 25,700 = 1,773,300$).

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.*

B. Coastal Act Policies

As described earlier, because the proposed project is located seaward of the first through public road and the sea, the Coastal Act's public access and recreation policies also apply to any proposed development at this location. Applicable Coastal Act access and recreation policies include:

***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.*

C. Policy Summary

The LCP and Coastal Act public recreational access policies that apply to this site protect existing access and require that development provide for new access, including requiring dedications for lateral and vertical accessways and related improvements, where such new access use is an LCP priority west of Highway One. Under IP Section 3.2 (Access Requirements), minimum dedication areas are 10 feet in width for vertical accessways from the public road to the shoreline, 25 feet in width for lateral accessways along the sandy shoreline beach, and an adequate width to provide safe access along bluffs. Such access improvements and areas must be identified and sited and designed in such a way as to meet the LCP's hazards provisions (including the requirement to be located inland of hazard areas) and visual provisions as well.⁸⁷ Vista points must be provided, as must public access parking at a rate of 10% above the development's basic parking requirements.

In short, read together, the applicable policies and standards require development projects to include public recreational access to and along the shoreline, including improvements to

⁸⁷ See hazards and visual findings for further detail in this respect.

facilitate public recreational use, and 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, and to avoid public viewshed impacts. As applied to this case, these requirements mean that in addition to providing dedicated access along the sandy shoreline beach, the proposed project must include dedicated public access improvements. These improvements must be dedicated, must be maintained over time, and must include access trails that connect from Sand Dunes Drive to the shoreline beach, trails that connect Sand Dunes Drive to the regional bike path, vista point areas that provide views to and across the Monterey Bay, and parking commensurate with the intensity and density of the proposed project use. All such public access areas and related development/amenities must be sited and designed to blend seamlessly into the public viewshed and to adequately respond to coastal hazards, including through appropriate setbacks.

The LCP also includes specific visitor-serving use requirements and densities for the site. In general, the applicable permitted uses include a hotel (up to 375 units maximum), residential timeshare units (up to 100 units maximum), residential units (up to 175 units maximum), and parks and recreation facilities. The LCP allows these uses to be intermixed on the site; however, such a mixed use scenario is only allowed provided that the visitor-serving residential and residential uses do not decrease the proportion of visitor-serving commercial (hotel) uses on the site. In other words, the LCP protects the strictly visitor-serving uses envisioned for this site and prioritizes them over quasi- and purely residential uses.

The LCP also encourages the provision of lower-cost visitor-serving facilities, such as campgrounds. Similarly, the Coastal Act public access policies also require the protection, encouragement, and where feasible, the provision of lower cost visitor and recreational facilities. (Section 30213). The Commission has interpreted this Coastal Act policy to require that development of new overnight accommodations either include lower cost units, or if the provision of such units within the proposed development is not feasible, that the Applicant provide an in-lieu payment or in some other way contribute towards the protection of lower cost accommodations in the region (see previous Low Cost Visitor Serving finding).

3. Existing Public Recreational Access Setting

The shoreline beach area at the project site is part of an unbroken stretch of sandy beach extending roughly 13 miles from the Salinas River to the Monterey Harbor that is used by the general public as a primary lateral accessway for this stretch of coast, including by bridging the gap between Monterey State Beach and Seaside State beach downcoast and the beaches of the Fort Ord Dunes State Park unit immediately upcoast. The Monterey Bay Sanctuary Scenic Trail, which is located just inland of the site and between the site and Highway One, provides hardscaped lateral access paralleling the beach's lateral access. This recreational trail is very popular, and is heavily used by the public throughout the region. Together, the recreational trail and the beach are major components of the California Coastal Trail. On the site's upcoast boundary is the Fort Ord Dunes State Park property. Although it only recently opened for public use, and the use patterns and amenities have not been completely developed, public trails extend from the recreational trail down to the beach that is located upcoast of the project site. Adjacent to the site on the downcoast side, the public can access the city beach at informal access points at the ends of Playa, Tioga, and Bay Avenues.

In terms of the site itself, the public may have used it for access historically, including as a route

to the ocean from inland roads, given its location adjacent to Sand Dunes Drive, but there is little in the file to indicate one way or the other on this point. Existing fencing acts as a deterrent currently, but such fencing is not complete and is not such a barrier as to preclude use. In fact, it is clear that the tall dune feature on the site continues to be actively used by the public, primarily as a landform feature on which to roll, slide, or slip down, and also as a natural billboard of sorts with people forming messages in the sand that can be read by Highway One motorists. Despite such ongoing use, there has not been any sort of formal public access study or evaluation specific to the site (such as a prescriptive rights study), and public access rights associated with the property, to the extent any have accrued and exist, have not been established.

4. Proposed Access Improvements and Dedications

The Applicant submitted an Access, Signage, and Lighting Plan (October 2013) that details the project's proposed access improvements, including a 5-foot wide vertical accessway to the beach along the northern boundary of the project and a lateral access area along the beach. The lateral access area includes the entire portion of the site above the mean high water mark seaward of the 20-foot contour, which generally corresponds to the toe of the foredune/coastal bluff, and totals approximately 120 feet in width and 1,500 feet in length for a total of 4.1 acres. Both the vertical and lateral access areas would be placed in a public access easement. The project would also provide a public vista point in the northwestern corner of the site, at the end of a spur trail along the vertical access to the beach. A 46-space parking area for the public is proposed in the northeast corner of the site. Class 2 bicycle lanes will be provided from the resort entry through the public parking area and bicycle racks are proposed at the northern end of the public parking lot where the vertical beach accessway begins. Finally, the Applicant proposes to allow public access from 5 a.m. until one hour after sunset at all public access areas, and the public parking area will have an electronic gate that will be operated consistent with these times.

The plan also provides some details for the construction and management of the proposed accessways, amenities provided for such accessways (e.g., trash receptacles, benches, etc.), signage and lighting, and a plan for managing and operating the access areas. Please see Exhibit 23 for public access details.

5. Consistency Analysis

Public Access and Recreation

The proposed access program includes areas of the site to be set aside for both vertical and lateral public access and for public parking, which generally correspond to the Public Recreation land use designation for the site illustrated by LUP Figure 11 (Exhibit 3). This is the principal area of the site designated by the LCP for recreational use by the general public, and the proposed dedications are generally consistent with the LCP requirement that both a lateral and a vertical accessway be dedicated on this property (LUP Policies 2.3.1, and 2.3.2). However, even with these accessways, several issues of LCP and Coastal Act consistency remain.

Lateral Access

The LCP requires the dedication of all sandy beach areas seaward of the toe of the dune, bluff, or shoreline protective device as a condition of development (LUP Policy 3.3.9). To further refine this, the IP requires that the lateral beach accessway be provided by an easement with a minimum width of 25 feet of dry sandy beach or the entire sandy beach if the width of the beach is less than 25 feet (IP Section 3.2). The approximately 120-foot wide proposed dedication area

(from the 20 foot contour to the mean high water line) would meet this requirement. However, as discussed in the hazards finding, Sand City and the surrounding area has one of the highest long-term bluff retreat rates in the state because of the unconsolidated nature of the sandy dunes, the exposure of southern Monterey Bay to high wave energy, and ongoing sand mining in the region. Given these factors, uncertainty exists as to whether there would remain adequate space for required public beach access at the project site over time.

Erosion and sea level rise are likely to narrow the area of sandy beach seaward of the proposed development, thereby reducing the area available for public use over time and potentially eliminating it altogether at some point in the future. This would be inconsistent with the LCP requirement for a minimum 25-foot wide lateral beach access as well as the Coastal Act requirement to provide maximum public access because the proposed development would ultimately become a barrier to the public's ability to laterally traverse the shorefront at this location. Furthermore, the Coastal Act and LCP require that such access be located where it will not be subject to high erosion rates or other hazards to public safety (LUP Policy 2.3.4(1)(e), Coastal Act Section 30210). The CDP must be conditioned so that the dedicated access areas and associated improvements will move inland as necessary to continue to provide the requisite access over time. The plan states that "the proposed public access easement areas included sufficient area inland of the 50-year erosion limit to allow for relocation of these facilities."⁸⁸

To ensure that the lateral access area along the beach will be protected, despite erosion and sea level rise, the public access area must shift inland as the water rises and the sandy beach disappears. With continued sea level rise, the base of the bluff will be exposed to high tide and storm waves for greater periods of time during any given year, causing continual as well as episodic bluff retreat. The sloughing of bluff material will create new beach area as the ocean waters rise, causing the sandy beach to march inland. Special Conditions 5(b)(5) and 5(i) require that the approximately 4-acre lateral access area move inland to encompass the new beach area as the bluff retreats. In other words, as the sandy beach area narrows over time and the bluff retreats landward, the public access area must shift landward to continue to provide the public with beach lateral access, as is approved under this CDP.

At some point in time, the lateral access area will meet with the structural development of the Resort, where the inland march of the beach will cease and the beach will narrow. To ensure consistency with IP Section 3.2, Special Conditions 5(b)(5) and 5(i) require that the Applicant maintain the lateral access area seaward of the development in perpetuity. In order to maintain this lateral access area, it may be necessary to remove portions of the Resort development. Special Condition 9(g)(3) includes a provision to remove and/or relocate any and all portions of the Resort development that fall within the public sandy beach area. Finally, Special Condition 6 requires an ambulatory public access easement that memorializes these requirements to shift the lateral access area inland to retain its utility and to remove portions of the development if necessary to maintain the lateral access area. Only as conditioned to provide this maximum lateral public access over time can the project be found consistent with the LCP and Coastal Act access requirements.

Vertical Access

⁸⁸ Public Access Plan (October 2013), pp. 7-6.

The Applicant has proposed a vertical accessway along the northern edge of the property from the public access parking lot to the beach. The accessway would be constructed of decomposed granite from the parking lot to the point where sand conditions dictate the use of a boardwalk. The rock path portion is proposed to be 5 feet wide and the boardwalk portion is proposed to be up to 10 feet wide. Although this is not the precise location in which the required vertical access is shown in LUP Figure 4, Figure 4 acknowledges that the mapped “floating vertical access” areas are generalized locations only. In addition, LUP Policy 2.3.4 requires accessways to be developed consistent with certain guidelines, including that they minimize alteration of natural landforms, conform to existing contours and blend in with the visual character of the setting. (LUP Policy 2.3.4(d)(1)). The proposed vertical accessway would be primarily located in one of the few areas of the site that is not proposed to be graded extensively, and will traverse the edge of the site in the vicinity of the protected buckwheat habitat. Despite the fact that the vertical accessway is not in the precise location identified in LUP Figure 4, its location can still be found to be consistent with the LCP, as the location on Figure 4 is a generalized location only, and the accessway has generally been sited to comply with other LCP requirements.

However, the width of the proposed vertical access is inconsistent with LCP requirements. The LCP requires that vertical beach accessway easements be “a minimum width of ten (10) feet and shall extend from the nearest public roadway to the sandy beach frontage” (IP Section 3.2). In addition, the Commission typically requires a minimum width of 10 feet for public access dedications unless there is a compelling reason not to, such as a physical barrier that makes it infeasible to do so. The portion of the vertical access and its corresponding easement area that is proposed to be five feet wide is inconsistent with these requirements. Special Condition 5 requires that the entirety of the proposed vertical easement area be at least 10 feet wide. This will allow for future adaptation of the trail in response to changing dune environmental conditions. The trail itself can be less than 10 feet wide; however, in this case, five feet is not sufficient to provide adequate two-way pedestrian use for the approximately 200-foot stretch from the parking lot to the section of boardwalk through the dunes.

Furthermore, 10 feet is unnecessarily wide for the portion of the boardwalk through the dunes, given the presence of buckwheat and other natural dune features. In order to provide adequate space for two-way ADA access (namely, for two wheelchairs to pass unimpeded) and to adequately protect surrounding dunes, a width of six feet for the entirety of the lateral accessway, from the public parking area to the beach stairway and including to the overlook, is necessary and appropriate. Special Condition 5(b)2 details these requirements for the lateral accessway. In addition, to ensure protection of the adjacent buckwheat habitat, Special Condition 2 requires habitat protection measures during construction activities including via use of a biological monitor, preparation of weekly monitoring reports, pre-construction surveys, and consultation with USFWS if sensitive species are found within the project impact area. Further, Special Condition 5(b)(4) requires protection of buckwheat from ongoing adjacent public use at the site via siting and designing the path away from the location of the plants and Special Condition 5(c) further requires educational and interpretive signing features to inform the public of the presence and importance of this native dune species to the dune ecosystem and the federally protected Smith’s blue butterfly.

Similar to the lateral access area, the proposed access plan does not include provisions to relocate the vertical access area in the event it is displaced by coastal hazards, including erosion and/or

sea level rise. In order to ensure that the vertical access area will continue to be provided from the nearest public roadway to the sandy beach frontage (as required by IP Section 3.2), Special Conditions 5(e) and 5(i) require the vertical access area to move inland as the sandy beach moves inland. Special Condition 6 requires an ambulatory public access easement that memorializes this requirement to shift the vertical access area inland if necessary to retain its utility. In the event that any of the vertical access amenities are threatened and in danger of being damaged or destroyed by coastal hazards, Special Condition 5(i) requires those amenities (including but not limited to the pathway system, vista point, and beach stairway/path) to be reconstructed (and relocated inland as necessary to provide long term stability). These conditions will ensure continual public access, in all aspects, despite the effects of erosion and sea level rise.

Public Parking

To accommodate the public's use of the site, the project includes 46 public parking spaces in the northeast corner of the site adjacent to the proposed vertical access trail. The LCP requires that the project provide onsite public parking at a rate of 10% more than the total required parking for the site. The parking can be provided offsite so long as it is in a convenient location to the beach, or the project can be assessed an in-lieu pro-rata fee that the City could utilize for public parking and maintenance purposes. Although not part of the LCP, Title 10 of the City's Municipal Code includes the in-lieu parking fee amount of \$500 per space per year, which serves as guidance in this case. LUP Policy 2.3.10 also requires that parking areas be screened from public viewpoints. The Coastal Act, also applicable in this case, dictates that public parking facilities be distributed throughout an area so as to mitigate against impacts of overcrowding or overuse by the public of any single area.

According to the Applicant's materials, the project must provide 809 parking spaces for the resort development (based on the revised project.). Thus, under the LCP requirement, the development must provide at least 81 additional public parking spaces for public access, either on- or off-site, or through in lieu fees. The proposed 46 public parking spaces are located in an important Highway 1 public viewshed, as discussed in the Visual Resources section of this report, but the visual impacts of this development can be screened/minimized by appropriate siting and design, including through limiting visibility and making sure it blends into the dune aesthetic to the maximum extent feasible ~~re-siting the parking area slightly to the south towards the main entrance tunnel to take advantage of topography and to place it near the edge of the extended dune feature where additional camouflaging tools can be applied.~~ However, given siting limitations and the extreme visibility of the site from Highway 1, it is not possible to locate the additional 35 required public parking spaces along the California Avenue Extension public parking site. The additional public parking spaces would be directly in the foreground of the primary southbound Highway 1 motorists view with few options for screening and/or minimizing these impacts. The additional parking spaces would be difficult to hide and/or modify so as to integrate into the dune aesthetic and thus would degrade the Highway 1 public viewshed. Further, it is likely that additional parking, if required at the project site, would necessarily encroach into the dunes, raising natural resource protection issues. Therefore, all 81 required public parking spaces cannot be provided onsite consistent with the LCP.

The LCP does not indicate that some mix of on- and off-site parking and fees can or cannot be employed. As such, it is appropriate in this case to allow the 46 public spaces on-site, and to require the remaining 35 spaces off-site or through in-lieu fees. Special Condition 5(h) requires

the Applicant to provide 35 new offsite beach access parking spaces within one quarter mile of the project site or pay the City's required \$500 per space per year in-lieu fee. Special Condition 5(g) requires this parking requirement be fulfilled prior to occupancy of the approved development. If an off-site arrangement is chosen, the condition requires the Applicant to submit a parking management plan to ensure the parking is available for as long as the proposed development or some future similar use operates at this location. Alternatively, the Applicant can fulfill the requirement by paying parking in-lieu fees to the City, wherein the City would use the money for public beach access parking and maintenance purposes in the area. Such an approach is consistent with the LCP as well as the Coastal Act mandate to distribute parking to minimize overcrowding, especially given the sensitive visual and dune environment.

Bicycle Path

As described in the Access Plan, the project proposes to include Class 2⁸⁹ bicycle lanes from the entry through the parking area to the northern end of the parking lot to the entry of the vertical beach accessway. However, project plans illustrate only one bicycle lane on the entry side of the driveway and do not show that lane or any other bicycle facility continuing north through the proposed public parking area. Project plans also do not illustrate how any transition points (e.g., Monterey Bay Sanctuary Scenic Trail, resort entry, parking lot, vertical accessway, etc.) would function. LUP Policy 2.3.4 requires developments to provide safe accessways and improvements; requires that accessways be located at intervals commensurate with the level of public use; and requires that accessways be designed to prevent unwarranted hazards to public safety and minimize conflicts with adjacent uses. It is unclear how the proposed bicycle facilities would be consistent with these LCP requirements.

As described in the Traffic and Circulation section of this report, the project is expected to generate 2,032 daily vehicle trips, all of which would utilize the development's one entrance/exit driveway. The entry driveway of the resort is narrow (two 12-foot vehicle lanes) and the proposed five-foot wide single attached bicycle lane would be expected to accommodate two-way bicycle traffic as well as pedestrians. Such a design raises safety and congestion issues for bicycles, pedestrians, and vehicles alike and is inconsistent with LCP requirements for public accessways to prevent unwarranted hazards to public safety and to minimize conflicts with adjacent uses. Safety would be particularly difficult to ensure during peak summer weekends when the maximum amount of vehicle, bicycle, and pedestrian traffic would all be utilizing the same driveway.

In order to provide clear, safe, and direct bicycle and pedestrian access from California Avenue and the Monterey Bay Sanctuary Scenic Trail through the property to the proposed vertical beach accessway consistent with the LCP, Special Condition 5(b)(2) requires that the project provide a dedicated, separated pathway system that connects the existing regional path to the beach. The bicycle path needs to include a seamless transition from the Monterey Bay Sanctuary Scenic Trail and be of a similar width (minimum 8 feet) to the existing regional bikeway up to the point where it transitions to a boardwalk, and then can be six feet. Special Condition 5(b)(2) requires that this pathway be colored to blend with the surrounding dune environment and separated from the driveway and parking area to ensure the safety of all users. The bikeway must transition

⁸⁹ As defined In CalTrans' *Highway Design Manual*, a Class 2 bikeway provides a striped lane for one-way bike travel on a street or highway.

directly into the vertical wooden boardwalk accessway to the beach. As conditioned, the project can be found consistent with LCP and Coastal Act requirements for safe maximum public access for all users.

Use Hours

The Applicant has proposed use hours during which the public access amenities are available to the general public. Specifically, the Applicant intends to make all of the public access areas and public access amenities available to the public from 5 a.m. to one hour after sunset and will open and close the public parking area at these times. The LCP does not specify required public use hours but it requires visitor facilities that meet a range of needs and that are open to the general public (LUP Policy 3.3.2). Similarly, the Coastal Act requires maximum public access, which, in this context, the Commission has historically interpreted to mean minimal use limitations on the public's ability to access the beach, day or night. The term "maximum," as distinct from "provide," "encourage" or even "protect," requires that coastal zone development affirmatively seek to provide the maximum of such public recreational opportunities possible, consistent with other resource constraints and the protection of public and private rights.

The project site is located in an area of the coast where beach access points and improved public parking areas are few and far between. The vehicular entry point and parking lot at Fort Ord Dunes State Park, which is adjacent to and upcoast of the project site, is located at the far northern end of the park, approximately four miles from the Applicant's property boundary. Downcoast of the site, the nearest formal public beach parking area is approximately one mile to the south at Monterey State Beach. As such, the proposed public parking lot and beach access point at the site fill a critical gap in the public's ability to access the beach in the southern Monterey Bay region. Once developed, the site is likely to become a popular place to access the shoreline for area residents and visitors alike, given the easy access from the highway and readily available parking. As such, it is important to maximize the public's ability to utilize the proposed access amenities at the site, and not just during daylight hours. Even after the sun goes down, the site should be available for the public to access the shoreline, including for nighttime beach and surfing access, parking and taking in the night sky and coastal vistas across the bay, and for use of the recreational trail system.

The Applicant has not provided any evidence to suggest the infeasibility of unlimited public access to and along the beach. The Commission understands the need to balance public rights with private property rights, safety needs, and protection of natural resource areas from overuse. However, in this case, the Commission has not been presented with any information to believe that private rights, safety needs, or natural resource degradation are at issue, or that maximum access is not otherwise possible at this coastal access point. As proposed, the use hours limit the public's ability to take advantage of this new access point, inconsistent with the LCP requirement that visitor facilities meet a range of needs and the Coastal Act requirement to maximize public access. To ensure that access at the site is maximized, Special Condition 5(f) requires that the public access areas and amenities be available from 5 am until midnight and that the beach be available 24 hours per day.

The proposed Access Plan also suggests that seasonal closures of the beach will be implemented to address potential impacts associated with public use of the beach during the nesting season for the federally-listed Western snowy plover. Though at first blush this might seem like an appropriate response, the actual habitat protection plan details and plan measures including

timing, location, duration, monitoring, enforcement and implementation have not been reviewed or authorized in consultation with USFWS – the agency responsible for review of such plans. Accordingly, it is unclear whether the proposed mitigation measures are appropriate or adequate. Special Condition 15 requires the Applicant to obtain concurrence submit evidence of any permits and/or authorizations issued by ~~from~~ USFWS)if legally required, and to modify the Habitat Protection Plan (HPP) to incorporate standards that address concerns raised by the USFWS regarding potential impacts to western snowy plover, Smith’s blue butterfly, and Monterey spineflower before implementing any mitigation measures that would impact public access at this location. ~~Should~~ If changes to the project required by another agency or changes required by the approved modified HPP authorize a plan that includes measures that would limit public use and enjoyment of the beach, Special Condition 15 requires the applicant to submit an application for an amendment to this permit, to implement said ~~plan~~ changes, unless the Executive Director determines that no amendment is legally necessary.

Accordingly, and if the proposed project’s public access amenities are fully and rigorously implemented, including with respect to maximizing public recreational access utility (i.e., by providing vertical and lateral access and an overlook, appropriate siting for benches, bicycle parking, benches, and related features), providing clear signage and direction, then the proposed project represents a valuable addition to public recreational access along this portion of the Monterey Bay. To ensure that this is the case, Special Condition 5 requires an access management plan that specifically describes all public access amenities associated with the proposed project, including interpretive and other signage, number of benches and their locations, trash cans, bicycle racks at specific locations, maintenance of all public access amenities in perpetuity unless they are threatened by shoreline hazards, relocation and reconstruction of access amenities if they are threatened by hazards, etc. With these amenities, the proposed project will make this area of the coast more accessible and enjoyable for a wider variety of users. This condition also requires that the public access signage reflects that these trails are components of the California Coastal Trail and Sanctuary Scenic Trail, and that the signs recognize the local and state agencies, including the City, the County, the Sanctuary, and the Commission, that have made these trails possible.

Visitor-Serving Uses

The proposed project includes 184 traditional visitor-serving hotel units, 92 visitor-serving residential condominium units (condominium-hotel component), and 92 non-visitor-serving residential condominium units. The 92 condo-hotel visitor-serving units would be individually owned and available to the general public on a rental basis. In general, the proposed development will provide a new coastal priority, visitor-serving use that will also include amenities to support public access and recreation.

The Commission must ensure, however, that there are protections in place to guarantee that the visitor-serving components of the project remain as such. It is important to provide terms of use for the project that make the hotel aspect of the facility exclusively visitor-serving and the condo-hotel visitor-serving aspects of the facility non-exclusively residential, consistent with the LCP requirement that the proportion of visitor-serving uses at the site are not decreased (LUP Policy 6.4.1) and consistent with the Coastal Act requirement to prioritize and protect visitor-serving commercial use over private residential development (Section 30222). Towards that end, Special Condition 10(b) prohibits the conversion of any of the 184 hotel overnight units or any of

the hotel use areas to any quasi-visitor-serving use arrangements. Similarly, Special Condition 11(h) prohibits the conversion of any of the condo-hotel visitor-serving units to any other type of use (other than standard operating hotel units). In addition, Special Conditions 10(a) and 11(c) include limitations on the length of stay by hotel guests and any unit owner in order to maximize the public's ability to use the site. Specifically, the conditions limit stays in both the hotel and condo-hotel units to no more than 29 consecutive days ~~per year and no more than 14 days between Memorial Day and Labor Day~~ for any individual, family, or group (or any partnership of owners for condo-hotel units). Stays in the condo-hotel visitor-serving units are further limited to 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 for each owner~~, including any individual, family, group, or partnership of owners for a given unit (no matter how many owners there are). ~~These limitations mean that the condo-hotel units will be available to the public 89% of the time during the peak summer period and they would be available to the public 77% of the year overall.~~

In order to satisfy LCP policy 6.4.1(c) regarding timing on provision of visitor-serving elements in mixed use projects, Special Condition 12 requires the visitor-serving units to be in operation prior to the development of the residential units, or available for transient occupancy use concurrent with the occupancy of the residences. This ensures that priority visitor-serving uses (i.e., condominium-hotel and hotel) are developed and available for the general public. Further, Special Condition 13 makes explicit that there are no restrictions on the conversion of purely residential condominium units into visitor-serving condominium-hotel units (or straight hotel units) in order to provide an even greater pool of visitor accommodations.

Finally, Special Condition 11 includes comprehensive management and liability provisions to assure adequate compliance and enforcement of the general visitor-serving requirements of the approval. Only with these provisions can the proposed project be found consistent with the LCP and Coastal Act visitor-serving use requirements.

6. Conclusion

The proposed project includes numerous public access amenities, as required by the Coastal Act and LCP. Specifically, the Applicant has proposed dedication of both lateral and vertical public accessways. These public accessways will need to be managed to ensure that public access is maximized, while still protecting the natural resources on the site. In sum, as proposed and conditioned, the project can be found consistent with the LCP and Coastal Act public access and recreation policies.

J. PUBLIC SERVICES

Applicable Policies

The LCP identifies public services as a constraint to new development due to limited availability of water and wastewater treatment capacity. Applicable LCP policies and IP standards include:

***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.

The LCP clearly recognizes that water is a finite commodity in great demand in Sand City and the surrounding area. The LCP thus only allows approval of new development where it has been clearly demonstrated that adequate water supply is available to serve the development, and that such water is consistent with the Monterey Peninsula Water Management District's (MPWMD) allocation to Sand City, or has been reviewed and approved by MPWMD in certain circumstances, including those that apply here. Likewise, the same availability and adequacy criteria apply to the need for wastewater services. The LCP includes these limitations to ensure that new development does not exacerbate water and wastewater problems.

Wastewater Services

Wastewater from the site would be directed to the Monterey Regional Water Pollution Control Agency's (MRWPCA) wastewater treatment plant in Marina via delivery lines maintained by the Seaside County Sanitation District (SCSD). MRWPCA's Marina plant currently processes slightly under 20 million gallons per day (MGD) and has a permitted capacity of 25 MGD.⁹⁰

The project would generate up to 50.5 acre feet per year (ac-ft/yr) of wastewater. Both MRWPCA and SCSD have provided confirmation that there is adequate and available capacity to serve the proposed project.⁹¹ The proposed project is consistent with the LCP with respect to wastewater services.⁹²

Water Supply Context

The adequacy and availability of water to serve the development is the key public services question with respect to the proposed development. Water supply in this area is extremely limited, subject to significant restrictions (including court adjudication and a State Water Resources Control Board (SWRCB) order that limits available water supplies), and existing and new water extractions to serve development raise a series of significant and complicated issues. This section provides background on the water supply context and LCP provisions that are applicable to the proposed project.

1. Existing Public Water Supply for the Project Area

The primary water supply for communities on the greater Monterey peninsula is managed by the MPWMD and provided by California American Water (Cal-Am), which is a privately-owned water purveyor. Cal-Am extracts the water it sells from both the Carmel River and the Seaside

⁹⁰ The plant has a maximum operating capacity of 30 MGD, but the Regional Water Quality Control Board (RWQCB) permit limits this facility to a maximum of 25 MGD.

⁹¹ See SCSD letter dated January 2, 2014 in Exhibit 18. Delivery line and pump station upgrades are not expected to be required to serve the proposed project, but SCSD indicates that if they are required, the cost of such upgrades attributable to the project would be borne by the Applicant. To the extent such upgrades become necessary and raise coastal resource concerns, a separate coastal development permit approval may be required in the future. However, SCSD indicates that the existing system appears adequate to serve the project, and that any upgrades would only occur within existing developed roadway alignments and thus are not expected to result in adverse coastal resource impacts.

⁹² This finding is based on the understanding that the project would not require wastewater infrastructure improvements that would lead to adverse coastal resource impacts, as has been represented in the application. Because the proposed project is consistent with the LCP with respect to wastewater services, this issue is not discussed further in these findings.

groundwater basin aquifer, which underlies much of the Monterey Peninsula area, including Sand City. MPWMD allocates Cal-Am's water supplies among various cities and Monterey County, which in turn decide how to distribute their respective allocations to users within their jurisdictions. The project site is in the process of being annexed into Cal-Am's service territory, with the nearest Cal-Am water lines located inland of Highway One approximately 670 feet from the site.⁹³

There are currently significant regulatory constraints on Cal-Am's extractions from both the Carmel River and the Seaside aquifer, and there is the potential for significant reductions in the current extractions from both sources.

Carmel River Extractions

It has been long established that current Cal-Am water withdrawals are having significant adverse impacts on the Carmel River. The river, which lies within the approximately 250-square-mile Carmel River watershed, flows 35 miles northwest from the Ventana wilderness in Big Sur to the ocean. Surface diversions and withdrawals from the river's alluvial aquifer have had significant impacts on riparian habitat and associated species, particularly in the lower reaches.⁹⁴ This includes adverse impacts to two federally threatened species, the California red-legged frog (*Rana aurora draytonii*), listed in 1996, and steelhead (*Oncorhynchus mykiss*), listed in 1997. In particular, water diversions and withdrawals reduce the stream flows that support steelhead habitat and the production of juvenile fish, especially during dry seasons.

In 1995, the SWRCB issued Water Rights Order 95-10 ("Order 95-10") in response to complaints alleging that Cal-Am did not have a legal right to divert water from the Carmel River and that the diversions were having an adverse effect on the public trust resources of the river. The SWRCB found that Cal-Am was diverting 14,106 ac-ft/yr, yet only had a legal right to withdraw about 3,376 ac-ft/yr from the river, and that the Cal-Am diversions were having an adverse effect on the lower riparian corridor of the river, the wildlife that depends on this habitat, and the steelhead and other fish inhabiting the river. The SWRCB thus ordered Cal-Am to implement measures to terminate its unlawful diversions.

SWRCB Order 95-10 also reduced the amount of water Cal-Am could take from the Carmel River and its alluvial aquifer by 20 percent in the near-term and up to 75 percent in the long-term. The SWRCB further required that any new water that is developed/obtained by Cal-Am must first completely offset Cal-Am's unlawful diversions from the Carmel River before it can be used for new construction or expansions in use. Since that time, the jurisdictions along the Monterey peninsula have been implementing conservation measures, and have focused their efforts on improving water conservation programs, while also working on other potential water supply augmentation proposals. For example, along with other regional stakeholders, and largely to address Order 95-10 issues, Cal-Am has been pursuing development of a large-scale desalination facility. The project, however, is in the early planning and environmental assessment stage, and it is unknown when such a facility may come online.

Since 1995, however, Cal-Am has made no significant reductions in its illegal diversions from

⁹³ EIR Addendum, p. 107.

⁹⁴ See, for example, *Instream Flow Needs for Steelhead in the Carmel River: Bypass flow recommendations for water supply projects using Carmel River Waters*, National Marine Fisheries Service, June 3, 2002.

the Carmel River. As a result, the SWRCB issued a proposed Cease and Desist Order ("CDO"), held hearings, and issued CDO No. 2009-0060 on October 20, 2009 (Exhibit 24). The SWRCB found that in the nearly 14 years since the issuance of Order 95-10, Cal-Am had "implemented astonishingly few actions to reduce its unlawful diversions from the river."⁹⁵ This lack of diligence was contrasted with the present effects of Cal-Am's diversions: miles of river that are critical habitat for threatened steelhead are dry 5-6 months of the year. Cal-Am was responsible for 85 percent of the diversions that cause this condition.⁹⁶ Overall, Cal-Am's present level of illegal diversions is clearly having a present and significant adverse impact on fish, wildlife, and the riparian habitat of the Carmel River.⁹⁷

The SWRCB found that Cal-Am must be prohibited from further degradation of the river and thus prescribed a series of additional cutbacks to Cal-Am's pumping from Carmel River from 2010 through December 2016. Specifically, WR2009-0060 includes a schedule for Cal-Am to reduce diversions from the Carmel River, bans new water service connections (with certain exceptions), bans increased use of water at existing service connections resulting from a change in zoning or use, and establishes a requirement to build smaller near-term water supply projects. If a new water supply does not come on line by the end of 2016, the California Public Utilities Commission (which regulates Cal-Am as a water utility), may require water rationing and/or a moratorium on new water permits for construction and remodels. Various agencies and stakeholders are actively pursuing alternative water supply projects, including desalination project options, groundwater recharge, aquifer storage and recovery, conservation, and other options for the Monterey Peninsula, so that withdrawals from the Carmel River could be reduced or perhaps even be eliminated. However, there are significant challenges in identifying an acceptable project for all stakeholders, including one that could be successfully permitted by state and local entities.

In sum, it is clear that Cal-Am's diversion of water from the Carmel River is having a significant adverse impact on the coastal resources of that river. As a result, Cal Am's ability to supply any new customers is, at best, a legal uncertainty in light of the current SWRCB enforcement activities and explicit ban on new connections.

Seaside Aquifer Extractions

The only other currently available water supply for the greater Monterey peninsula is the Seaside coastal groundwater basin aquifer (Basin).⁹⁸ Like the Carmel River, that water source is dangerously over-used. A 2009 technical report completed for MPWMD shows consistently declining water levels and deficit water budgets over an 8-year period, indicating that the Basin

⁹⁵ SWRCB CDO No. 2009-0060, at p. 36.

⁹⁶ SWRCB CDO No. 2009-0060, at p. 37.

⁹⁷ SWRCB CDO No. 2009-0060, at pp. 37-39.

⁹⁸ Sand City obtained approval in 2005 to build a desalination facility (including an operational agreement between the City and Cal-Am for production and delivery of water) in the City downcoast of the subject site (Coastal Commission CDP A-3-SNC-05-010). That facility has been in operation since April 2010. At full operation, the plant is capable of producing 300 ac-ft/yr of potable water that would be available to be allocated within Cal-Am's service areas within the City (i.e., not including the subject site). Water not allocated to City uses is required to be applied by Cal-Am to offset extractions from the Carmel River and the Seaside Basin aquifer. Since beginning operations, several factors have affected production and the plant is producing less than originally anticipated.

is in a state of overdraft since groundwater extractions exceed the sustainable yield.⁹⁹ According to the MPWMD-sponsored report, in the event of a prolonged drought, storage in the Seaside basin could not be relied upon to sustain current levels of production for very many years in a row.¹⁰⁰ In fact, in its November 30, 2013 report for the Seaside Basin Watermaster, the consulting group Hydro-Metrics found several signals including: depressed groundwater levels below sea level, continued pumping in excess of recharge and fresh water inflows, and ongoing seawater intrusion in the nearby Salinas Valley, which suggest that seawater intrusion could occur in the Seaside Groundwater Basin – but that seawater intrusion had not yet been observed in existing monitoring or production wells.

Existing and potential withdrawals from the Basin have been adjudicated in Monterey County Superior Court (referred to as the “Adjudication”).¹⁰¹ The court concluded that the “natural safe yield” of the Seaside basin is between 2,581 to 2,913 ac-ft/yr, but that total groundwater production withdrawals over the preceding five years ranged between approximately 5,100 and 6,100 ac-ft/yr, or roughly twice the safe yield of the Basin. All parties to this Adjudication were in agreement that continued production from the Basin beyond the safe yield will ultimately result in seawater intrusion and additional deleterious effects to the Basin in the foreseeable future. Under a schedule set out by the court, most current withdrawals from the Basin would have to be reduced 10% every three years beginning in 2009, unless a supplemental water source is obtained for the greater Monterey peninsula. The court also appointed a special Watermaster¹⁰² to help implement a long-term management program to reduce production from the Basin over time to the natural safe yield. The Watermaster can impose additional cuts (beyond the phased 10% triennial reductions) if the groundwater conditions worsen. In its recent Carmel River CDO, the SWRCB recognized that the Adjudication will decrease Cal-Am's water supplies from groundwater sources, but also prohibited Cal-Am from drawing any river water to offset these shortages.¹⁰³

2. Proposed Water Supply for Proposed Project

The proposed project would require 63.45 ac-ft/yr of water. The Applicant is also requesting an additional acre foot of water to service the adjacent parcel to the north. In the Adjudication, the Applicant's groundwater production allowance was identified as 149 ac-ft/yr, based on its status as the owner of land overlying a portion of the basin and historical production from a well on the site.¹⁰⁴ The Applicant seeks, however, to utilize that production allowance by connecting to the Cal-Am water supply system so that the water for the proposed project would be physically

⁹⁹ Eugene Yates, Martin Feeney and Lewis Rosenberg, *Seaside Groundwater Basin: Update on Water Resources Conditions* April 2005 for MPWMD (available at <http://www.mpwmd.dst.ca.us/seasidebasin/index.html>). Estimated sustainable yield is about 2,880 ac-ft/yr while average extractions are about 5,600 ac-ft/yr.

¹⁰⁰ Id; p. 28.

¹⁰¹ *California American Water v. City of Seaside*, Monterey County Superior Court Case M66343.

¹⁰² The “Watermaster” is not a single individual; rather the Watermaster is a board made up of 9 voting members. MPWMD, MCWRA, Cal-Am, Seaside, Sand City, Monterey, and Del Rey Oaks each appoint one member, and underlying basin landowners with certain water rights appoint two members. The votes are weighted differently among the members. Specifically, the 9 positions are allotted 13 total votes, with Cal-Am having 3 votes; MPWMD, MCWRA, and Seaside with 2 votes each; Sand City, Monterey, and Del Rey Oaks each with one vote; and the landowners each with one-half vote. .

¹⁰³ SWRCB, CDO No No. 2009-060, at p 40.

¹⁰⁴ *California American Water v. City of Seaside*, Monterey County Superior Court Case M66343.

extracted elsewhere and provided to the project by Cal-Am through pumping at its inland wells.¹⁰⁵ The premise of the Applicant's water permit application was that, because Cal-Am would be extracting the groundwater using the Applicant's separate and distinct well production water rights, Cal-Am could produce an additional 90 ac-ft/yr to serve the project without regard to the various regulatory and judicial restrictions on Cal-Am's current groundwater production.¹⁰⁶

4. Project Consistency with the LCP

As described above, the LCP only allows approval of new development where it has been clearly demonstrated that adequate water supply is available to serve the development, and that such water is consistent with the MPWMD allocation to Sand City, and has been reviewed and approved by MPWMD in certain circumstances, including those that apply here.

Water Permit Required

The intent of the LCP water supply policies, including LUP Policies 4.3.27 and 6.4.10, is to ensure that prior to approving new development the Applicant can demonstrate and the City, or Commission on appeal, can find that adequate water is available to serve the development.

Towards this end, the LCP specifically calls for comprehensive water analyses to be reviewed and approved by MPWMD, the regulatory body in charge of managing water use throughout the greater Monterey peninsula, and explicitly indicates that MPWMD's review and approval is to be incorporated into the development review process in the City. Such development review process includes the CDP application review process, and specifically applies to the application now before the Commission.

In response, the Applicant has provided evidence of a final approval of a Water Distribution System ("water permit") to serve the Monterey Bay Shores development. The MPWMD authorization is for a potable water supply with an annual production limit of 90 acre feet per year and one master connection to the Applicant's parcel. As noted, the Applicant has submitted materials indicating that the resort development would require 63.45 acre-feet/year based on an average 85% hotel occupancy rate. The MPWMD authorization is subject to further conditions that restrict the use of the 90 ac-ft/yr to the subject parcel and further require that the water serving the parcel be developed from wells within the Coastal Subareas of the Seaside Groundwater Basin. Additionally, strict water accounting measures must be implemented to ensure that no Carmel River Basin water is used to serve the development and that any use of its on-site wells does not result in more than 149 ac-ft/yr extractions from the Seaside Basin when Cal-Am production and on-site well production are combined. Finally, the MPWMD permit is contingent upon evidence from the California Public Utilities Commission (CPUC) that the

¹⁰⁵ MPWMD staff report for their February 26, 2009 meeting.

¹⁰⁶ Under the Adjudication, the Applicant's groundwater allocations are separate from (and have priority over) water rights held by certain other producers, including Cal-Am (Seaside Basin Adjudication, 9, 20). As such, the Applicant's production rights are not included in the court-imposed, phased, 10 percent triennial cuts in groundwater pumping that began in 2009 for most other users (including Cal-Am) unless certain criteria are met (i.e., certain water supply augmentations, etc.), and potentially exempt from any further reductions ordered by the Watermaster if the condition of the Basin worsens. These production rights, however, are still subject to the Adjudication overall, and if water is extracted to serve a priority user, such as the Applicant, under the Adjudication, that water use still is required to be offset in the Basin. In other words, any water used by the Applicant must be offset by reductions in water use by other users in the Basin (i.e., the court has capped the amount of water that can be withdrawn from the aquifer each year, but the Applicant has a senior right to such water).

project site has been annexed into Cal-Am's service territory. An advice letter from the California Public Utilities Commission approving the annexation has been requested.

5. Conclusion

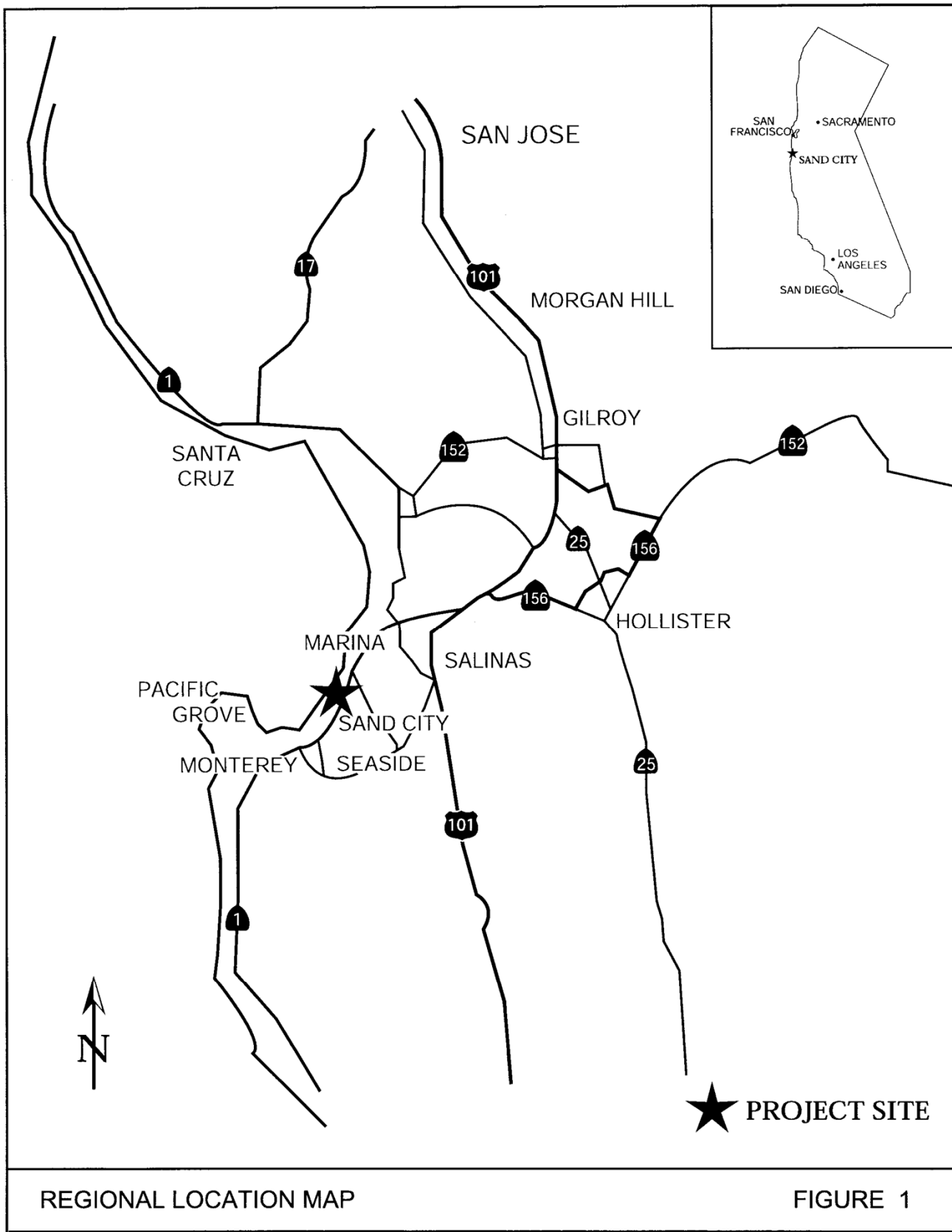
It is clear that there is a significant water shortage problem in the greater Monterey peninsula area that has long been recognized and that is resulting in ongoing coastal resource degradation. It is likewise clear that a complicated series of interwoven solutions are being applied to this problem at planning, regulatory, judicial, and use levels throughout the peninsula. The LCP allows approval of new development where it has been clearly demonstrated that adequate water supply is available to serve the development, and that such water is consistent with the MPWMD allocation to Sand City, or has been reviewed and approved by MPWMD. The Applicant has provided evidence of a final approval of a Water Distribution System ("water permit") to serve the Monterey Bay Shores development including a potable water supply with an annual production limit of 90 acre feet per year and one master connection to the Applicant's parcel. Accordingly, the Commission finds the proposed project can be found consistent with the LCP's public services policies.

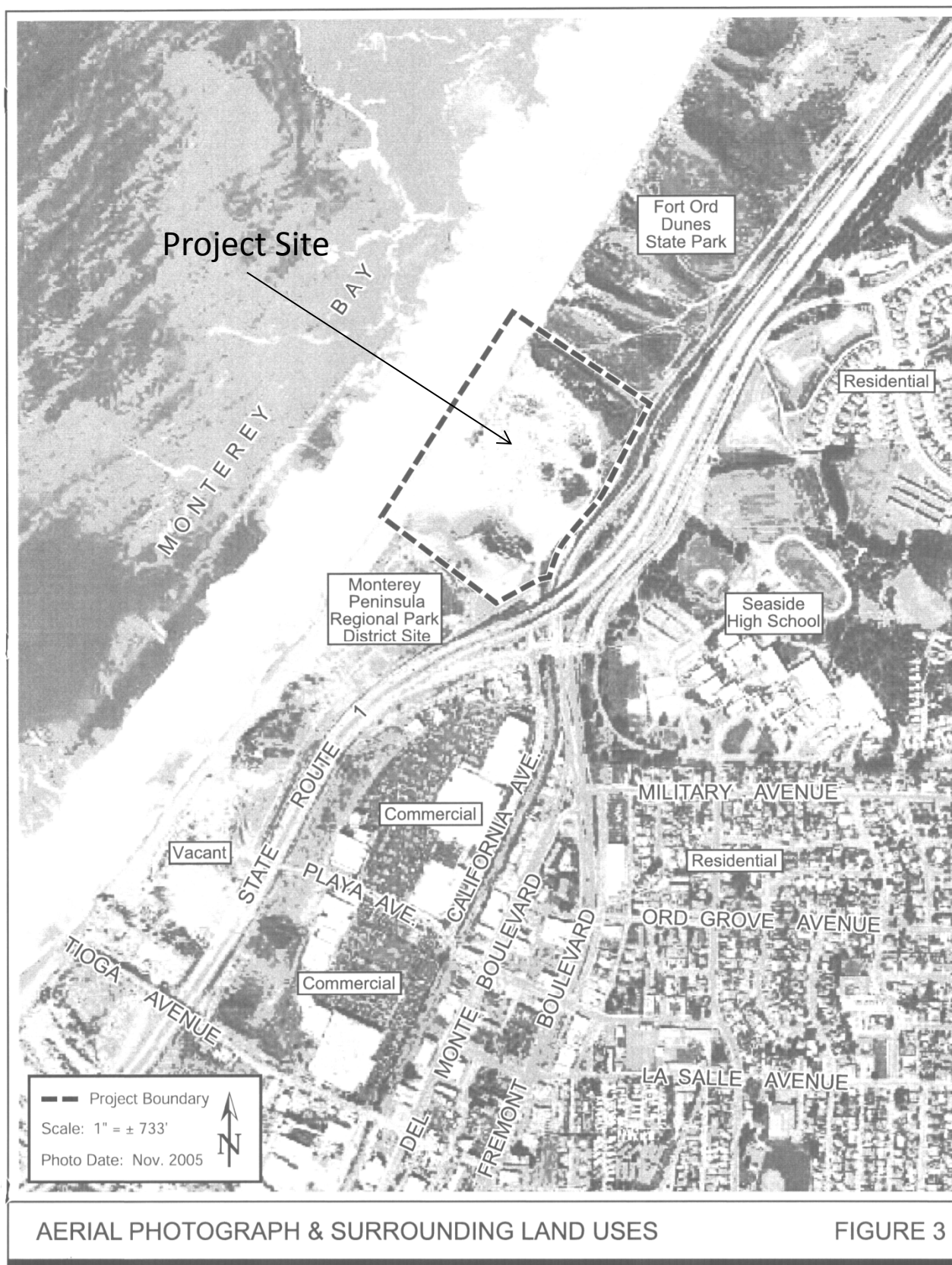
K. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Section 13096 of the California Code of Regulations requires that a specific finding be made in conjunction with coastal development permit applications showing the application to be consistent with any applicable requirements of CEQA. Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

The City of Sand City, acting as lead agency, adopted a Final EIR in December 1998 and an Addendum to the Final EIR in October 2008. The Coastal Commission's review and analysis of land use proposals has been certified by the Secretary of Resources as being the functional equivalent of environmental review under CEQA. The Commission has reviewed the relevant coastal resource issues associated with the proposed project, and has identified appropriate and necessary modifications to address adverse impacts to such coastal resources to the extent allowed while avoiding a taking of private property without just compensation. All public comments received to date have been addressed in the findings above. All above findings are incorporated herein in their entirety by reference.

The Commission finds that only as modified and conditioned by this permit will the proposed project avoid significant adverse effects on the environment within the meaning of CEQA. As such, there are no additional feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse environmental effects that approval of the proposed project, as modified, would have on the environment within the meaning of CEQA. If so modified, the proposed project will not result in any significant environmental effects for which feasible mitigation measures have not been employed consistent with CEQA Section 21080.5(d)(2)(A).



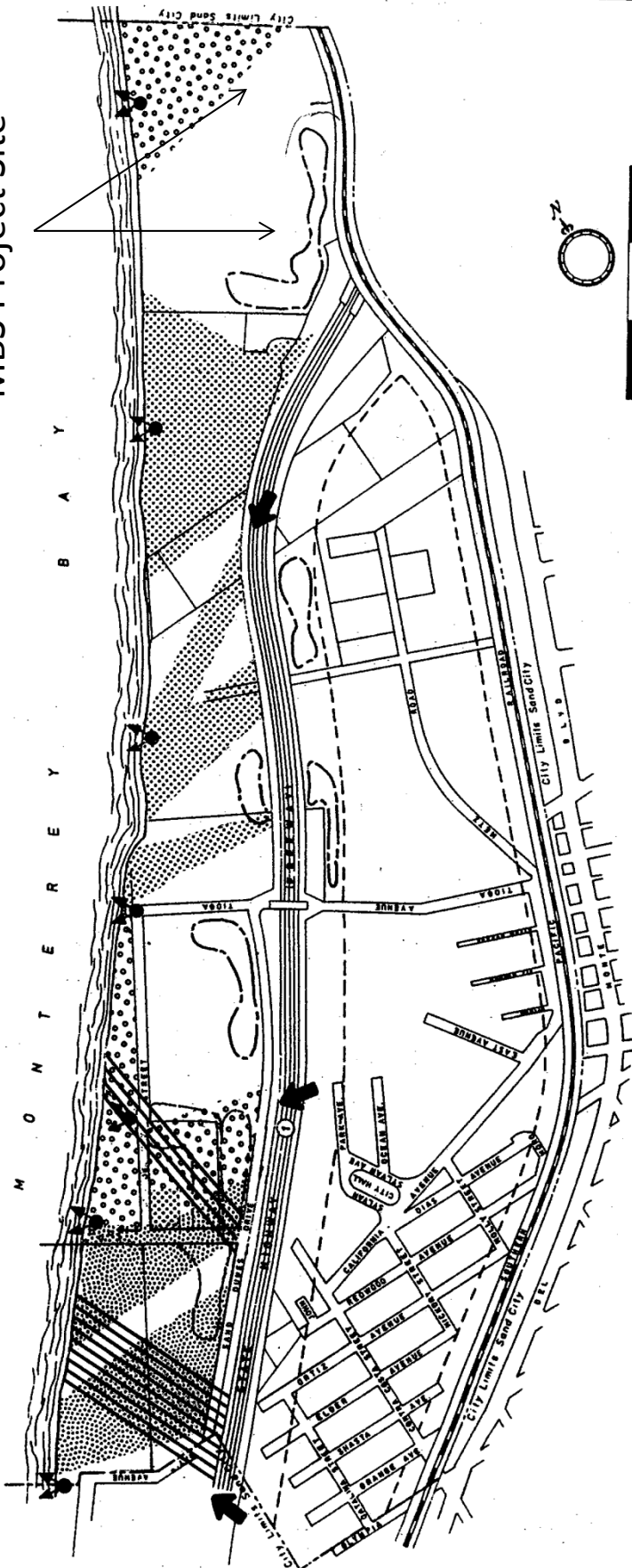




Source: California Coastal Records Project Aerial 200508214

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SAND CITY SHORELINE



Note: For more detail south of Bay Avenue, refer to Figure 12

VIEW CORRIDORS nv--A/nv--B SOUTH OF BAY AVENUE

VIEW CORRIDORS sv-A/sv-B SOUTH OF BAY AVENUE

VISTA POINTS

OPEN VIEW CORRIDORS

VIEW CORRIDORS OVER DEVELOPMENT

DUNE PRESERVATION, STABILIZATION & RESTORATION AREAS

KEY COSTAL OVERVIEWS

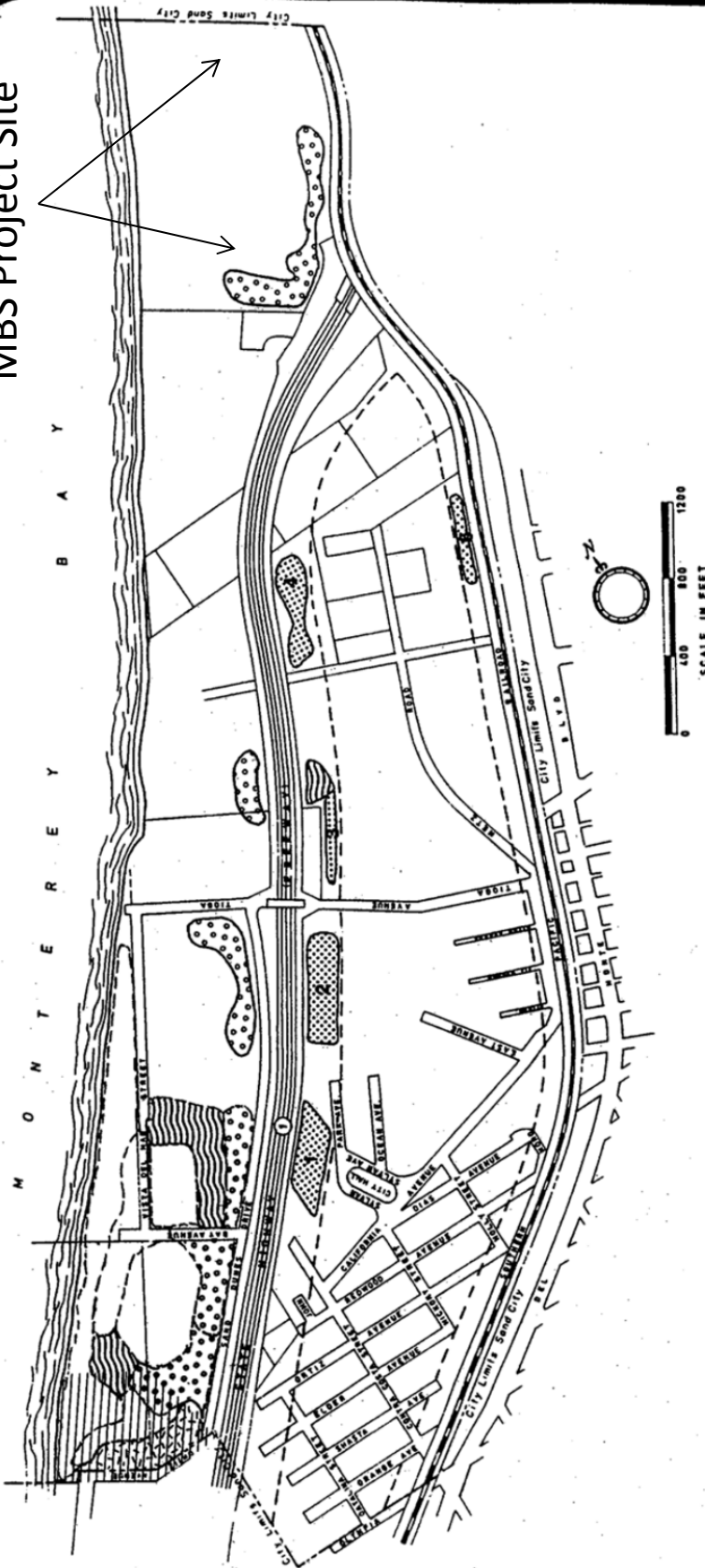
Generalized Views from Hwy. 1 and Vistas

SAND CITY LCP LAND USE PLAN

VISUAL RESOURCES

Figure 9

MBS Project Site



Legend :

SENSITIVE HABITAT AREAS
(Generalized Locations)



HABITAT RESTORATION AREAS



DUNE STABILIZATION/RESTORATION AREAS
(Within Future Development) Note: For more detail and additional land uses allowed south of Bay Avenue, refer to Figure 12



BUTTERFLY HABITAT RESTORATION ZONE



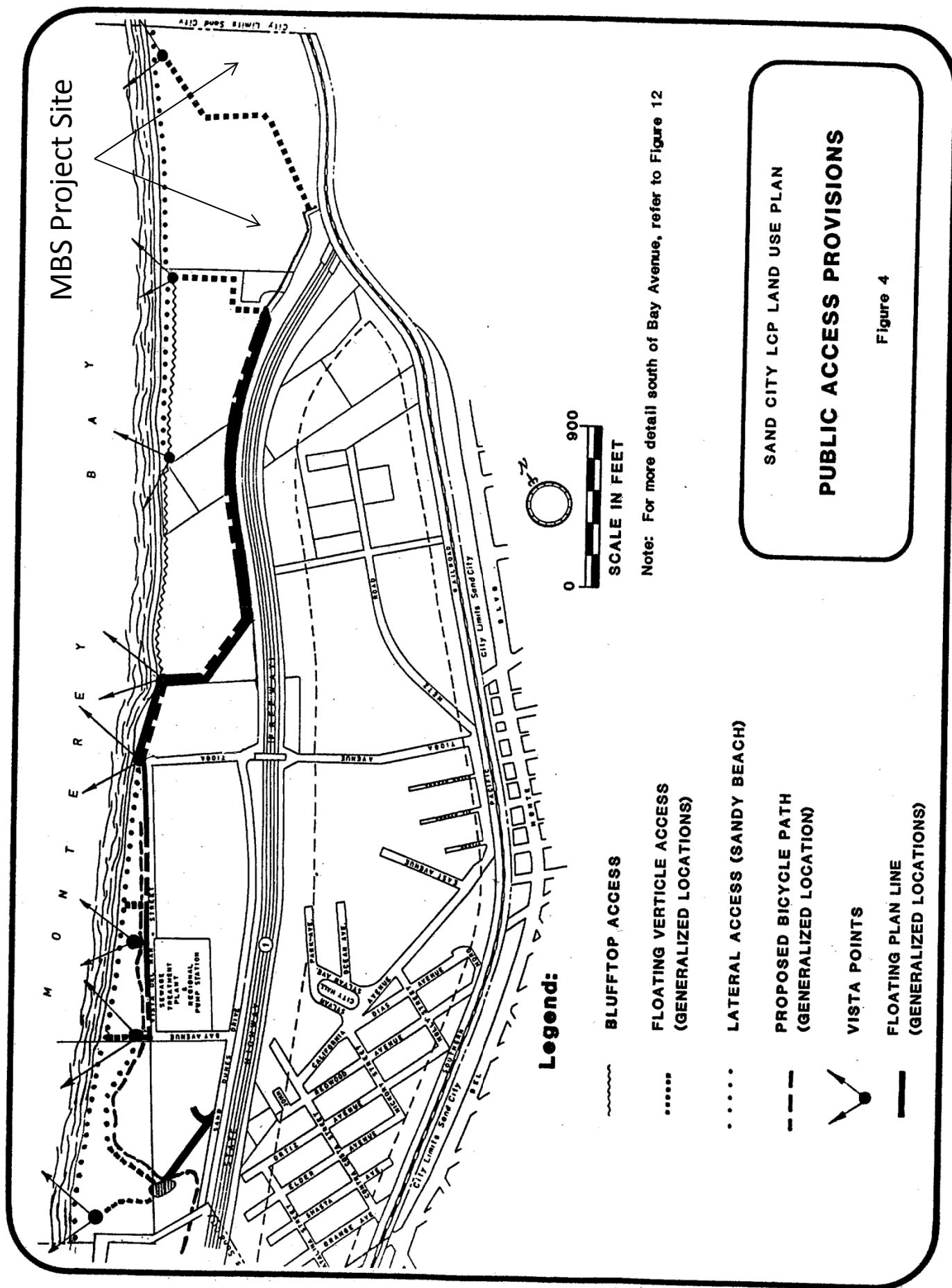
AREA OF HIGH ARCHAEOLOGICAL SENSITIVITY



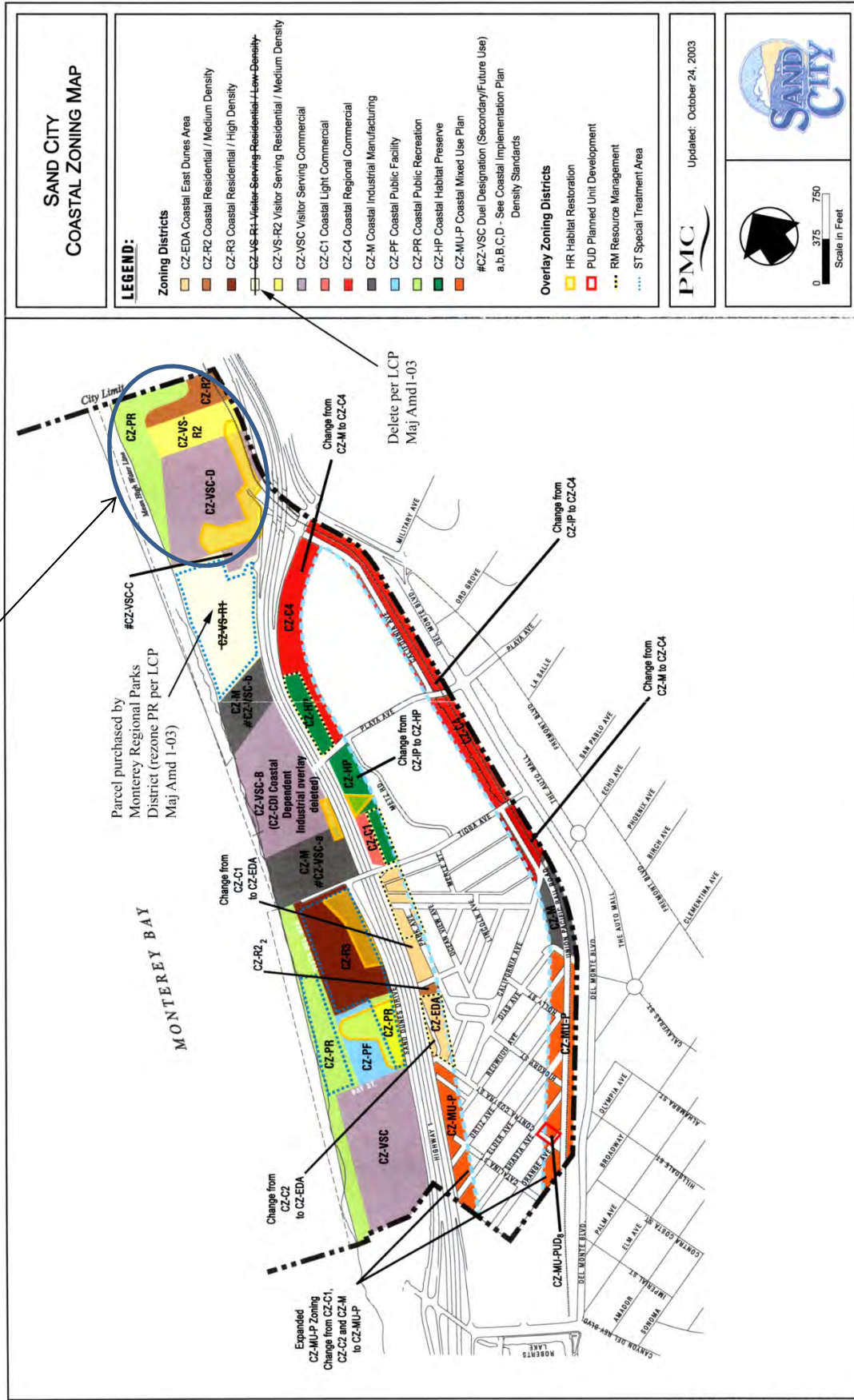
SAND CITY LCP LAND USE PLAN

COASTAL RESOURCES

Figure 7



MBS Project Site



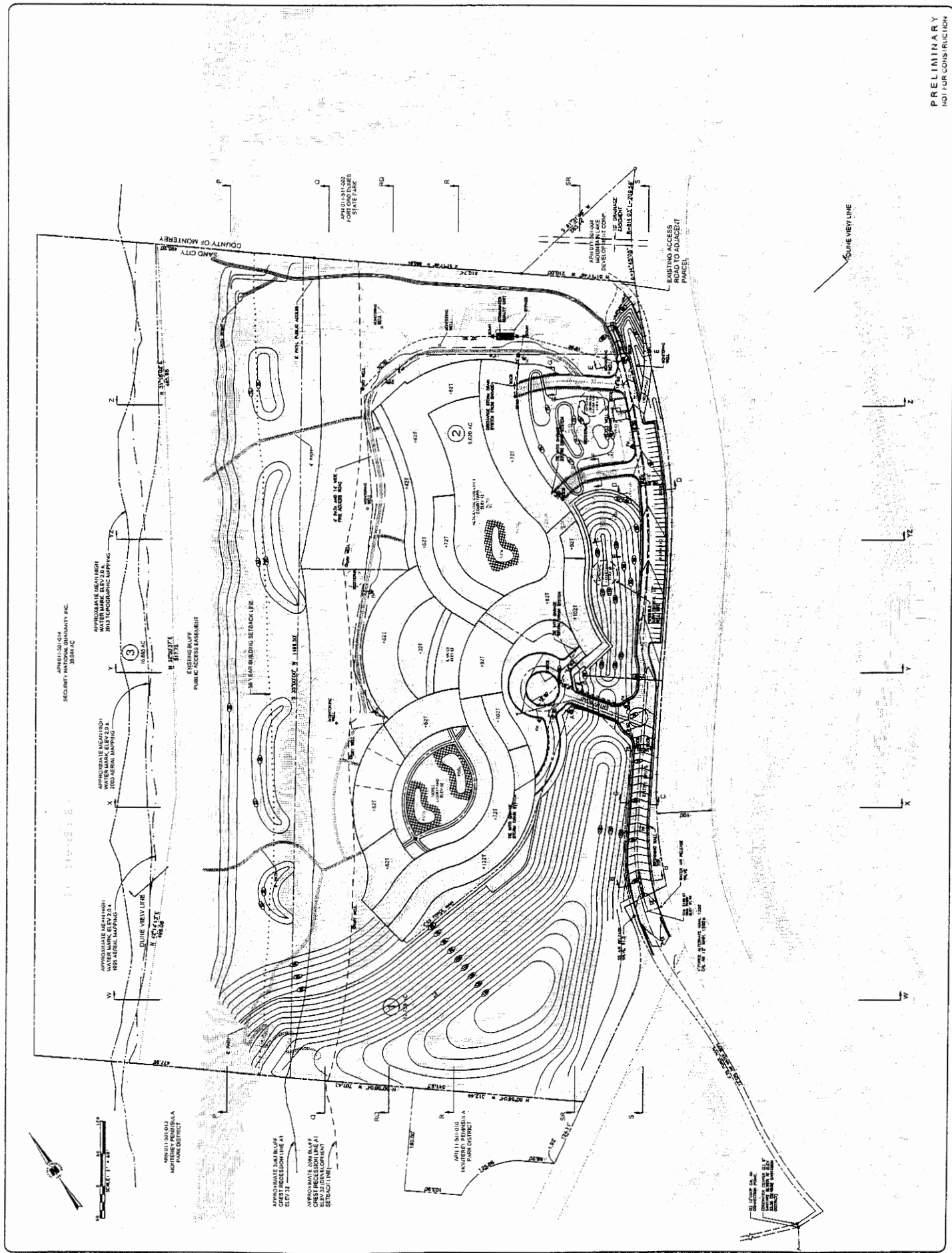


Exhibit 4 Site Plans and Cross-Sections
A-3-SNC-98-114 Settlement Agreement
2 of 5

DATE	BY	REVISION
11/1/01	SS	ISSUED FOR PERMIT
11/1/01	SS	ISSUED FOR PERMIT
11/1/01	SS	ISSUED FOR PERMIT
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11/1/01	SS	ISSUED FOR PERMIT



SECTION ENGINEERS, INC.
CIVIL ENGINEERING - SURVEYING - LAND PLANNING
9701 BLUE LAKES DRIVE, MONTEREY, CALIFORNIA 93940
(408) 255-1111

PROJECT DATA, SECTIONS
MONTEREY BAY SHORES
APR 01-10-01-014

PROJECT DATA, SECTIONS
MONTEREY BAY SHORES
APR 01-10-01-014

WATER CONSUMPTION

PARKING AND PROJECT STATISTICS

PROJECT LAND USE AREAS, DENSITIES AND RATIOS

LAND USE	AREA (SQ. FT.)	DENSITY (UNITS/AC.)	RATIO	WATER CONSUMPTION (GALLONS)	WATER CONSUMPTION (GALLONS)
HOTEL	100,000	100	1.0	100,000	100,000
OFFICE	50,000	50	0.5	50,000	50,000
RETAIL	20,000	20	0.2	20,000	20,000
INDUSTRIAL	10,000	10	0.1	10,000	10,000
TOTAL	180,000	180	1.8	180,000	180,000

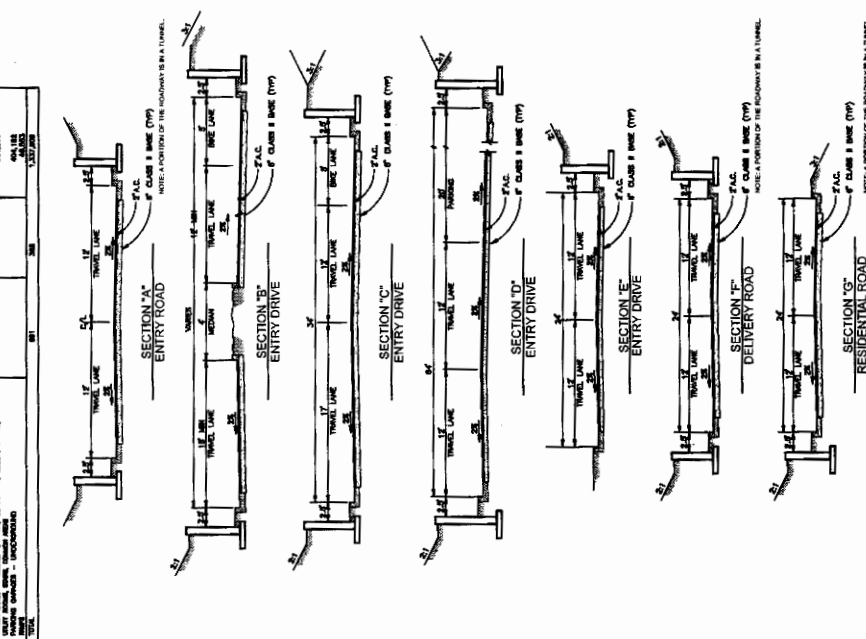
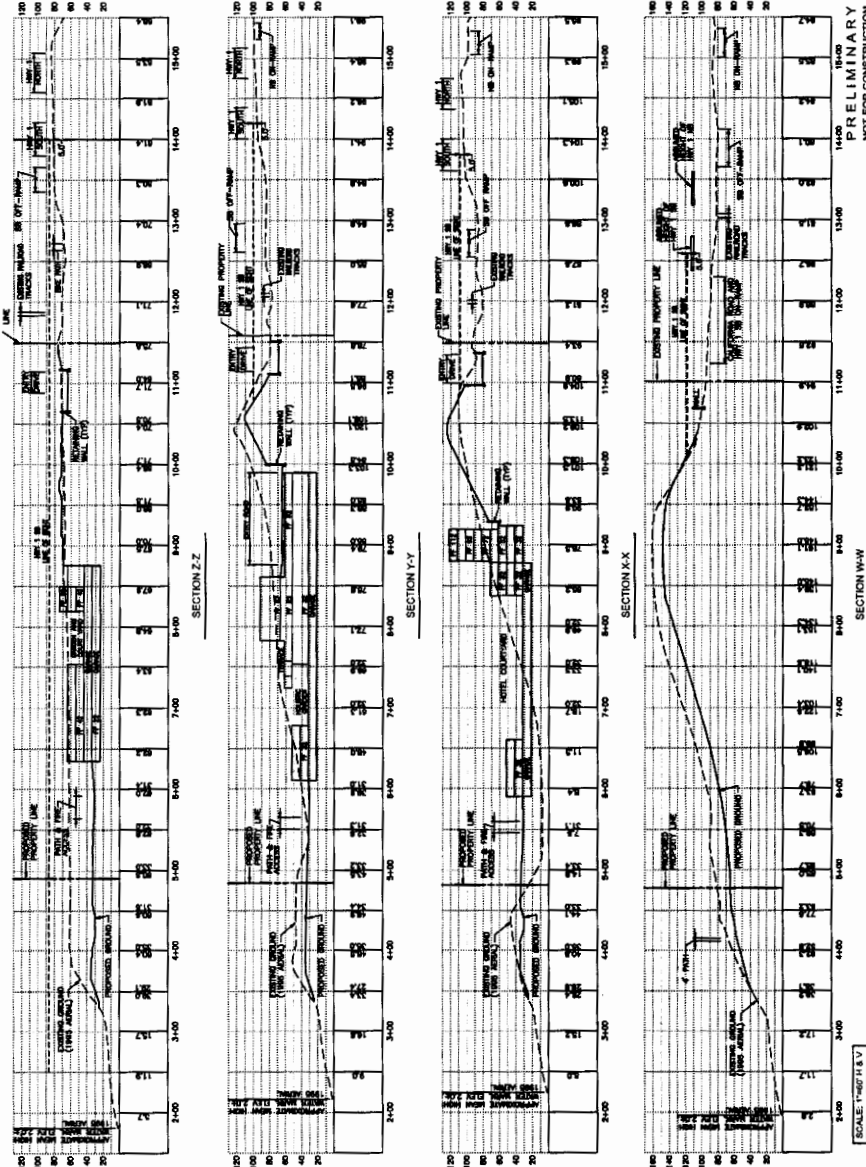
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HOTEL	100,000	100	1.0	100,000	100,000
OFFICE	50,000	50	0.5	50,000	50,000
RETAIL	20,000	20	0.2	20,000	20,000
INDUSTRIAL	10,000	10	0.1	10,000	10,000
TOTAL	180,000	180	1.8	180,000	180,000

LAND USE	AREA (SQ. FT.)	DENSITY (UNITS/AC.)	RATIO	WATER CONSUMPTION (GALLONS)	WATER CONSUMPTION (GALLONS)
HOTEL	100,000	100	1.0	100,000	100,000
OFFICE	50,000	50	0.5	50,000	50,000
RETAIL	20,000	20	0.2	20,000	20,000
INDUSTRIAL	10,000	10	0.1	10,000	10,000
TOTAL	180,000	180	1.8	180,000	180,000

1. THE WATER CONSUMPTION CALCULATED ABOVE IS BASED ON THE PROJECT PROPOSED PLANS. THE PROJECT PROPOSED PLANS ARE SUBJECT TO REVIEW AND APPROVAL BY THE MONTEREY BAY SHORES WATER DISTRICT. THE PROJECT PROPOSED PLANS ARE SUBJECT TO REVIEW AND APPROVAL BY THE MONTEREY BAY SHORES WATER DISTRICT. THE PROJECT PROPOSED PLANS ARE SUBJECT TO REVIEW AND APPROVAL BY THE MONTEREY BAY SHORES WATER DISTRICT.

2. THE WATER CONSUMPTION CALCULATED ABOVE IS BASED ON THE PROJECT PROPOSED PLANS. THE PROJECT PROPOSED PLANS ARE SUBJECT TO REVIEW AND APPROVAL BY THE MONTEREY BAY SHORES WATER DISTRICT. THE PROJECT PROPOSED PLANS ARE SUBJECT TO REVIEW AND APPROVAL BY THE MONTEREY BAY SHORES WATER DISTRICT. THE PROJECT PROPOSED PLANS ARE SUBJECT TO REVIEW AND APPROVAL BY THE MONTEREY BAY SHORES WATER DISTRICT.

3. THE WATER CONSUMPTION CALCULATED ABOVE IS BASED ON THE PROJECT PROPOSED PLANS. THE PROJECT PROPOSED PLANS ARE SUBJECT TO REVIEW AND APPROVAL BY THE MONTEREY BAY SHORES WATER DISTRICT. THE PROJECT PROPOSED PLANS ARE SUBJECT TO REVIEW AND APPROVAL BY THE MONTEREY BAY SHORES WATER DISTRICT. THE PROJECT PROPOSED PLANS ARE SUBJECT TO REVIEW AND APPROVAL BY THE MONTEREY BAY SHORES WATER DISTRICT.



DATE	7-1-07
BY	TM-4
REV	10/11/14
APP	APN 011-501-014

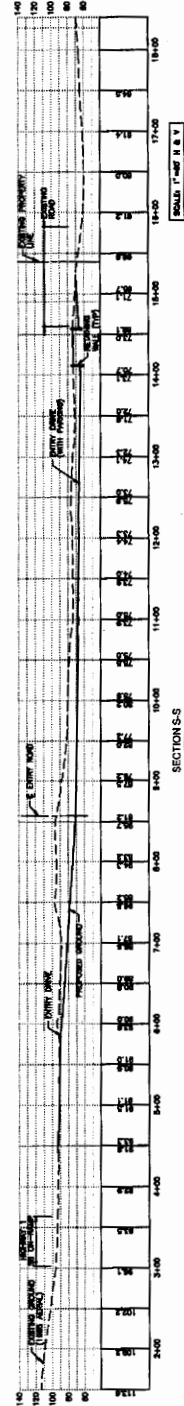
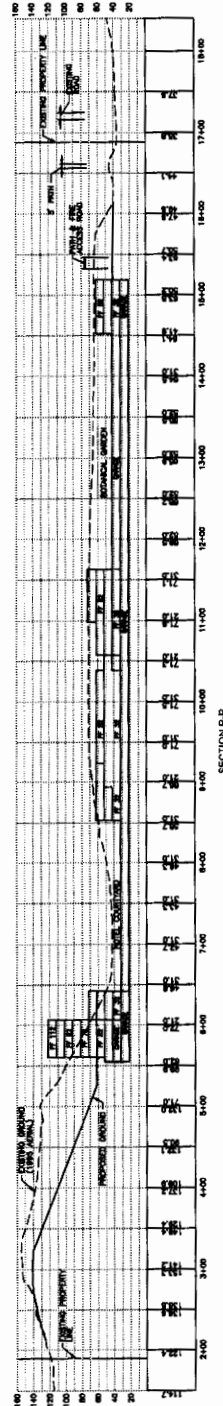
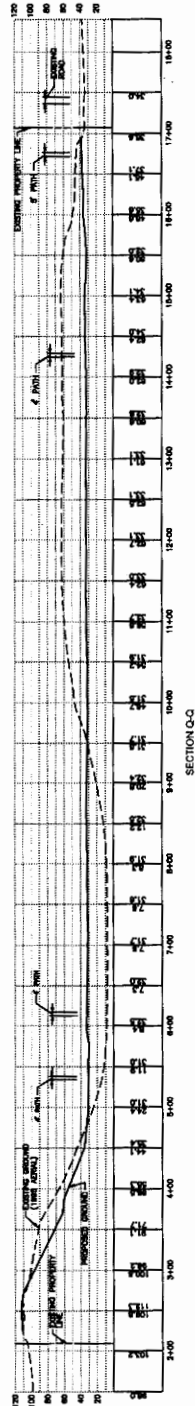
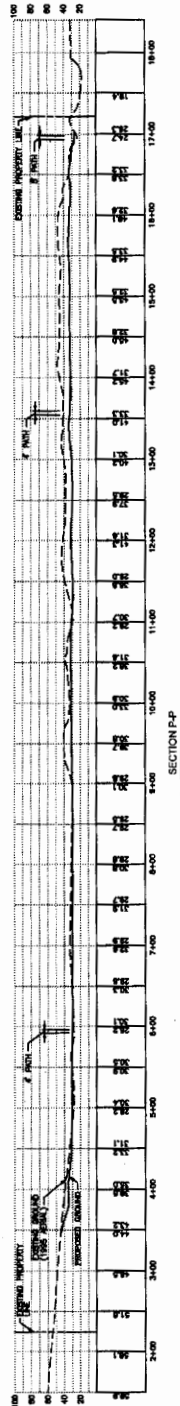
SECTIONS
MONTEREY BAY SHORES
APN 011-501-014

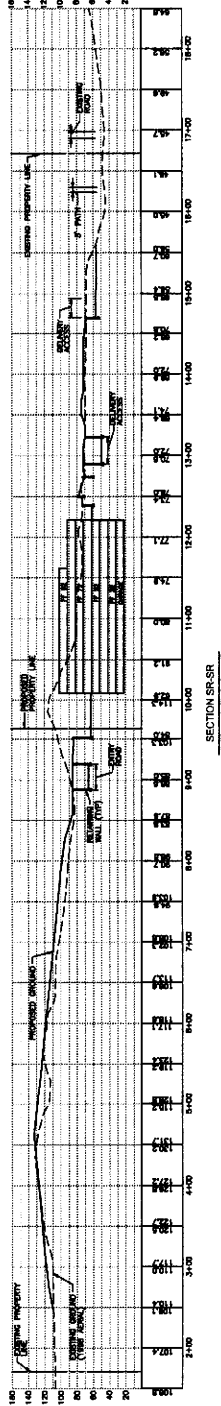
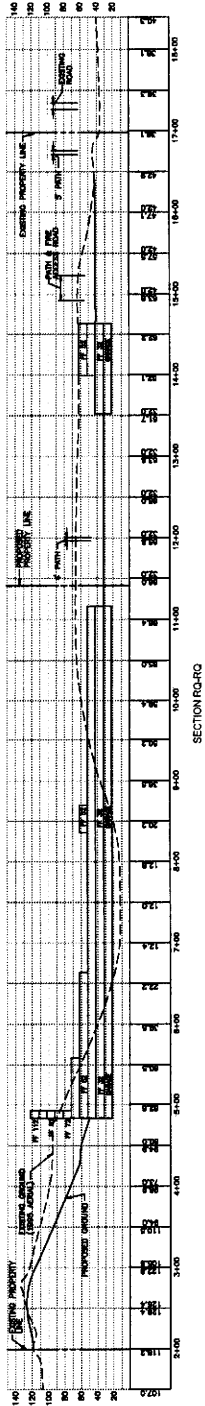
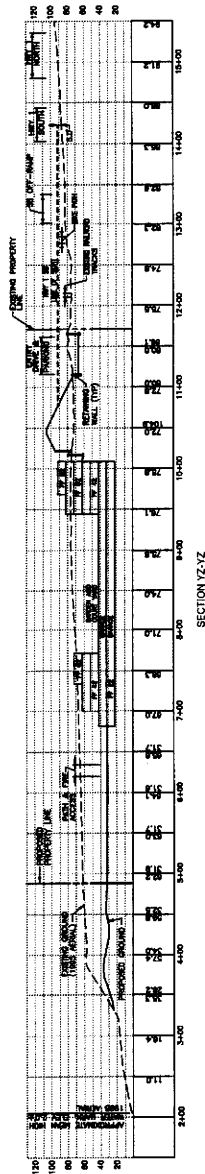
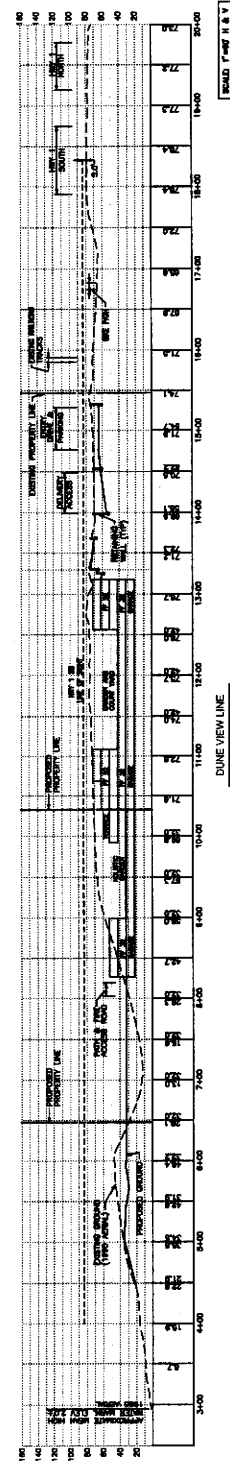


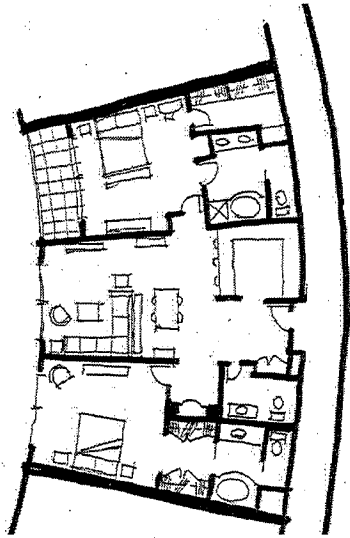
SECTION ENGINEERS, INC.
3701 BLUE LAKES DRIVE, MONTEREY, CALIFORNIA 93940
CIVIL ENGINEERING - SURVEYING - LAND PLANNING

Monterey Bay Shores
LOCAL TRAILS AND WALKWAYS

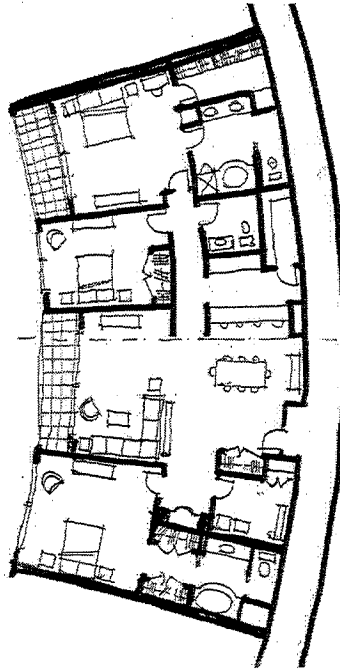
DATE	7-1-07
BY	TM-4
REV	10/11/14
APP	APN 011-501-014



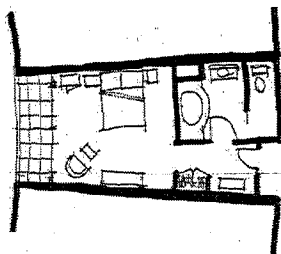




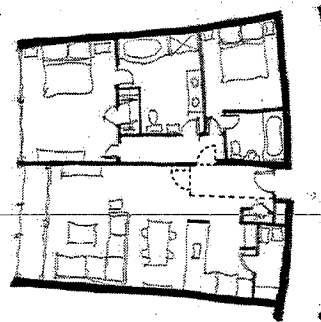
Residential 2 Bedroom Unit



Residential 3 Bedroom Unit



Hotel Unit



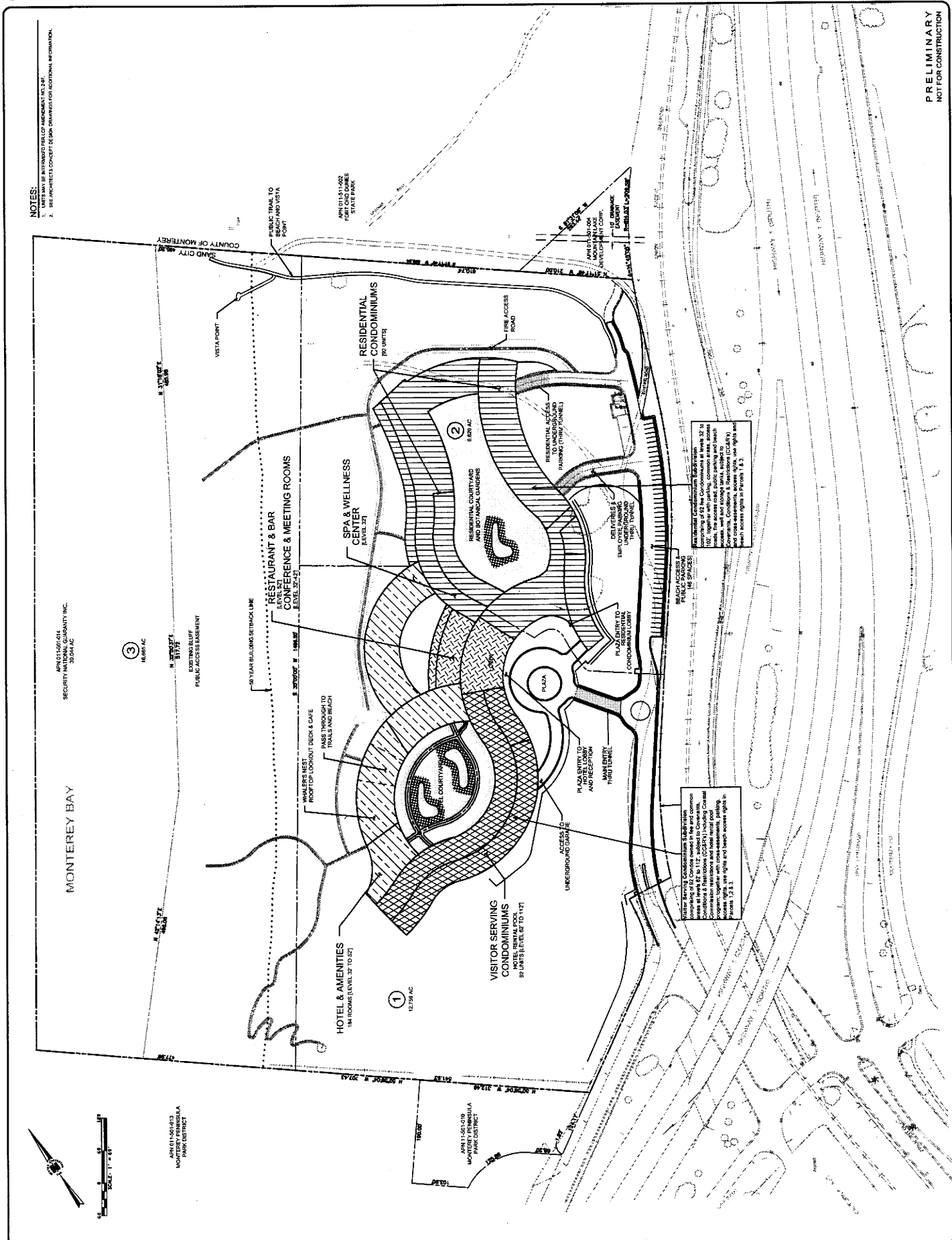
Visitor Serving Condo

TYPICAL UNIT PLANS

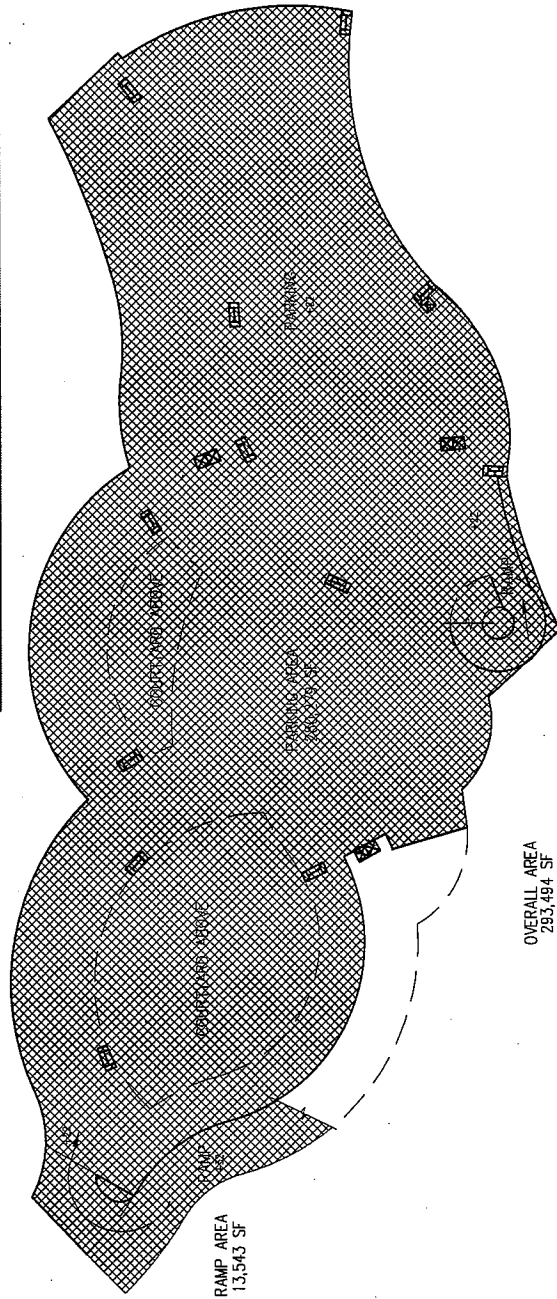
Monterey Bay Shores
Ecoresort, Wellness Spa, and Residences

Security National Guaranty, Inc.

WATG
2013 October 16 A5-01



BUILDING & PROGRAM ELEMENTS AND DEVELOPMENT FEATURES & AREAS				
	MODULES	UNITS	SQ. FT.	
Hotel Rooms	198	184	109,336	
Visitor Serving Condos(Condo Hotel)	187	92	102,950	
Residential Condominiums	306	92	168,187	
Sub-Total	691	368	380,453	
Commercial Areas: Restaurants, Bars, Retail			59,295	
Spa, Kitchens, Meeting Space				
Sub-Total			439,748	
Courtyards and Gardens			85,858	
Other Building Elements:BOH,Corridors,Lobby, Office, Utility Rooms, Stairs, Common Areas			361,558	
Parking Garages-Underground			404,192	
Ramps			46,553	
TOTAL	691	368	1,337,909	



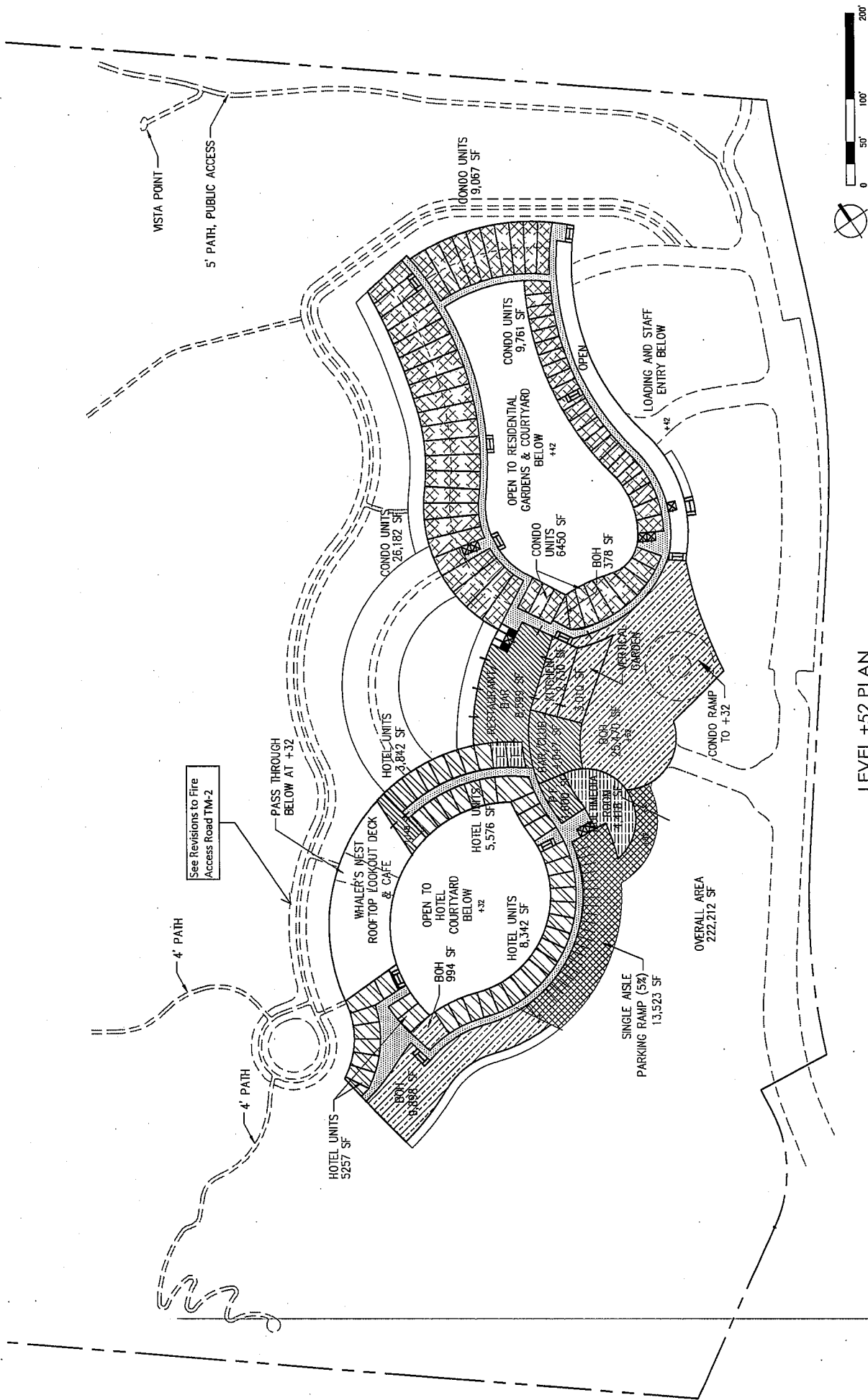
LEVEL +22 PLAN - PARKING

Monterey Bay Shores
Ecoresort, Wellness Spa, and Residences

WATG
Rev.: 14/07/15
2013 October 16 A2-01

Security National Guaranty, Inc.



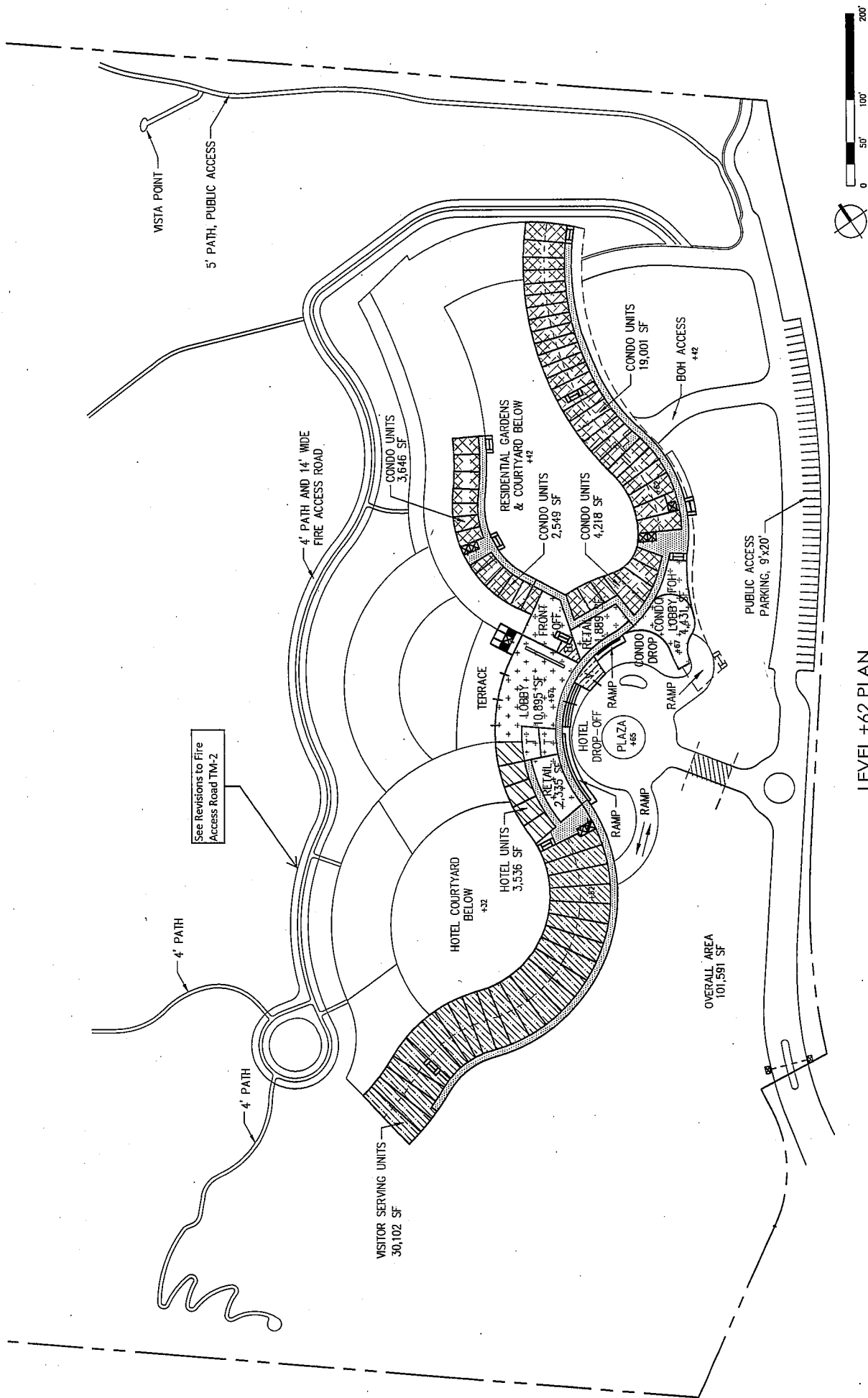


LEVEL +52 PLAN

WATG
Rev. 140/MS
2013 October 16 A2-04

Monterey Bay Shores
Ecoresort, Wellness Spa, and Residences

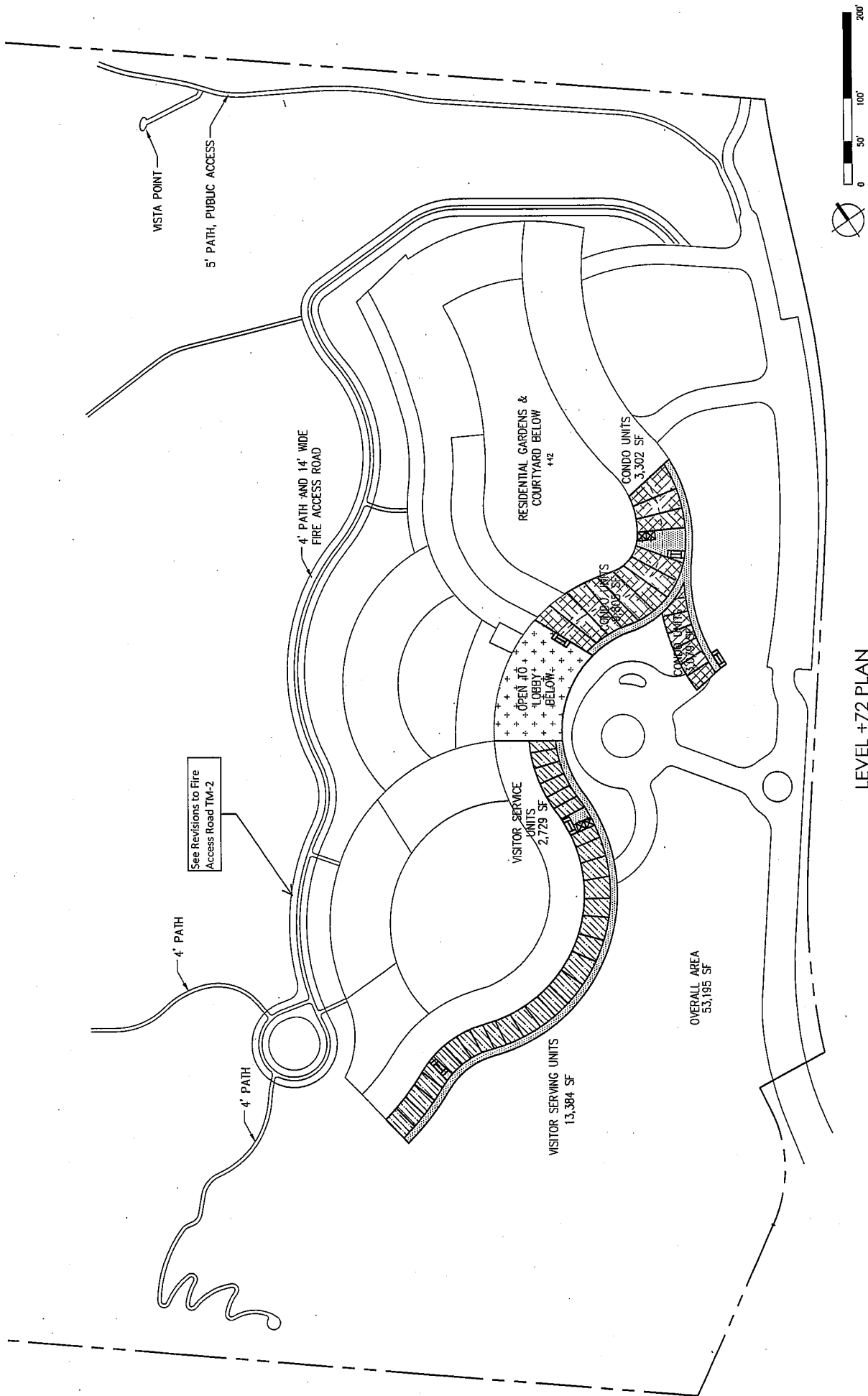
Security National Guaranty, Inc.



WATG
Rev. 1407MS
2013 October 16 A2-05

Monterey Bay Shores
Ecoresort, Wellness Spa, and Residences

Security National Guaranty, Inc.

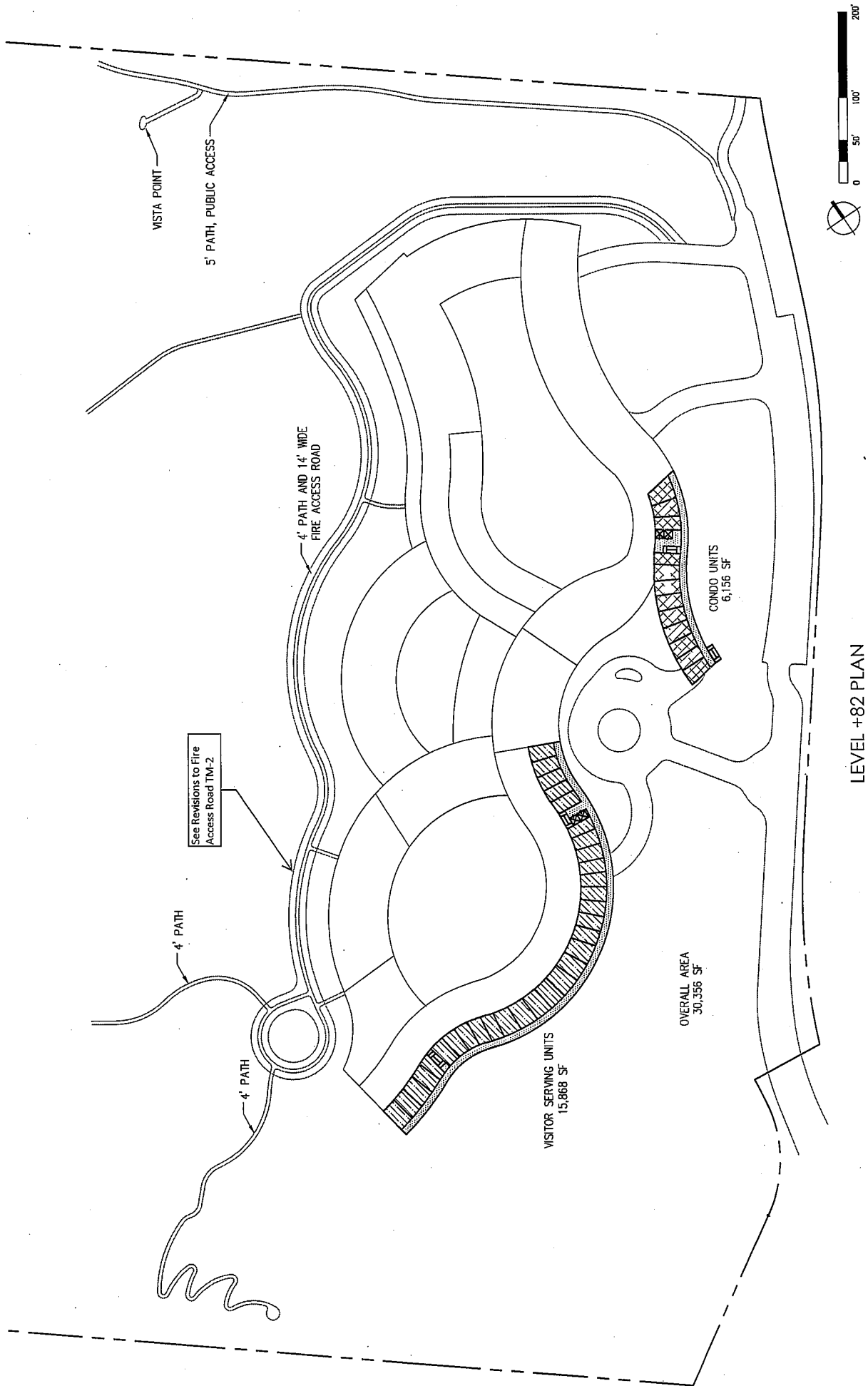


LEVEL +72 PLAN

WATG
Rev: 1407/MS
2013 October 16 A2-06

Monterey Bay Shores
Ecoresort, Wellness Spa, and Residences

Security National Guaranty, Inc.

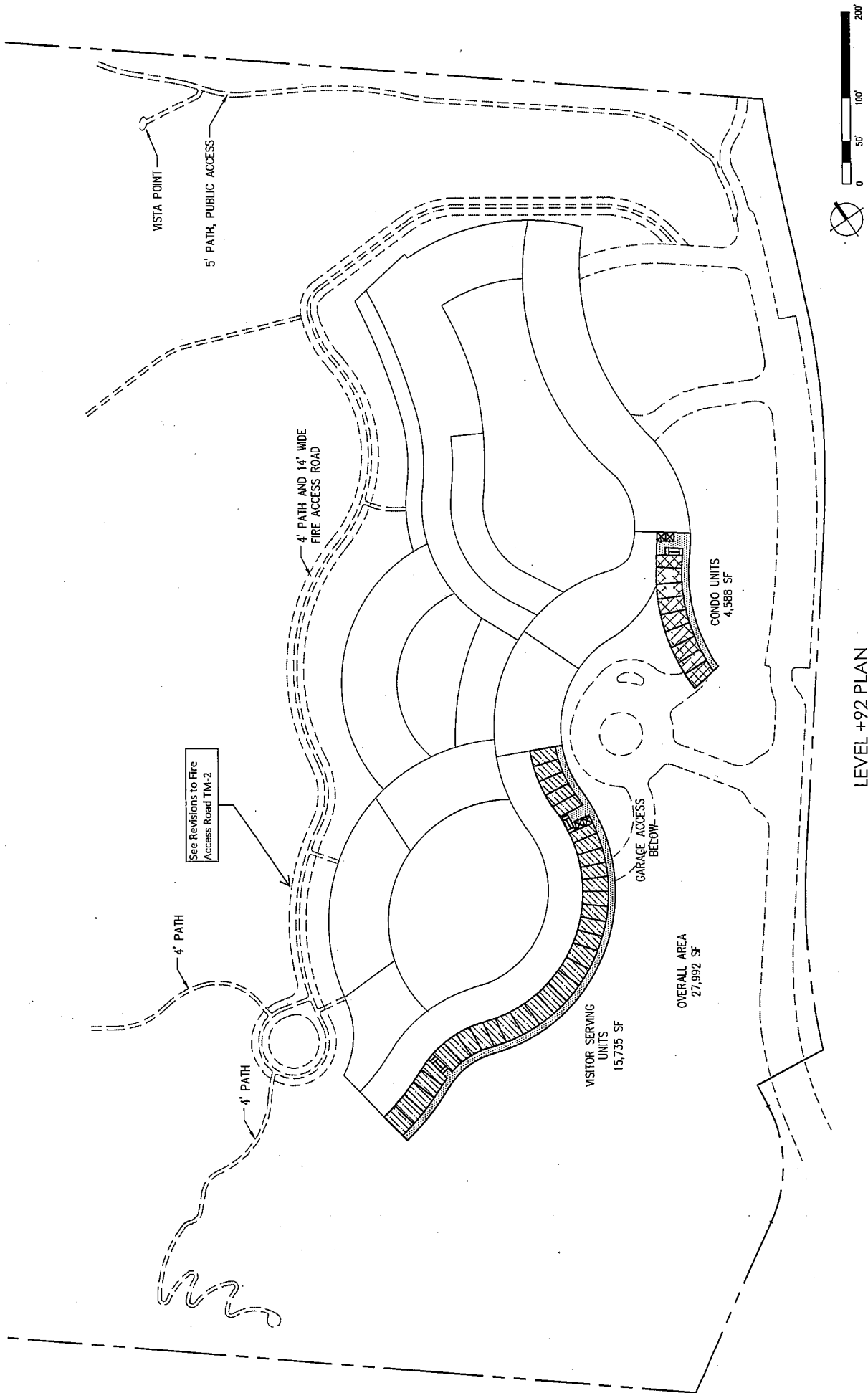


LEVEL +82 PLAN

WATG
 Rev. 140/MS
 2013 October 16 A2-07

Monterey Bay Shores
 Ecoresort, Wellness Spa, and Residences

Security National Guaranty, Inc.

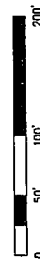
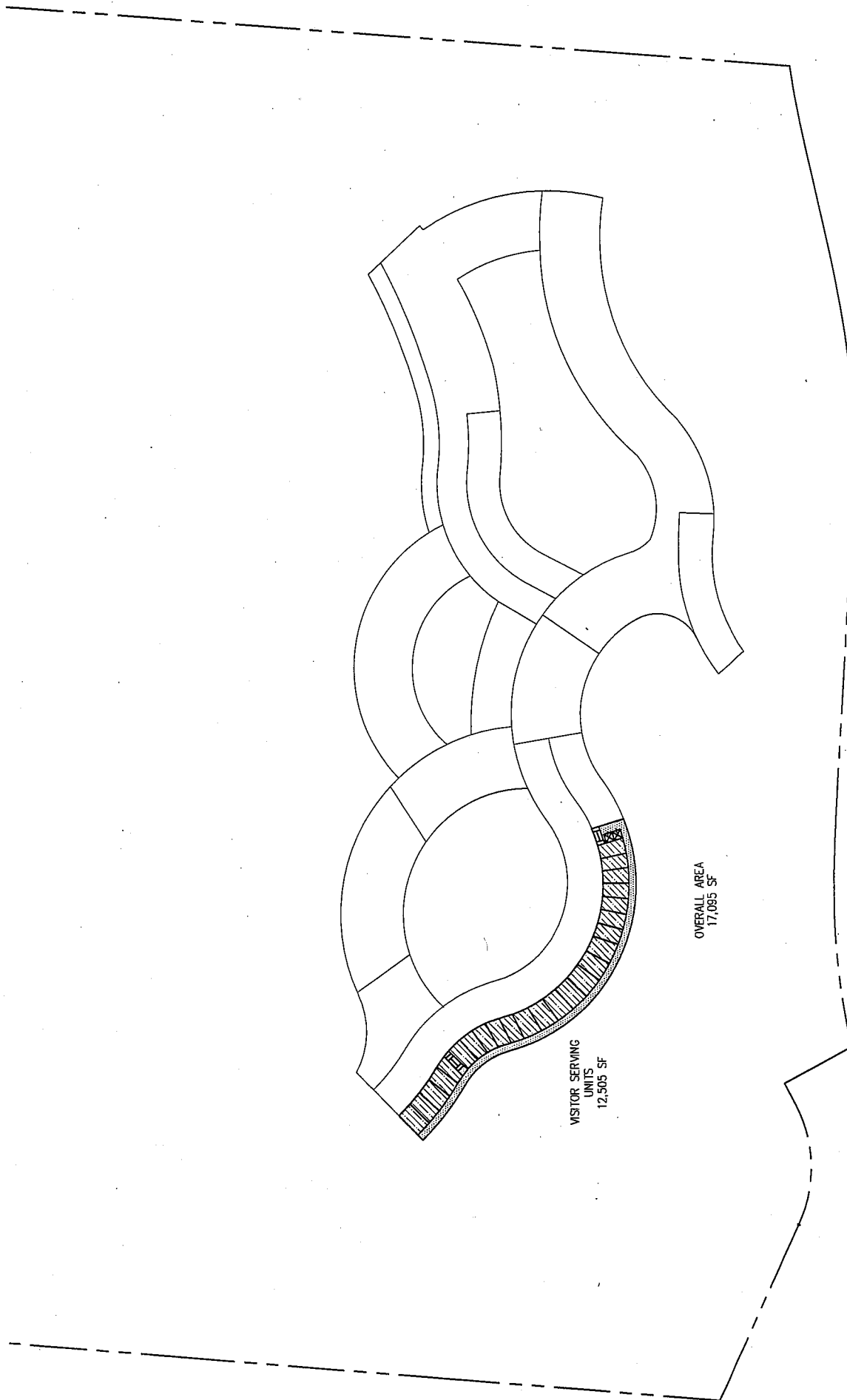


LEVEL +92 PLAN

WATG
Rev: 14/01/13
2013 October 16 A2-08

Monterey Bay Shores
Ecoresort, Wellness Spa, and Residences

Security National Guaranty, Inc.



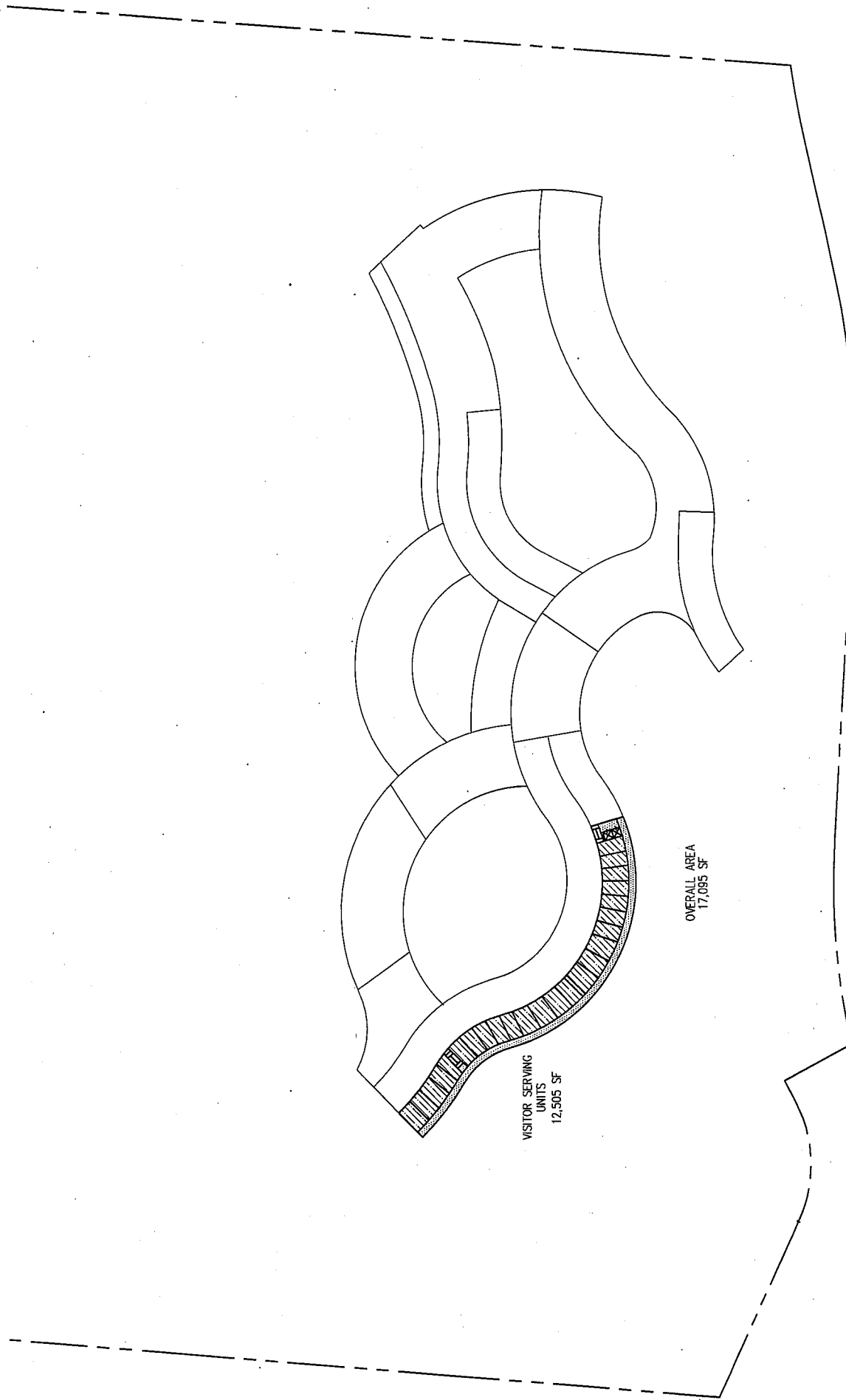
LEVEL +102 PLAN

WATG

Rev: 140715
2013 October 16 A2-09

Monterey Bay Shores
Ecoresort, Wellness Spa, and Residences

Security National Guaranty, Inc.

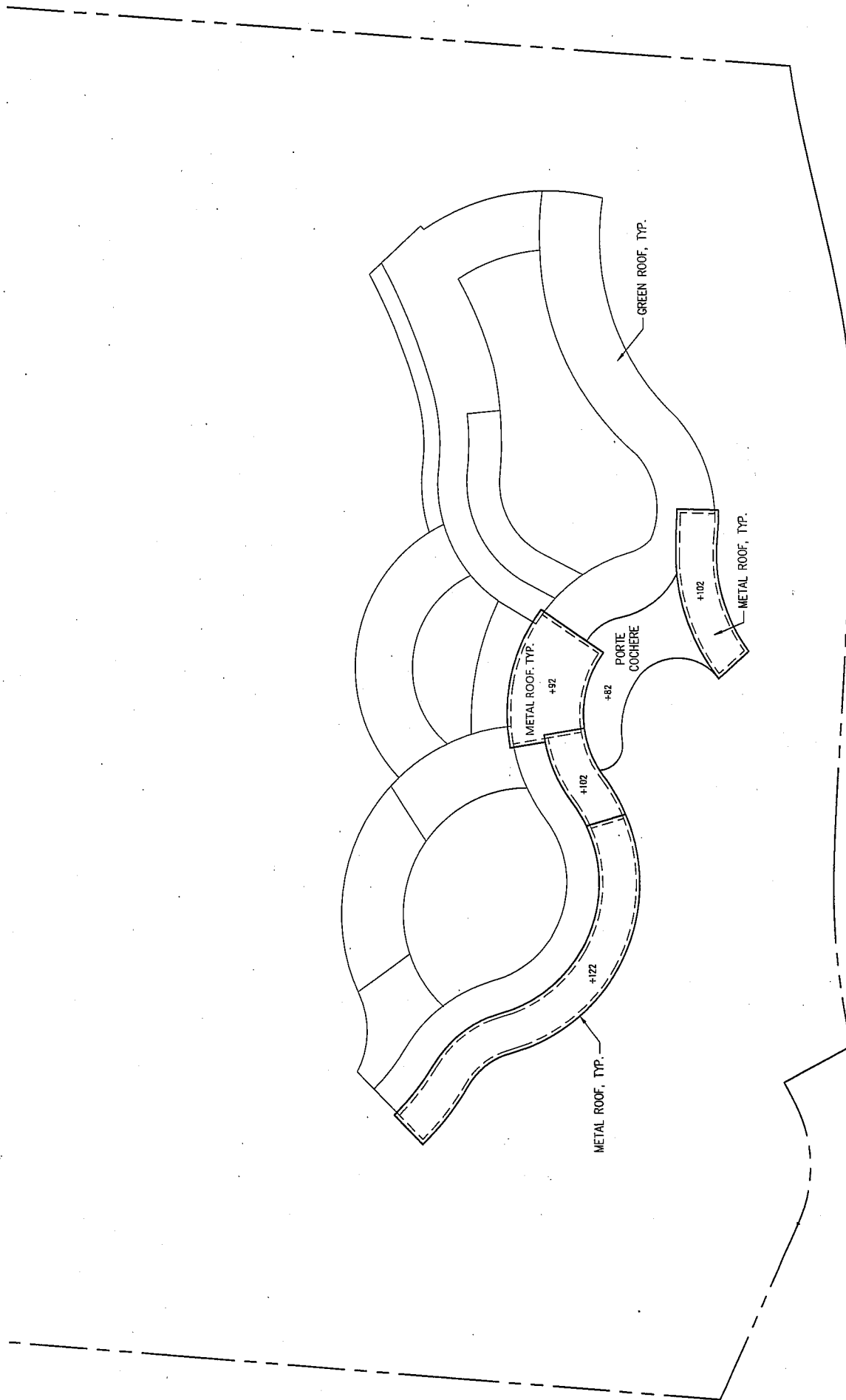


LEVEL +112 PLAN

WATG
 Rev. 14/07/15
 2013 October 16 A2-10

Monterey Bay Shores
 Ecoresort, Wellness Spa, and Residences

Security National Guaranty, Inc.



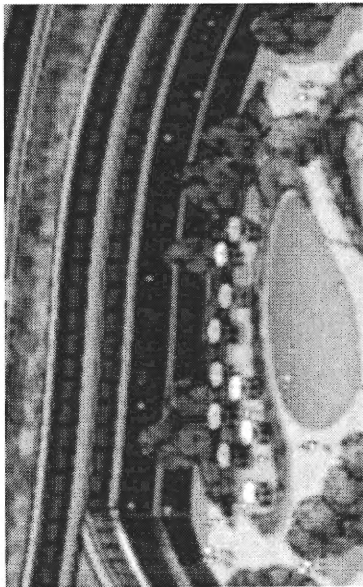
LEVEL +122 ROOF PLAN

WATG
 Rev: 14/07/15
 2013 October 16 A2-11

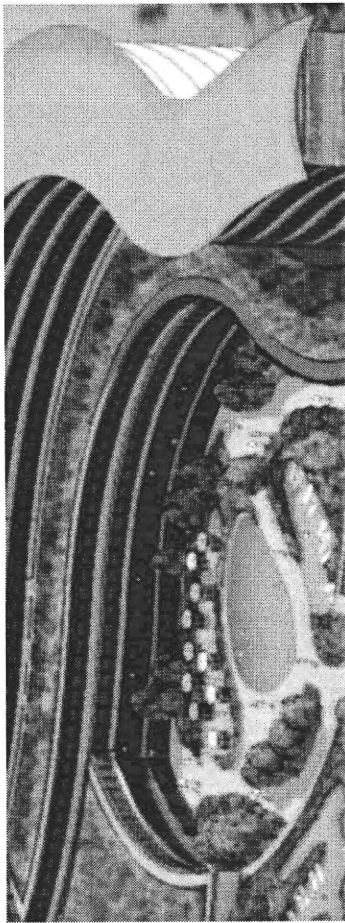
Monterey Bay Shores
 Ecoresort, Wellness Spa, and Residences

Security National Guaranty, Inc.

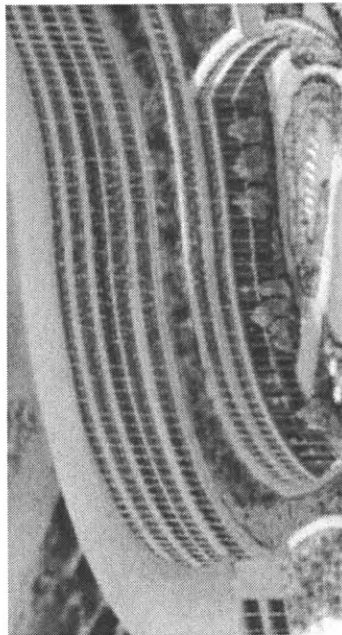
HOTEL ELEVATIONS & VIEWS



Hotel Rooms & Courtyard - East View



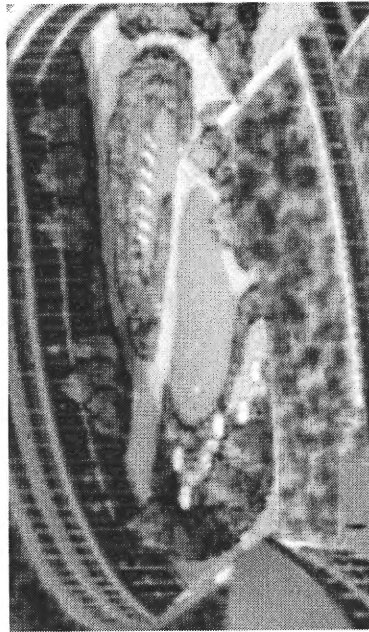
Hotel Rooms & Courtyard – South View



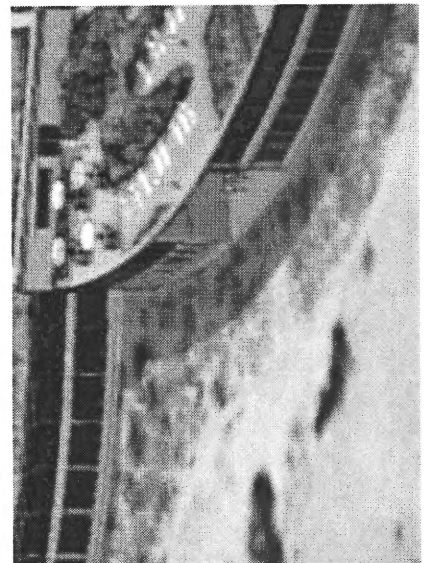
Visitor Serving Condo Hotel (top) & Hotel Rooms
 (Below) - South View Inside Courtyard



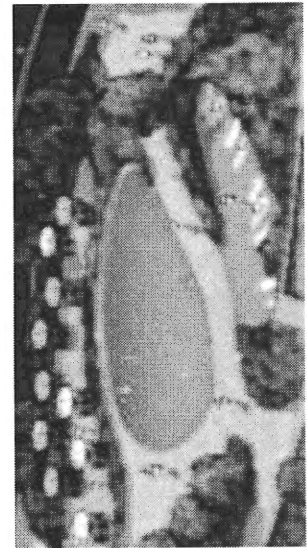
Resort Plaza Entry thru Tunnel



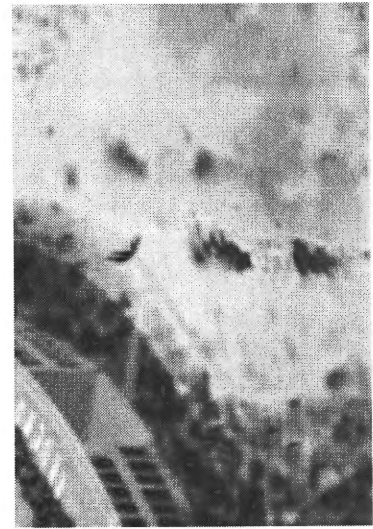
Hotel Courtyard with Lower Floors
 South View



Hotel Passthru to Beach – North View



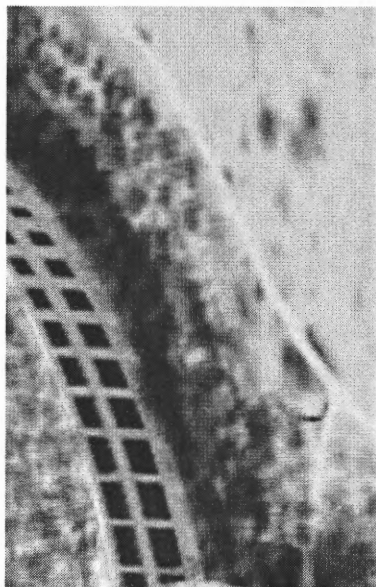
Pool in Hotel Courtyard



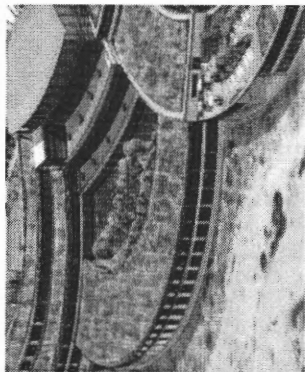
Hotel Passthru to Beach – South View

01/21/14

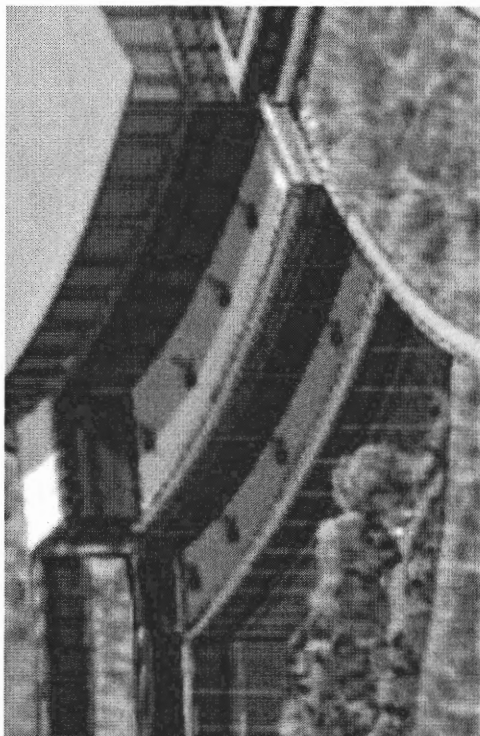
LOBBY BUILDING, HOLLISTIC SECTION & GREEN ROOFS ELEVATIONS & VIEWS



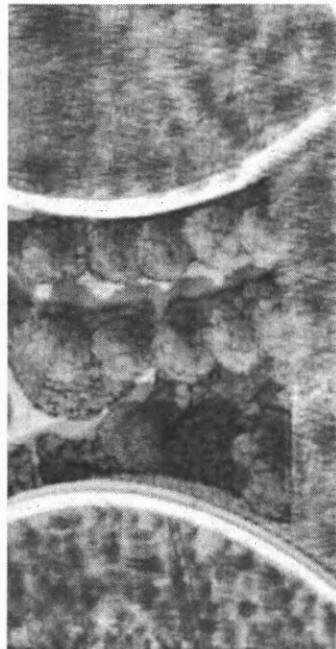
Seaward Hotel Rooms -Hollistic
Section – View South East



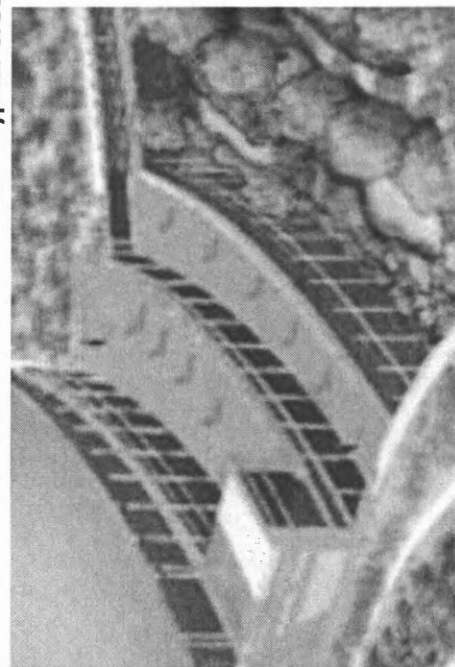
Hotel Hollistic and Lobby Restaurants
View North East



Lobby (top), Restaurants (middle) and
Conference Section (lower level)
View North East



Typical Green Roofs around Courtyard

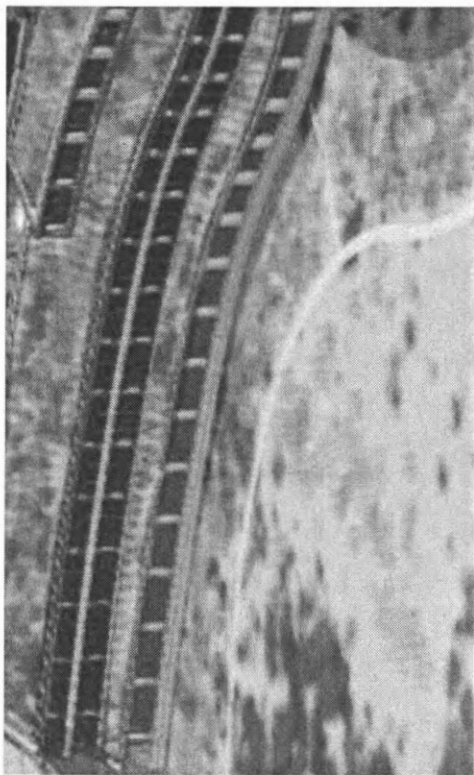


Lobby, Restaurants, Conference
Area And Hollistic Garden
View South

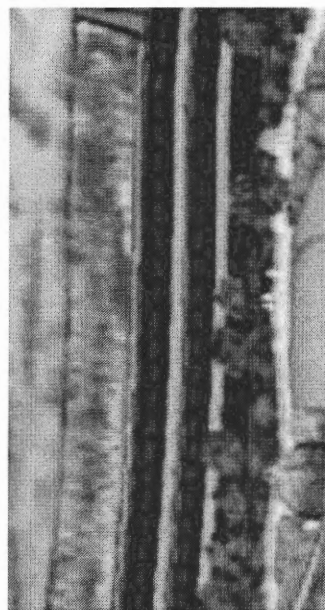


Hollistic Garden and Conference Area

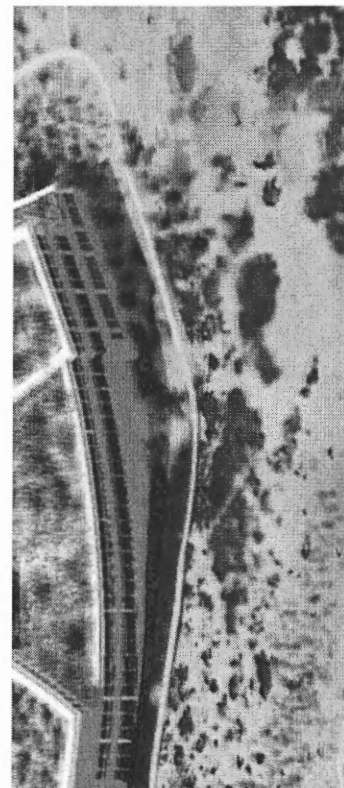
RESIDENTIAL CONDOMINIUMS ELEVATIONS AND VIEWS



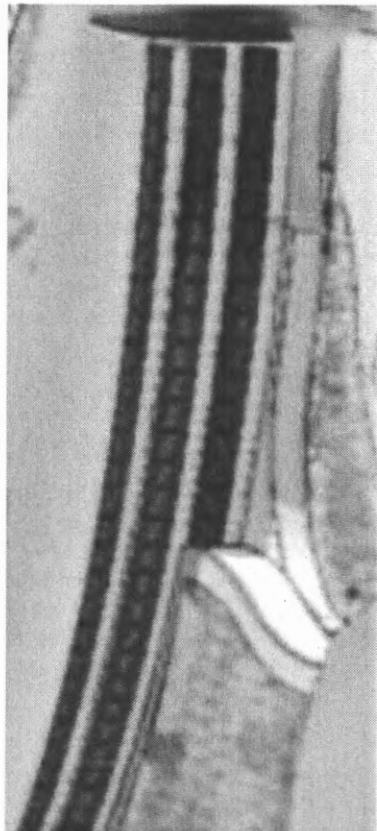
Seaward Residential Condominiums Building – North East View



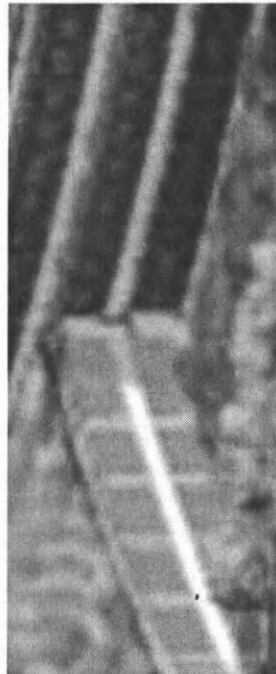
Courtyard Condominiums – View East



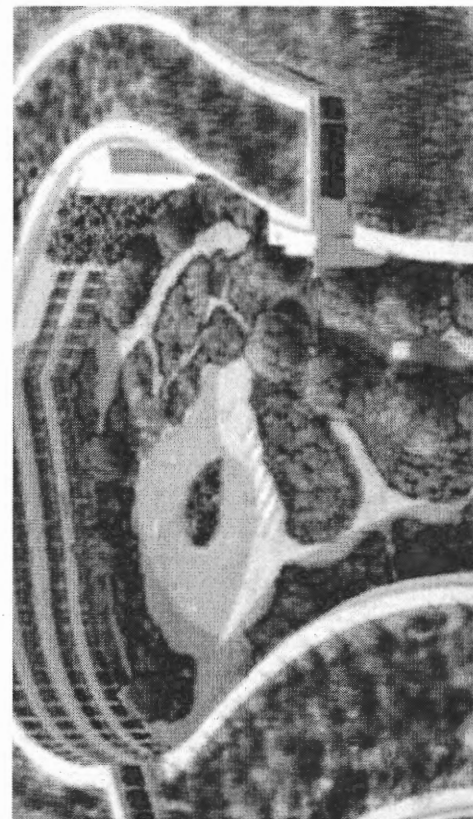
Northern Most Units and Fire Access - View South from Swale



Condominium Units around Plaza Resort Entry
View East



Condominium Units on North Courtyard- View North



Botanical Gardens & Pool Courtyard – Looking South



CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

APH 011-501-014
SECURITY NATIONAL GUARANTY INC.

MONTEREY BAY

①

APPROXIMATE MEAN HIGH
WATER MARK. CLV 2.0 ±.APPROXIMATE MEAN HIGH
WATER MARK, ELEV 2.0 ±.

LFM 011-501-013
CONTERO PENINSULA

2.6 ft/vr (1984-2004)

1 ft/vr (1940-2004)

6.4 ft/VF (1940-1984)

75 YEAR AT 2.6 FEET
PER YEAR SET BACK
LINE

PRELIMINARY
NOT FOR CONSTRUCTION

VESTING TENTATIVE MAP
MONTREY BAY SHORES

SESTOR ENGINEERS, INC.
CIVIL ENGINEERING - SURVEYING - LAND PLANNING
1701 BLUE LARKSPUR LAKE, MONTEREY, CALIFORNIA 93940



 AMERICAN MUSIC THERAPY ASSOCIATION
 1000 17th Street, NW, Suite 1000
 Washington, DC 20036-4001
 Phone: 202/331-9300
 Fax: 202/331-9301
 Email: info@amta.net
 Website: www.amta.net

Exhibit 9: 75 Year Setback Line
A-3-98-114 Settlement Agreement

CALIFORNIA COASTAL COMMISSION

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



18 March 2014

GEOTECHNICAL REVIEW MEMORANDUM

To: Michael Watson, Coastal Program Analyst
From: Mark Johnsson, Staff Geologist
Re: SNG Application (A-3-SNC-98-114)

The purpose of this memorandum is to address the nature and maximum extent of episodic erosion observed at the subject site in Sand City, California. Long-term average bluff retreat has been discussed in the “hazards” section of the staff report for this item, much of which I wrote, and all of which I have reviewed. For the purposes of this memorandum, episodic erosion will be defined as erosion taking place over a single winter storm cycle, and is distinguished from long-term erosion in that it represents short-term erosion events characterized by large absolute amounts of bluff retreat. Long-term erosion, on the other hand, represents the average bluff retreat over decadal time scales, incorporating both large retreat events and periods of little or no retreat between such events.

The project site lies entirely within the Monterey Bay Dune Field of Quaternary age. Although underlain at greater depths by sedimentary rocks and granite of the Salinian Block, borings to depths of up to 80 feet reported in Kleams and Raas (1987) encountered only dune sands. These dunes making up the uppermost portions of the dune field are young, active, and poorly consolidated. Older dunes containing paleosols and somewhat more consolidated sands underlie the younger deposits. The coastal bluff at the site is cut into both types of deposits, and reaches heights up to 80 feet.

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, particularly those correlating with El Niño events. Much less erosion occurs between these episodic events. Erosion and coastal bluff retreat associated with the 1982-1983 and 1997-1998 El Niño events are particularly well documented throughout Monterey Bay (see, for example, Griggs and Brown, 1998; Dingler and Reiss, 2002; Griggs et al. 2005).

Most studies of coastal erosion in southern Monterey Bay have focused on long-term bluff retreat, smoothing out episodic events in an attempt to define averages over long time scales. 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 subjects site. For example, Dingler and Reiss (2002) measured (by survey) 70 feet of bluff retreat between 1982 and 1998 (a 15 year period). Of that, 25 feet occurred between February and April of 1983

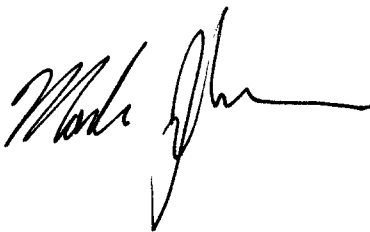
and over 30 feet occurred during the 1997-1998 El Niño winter, with only 15 feet occurring during the remaining 14 years (as quoted in Phillip Williams and Associates, 2008). Thornton et al. (2006) measured coastal erosion by the volume of sand eroded, and found that during the 1997-1998 El Niño 2.4 million cubic yards of dunes were eroded, a seven-fold increase over the average annual volume.

The best documentation of the amount of bluff retreat that might be expected during a severe El Niño event was reported in Quan et al. (2013). These authors, using ship-borne LIDAR, did surveys pre- and post- El Niño for the 1997-1998 event. They documented several erosion “hot spots” one to two miles north of the site of up to 15 m (49 feet) of bluff recession. Through repeated LIDAR surveys at other time intervals, they found that these “hot spots” tended to migrate with subsequent erosion events. Even though the amount of bluff retreat they measured at Sand City was only on the order of 7 m (23 feet) during the 1997-1998 El Niño, a principal conclusion to be drawn from their research is that the location of erosion hot spots moves throughout the area; erosion hot spots are not fixed in one or two locations and, there are no constraints that would prevent a future erosion hot spots from developing at the bluff fronting the proposed development. Indeed, the areas where the hotspots occurred during the 1997-1998 El Niño have generally the same geologic and wave characteristics as the proposed development site.

Thus, it is my opinion that episodic erosion of the bluffs adjacent to the proposed development may be expected to be subject to erosion of as much as 49 feet over a single winter storm season. This opinion is consistent with the estimate by HKA that as much as 50 feet of erosion could occur during a large winter storm season. These large episodic events contribute to, but do not replace the high annual erosion that has been observed to occur in Sand City; both types of retreat can expose the proposed development to future bluff instability.

I hope that this review is helpful. Please do not hesitate to contact me with any further questions.

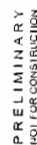
Sincerely,

A handwritten signature in black ink, appearing to read 'Mark Johnsson', with a stylized, flowing script.

Mark Johnsson, Ph.D., CEG, CHG
Staff Geologist

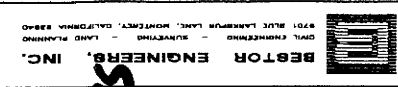
References Cited

- Dingler, J.R. and Reiss, T.E., 2002, Changes to Monterey Bay beaches from the end of the 1982-83 El Niño through the 1997-98 El Niño: *Marine Geology*, v. 181, p. 249-263.
- Griggs, G.B. and Brown, K.M., 1998, Erosion and shoreline damage along the central California coast: A comparison between the 1997-98 and 1982-83 ENSO winters: *Shore and Beach*, v. 1998, p. 18-23.
- Griggs, G., Patsch, K., and Savoy, L., 2005, *Living with the changing California coast*: Berkeley, California, University of California Press, 540 p.
- Kasunich (GE 455), J.E., and Foxx (CEG 1493), M., 2003, Coastal recession evaluation for coastline of Sand City, California: Watsonville, California, Haro, Kasunich and Associates, Inc., 17 p.
- Kleames, M.D., and Raas (CE 33459), S.M., 1987, Soil feasibility study for Monterey Dunes Beach Hotel, Seaside, California: Watsonville, California, M. Jacobs and Associates, 21 p.
- Phillip Williams and Associates, 2008, Coastal regional sediment management plan for southern Monterey Bay: San Francisco, Phillip Williams and Associates, 162 p.
- Quan, S., Kvitek, R.G., Smith, D.P., and Griggs, G.B., 2013, Using vessel-based LIDAR to quantify coastal erosion during El Niño and inter-El Niño periods in Monterey Bay, California: *Journal of Coastal Research*, v. 29, p. 555-565.
- Thornton, E.B., Sallenger, A., Conforto Sesto, J., Egley, L., McGee, T., and Parsons, R., 2006, Sand mining impacts on long-term dune erosion in southern Monterey Bay: *Marine Geology*, v. 229, p. 45-58.



DATE	10/27/2011
BY	W. J. WILSON
CHECKED BY	W. J. WILSON
SCALE	AS SHOWN
PROJECT	SECURITY NATIONAL GUARDIANITY INC.
NO.	3554 AC

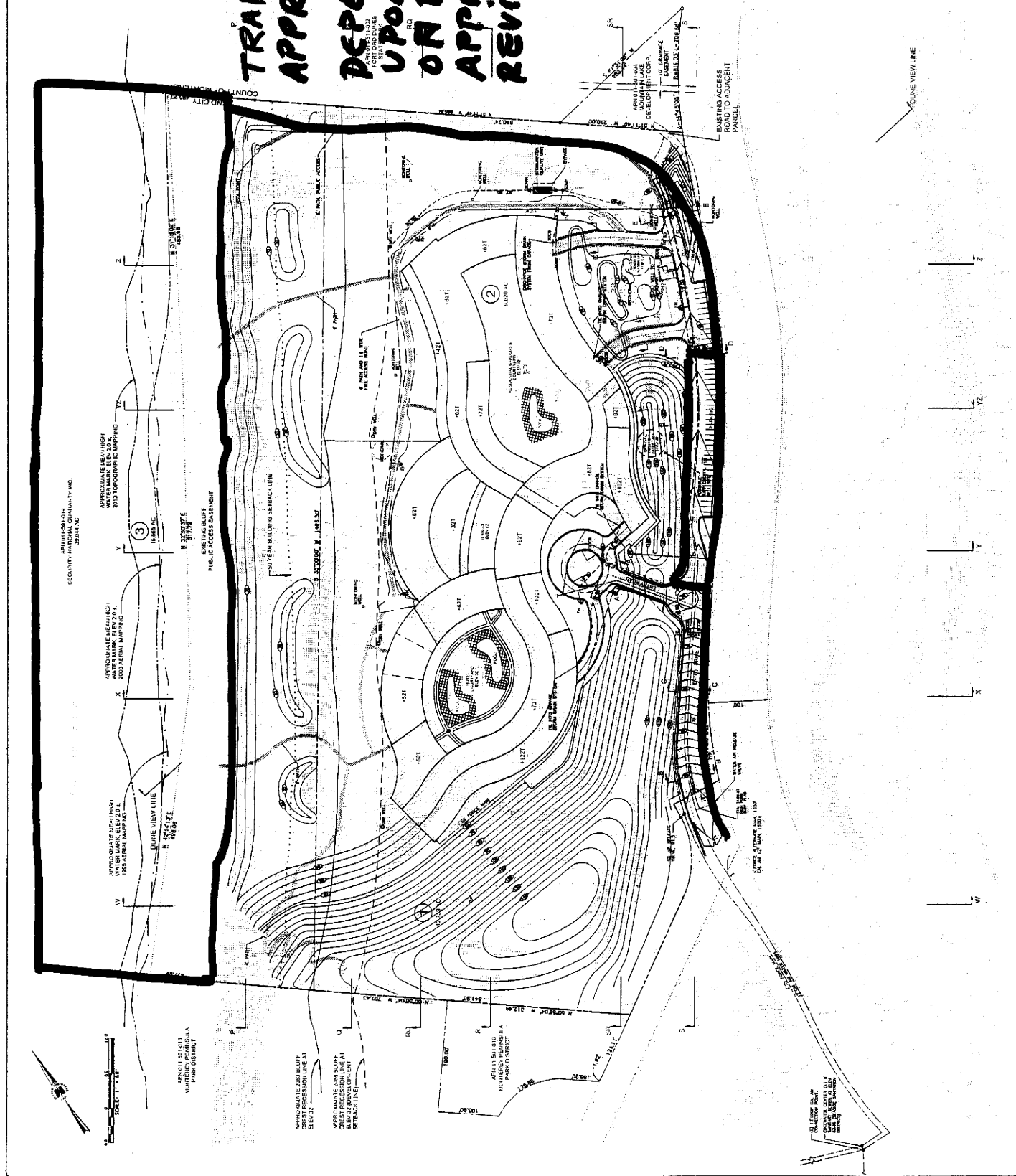
RESTOR ENGINEERS, INC.
 CIVIL ENGINEERING - SURVEYING - LAND PLANNING
 8701 BLUE LAKES DRIVE, MONTEREY, CALIFORNIA 93940
 (408) 255-1100
 FAX (408) 255-1101
 www.restor-engineers.com



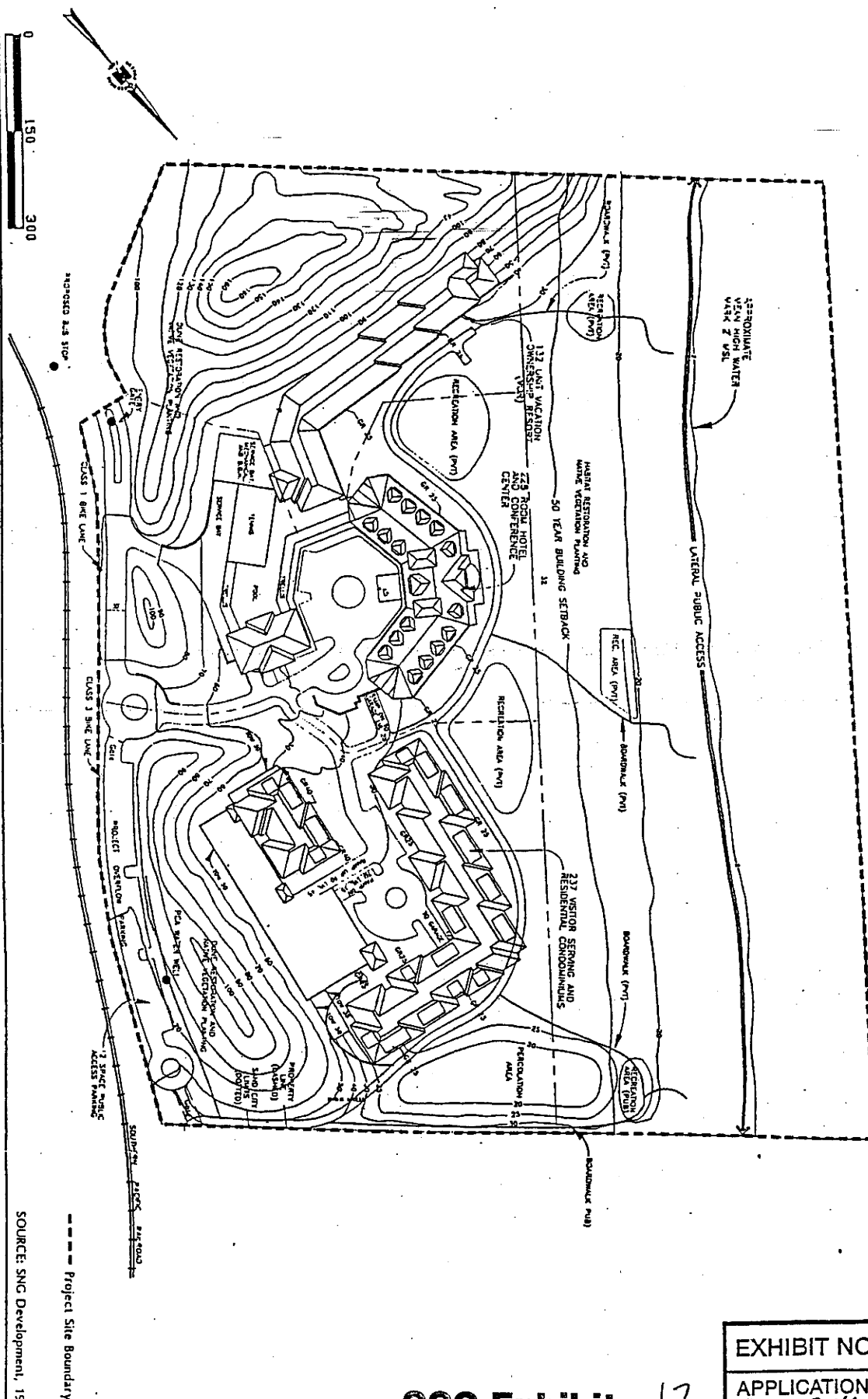
PROJECT	VESTING TENTATIVE MAP
DATE	APR 01-2014
BY	W. J. WILSON
CHECKED BY	W. J. WILSON
SCALE	AS SHOWN
PROJECT	SECURITY NATIONAL GUARDIANITY INC.
NO.	3554 AC

**TRAIL PORTIONS
 APPROXIMATE
 DEPENDENT
 UPON LOCATION
 OF FINAL
 APPROVED
 REVISED PLANS**

PRELIMINARY
 NOT FOR CONSTRUCTION



PROPOSED SITE PLAN AND FINISHED GRADE CONTOURS



SOURCE: SNC Development, 1997

FIGURE 7

CCC Exhibit 12
(page 2 of 4 pages)

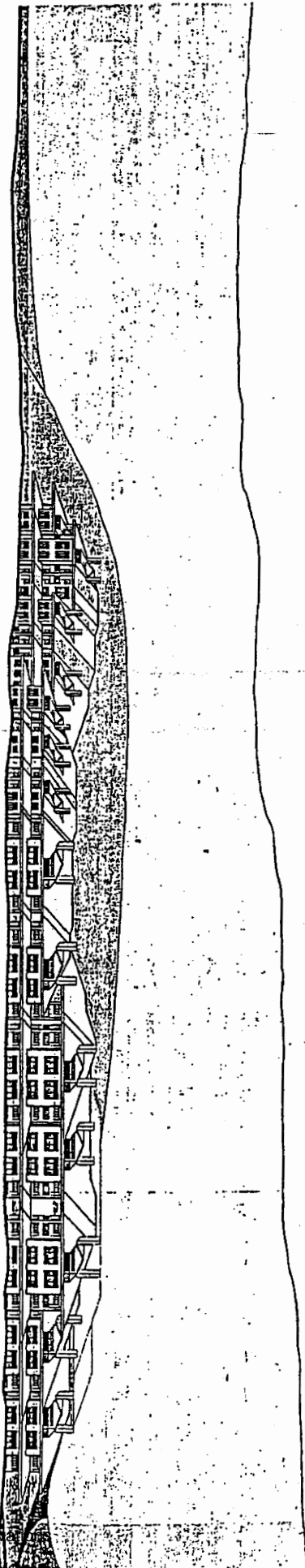
EXHIBIT NO. 6
APPLICATION NO. A-3-SNC-98-114
Proposed Finished

ALTERNATIVE C RESIDENTIAL CONDOMINIUMS - VIEW FROM BEACH PERPENDICULAR TO SHORELINE

FIGURE 46

*Northern portion of these
buildings must be lowered
by one story per City
Council's approval.*

SCALE
0 10 20 30 40 50 60 70 80 90 100
Feet



CCC Exhibit 12
(page 3 of 4 page

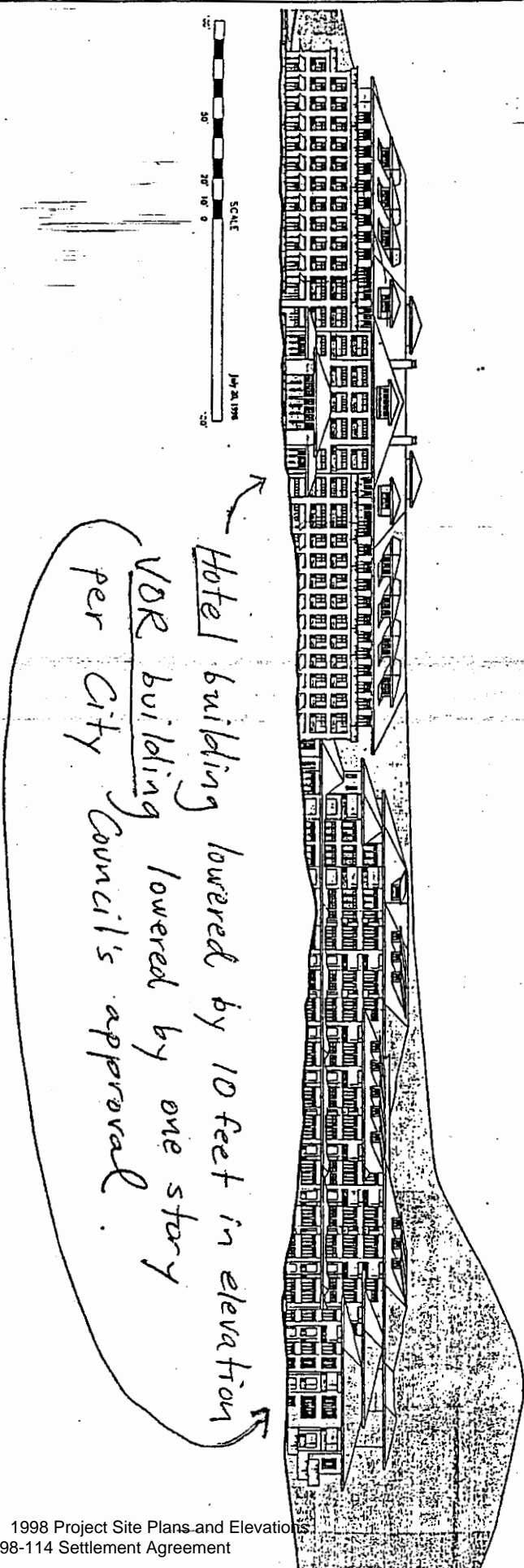
EXHIBIT NO. 11a

APPLICATION NO.
A-3-SNC-98-114

View of portion
of project from beach

ALTERNATIVE C HOTEL AND VOR BUILDINGS - VIEW PERPENDICULAR TO SHORELINE FROM BEACH

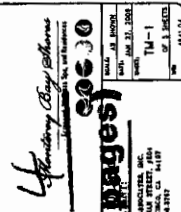
FIGURE 45



CCC Exhibit 12
(page 4 of 4) pag

EXHIBIT NO. 116
APPLICATION NO. A-3-SNC-98-114
View of portion of project shown

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

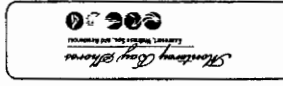


OWNER / DIRECTOR
SECURITY NATIONAL
2400 SOUTHWEST
AVENUE, SUITE 100
TEL. 416-874-3333

COURSE TABLE			SEMESTER	
	2013-14	2014-15	2014-15	2015-16
1	ENGL 101	ENGL 101	21-36	11-17
2	ENGL 102	ENGL 102	37-52	18-24
3	ENGL 103	ENGL 103	53-68	25-31
4	ENGL 104	ENGL 104	69-84	32-38
5	ENGL 105	ENGL 105	85-100	39-45
6	ENGL 106	ENGL 106	101-116	46-52
7	ENGL 107	ENGL 107	117-132	53-59
8	ENGL 108	ENGL 108	133-148	60-66
9	ENGL 109	ENGL 109	149-164	67-73
10	ENGL 110	ENGL 110	165-180	74-80
11	ENGL 111	ENGL 111	181-196	81-87
12	ENGL 112	ENGL 112	197-212	88-94
13	ENGL 113	ENGL 113	213-228	95-101
14	ENGL 114	ENGL 114	229-244	102-108
15	ENGL 115	ENGL 115	245-260	109-115
16	ENGL 116	ENGL 116	261-276	116-122
17	ENGL 117	ENGL 117	277-292	123-129
18	ENGL 118	ENGL 118	293-308	130-136
19	ENGL 119	ENGL 119	309-324	137-143
20	ENGL 120	ENGL 120	325-340	144-150
21	ENGL 121	ENGL 121	341-356	151-157
22	ENGL 122	ENGL 122	357-372	158-164
23	ENGL 123	ENGL 123	373-388	165-171
24	ENGL 124	ENGL 124	389-404	172-178
25	ENGL 125	ENGL 125	405-420	179-185
26	ENGL 126	ENGL 126	421-436	186-192
27	ENGL 127	ENGL 127	437-452	193-199
28	ENGL 128	ENGL 128	453-468	200-206
29	ENGL 129	ENGL 129	469-484	207-213
30	ENGL 130	ENGL 130	485-500	214-220
31	ENGL 131	ENGL 131	501-516	221-227
32	ENGL 132	ENGL 132	517-532	228-234
33	ENGL 133	ENGL 133	533-548	235-241
34	ENGL 134	ENGL 134	549-564	242-248
35	ENGL 135	ENGL 135	565-580	249-255
36	ENGL 136	ENGL 136	581-596	256-262
37	ENGL 137	ENGL 137	597-612	263-269
38	ENGL 138	ENGL 138	613-628	270-276
39	ENGL 139	ENGL 139	629-644	277-283
40	ENGL 140	ENGL 140	645-660	284-290
41	ENGL 141	ENGL 141	661-676	291-297
42	ENGL 142	ENGL 142	677-692	298-304
43	ENGL 143	ENGL 143	693-708	305-311
44	ENGL 144	ENGL 144	709-724	312-318
45	ENGL 145	ENGL 145	725-740	319-325
46	ENGL 146	ENGL 146	741-756	326-332
47	ENGL 147	ENGL 147	757-772	333-339
48	ENGL 148	ENGL 148	773-788	340-346
49	ENGL 149	ENGL 149	789-804	347-353
50	ENGL 150	ENGL 150	805-820	354-360
51	ENGL 151	ENGL 151	821-836	361-367
52	ENGL 152	ENGL 152	837-852	368-374
53	ENGL 153	ENGL 153	853-868	375-381
54	ENGL 154	ENGL 154	869-884	382-388
55	ENGL 155	ENGL 155	885-900	389-395
56	ENGL 156	ENGL 156	901-916	396-402
57	ENGL 157	ENGL 157	917-932	403-409
58	ENGL 158	ENGL 158	933-948	410-416
59	ENGL 159	ENGL 159	949-964	417-423
60	ENGL 160	ENGL 160	965-980	424-430
61	ENGL 161	ENGL 161	981-996	431-437
62	ENGL 162	ENGL 162	997-1012	438-444

Exhibit 13 2009 Project Site Plans & Elevations
A-3-SNC-98-114 Settlement Agreement
3 of 5

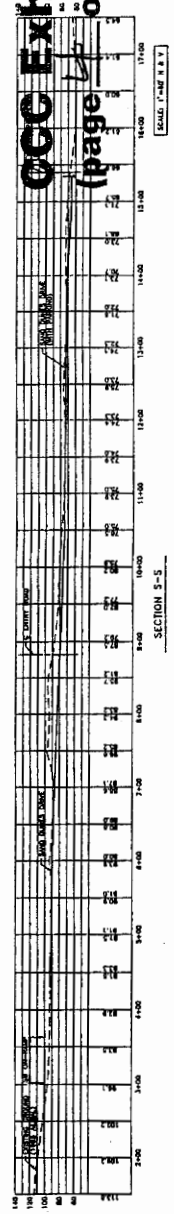
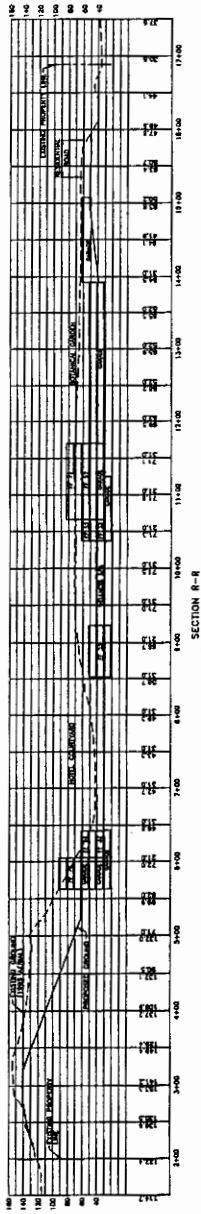
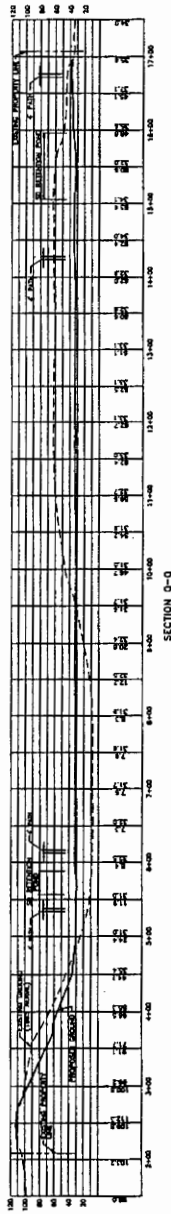
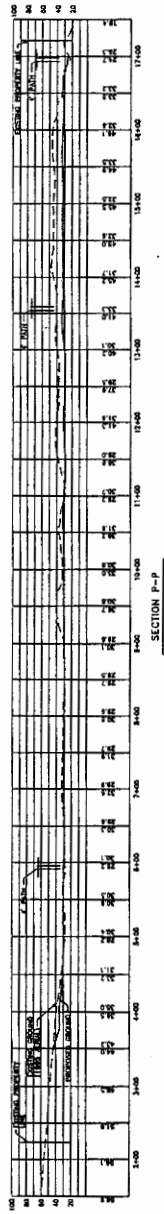
RECEIVED
JAN 30 2009
CALIFORNIA
COASTAL COMMISSION
CENTRAL BOARD AREA



BESTOR ENGINEERS, INC.
CIVIL ENGINEERING - SURVEYING - LAND PLANNING
1001 BLUE LAKES DRIVE, MONTEREY, CALIFORNIA 93940
TEL: 408.241.1100 FAX: 408.241.1101

PROJECT: TOWN AND RECREATION DEVELOPMENT
MONTEREY BAY SHORES
APN 011-301-014
SECTIONS

DATE: JAN 27, 2009
BY: J. S. BROWN
TIN-4
PRELIMINARY
NOT FOR CONSTRUCTION



4
CCC Exhibit
of 4 pages

APN 011-501-014
SECURITY NATIONAL GUARANTY INC.
39.044 AC

MONTEREY BAY

RECEIVED

JAN 30 2009

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

RESTOR ENGINEERS, INC.
CIVIL ENGINEERING • SURVEYING • LAND PLANNING
8701 BLUE LAKES DRIVE, MONTEREY, CALIFORNIA 93940
831.733.2341 831.666.4116 F. WWW.RESTOR.COM

②

16.665 AC

①

22.379 AC

HOTEL & AMENITIES
161 ROOMS

WELLNESS CENTER

VISITOR SERVING
RESIDENTIAL
46 UNITS - RENTAL POOL

VISITOR SERVING
RESIDENTIAL
42 UNITS - RENTAL POOL

RESIDENTIAL
CONDOMINIUMS
52 UNITS

PUBLIC TRAIL TO
BEACH AND VISTA
POINT

35
RETENTION POND

BEACH ACCESS
PUBLIC PARKING

MAIN ENTRY

PREPARED FOR: S&G DEVELOPMENT COMPANY
PROGRAM AREA SITE PLAN
MONTEREY BAY SHORES
APN 011-501-014
COUNTY OF MONTEREY, CALIFORNIA

Monterey Bay Shores
Resort, Wellness Spa, and Residences

SCALE 1" = 120'
DATE JAN 28, 2009
PAGE 1
PA-1
461104

Exhibit 13
PRELIMINARY
(page 1 of 11 pages)

A-3-SNC-98-114

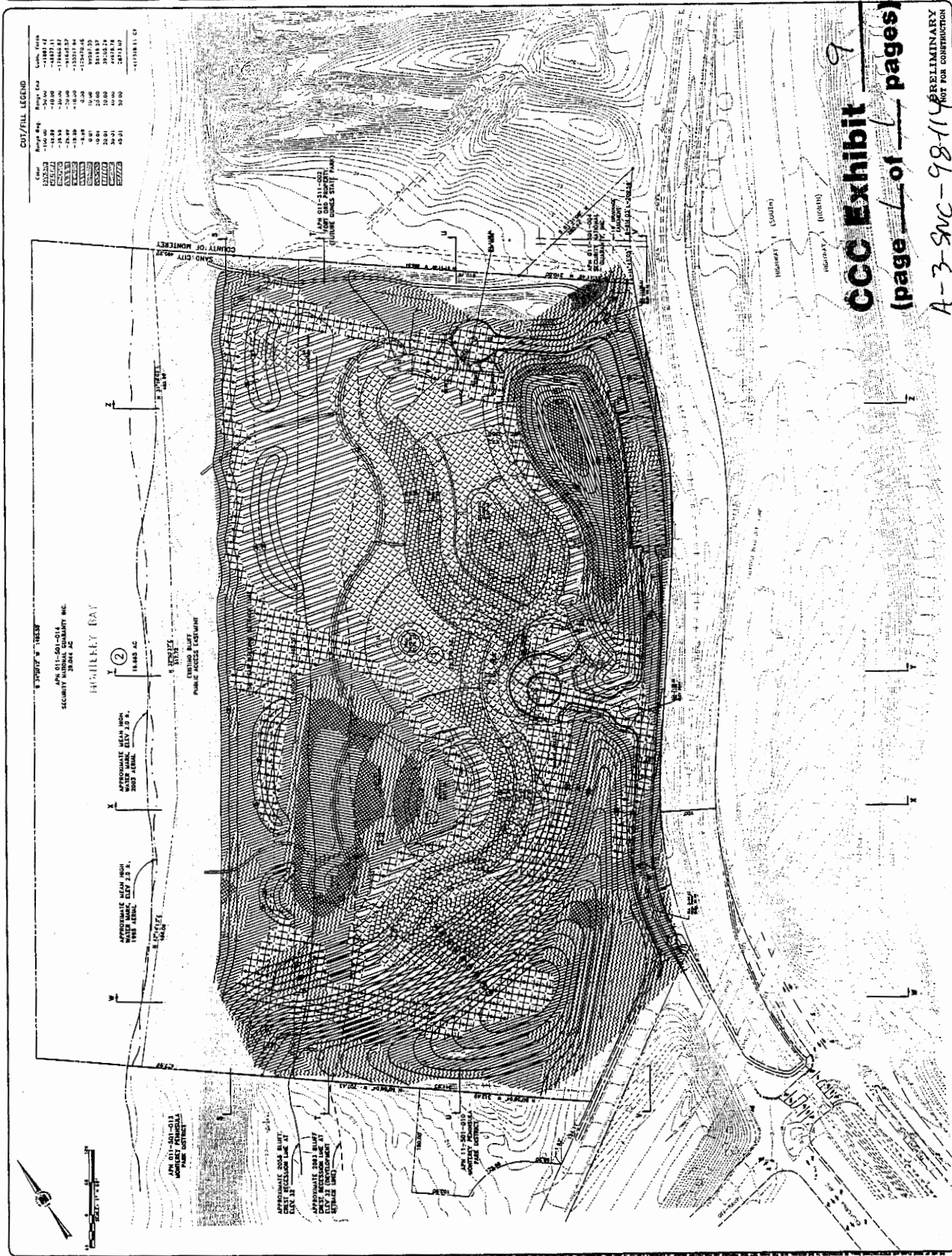
DATE	11/11/09
PROJECT	MONTEREY BAY SHORES
CLIENT	CCC
DESIGNER	BE&K ENGINEERS, INC.
CHECKED BY	W. J. JONES
DATE	11/11/09

BE&K ENGINEERS, INC.
 CIVIL ENGINEERING - SURVEYING - LAND PLANNING
 8701 BLUE LAKES DRIVE, MONTEREY, CALIFORNIA 93940

BE&K ENGINEERS, INC.
 CIVIL ENGINEERING - SURVEYING - LAND PLANNING
 8701 BLUE LAKES DRIVE, MONTEREY, CALIFORNIA 93940

CUT/FILL PLAN
 MONTEREY BAY SHORES
 APR 011-001-014

DATE	11/11/09
PROJECT	MONTEREY BAY SHORES
CLIENT	CCC
DESIGNER	BE&K ENGINEERS, INC.
CHECKED BY	W. J. JONES
DATE	11/11/09



CUT/FILL LEGEND

Range	Depth	Color
0.00 - 0.99	0.00 - 0.99	Light Blue
1.00 - 1.99	1.00 - 1.99	Medium Blue
2.00 - 2.99	2.00 - 2.99	Dark Blue
3.00 - 3.99	3.00 - 3.99	Very Dark Blue
4.00 - 4.99	4.00 - 4.99	Black
5.00 - 5.99	5.00 - 5.99	Black
6.00 - 6.99	6.00 - 6.99	Black
7.00 - 7.99	7.00 - 7.99	Black
8.00 - 8.99	8.00 - 8.99	Black
9.00 - 9.99	9.00 - 9.99	Black

CCC Exhibit 9
 (page 1 of 1 pages)
 A-3-SNC-98-114 PRELIMINARY
 NOT FOR CONSTRUCTION

SAND CITY COASTAL RECESSION EVALUATION

INTRODUCTION

This report evaluates coastal erosion processes, the resulting coastal bluff and dune recession rates, and beach scour along the coastline of Sand City, California. Sand City is located in southern Monterey Bay between Seaside and the former Fort Ord military base. Moffatt and Nichol Engineers performed a detailed Shore Erosion Study in 1989 which was accepted by the City Council of the City of Sand City on May 15, 1990 by Resolution SC-21. The purpose of that study was to provide information concerning shore erosion, the need for shore protection, and shore protection alternatives. Haro, Kasunich and Associates, Inc. (HKA) was hired in 2003 to review, validate, and update that study to include assessment of the position of development setbacks where no coastal protection would be needed for 50 years. Using HKA study's methodology and the grading plan for the site proposed for development, allows a site specific bluff edge position line (which can be used as a construction and development setback line) to be developed for the year 2053, at any given location. This setback line, developed using these techniques, shall be used for planning purposes only. Because of uncertainties that are inherent in the analysis and are beyond the control of HKA, no guarantee or warranty is possible that future recession will occur at the rate predicted. Greater or lesser erosion and recession may occur. This study should not be used in lieu of appropriate insurance coverage. The risk of damage to improvements from coastal erosion and/or recession will exist even if the improvements are setback as indicated by this method. The developers, owners and

occupants of the coastal improvements shall accept the risk of that damage, and HKA recommends that they should purchase appropriate insurance to mitigate the inherent risk.

In order to evaluate coastal erosion processes and estimate future coastal bluff recession rates at the property, HKA obtained and examined the following:

1. The December 1989 Moffat and Nichol Shore Erosion Study.
2. The 1933 U. S. Coast and Geodetic Survey map of the Monterey Harbor and vicinity.
3. January 10, 1940 aerial photographs.
4. October 5, 1976 aerial photographs.
5. A November 28, 1988 topographic map.
6. A 1991 topographic map (precise date unknown).
7. January 15, 2003 aerial photographs.

The pertinent areas of these maps and photographs were digitized and adjusted to be a uniform scale. The positions of various coastal geomorphic features were digitally drawn on each photograph. These included the shoreline, the inland edge of wet beach sand, the bottom of the dunes, and the dune scarps. In addition, selected cultural features on the maps and photographs were delineated, including roads, railroads and intersections. This allowed rotation, scaling, registration and overlays of all of the maps and photographs. A copy of the overlay, shown using the 1986 aerial

photo as a base, is entitled "Sand City Coastal Recession Map" which consists of Sheets 1 thru 4 (attached). A set of topographic maps and cross sections entitled "Sand City Shoreline Map and Cross Sections Showing Projected Future Recession" which consists of 5 Sheets is also attached.

ANALYSIS AND OBSERVATIONS

Analysis of the overlay and review of the historical maps and photographs reveals many things. The coastline has receded significantly landward since 1933. The 1933 USCGS map show a broad landward indentation in the bottom of the dunes where Roberts Creek crossed through the dunes and entered the ocean. This indentation is also evident on the 1947 USGS topographic map. The 1940 aerial photographs have extremely good resolution and clearly show the area as it existed before much sand mining, development and construction of the Highway 1 alignment took place. The 1976 aerial photographs show significant dune recession along this stretch of coastline. Substantial erosion and dune recession occurred during the severe 1983 coastal storms, which lowered beach elevations throughout the Monterey Bay area and caused substantial damage to structures along the coastline. This damage was from high wave run-up and from coastal erosion. The coastal erosion lowered beach elevations, allowing larger waves to break closer to the dunes and bluffs. Increased wave energy reached the base of the coastal bluffs and dunes, causing erosion that removed the sediments that form the bluffs and dunes and the waves transported the sediments into offshore locations. Sediment removal at the base of bluffs and dunes caused them to slump and slide seaward, resulting in recession of the bluffs and dunes landward.

These coastal processes commonly occur to some degree each winter, however they are much more severe during some winters than others. A combination of persistent ocean storms that lower beach elevations, followed by concurrent very high ocean swells during periods of high tides can cause substantial rapid bluff or dune recession. Because there is no exposed bedrock along the Sand City coastline, only cohesion-less dune sand and slightly cohesive soils, very rapid erosion is possible and does periodically occur.

In mid December 2002, very high ocean swells during periods of high tides occurred along the Sand City coastline. Just south of Sand City HKA observed a large "scour hole" associated with the formation of a large rip channel in the surf zone that formed directly in front of the down-coast end of the Monterey Beach Hotel. This scour hole deepened against the face of the Hotel seawall until the beach was at an elevation of 2.5 feet below Mean Sea Level against the wall. At nearly all tidal levels, the edge of Monterey Bay was against the seawall, and ocean waves were breaking there.

COASTAL RECESSION MEASUREMENTS

Because Sand City is located on an eroding coastline, the geologic, geotechnical and oceanographic environment at any selected fixed location is gradually becoming more hazardous with time. Property owners have taken erosion control measures along large sections of the coastline to retard the rate of coastal bluff and dune recession. These measures have included placement of quarry stone rip-rap, broken concrete rip-rap, and poured concrete slurry. These measures have been effective in retarding coastal bluff and dune recession, but do not appear to have affected the rate

of shoreline (Mean High Tide Line) recession yet. In areas without erosion control, the average long-term annual rates of shoreline recession and bluff and dune recession are always equal, assuming the bluff is composed of homogenous earth materials. Measurements of the 1933 USCGS map shoreline position and the 2003 wetted bound shoreline position were made. The measurements allow calculation of an average long-term annual rate of shoreline recession of 3.1 feet per year. Measurements of 1933 and 2003 coastal bluff and dune positions were made between Bay Avenue and Tioga Avenue at locations where grading, mining, and erosion control do not appear to have affected the bluff and dune recession rate, in order to calculate an average long-term annual rate of coastal bluff and dune recession. These calculations show that the shoreline and bluffs are receding landward along this section of coastline at an average long-term annual rate of approximately 2.4 feet per year (170 feet in 70 years), based on analysis of the position of the bottom of the dunes identified on the 1933 USCGS map and the 2003 aerial photographs. This rate correlates well with the calculated shoreline recession rate, (220 feet in 70 years), which includes the effects of the extreme short-term seasonal shoreline inland fluctuation from December 2002, but almost certainly includes an average shoreline position from 1933 (since average shorelines predominate in the non-rainy season and that is the likeliest time that the 1933 map was made). If similar shoreline positions could have been measured in 1933 and 2003, then the shoreline recession measured from 1933 to 2003 would probably be 50 feet less (170 feet in 70 years).

CESSATION OF SAND MINING

Examination of the 1988, 1991 and 2003 topographic maps was done to assess whether the relatively recent cessation of surf zone sand mining has slowed the rate of coastal erosion and recession. The 1988 topographic maps do not extend below an elevation of 10 feet above Mean Sea Level and have insufficient detail to be useful. The 1991 topographic map is detailed but does not extend down to the Mean High Tide Line, because it was based on photography taken at high tide. The exact date and time of year the 1991 map represents is unknown, so the beach elevation and beach width data thereon is of little use. The position of the contour that is 20 feet above Mean Sea Level on the 1991 and 2003 topographic maps was compared. The 2003 map showed that the contour varied from being in the identical position on the 1991 map to a position of 30 feet further inland. This indicated that a rate of bluff recession of zero to 2.5 feet per year occurred in the 12-year period from 1991 to 2003. This evidence is inconclusive with regard to the belief that the relatively recent cessation of surf zone sand mining has slowed the rate of coastal erosion and recession. The passage of additional time and future observations will be needed to confirm or negate that belief. Until then, it is appropriate for planning purposes, to utilize the calculated 1933 to 2003 bluff recession rates as an indicator of future recession rates, and not reduce them based on the hypotheses that recession rates will slow down in the future compared to the past. This strategy is conservative. Future re-evaluation of the bluff and dune recession rates from 1991 to 2011 may be done to assess whether a more liberal approach is warranted. The current California State Resources Agency regulatory strategy relocation or elimination of coastal development by planned retreat from the

bluff edge instead of building seawalls reinforces the need to be conservative in planning for future bluff recession.

FUTURE COASTAL EROSION AND BLUFF RECESSION

Because of the extreme susceptibility of the soils to erosion, a single severe ocean storm season has the potential to cause 50 feet of bluff recession anywhere on this section of coastline. Since the rip-rap was placed at the end of Tioga Avenue, and the concrete slurry was placed up-coast from there, approximately 70 feet of shoreline and bluff recession has occurred up-coast and down-coast from there. This historical erosion and bluff recession has caused these areas with erosion protection to, in effect, be located further seaward now than when they were constructed. Because of the "stored up" recession that has been prevented since the erosion control was done, accelerated recession will occur to re-establish an equilibrium position for the dune face and coastal bluff if the coastal protection material is removed.

As the beach profile translates landward due to horizontal recession of the shoreline and bluff, the elevation of the ground surface decreases with time at any given fixed reference point. This trend is masked by the large seasonal fluctuation in beach sand elevations and resultant beach width. The effect of this is that the average beach sand elevations as measured at the face of existing coastal protection structures become lower and lower from decade to decade. Seasonal variations in beach surface elevation, due to seasonal beach scour and accretion, are typically from 4 to 12 feet vertically up and down, depending upon wave climate conditions that year, the onshore-

offshore position on the beach profile where the measurements are taken, and the up-coast/down-coast position relative to rip channel or beach cusp formation. The future elevations of the beach, configurations of the beach and bathymetric profiles, and configurations of the bluff and dune faces will affect the limits of future wave run-up.

Analysis of coastal recession suggests that wintertime lateral access across the beaches in Sand City where erosion control structures now exist, or are built in the future, will become impeded by natural wintertime beach scour more frequently in the future. In the 2002-2003 winter, lateral access across the beach seaward of Tioga Avenue and in front of the concrete slurry structure up-coast from there was impossible without getting wet from wave run-up. The Mean High Tide Line was then along the face of these structures. Because the beach typically accretes, and the elevation of the beach rises in the summer, lateral access is now again usually possible in summer 2003 here, even though it was impeded in the prior winter. Future continuing coastal erosion will eventually make wintertime and summertime lateral access across the beach in front of these areas impossible without getting wet from wave run-up, unless these structures are removed.

The 1989 Moffatt and Nichol Shore Erosion Study was prepared partly for use as a hazard avoidance tool. Calculated future shoreline recession rates could be used to develop estimated future bluff and dune recession positions in the future. Sand City has selected a 50-year time frame for which to develop future bluff and dune recession positions. Once the future shoreline position is known, the beach and dune profile

landward of the shoreline can be estimated, based on the geomorphic and geotechnical characteristics at the site, and future bluff and dune recession positions can be estimated. Then a construction and development setback line can be developed based on the grading plan for the site proposed for development. Because natural coastal bluff faces and dune faces slope seaward, the lower in elevation finish grade at a development site is located, the less setback from the shoreline is required. Wave runup and coastal flooding hazards must be considered when designing the minimum finish grade elevation.

The 1989 Moffat and Nichol methodology for calculating future shoreline recession involved delineating historic shoreline positions by utilizing the wetted bound of the beach sand as a shoreline position marker. Aerial photographs from 1940 through 1988 and a 1988 topographic map were used in the study, and the position of the wetted bound was measured at 500 foot intervals. The study found that the greatest long-term erosion occurred between the late 1940's and the 1970's and averaged 7.5 to 8 feet per year. It also found that the erosion slowed to between zero and 4.5 feet per year between the 1970's and 1988, with the greatest erosion in north Sand City. The Moffatt and Nichol Study developed future shoreline position estimates considering sand mining, relative sea level rise, and extreme short-term beach fluctuations. Moffat and Nichol reduced the historical recession rates they measured by about 0.6 feet per year (32 feet in 50 years) when they did their calculations to estimate future shoreline positions. Moffat and Nichol proposed a methodology to establish future Mean High Water Line positions and indicated that Line should be used to define corresponding

future bluff crest positions based on site specific geologic conditions and proposed grading plans.

This current analysis, which incorporates 7 years of additional earlier data and 14 years of additional later data, indicates that slight modifications to the 1989 calculations are appropriate. The largest modification is that while Moffat and Nichol discounted the historical shoreline recession rates, because of the cessation of sand mining, and the widely held belief (in 1989) that sand mining was causing accelerated recession. Observation of recession since 1989 is ambiguous and inconclusive relative to now determining if cessation of sand mining has slowed down shoreline recession. The 2003 average annual shoreline recession rates indicated herein are based on the total historical shoreline and dune recession found since 1933. Improved digital electronic technology available for measurement and calculation of historical recession has allowed us to refine the historical shoreline recession rates.

DEVELOPMENT OF FUTURE BLUFF EDGE POSITIONS

AND CONSTRUCTION AND DEVELOPMENT SETBACK LINES

This study goes beyond the conclusions of the Moffatt and Nichol 1989 report, by estimating typical equilibrium beach and dune profiles landward of the shoreline, based on the geomorphic and geotechnical characteristics at the site, based on existing topography. A 2053 bluff edge position line (which can be used as a construction and development setback line) for the existing topographic conditions is shown. Using HKA study's methodology and the grading plan for the site proposed for development, allows

a site specific bluff edge position line (which can be used as a construction and development setback line) to be developed for the year 2053, at any given location. This setback line developed using these techniques shall be used for planning purposes only. Because of uncertainties that are inherent in the analysis and are beyond the control of HKA, no guarantee or warranty is possible that future recession will occur at the rate predicted. Greater or lesser erosion and recession may occur. This study should not be used in lieu of appropriate insurance coverage. The risk of damage to improvements from coastal erosion and/or recession will exist even if the improvements are setback as indicated by this method. The developers, owners and occupants of the coastal improvements shall accept the risk of that damage, and HKA recommends that they should purchase appropriate insurance to mitigate the inherent risk.

The methodology HKA used to develop site-specific bluff edge position lines (which can be used as a construction and development setback lines) for planning purposes is summarized as follows:

1. HKA obtained the 1933 U. S. Coast and Geodetic Survey map of the Monterey Harbor and vicinity, January 10, 1940 aerial photographs, October 5, 1976 aerial photographs, and January 15, 2003 aerial photographs.
2. The pertinent areas of these maps and photographs were digitized and adjusted to be a uniform scale.

3. The positions of various coastal geomorphic features were digitally drawn on each photograph. These included the shoreline, the inland edge of wet beach sand, the bottom of the dunes, and the dune scarps.

4. HKA has observed average seasonal fluctuations of shoreline positions in Sand City and southern Monterey Bay for 25 years. Seasonally, the average shoreline position varies 50 feet from extreme winter to summer conditions.

5. HKA made measurements between Bay Avenue and Tioga Avenue at locations where grading, mining, and erosion control do not appear to have affected the bluff and dune recession rate. Measurements indicate that the shoreline and bluffs are receding landward along this section of coastline at an average long-term annual rate of approximately 2.4 feet per year, based on analysis of the position of the bottom of the dunes identified on the 1933 USCGS map and the 2003 aerial photographs (170 feet in 70 years). This rate correlates well with measured 3.1 foot per year shoreline recession rates in this area (220 feet in 70 years), which include the effects of the extreme-short-term seasonal shoreline inland fluctuation from December 2002, but almost certainly includes an average shoreline position from 1933. If similar shoreline positions could have been measured in 1933 and 2003, then the shoreline recession measured from 1933 to 2003 would probably be 50 feet less (170 feet in 70 years).

6. HKA evaluated whether the existing coastal protection (rip-rap and poured concrete) along much of the Sand City coastline has retarded recession of the coastal bluffs. It is obvious it has done so.

7. HKA evaluated whether the existing coastal protection (rip-rap and poured concrete) along much of the Sand City coastline has retarded recession of the shoreline (MHTL). It does not appear to have done so, but appears that it will soon, as recession continues.

8. HKA examined 1988, 1991 and 2003 maps and aerial photographs and have observed the Sand City shoreline recession and dune recession from 1990 to 2003 to assess whether the relatively recent cessation of surf zone sand mining has slowed the rate of coastal erosion and recession. HKA found inconclusive evidence to support the belief that the relatively recent cessation of surf zone sand mining has slowed the rate of recent coastal erosion and recession and will slow the rate of future coastal erosion and recession.

9. HKA measured average beach widths and beach gradients landward of the Mean High Tide Line on the January 15, 2003 photogrammetric topographic maps prepared by Creegan D'Angelo Engineers. The average beach width was approximately 100 feet and the average beach gradient was 7:1 (H:V).

10. The Intergovernmental Panel on Climate Change has estimated that sea level rise during the next 50 years will be 0.6 feet greater than that in the past 50 years. Based on the Bruun rule technique, and assuming a H of 60 feet and a L of 720 feet, this will move the Mean High Tide Line about 7 feet landward, and results in 7 more feet of recession than has occurred per 50 years historically.

11. HKA considered Moffatt and Nichols conclusion that a Safety Factor is necessary to account for uncertainties inherent in future shoreline position estimates. For 50-year estimates, they selected 25 feet, which seems reasonable.

12. HKA examined and measured the long-term equilibrium slope gradients of the coastal bluff dune faces along the Sand City coastline. Buried paleosols exposed in portions of the dune face are cohesive and stand at steeper gradients (1:1 or steeper) than the cohesionless dune sands which stand at about 1.5 to 2:1 gradients. A conservative gradient for use in calculating future bluff crest positions is 2:1 (H:V).

13. To calculate future (2053) bluff crest recession line positions that conform to the 2003 HKA methodology, use the following procedure:

- A. Draw a profile perpendicular to the shoreline on the January 15, 2003, photogrammetric Topographic map prepared for Sand City by Creegan D'Angelo Engineers. Use H = V scaling on the profile. Use of this map negates the need to further consider the effects of extreme short-term seasonal fluctuations of the shoreline position.

- B. Locate the Mean High Tide Line (Mean High Water Level) on the January 15, 2003 based profile. For purposes of this procedure, the +2 foot elevation contour can be used as the MHTL.
- C. Establish a year 2053 MHTL position on the profile a distance of 152 feet (2.4 feet per year times 50 years plus 7 feet from additional increased future sea level rise plus a 25 foot safety factor) landward of the 2003 MHTL at elevation +2.
- D. Extend a 7:1 (H:V) beach slope 105 feet in horizontal length that rises landward to a point that will be the 2053 toe of dune/back of beach position, at elevation +9.5 MSL(NGVD).
- E. Extend a 2:1 (H:V) coastal bluff dune face rising landward from the point at the 2053 toe of dune/back of beach position upward to daylight at finish grade. The location where this daylights on the profile is the predicted 2053 bluff edge position.
- F. Because the 2:1 coastal bluff dune face slopes seaward, the lower the elevation that finish grade at a development site is located, the further seaward the bluff edge position will be. For illustration purposes, at a bluff top building site with finish grade at elevation 30, the 2053 bluff edge position will be 298 feet landward of the 2003 MHTL position. At a bluff top building site with finish grade at elevation 50, the 2053 bluff edge position will be 338 feet landward of the 2003 MHTL position.
- G. Wave runup and coastal flooding hazards must be considered when designing the minimum finish grade elevations. FEMA has designated a 24

foot NGVD (MSL) Base Flood Elevation for some portions of the Sand City shoreline. HKA did not confirm this BFE or calculate BFE's for the other portion of the Sand City shoreline as part of this study.

- H. Cross Sections F and G shown on the drawings that accompany this report are in the area where FEMA has designated a 24 foot NGVD (MSL) Base Flood Elevation. In order to illustrate how site grading may affect the 2053 bluff edge position, we have shown how the 2053 bluff edge position changes in cross section view and plan view at Sections F and G if grade is lowered by excavation and removal of soils to an elevation of 24 feet NGVD in the area where those cross section are located. Three attached figures show the effect grading has on the 2053 bluff edge position.

14. From an engineering perspective, coastal protection structures or beach nourishment could be used to retard coastal recession and control the position of the 2053 shoreline and bluff crest. Regulatory constraints from public agencies may prevent this. We understand that California Coastal Act requires that new development along the Sand City coastline be conditioned to remove any existing coastal protection there now. Therefore, for the purposes of this study, HKA did not consider any reduction in coastal recession rates that may occur from the current presence of this coastal protection. Because the future bluff edge recession rate estimations in this study are calculated based on shoreline (Mean High Tide Line) recession as a base line, and because the Mean High Tide Line position has not been affected by the existing coastal protection, removal of the coastal protection structures should not alter

the setback methodology outlined in this study. The distance of the construction and development setback lines from the bluff edge estimated by this study will typically be greater in areas of existing coastal protection than in areas without it.



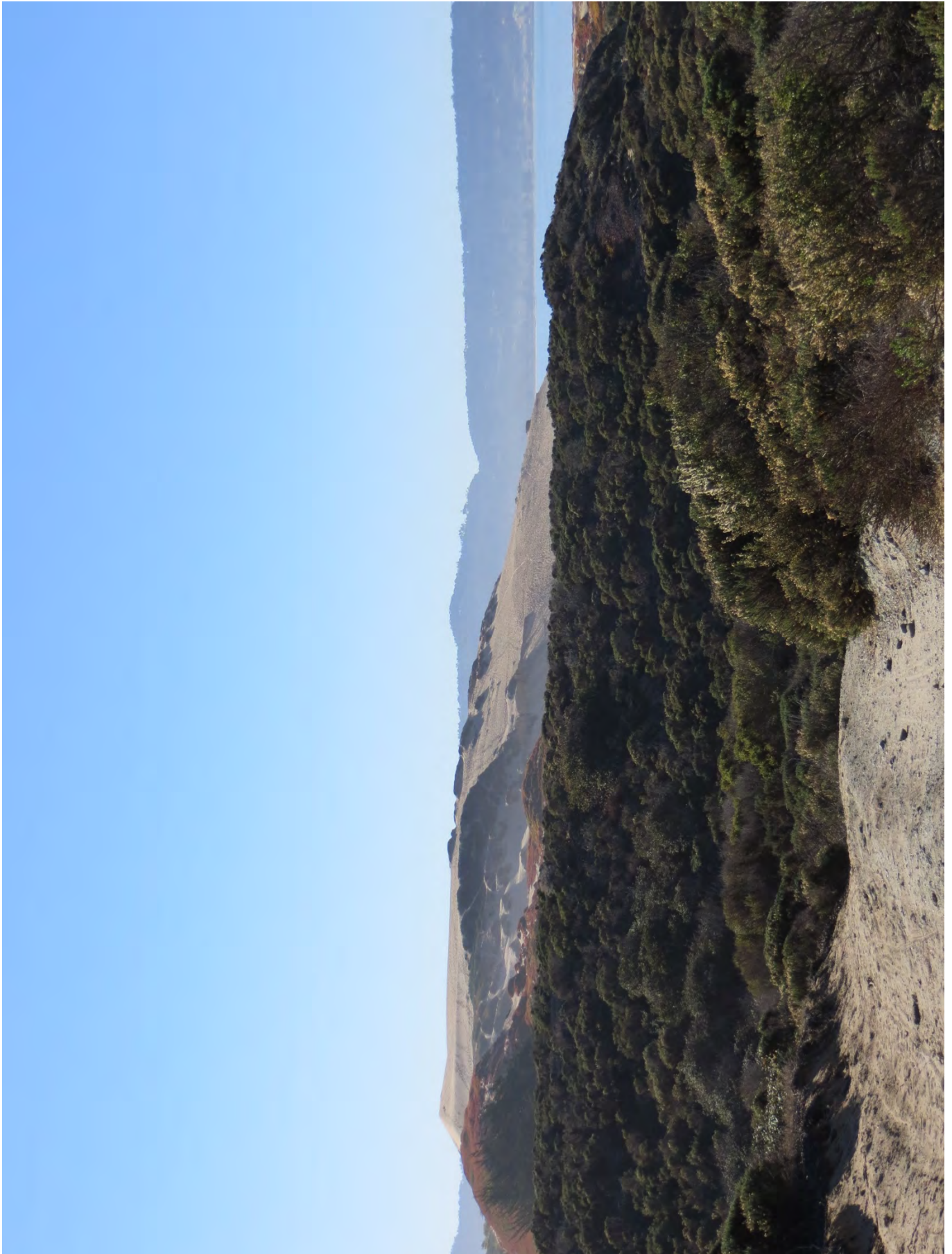
Southbound Views From State Highway 1

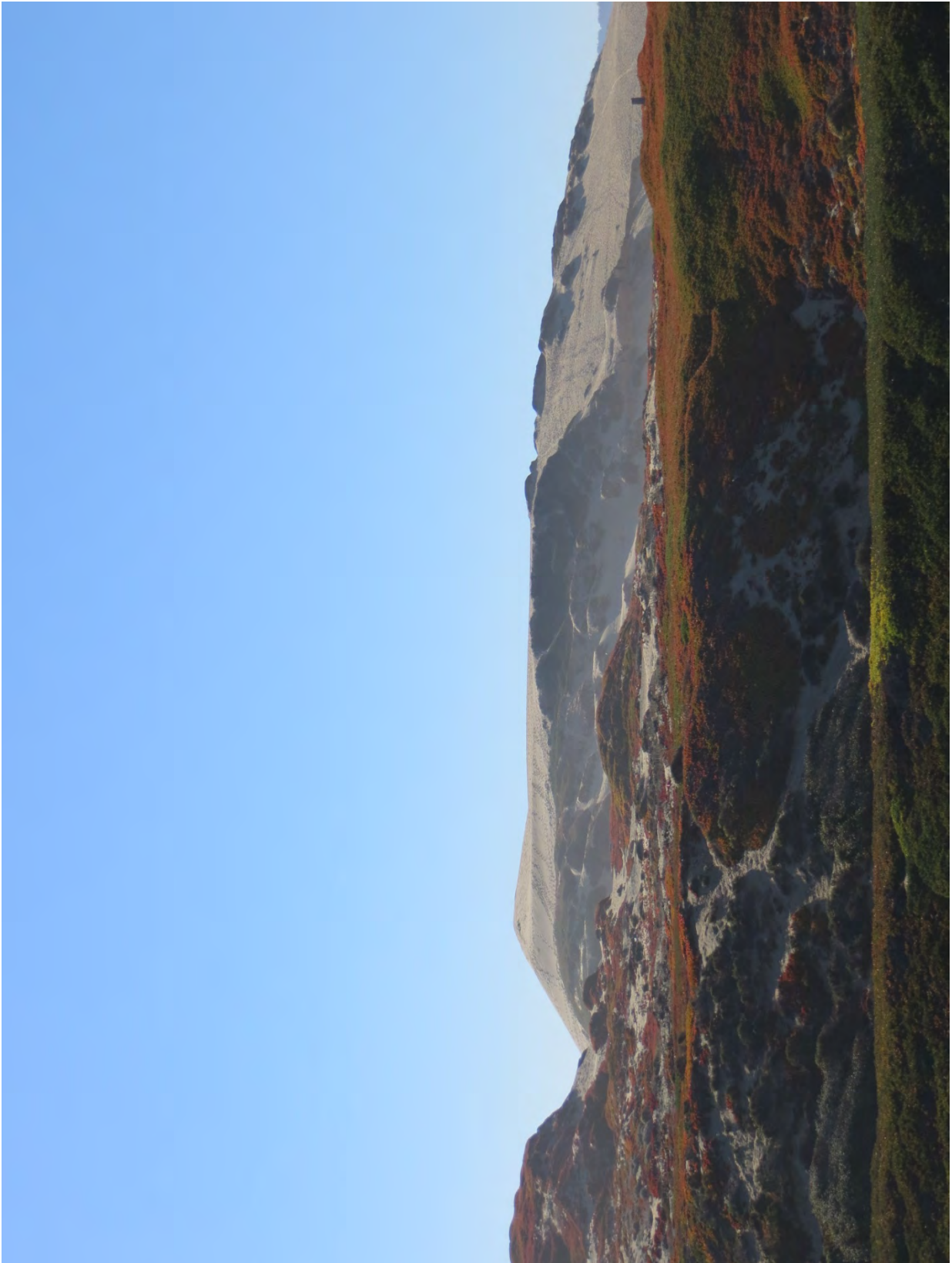




Northbound Views From
State Highway 1









SEASIDE COUNTY SANITATION DISTRICT

440 HARCOURT AVENUE * SEASIDE, CALIFORNIA 93955

Telephone (831) 899-6825 Fax (831) 899-6211

BOARD MEMBERS

Ralph Rubio

*City of Seaside
440 Harcourt Ave
Seaside, CA 93955
(831) 899-6825*

January 2, 2014

Jeff Cecilio

*City of Del Rey Oaks
650 Canyon Del Rey
Del Rey Oaks, CA 93940
(831) 394-8511*

Mr. Ed Ghandour

Security National Guarantee
505 Montgomery Street, Suite 1019
San Francisco, CA 94111
Via email:

David Pendergrass

*City of Sand City
1 Sylvan Park
Sand City, CA 93955
(831) 394-3054*

Subject: Sanitary Sewer Service to Monterey Bay Shores, a Proposed
Development in Sand City California, APN 011-501-014

DISTRICT STAFF

John Dunn

*District Manager
440 Harcourt Avenue
Seaside, CA 93955
(831) 899-6203*

Seaside County Sanitation District (SCSD) understands that you are requesting sanitary sewer service for a proposed development in Sand City at APN 011-501-014. The proposed development is within the SCSD service area and SCSD has the responsibility to provide sanitary sewer service within our service area. Therefore, SCSD will serve the proposed development.

Diana Ingersoll

*District Engineer
440 Harcourt Avenue
Seaside, CA 93955
(831) 899-6825*

Please note that an engineering analysis must be performed to evaluate any potential impacts to the sewer system performance by the proposed connection. The evaluation shall be performed by a professional engineer prior to entering into a service agreement. To attenuate potential impacts caused by the proposed development, the service agreement would require that the sewer system be upgraded where needed prior to connecting the new service. SCSD policy is for the project proponent to pay for the evaluation and any potential upgrades to the sewer system.

Patrick McGreal

*Legal Counsel
Office of the County Counsel
168 West Alisal Street
Third Floor
Salinas, CA 93901
(831) 755-5313*

Please contact Mr. Rick Riedl of my staff at (831) 899-6884 to discuss any questions or comments.

Sincerely,

A handwritten signature in blue ink that reads "Diana Ingersoll".

Diana Ingersoll, P.E.
District Engineer

Lesley Milton

*District Clerk
440 Harcourt Avenue
Seaside, CA 93955
(831) 899-6707*

C: Steve Matarazzo, City of Sand City
Rick Riedl, Associate Civil Engineer

Legend

Project Boundary



Coastal Strand



Coastal Scrub/Ice Plant Mix



Pioneer Dune Vegetation/
Ice Plant Mix



Ice Plant



Monterey Cypress Trees



Ruderal



Bare Sand



Open Water



Developed/Disturbed



Seacliff Buckwheat



Monterey Spineflower *
(Low Density, ~0-1 plants per
square meter)



Monterey Spineflower *
(Medium Density, ~2-4 plants
per square meter)



Monterey Spineflower *
(High Density, ~5+ plants per
square meter)



* 2008 Data



Source: Google Earth 2012

Figure 5

Vegetation Map

Monterey Bay Shores Habitat Protection Plan





Planning for Success.

HABITAT PROTECTION PLAN

MONTEREY BAY SHORES RESORT

Sand City, California

PREPARED FOR

Security National Guaranty (SNG)

October 2013

EMC PLANNING GROUP INC.
A LAND USE PLANNING & DESIGN FIRM

801 Lighthouse Avenue Suite C Monterey California 93940 Tel 831-649-1799 Fax 831-649-8399
www.emcplanning.com

Exhibit 20: Habitat Protection Plan
A-3-SNC-98-114 Settlement Agreement

MONTEREY BAY SHORES RESORT

Habitat Protection Plan

PREPARED FOR
Security National Guaranty (SNG)
Mr. Ed Ghandour
505 Montgomery Street, Suite 1150
San Francisco, CA 94111
Tel 415.874.3121

PREPARED BY
EMC Planning Group Inc.
301 Lighthouse Avenue, Suite C
Monterey, CA 93940
Tel 831.649.1799
Fax 831.649.8399
ilse@emcplanning.com
www.emcplanning.com

October 2013

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I.0

INTRODUCTION

I.1 PROJECT AND SITE CONDITIONS OVERVIEW

This Habitat Protection Plan (HPP) for the proposed Monterey Bay Shores resort has been prepared as a revised update to the 1997 version prepared by Zander Associates and the 2008 and 2011 versions prepared by EMC Planning Group. The HPP is being submitted to the California Coastal Commission as part of the coastal development permit (CDP) application. As part of that process, the Coastal Commission will impose conditions on the CDP. This HPP and the conditions to the CDP are intended to be read together. To the extent that there is a material conflict between this HPP and the CDP conditions imposed by the Coastal Commission, the CDP conditions shall prevail.

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

The HPP evaluates and establishes a plan to avoid take of animal species including the federally endangered Smith's blue butterfly (*Euphilotes enoptes smithi*), and the federally threatened western snowy plover (*Charadris alexandrinus*), and also seeks to minimize take and mitigate potential impacts to the federally threatened Monterey spineflower (*Chorizanthe pungens* var. *pungens*). It also seeks to create conditions that will enhance the survival and recovery of these species.

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

- Addendum to the Final Environmental Impact Report, Monterey Bay Shores Resort (City of Sand City 2008)

1.0 INTRODUCTION

- Final Environmental Impact Report, Monterey Bay Shores Resort (City of Sand City 1998)
- Final Environmental Impact Report for The Sands of Monterey (EIP 1990)
- Biotic Assessment, Monterey Bay Shores EIR Addendum, Sand City, California (Zander Associates 2008)
- Annual Western Snowy Plover Surveys and Reports, PRBO/Zander Associates 1994-2012
- Peer Review, Review of Mitigation Measures for Potential Impacts to the Western Snowy Plover; Proposed Monterey Bay Shores Eco-resort, Sand City, California (Wildlife Science International 2008)
- Peer Review, Monterey Bay Shores EIR Addendum, Sand City, CA (URS 2008)
- Monterey Bay Shores Botanical Survey Update Results (EMC Planning Group 2008)
- Monterey Bay Shores Botanical Survey Update Results (EMC Planning Group 2011)
- Monterey Bay Shores Botanical Survey Update Results (EMC Planning Group 2013)
- Landscaping Plan (Rana Creek 2013)
- Vesting Tentative Map, Monterey Bay Shores (Bestor Engineers 2013)
- Access, Signage, and Lighting Plan (EMC Planning Group, Inc. 2013)
- Excess Sand Disposition from the Monterey Bay Shores (Haro Kasunich 2013)
- Engineering Surveys of Site (Bestor Engineering 2013)

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

As explained in the 2008 Addendum to the Monterey Bay Shores Environmental Impact Report (EIR), since certification of the original EIR in 1998 there have been substantial changes in the project design, building layout and size; changes in the distribution of biological resources; and changes in the regulatory environment overseeing the protection of the special status species at issue. Since publication of the 2008 EIR, additional changes have been made to the project design, notably, reduction in bulk, mass and resort size as well as project footprint with a portion of the buildings underground affording more opportunity for restoration above ground. This HPP addresses potential impacts associated with the 2013 resort design (Bestor Engineers 2013).

1.1.1 Revisions to the 1998 Project Design

With respect to the project design, building layout and size, the revised project will be set back a substantially greater distance from the ocean than the original layout of the project. Thus, there will be a greater buffer between many of the construction activities and the lower beach, where migratory birds and snowy plovers are most likely to be located. The elimination of these significant construction and operational activities are part of a broad plan to eliminate significant impacts to potential plover habitat or breeding activity. The redesign of the project and landscape also specifically take into account the re-creation of types of habitat on or near the beach and strand that are more likely to attract plover nesting and activity. The redesign has also incorporated green roofs on most of the buildings which affords an opportunity for additional habitat restoration. In addition, the revised project has been designed specifically to avoid any take of any coast or seacliff buckwheat plants found near the northern boundary of the project site, thus preserving habitat for the Smith's blue butterfly.

1.1.2 Biological Surveys and Updates

Since 1998, there have been numerous additional biological surveys conducted on the project site to update the data on existing conditions. For example, in 2006, 2008 2011 and 2013, EMC Planning Group completed new vegetation mapping and in 2008 conducted surveys for Monterey spineflower and seacliff and coast buckwheat – host plants for the Smith's blue butterfly. The changes in the vegetation on site have been taken into account in preparing this HPP.

Beginning in 2005, the City of Sand City has co-sponsored annual systematic breeding season surveys of the Sand City coastline for the western snowy plover. These surveys were (and are) being conducted by *PRBO Conservation Science*, the consulting branch of the Point Reyes Bird Observatory (PRBO), under contract to Zander Associates. Nesting only sporadically occurs within the project boundary and is limited to the strand area adjacent to the ocean, outside of the proposed area of disturbance. In 2008, two nests were identified within the project boundary and were protected by symbolic fencing consisting of signed, roped-off areas. The two nests successfully hatched (PRBO 2008). In 2010, no nests were identified within the project boundary (PRBO 2010). In 2012, two nests were identified, protected by symbolic fencing, and successfully hatched (PRBO 2012). Biologists specializing in the habits of western snowy plover have documented that, since the mid-1990s, plover in the area have shifted and focused nesting preferences to the Moss Landing area, which is located about 16 miles to the north. Annual reports by PRBO have indicated a steady decline in nesting western snowy plovers in the north Monterey and Sand City shoreline area, including the project site lower beach area. For the overall area, PRBO reported a total of 13 plover nests in 1995, 7 nests in 1996, 4 nests in 1997, 4

nests in 1998, and 2 nests in 1999. In 2000, only one nest was reported, but the nesting attempt was unsuccessful (on the Fort Ord Dunes State Park property line). From 2000 to 2008, a maximum of one nest was observed in Sand City. In 2008 two nests were identified along the Sand City shoreline, one of which was on the lower beach of the northwestern corner of the project site, and one of which was located south of the project site. In 2010 no nests were reported and in 2012 two nests were reported. In contrast, plover-nesting activity has increased significantly at the Moss Landing Salt Ponds managed by PRBO in recent years. According to PRBO, “the former salt pods at the Moss Landing Wildlife Area have emerged as the most productive habitat for snowy plovers in the Monterey Region.” (Page 1999). Plover nesting also has been observed with higher frequency along the northerly shoreline boundary of former Fort Ord and the City of Marina.

1.1.3 Regulatory Setting

There have been several regulatory changes regarding the sensitive species previously identified on the project site. First, in September 2012, the U.S. Fish and Wildlife Service designated the site’s beach and a portion of the upper bluff(westerly), as well as all of the Sand City coastline and upper bluff within the Monterey critical habitat unit, as critical habitat designation for the western snowy plover. The upper bluff was added to allow replacement of lost lower beach due to potential future erosion. Recent surveys of the site (2013) show accretion on the site. Second, in December 2007, the U.S. Fish and Wildlife Service determined that the site should not be included in the final revised critical habitat designation for the Monterey spineflower. Third, in January 2008, the California Court of Appeal held that the Sand City Local Coastal Program Land Use Plan (LCP) does not deem the project site to be environmentally sensitive habitat area (ESHA) and that the Coastal Commission had exceeded its jurisdiction by declaring the site to be ESHA. (*Security National Guaranty, Inc. v. California Coastal Com.*, 159 Cal.App.4th 402.) The Court further held that in reviewing and approving a development project, a local government is not required to demonstrate that “the conclusions in the LCP still ‘relate to current conditions.’” The Court explained that requiring “a reexamination of basic land-use policy with every permit application would impose an unnecessary and wasteful burden on local governments.” Finally, the Court remanded the coastal development permit application to the Commission for rehearing, based solely on the standards in the existing LCP, i.e., with no ESHA on site. Fourth, in May 2013 the San Francisco Superior Court upheld the 2009 Ecoresort project previously rejected by the Coastal Commission as consistent for the most part with the Sand City Local Coastal Plan (LCP) and further determined that the Coastal Commission violated the 2008 Court of Appeal decision regarding ESHA by applying the functional equivalent to natural resources. In June 2013, the San Francisco Superior Court ordered the project remanded back to the Coastal Commission for a re-hearing on the Coastal Development Permit (CDP).

Therefore, in accordance with the existing, certified Sand City LCP, and the Court of Appeal decision, this HPP assumes that no ESHA exists on site.

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

1.2 PROJECT AREA DESCRIPTION

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

The beaches and dunes extending from the Salinas River to the mouth of the Monterey Harbor once formed an extensive complex that has been heavily affected by industrial use and development for decades. Sand mining, military use, and all have affected the continuity and integrity of this shoreline dune complex. In recent years, however, there has been a trend toward restoration and preservation of substantial portions of the remaining dune habitats and the sensitive species they support from the National Wildlife Refuge at the mouth of the Salinas River eight miles north of the site to Marina State Beach and the former Fort Ord. Sand City's redevelopment plan seeks to encourage restoration of the dunes as part of coastal development in two nodes of development, the Monterey Bay Shores site representing the largest development, with the rest of the coastal zone as open space. In 2013 the Redevelopment Authority of Sand City was eliminated, thus removing the Monterey Bay Shores from designation as a resort in a redevelopment area.

1.3 PROJECT DESCRIPTION

The proposed revised project includes the construction of a 368-unit mixed-use resort with a hotel, visitor serving condominiums (condominium hotel units) amenities and programs including a conference center, spa and a residential component designed to integrate development within the existing dune complex. A good portion of the resort in the northern

section is designed below or at existing grade stepping up as you move down-coast in order to protect coastal resources, including views, and enhance open space through green roofs and habitat restoration. Dune restoration on the east side of the property extends about two thirds up-coast on the property, with the main entry into the resort through a tunnel that enhances dune and habitat restoration opportunities. Lonestar Industries previously used the site for approximately 60 years for sand mining and the site remains in a degraded state. Minimal to no reclamation activities have occurred since the mine closure. The site encompasses a gross area of 39.04 acres, of which approximately 32 acres lie above the mean high tide line. The resort will include the following uses:

- A 184-room hotel located south of the central lobby building area;
- 92 visitor-serving condominium units (rental pool condo hotel) located south of the lobby building area enveloping a courtyard in the backside and above the hotel units;
- 92 residential condominium units located north of the lobby and a main program building enveloping a courtyard;
- A program facilities building including a reception/lobby, restaurant, retail and wellness spa;
- Auxiliary facilities including conference center, meeting rooms, theater and parking all located in the underground building at levels 22' and above;

Main access to the resort begins at the terminus of California Ave. at the main entry driveway and through a tunnel ending on the westerly side of a plaza in front of the lobby, with direct access to underground parking for both the hotel and residential units. Secondary access for service to the hotel and the residential condominiums in on the north easterly end of the resort below existing grade along with fire trucks access provided on the north end of the resort wrapping westward in front of the resort with a turnaround, all connecting to guest trails to the beach; and

- Open space, public access and surface parking on the easterly side, trails to the beach, vista point, and habitat and dune restoration areas.



Legend

 Project Boundary
  Sand City Limit Line
  Adjacent Parcels



0 1,000 feet

Source: Google Earth 2012, Monterey County GIS 2010

Figure 1
Site Vicinity



Monterey Bay Shores Habitat Protection Plan

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1.3.1 Grading and Site Preparation

The proposed revised project will require grading to recontour the site and stabilize and restore the dunes and will require the removal of 385,000 cubic yards. This represents a reduction of 50% compared with the sand removal requirements of the 1998 City-approved project and an additional reduction over the previous resort proposal. The excess sand has resulted from moving the project back to the 75 years/2.6-foot setback line (exceeding the requirements of the LCP), foredune grading in front of the habitable units, and the placement of the garages under the structures along with the underground building, in conformance with LCP policy encouraging underground parking. Disposal of excess sand would be accomplished in one of five ways:

1. Direct beach nourishment: Beach nourishment on the site consistent with the Association of Monterey Area Governments ("AMBAG") *Coastal Regional Sediment Management Plan* adopted 2008;
2. Indirect beach nourishment (stockpiling offsite): Provided or sold for projects identified in the *Coastal Regional Sediment Management Plan for Southern Monterey Bay* adopted by AMBAG and stockpiled in the interim;
3. Sold to contractors or upland users for construction projects at upland locations;
4. Sold or traded to CEMEX, the sand mining company located north of the project site; or
5. Trucked off-site to be disposed of in landfills.

Of the site's 32 acres above the mean high tide line, approximately 19.0 acres will be modified by grading, excavation, and recontouring, including rehabilitation, restoration and stabilization of the sand dunes impacted by historical sand mining. The beach area below 20 feet mean sea level (MSL) and the area along the northern property line set aside for buckwheat plant protection will not be subject to any grading, which will help avoid potential special-status species habitat in those areas. If the option to dispose of excess sand along the beach area is chosen, temporary disturbance to the beach area may occur during the construction period.

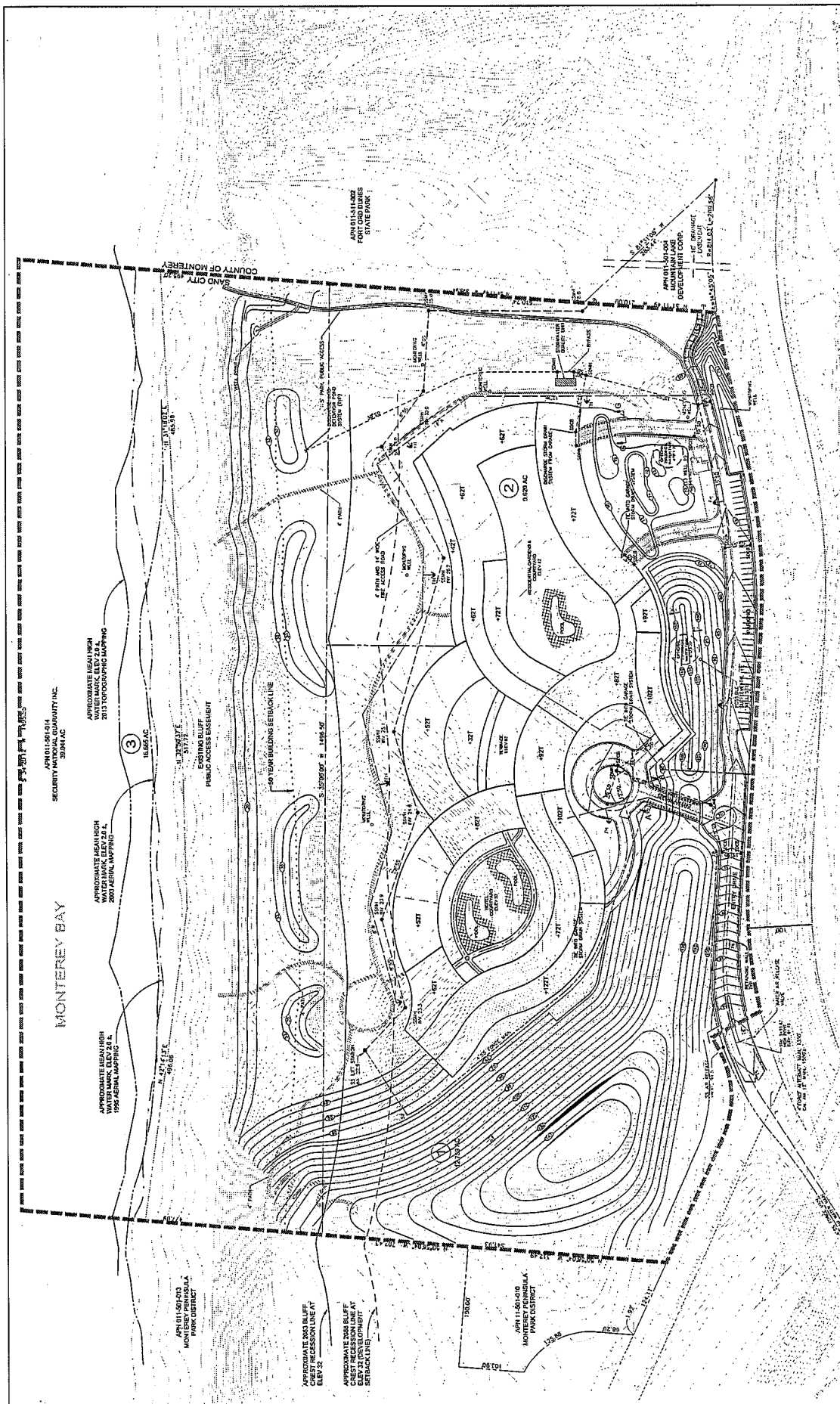
The remainder of the site will be recontoured for construction of the proposed buildings and infrastructure as shown in Figure 2, Site Plan, with a portion of the site surface restored above the underground buildings after completion of construction. Restored areas will include stabilized sand dunes and coastal habitat. At project completion, the maximum elevation on the site will be 160 feet above MSL at the southeast corner of the site, which will be recontoured for dune stabilization. The highest sand dune on the site currently is 161 feet MSL. Most existing dunes will be preserved with minor berming or minimal disturbance, other than what is needed for habitat restoration or stabilization of the dunes.

1.3.2 Project Design Objectives

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

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

The proposed development will be built "into the dunes", including the underground buildings, in order to mimic the dune environment, reduce the project's impacts to views of the site and of the Monterey Bay, and reduce noise impacts to the project, all of which are consistent with the policies of the LCP. Architectural forms are intended to conform to the topography, shore orientation, and scale of natural dune formations. The proposed hotel, resort, and condominium units all will be integrated into what appears as stepped buildings, starting with two and three stories in the west and cascading up the dunes going east as well as stepping up going south, with the bulk of the massing concentrated south towards the large dune area. The proposed buildings on the site will be constructed in a stepped fashion, beginning on the west side and stepping up into higher elevations to the east, to fit the dune topography and screen buildings (Figure 3, Proposed Building Cluster Design). The elevation of the main entry and reception area will be at 65 feet above MSL and will provide access both to the hotel and visitor serving condominiums portion on the south and the residential portion on the north of the building as well as to the

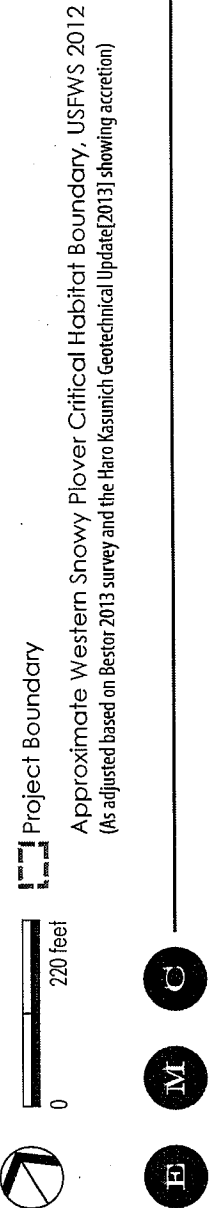


Source: Bestor Engineers 2013, USFWS 2012

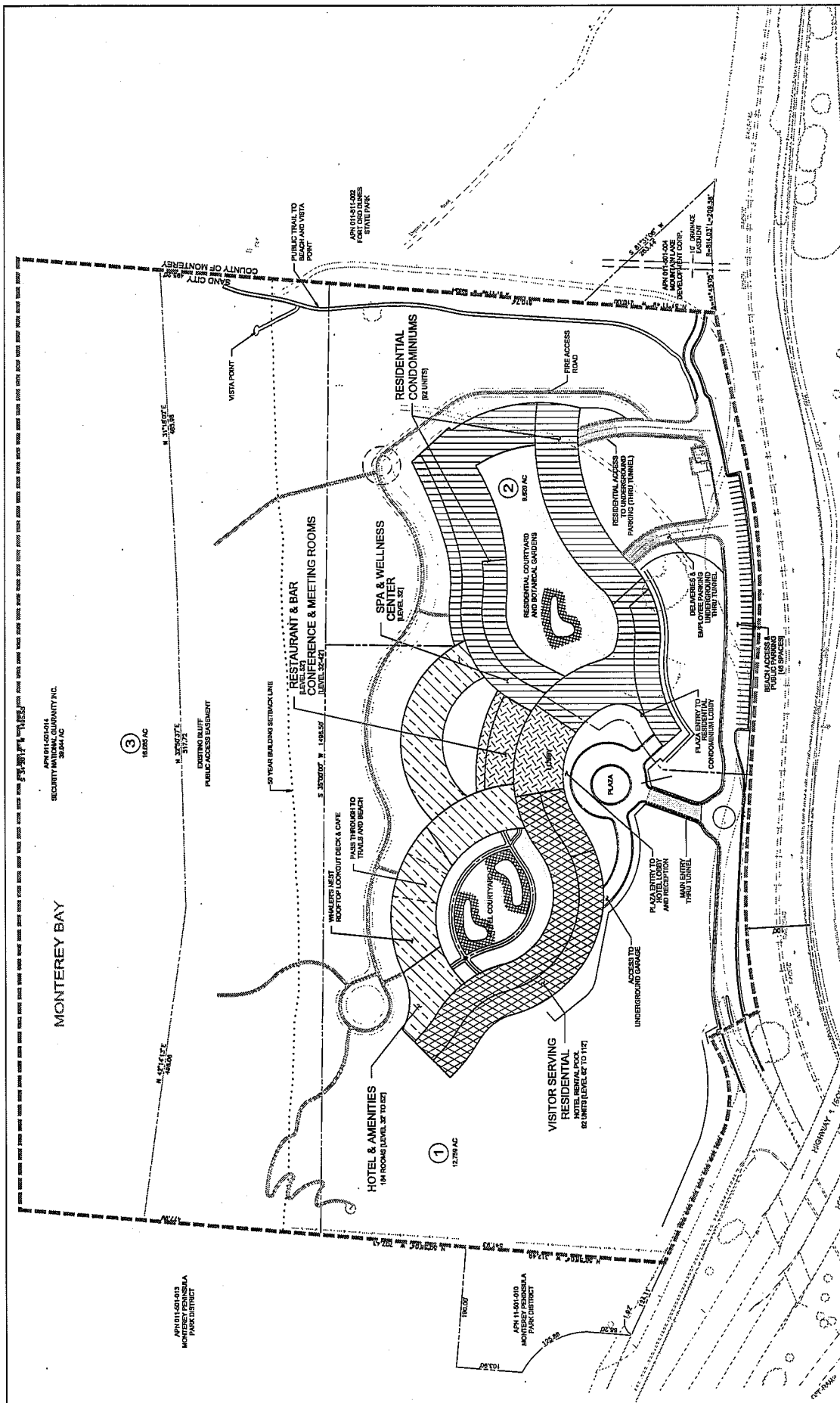
Figure 2

Site Plan

Monterey Bay Shores Habitat Protection Plan



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Source: Bestor Engineers 2013

Figure 3
Building Design

Monterey Bay Shores Habitat Protection Plan

1.0 INTRODUCTION

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conference area in the underground building. The highest building elevation will not exceed 122 feet above MSL. Most of the building roofs will be green roofs allowing for rain harvesting. The hotel units, visitor-serving residential units, and the underground facilities will be located on the southern end and central portion of the proposed buildings and the residential units will be located in the northern end. The main lobby/reception area and main program area building will separate the hotel/visitor serving units and the residential units, and steps down to an elevation of 32 feet. All of the buildings provide for vertical circulation, daylighting and ventilation towers.

Site Access and Parking

Vehicular access to the project site will be provided via an entry driveway with main access thru a tunnel to the lobby area. The main entrance to the proposed building will be located approximately 500 feet from the current terminus of California Avenue. The main entrance will provide access to the conference area and building lobby/reception and underground parking garages. Two secondary access roads used for delivery truck access, employee parking, residential condominium owners and fire-truck access to the beach in case of an emergency, will be provided on the north end of the project.

All proposed underground parking would be located behind and below the buildings in an underground garage. The parking garage will provide approximately 940 parking spaces for the proposed development. An additional 46 public parking spaces will be located along the entry drive on the northeast side of the project site. The revised project was designed to be consistent with the LCP, with roads and pathways that conform to the natural contours of the site. The revised project also provides maximum covered and underground parking, which fulfills the LCP policy of encouraging a layout that buffers parking from Monterey Bay.

Public Access

A public access easement is proposed on the easterly portion of the site along the entry. A public access pathway (10' wide), with a vista point, will be provided from the parking areas on the easterly side along the property line to the beach. Part of this access is a joint path road to service the well. Access ways are designed away from the large dune areas that are proposed for stabilization and/or habitat restoration. Pathways will be created to avoid and protect restored vegetation. A public easement will cover the entire beach area below the bluff top of 20 feet MSL to ensure lateral access along the coast on dry sand. Vertical access to the shore has been provided at three locations on the site to prevent crowding and overuse of coastal resources. Public access will be coordinated and controlled based on recommendations of a part-time biologist to avoid or minimize impacts to biological resources. A joint pedestrian and bike path is also proposed along the eastern property boundary adjacent to the public parking area, designed to connect with the regional bike path. The project proposes a public access easement

on the site that would connect the public parking area at the northeast corner of the site with the beach and vista point through a trail located along the northern side of the underground buildings. A 16.17-acre open space and/or conservation easement will surround the proposed buildings on the site. Visitors will be allowed within some areas of the conservation/open space easement associated with public access, subject to restrictions and signage needed to protect biological resources, as described herein.

Utilities and Infrastructure

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

The revised project will use cutting-edge energy demand-reducing technologies in order to reduce overall energy use, decrease fossil fuel use, and decrease the project's carbon footprint. The revised project proposes to capture stormwater for on-site use and allow infiltration on the site. The revised project includes cisterns and two retention ponds, one located on the northwest portion of the site and one located on the east portion of the site adjacent to the main entry driveway. Storm drainage lines ranging from 12 inches to 24 inches will be located throughout the site. Since the project is designed to avoid stormwater runoff, the project will not connect with off-site storm drainage lines and will not discharge stormwater from the site. These storm drainage lines instead will be directed to the on-site retention ponds and cisterns.

2.0

EXISTING CONDITIONS AND EXPECTED IMPACTS

2.1 EXISTING CONDITIONS

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

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

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

Thomas Reid Associates, EIP Associates, and EMC Planning Group, Inc. completed focused surveys for sensitive plant species in 1987, 1988, 2008, and 2011, and vegetation mapping was conducted in 1997 by Zander Associates and in 2006, 2011 and 2013 by EMC Planning Group.

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

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

All of the previous studies characterized the habitat on the Monterey Bay Shores property as highly disturbed, consisting of areas of bare sand or non-native iceplant, and generally devoid of any native plant communities, as shown on Figure 4, Aerial Photograph. Notwithstanding the site's degraded condition, portions of the site have served as actual or potential habitat for the Smith's blue butterfly, western snowy plover and Monterey spineflower. Surveys for the California black legless lizard, Monterey ceanothus and sandmat manzanita yielded negative results. The vegetation types described in the following sections are based in part on past work but have been updated as a result of more recent surveys conducted by Zander Associates in February 1995 and March and May 1997, and by EMC Planning Group Inc. in 2006, 2008, 2011 and 2013.

2.1.1 Vegetation Types

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

The following vegetation types and wildlife habitats are found on the Monterey Bay Shores site: 1) coastal strand/submerged land; 2) pioneer dune vegetation; 3) coastal scrub/iceplant mix; 4) iceplant dominated; 5) ruderal/disturbed; and 6) bare sand. These vegetation and habitat types are discussed below. The distribution of each of these types on the site is mapped on Figure 5, Vegetation Map, which was prepared in 2006 and updated in 2011 and 2013. This map was created based on an aerial photograph taken in 2013 and verified in the field.

Coastal Strand/Submerged Land

The Monterey Bay Shores property includes approximately 11 acres of area west from the coastal bluffs. While about 2.3 acres of this area is beach and coastal strand, the majority of the area (7.1 acres) is located in the Pacific Ocean, below the mean high water mark elevation. The beach and coastal strand area consists primarily of bare sand with scattered pockets of sea rocket



Source: Google Earth 2012

Figure 4

Aerial Photograph

Monterey Bay Shores Habitat Protection Plan



0 275 feet

Project Boundary

C













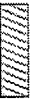

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2.0 EXISTING CONDITIONS AND EXPECTED IMPACTS

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Legend

-  Project Boundary
-  Coastal Strand
-  Coastal Scrub/Ice Plant Mix
-  Pioneer Dune Vegetation/
Ice Plant Mix
-  Ice Plant
-  Monterey Cypress Trees
-  Ruderal
-  Bare Sand
-  Open Water
-  Developed/Disturbed
-  Seacliff Buckwheat
-  Monterey Spineflower*
(Low Density, ~0-1 plants per
square meter)
-  Monterey Spineflower*
(Medium Density, ~2-4 plants
per square meter)
-  Monterey Spineflower*
(High Density, ~5+ plants per
square meter)

* 2008 Data



Source: Google Earth 2012

Figure 5

Vegetation Map

Monterey Bay Shores Habitat Protection Plan

2.0 EXISTING CONDITIONS AND EXPECTED IMPACTS

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(*Cakile maritima*), beach bur (*Ambrosia chamissonis*), and other pioneer species that are typical of the first stage of plant succession in the bare sand. Topographic mapping of the site and bluff top over the years by Bestor Engineers (1995, 2000, 2008) has shown that there is no loss of beach. Various other studies, including the *Coastal Regional Sediment Management Plan* (AMBAG 2008) and recent analyses of long term data sets indicate that sea level off the central coast of California has actually been falling since 1997 (CeNCOOS 2010).

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

Pioneer Dune Vegetation

The area on the property identified as pioneer dune vegetation includes approximately 9.0 acres north of the abandoned sandpit. The area contains asphalt roadway remnants and bare sand that has been highly compacted as a result of past sand mine operations. The area of pioneer dune vegetation mapped on Figure 5, Vegetation Map contains scattered clusters of native pioneer species that occur on approximately 50% of the area. The plants identified in these clusters include: pink sand verbenia (*Abronia umbellata*), beach bur, sea rocket, beach evening primrose (*Camissonia cheiranthifolia*), and silver bush lupine (*Lupinus chamissonis*). Since 1997, however, non-native hottentot fig (*Carpobrotus edulis*) and sea fig (*Carpobrotus chilensis*) have begun to spread beyond the extent of the native vegetation (visible in the aerial photograph in Figure 5, Vegetation Map and in Appendix A, Site Photographs). Various other non-native plant species such as New Zealand spinach (*Tetragonia tetragonioides*), ripgut brome (*Bromus diandrus*), and common sow thistle (*Sonchus oleraceus*) also occur in patches throughout this Pioneer dune areas can provide habitat for a variety of insects and reptiles adapted to exposed dune areas with relatively sparse vegetative cover. The insect fauna of the sand dunes is well developed and includes numerous species of bees, wasps, flies, butterflies, and moths (LSA 1988). Reptiles found in this habitat type include the western fence lizard (*Sceloporus occidentalis*) and northern alligator lizard (*Gerrhonotus coeruleus*). Birds expected to occur in this habitat include killdeer (*Charadrius vociferus*), California gulls (*Larus californicus*) and western gulls (*L. occidentalis*). EIP (1990) also reported the occurrence of several mammals on the site, including black tailed jackrabbit (*Lepus californicus*) and deer mouse (*Peromyscus maniculatus*).

Coastal Scrub/Ice Plant Mix

This habitat type is present in two distinct stands in the northern portion of the project site and comprises approximately 0.5 acres. Vegetation in this area consists of plant species typical of the

coastal scrub community that are gradually being out competed by ice plant. Native scrub species identified in these areas include mock heather (*Ericameria ericoides*), California coffeeberry (*Rhamnus californicus*), seacliff buckwheat (*Eriogonum parvifolium*), coast buckwheat (*Eriogonum latifolium*), poison oak (*Toxicodendron diversilobum*), and sandmat (*Cardionema ramosissimum*).

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

Ice Plant Dominated

Several areas of dense ice plant mats occur throughout the site, but the most contiguous areas of dense mats are found mainly in the southern and eastern portions of the site, on and around the dunes near the sand pit and along the northern boundary. In 1997, only 2.1 acres of this vegetation type was present, however by 2012 these areas of dense ice plant comprise approximately 7.9 acres of the property, an increase of approximately 376 percent (Figure 5, Vegetation Map). Although ice plant mats usually exclude establishment of other vegetation, occasionally there are plants that can coexist within the matted areas. Other plants observed within the ice plant dominated areas on the site include Bermuda buttercup (*Oxalis pes-caprae*), riggut brome, and wild radish (*Raphanus sativa*).

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

Ruderal/Disturbed

The ruderal/disturbed areas occur along the eastern property boundary and covers approximately 0.2 acres of the site. These areas are characterized separately from bare sand or ice plant mats in that they contain portions of an old paved access road and railroad spur associated with previous mining activities, and are dominated by ruderal plant species but include few ice plant mats. The ruderal species common in this vegetation type include riggut brome, red-stemmed filaree (*Erodium cicutarium*), wild radish, common groundsel (*Senecio vulgaris*), bur clover (*Medicago polymorpha*), and stock (*Matthiola* sp.). Several individual Monterey cypress trees (*Cupressus macrocarpa*), probably planted as windbreaks or landscaping for the

former sand mining operation on the site, also occur in this area. The northernmost area of ruderal/disturbed vegetation contains sporadic, low-density occurrences of Monterey spineflower, a known colonizer of disturbed areas.

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

Bare Sand

This habitat type covers approximately 11.4 acres of the project site and is considered distinct from the coastal strand in that it contains areas of bare sand on the property that are inland of the coastal bluffs, including the area of the abandoned sand mining pit and other areas on the property that are generally devoid of vegetation. Some of the bare sand areas may contain occasional small patches of ice plant and native and non-native dune plants, however because of the highly unstable shifting dune sand these areas are not conducive to the establishment of vegetation.

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

2.1.2 Wildlife

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

2.1.3 Special Status Species

When conducted, surveys have documented the occurrence of the Smith's blue butterfly, western snowy plover, and Monterey spineflower on the Monterey Bay Shores property at various times during the past 18 years. As described herein, occurrences of snowy plover have not been consistent in the past 10 years. Focused surveys for the California black legless lizard, Monterey ceanothus, sandmat manzanita, and coast wallflower have also been conducted on the site but none of these species were found to occur (Zander 1997). During an October 2000 site visit by Zander Associates, a burrowing owl (*Athene cunicularia*), a California species of special concern was observed using burrows on the Edgewater Shopping Center property and in adjacent areas on former Fort Ord. Since that sighting ten years ago, additional observations have not been recorded, although protocol surveys for this species have not been conducted.

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

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

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

Previous studies have documented the occurrence of the western snowy plover on the lower beach, Monterey spineflower, and a few examples of Smith's blue butterfly on the northern most swale area of the Monterey Bay Shores property. Additional special status species listed above have not been observed on the Monterey Bay Shores property but are known to occur in the vicinity and are therefore included in this HPP. Through dune stabilization and restoration activities, it is anticipated that habitat for all of these species will be created. The biological data, description of presence on the project site and discussion of project effects for each of the target species follows.

2.2 EXPECTED IMPACTS

The revised resort project will modify approximately 22.38 acres above the mean high tide line through grading, excavation, and recontouring. As noted in the 1998 FEIR, the Amended EIR (2008) and above, much of this area is degraded and non-native iceplant has continued to encroach into more native habitats.

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

Habitat restoration is a major component of the revised project. Approximately 20.56 acres will be restored to foredune, secondary dune, back dune, wetland and coastal bluff habitat. Of the 20.56 acres to be restored to native habitat, approximately 15.65 acres around the periphery of the development will be placed in open space and/or a conservation easement and protected in perpetuity. A public access easement will be designated on approximately 4.67 acres of the site, primarily to provide public access to the vista point, beach, and coastal strand areas. Three trails, one public and two associated with the resort will direct access out to the beach in a similar configuration as proposed by the previously approved plan.

The revised project will include some on-site alternative energy generation facilities. These facilities will be incorporated into the structural and design elements of the buildings and geothermal units will be underground. Approximately 1.4 acres of coastal dune scrub habitat will be preserved (including the area where seacliff buckwheat plants will be avoided during construction) to provide suitable opportunities for use by Smith's blue butterfly. Iceplant that is currently encroaching on the existing buckwheat plants will be eradicated and approximately 400 buckwheat plants, propagated from seed collected on site or nearby, will be established. Monterey spineflower will also be reestablished over approximately 3.7 acres of the restoration areas. Prior to grading and construction, seed will be collected from plants to be removed in the development area and reseeded into appropriate restoration areas on completion of grading.

2.0 EXISTING CONDITIONS AND EXPECTED IMPACTS

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BIOLOGICAL DATA AND EXPECTED IMPACTS ON SPECIAL STATUS SPECIES

3.1 SPECIAL STATUS SPECIES KNOWN TO OCCUR ON THE SITE

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

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

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

3.1.1 Smith's Blue Butterfly

Biological Data

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

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

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

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

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

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

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

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

Presence on the Monterey Bay Shores Property

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

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

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

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

Effect of the Proposed Project on Smith's Blue Butterfly

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

3.3.2 Western Snowy Plover

Biological Data

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

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

Critical Habitat and Regulatory Actions

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

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

The Service conducted a review of the status of the Pacific Coast population of the western snowy plover during 2005 and 2006. The study is known as a "12-month status review" and examined whether the population of western snowy plovers that breeds in coastal areas in California, Oregon and Washington should retain its current status as a threatened species. The Service made a "not warranted" finding on the petition to de-list the species on April 21, 2006 (71 Fed. Reg. 20607). The species therefore retains its current federal "threatened" status. In 2011, the USFWS began a 5-year review of species, including western snowy plover, in California, Nevada and the Klamath Basin of Oregon; however review has yet to be completed.

In March 2011, in a response to a Center for Biological Diversity lawsuit, the USFWS proposed to more than double protected critical habitat for the Pacific Coast population of the western snowy plover. The final designation of critical habitat includes 47 units in California (covering 16,337 acres), 9 units in Oregon (covering 2,112 acres) and four units in Washington (covering 6,077 acres). Unit CA-22 identifies the proposed critical habitat boundary within the area between Monterey and Moss Landing. Critical habitat is located along the coastal strand portion of the project site.

Overall Population and Presence in the Monterey Bay Area

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

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

Annual reports by PRBO indicate a steady decline in nesting western snowy plovers in the Monterey North (Sand City shoreline) area, including the Monterey Bay Shores project site. For the Monterey North area, PRBO reported a total of 13 plover nests in 1995, seven nests in 1996, four nests in 1997 and four nests in 1998. Only two plover nest sites (which were not on the

Monterey Bay Shores site) were reported from the entire Monterey North area in 1999. The chick-fledging success of snowy plovers in the Sand City area in 1999 was the lowest recorded since monitoring began (Page et. al., 1999). In 2000, only one nest was reported (the nesting attempt was unsuccessful), and by 2005, surveys found no nesting activity along the Sand City shoreline and only one sighting of a snowy plover occurred during the entire survey period (a single juvenile was seen approximately 200 meters south of the Fort Ord boundary). Since 2005, numbers have increased slightly, with two nests identified in Sand City in 2008, and three nests (two occurring on the strand area within the property boundary) were identified in Sand City in 2012.

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

Presence on the Monterey Bay Shores Property

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

As noted, plover breeding activity along the Sand City shoreline in general, including the project site, declined from 1998 through 2005. In 2005, the Service removed the Sand City shoreline from the designation of critical habitat for the western snowy plover, although in 2012, the Service re-designated the beach strand area of the site as critical habitat. Since 2005, snowy plover nesting activity has been typically limited to one or two sightings, the highest of which occurring in 2012, with two successful and one unsuccessful nesting attempt. As such, although plover nesting has declined in the Sand City shoreline area since the mid-1990s, the area continues to provide open sandy sites above the high tide line with direct access to the bay and

remains a viable outlier for potential plover breeding. No plover nesting activity has occurred for the past 20 plus years above 20 feet in elevation or on the upper bluff of the site.

Effect of the Proposed Project on Western Snowy Plover

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

- Pre-Construction Surveys and Construction Monitoring
- Pre-Construction Conference with Equipment Operators and Field Supervisors
- Preservation and Establishment of a Managed 1-2-Acre Nesting Protection Zone
- Nesting Protection Zone Expansion Per Biologist Recommendation
- Adaptive Management and Access Plan
- Establishment of Conservation/open space easements
- Annual Review of Resort Operations on Biological Conditions
- Mandatory Employee Biological Resource Education
- Predator Management Plan
- Coordination with Sand City and State Parks on Plover Management
- Ten Percent Allocation of Environmental Trust Funds to Plover Protection

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

3.1.3 Monterey Spineflower

Biological Data

Monterey spineflower is a small, prostrate annual of the buckwheat family. Monterey spineflower occurs scattered on sandy soils within coastal dune, coastal scrub grassland,

maritime chaparral, and oak woodland communities along and adjacent to the coast of southern Santa Cruz and northern Monterey Counties and inland to the coastal plain of Salinas Valley. Former Fort Ord supports the largest populations of Monterey spineflower known and these populations will be protected, managed and enhanced through implementation of the Installation-Wide Habitat Management Plan for former Fort Ord.

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

The Service listed Monterey spineflower as threatened in February 1994. In 2002, the Service designated 18,830 acres as critical habitat for the Monterey spineflower in Santa Cruz and Monterey counties, and the Monterey Bay Shores project site was previously within this critical habitat. (67 Fed. Reg. 37,498 [May 29, 2002].) On January 9, 2008, the Service issued a final rule revising spineflower critical habitat. That revised critical habitat designation did not include the project site. Therefore, the project site is not considered critical habitat for the Monterey spineflower. (73 Fed. Reg. 1525 [Jan. 9, 2008].)

Presence on the Monterey Bay Shores Property

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

Effect of the Proposed Project on Monterey spineflower

Project grading will modify areas of that provide habitat for the species. The proposed revised project will reestablish Monterey spineflower at a minimum 1:1 ratio. Monterey spineflower will be reestablished in approximately 3.7 acres of the restoration areas by collecting and propagating seed from plants to be removed in the development area.

3.2 SPECIES WITH POTENTIAL TO OCCUR ON THE SITE

3.2.1 *Black Legless Lizard*

Biological Data

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

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

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

Potential Presence on the Monterey Bay Shores Property

No individuals have been found on the project site.

3.2.2 *California Burrowing Owl*

Biological Data

The California burrowing owl is a medium-sized owl with sandy-colored, spotted plumage and long legs. Burrowing owls inhabit open grasslands, deserts, and arid scrublands with low-

growing vegetation but have also been observed in back-dune habitats within the City of Sand City (Zander 1997). The availability of rodent burrows or other similar shelters for roosting and nesting is an essential component of this species' habitat. Burrowing owls feed mostly on insects, but may also eat small mammals, reptiles, birds, and carrion.

Potential Presence on the Monterey Bay Shores Property

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

Burrowing owls typically nest in abandoned ground squirrel burrows and forage in grasslands. Zander Associates observed a limited amount of rodent activity on the project site and few areas for the burrowing owl to nest. No owls have been observed on site. There is a potential for the species to move onto the site should conditions improve (i.e. increased ground squirrel activity), but the species is not currently present.

3.2.3 Sand Gilia

Biological Data

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

Sand gilia prefer sandy soils in open, yet wind-sheltered areas (Dorrell-Canepa 1994). The low average rainfall (10-15 inches) and foggy conditions around the Monterey Bay area provide sufficient moisture for gilia to survive. Gilia are most often found in level areas or on shallow slopes (up to 45 degrees), but may also occur on the cut banks of sandy drainages. In steep areas, gilia seed often washes to the bottom of the slope and germinates there. On sand dunes, gilia seem to prefer northern, western, and eastern slopes to southern slopes, which are the hottest and driest in the dunes. Gilia often thrive in slight depressions. These depressions may have higher soil moisture and dead vegetative matter, providing a slight increase in nutrients in otherwise nutrient poor soils. Found in the mid to hind dunes (coastal scrub) and in open

pockets of maritime chaparral, gilia can tolerate a small amount of sand burial (probably < 1 cm). Gilia prefer stabilized sands and do not thrive in excessively windy areas. Previous physical disturbance to the sand seems to encourage germination in some areas, and healthy gilia populations may be found along old paths, in old vehicle tracks, or in areas where trenching has occurred. Gilia prefer areas with little plant competition. Associated native species include spineflower (*Chorizanthe* spp.), popcorn flower (*Cryptantha leiocarpa*) beach primrose (*Camissonia cheiranthifolia*), coast and dune buckwheat (*Eriogonum latifolium* and *E. parvifolium*), pink sand verbenia (*Abronia umbellata*), sea lettuce (*Dudleya caespitosa*), beach aster (*Lessingia filangifolia*), mock heather (*Ericameria ericoides*), silver beach lupine (*Lupinus chamissonis*) and California poppy (*Eschscholzia californica* var. *maritima*). Associated plant density rarely exceeds 30% cover in dune areas surrounding the gilia populations. In maritime chaparral, gilia survives in open pockets between taller species such as mock heather (*Ericameria ericoides*) and chamise (*Adenostoma fasciculatum*).

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

Presence on Monterey Bay Shores Property

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

3.2.4 Sandmat Manzanita

Biological Data

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

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

Presence on the Monterey Bay Shores Property

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

Effect of the Proposed Project on Sandmat Manzanita

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

3.2.5 Monterey Ceanothus

Biological Data

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

Presence on the Monterey Bay Shores Property

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

Effect of Proposed Project on Species

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

3.2.6 Migratory Birds

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

Presence on the Monterey Bay Shores Property

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

Effect of Proposed Project on Species

Project construction in the coastal strand could result in the loss of nests of migratory birds, including those specifically protected by the Migratory Bird Treaty Act. The proposed revised project includes the implementation of a pre-construction survey to determine if migratory birds occur on the project site or in the vicinity and determine appropriate avoidance and setback measures, if needed. The revised project will be set back a significantly greater distance from the mean high tide line than the previously proposed project. In addition to the avoidance measures identified herein, this design change resulting in a greater buffer between resort buildings and the lower beach is part of a broad plan to reduce to insignificant any potential impacts to migratory birds including plovers.

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4.0

MEASURES TO MINIMIZE AND MITIGATE IMPACTS TO SPECIAL STATUS SPECIES

Habitat restoration is a major component of the revised project. The HPP management program includes approximately 20.56 acres restored to foredune, secondary dune, back dune, wetland and coastal bluff habitat. Of the 20.56 acres to be restored to native habitat, about 15.65 acres around the periphery of the development will be placed in conservation/open space easements and protected in perpetuity. A public access easement will be designated on approximately 4.67 acres of the site, primarily to provide access to the beach and coastal strand areas.

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

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

4.1 BIOLOGICAL GOALS

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

- Avoid take of Smith's blue butterfly and western snowy plover, including from vehicle and pedestrian traffic.

4.0 MEASURES TO MINIMIZE AND MITIGATE IMPACTS TO SPECIAL STATUS SPECIES

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

4.2 DELINEATION AND DESCRIPTION OF MANAGEMENT AREAS

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

4.2.1 Management Area I *Beach and Strand (4.05 acres)*

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

4.0 MEASURES TO MINIMIZE AND MITIGATE IMPACTS TO SPECIAL STATUS SPECIES

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this area. An additional unsuccessful additional nest was observed in 2000. Since that time, the number of nesting plovers has steadily declined in this area. No nesting activity was observed in the area in the past 8 years until the spring of 2008 when one nest was observed within this management area on the northwest corner of the project site. Nesting activity was not recorded in 2011.

4.2.2 Management Area 2

Foredune / Secondary Dune Area (6.36 acres)

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

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

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

4.2.3 Management Area 3

Back Dune Area (9.30 acres)

Management Area 3 follows the southern and eastern property boundaries and includes the large dune in the southeast corner of the site, additional areas previously disturbed through sand mining activities, and the area above the underground garage. Although the existing habitats in this area are primarily ruderal/disturbed, bare sand and iceplant mats, there are also Monterey

4.0 MEASURES TO MINIMIZE AND MITIGATE IMPACTS TO SPECIAL STATUS SPECIES

cypress trees, remnant coastal scrub species and patches of Monterey spineflower. Several smaller dune formations, impacted by previous mining, also exist. This Management Area is identified on the *Landscape Plan* as “Back Dune.”

4.2.4 Management Area 4 **Developed Area (12.19 acres)**

Management Area 4, the proposed development area, includes most of the sand pit and the plateau north of the pit. Most of the pioneer dune vegetation identified on the site is included in this management area along with bare sand, ruderal/disturbed and iceplant dominated areas. A contiguous strip of coastal scrub/iceplant mix occurs at the northern edge of the property and is included in this management area. The resort project has been created with the intent of minimizing impervious areas and incorporating as much vegetation as feasible. Management Area 4 can be broken down into two parts: 1) planted/landscaped areas, which encompass approximately 5.2 acres and include landscaping, gardens, etc., and 2) impervious areas, which encompass the approximately 3.78 acres of buildings, parking area and access roads. The topography in Management Area 4 will be modified through a combination of excavation and fill. Management Area 4 includes the following communities identified on the *Landscape Plan*: coastal bluff living roof, hotel and residential landscapes, and living pool.

4.3 BIOLOGICAL OBJECTIVES FOR SPECIFIC MANAGEMENT AREAS

The biological goals of the HPP include restoration of approximately 20.56 acres of area on the Monterey Bay Shores project site, preservation and expansion of habitat and potential habitat for the Smith’s blue butterfly and other species associated with coastal scrub habitat, and protect and restore existing and potential nesting/breeding habitat designed to try to attract western snowy plover to the site. The biological objectives for meeting these goals in each management area have been set out in this HPP (and the *Landscape Plan*) and are defined as follows:

4.3.1 Management Area 1

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

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

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

4.3.2 Management Area 2

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

4.0 MEASURES TO MINIMIZE AND MITIGATE IMPACTS TO SPECIAL STATUS SPECIES

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

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

4.3.3 Management Area 3

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

4.3.4 Management Area 4

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

4.4 MANAGEMENT ELEMENTS AND TECHNIQUES

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

4.4.1 Avoidance of Sensitive Habitat and Potential Habitat

While balancing public access obligations as required by the California Coastal Act, the Monterey Bay Shores Resort has been planned and designed (as part of a broader plan to eliminate take of listed animal species) to eliminate direct removal of viable potential nesting/breeding habitat for the western snowy plover (based on data for the past 12 years) and for all Smith's blue butterfly habitat. Additional management elements and techniques will be incorporated into project construction activities to avoid disturbance of nesting/breeding plovers, if they are present on or immediately adjacent to the site. Discussions of these management elements and techniques are provided in this HPP.

4.4.2 Dune Creation/Stabilization

In accordance with the LCP, dune creation/stabilization will be achieved through a combination of grading and recontouring, installing erosion control blankets, temporary snow fencing,

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

4.4.3 Control of Exotic Species

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

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

European beachgrass is not currently present on the Monterey Bay Shores site. However, should it become established, it will also require control and removal to protect native dune vegetation. Removal of European beachgrass will occur as soon as it is observed and will be done by hand. If a stand of European beachgrass cannot be controlled by hand, then spraying may be required. Spraying will be done as described for iceplant but will not occur in the beach and strand zones during the nesting/breeding season of the snowy plover.

4.4.4 Revegetation and Habitat Enhancement

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

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

Seed Collection

Seed will be collected from specified native plants either on site or in nearby areas at least one year prior to being needed for revegetation. Plants considered for seed collection include Monterey spineflower, sand gilia, Monterey ceanothus, sandmat manzanita and a full palette of other coastal strand and dune scrub species. Seacliff buckwheat and coast buckwheat seed will be purchased or collected from plants as close to the project vicinity as possible, providing the source plants are outside of the range for Smith's blue butterfly. Seed collection techniques for target species will be as follows.

- Monterey spineflower - Collection of Monterey spineflower seed is typically conducted in June through August. The entire inflorescence is collected when it appears brown and dried. It is not necessary to separate the seeds from the inflorescence.

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- Sand gilia - Collection and propagation of sand gilia will follow methods described by Dorrell-Canepa (1994). The seed will be collected when capsules are just starting to dehisce, late April through early June. Bi-weekly visits to the site will ensure proper timing of seed collection. Seed can be collected by inverting the ripe capsules and gently tapping contents into an envelope. The seed can be stored without refrigeration for up to four years.
- Monterey ceanothus - Seed collection will be conducted March through May. Cuttings may also be collected in fall or winter but are difficult to propagate and therefore not always a reliable means of providing material for revegetation.
- Sandmat manzanita - Cuttings and seeds of this species can be collected for propagation. Seeds will be collected March through May and cuttings can be taken in fall or winter.

Seeding

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

Propagation

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

Planting of Seedlings and Cuttings

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

4.4.5 Transplant and Salvage of Plants

Prior to land disturbance on the site, seeds, cuttings and/or salvaged plants of native dune species will be collected and properly stored, or immediately transplanted into restoration areas

on the site (or other appropriate receiver sites) not affected by construction activities. Seeds will be collected as described previously. Cuttings from specific species will be collected and propagated for later installation into the restoration areas. Some of the salvaged plants may be transplanted into containers and maintained in a nursery until the created/recontoured dunes on the site are prepared for planting. Other plants may be directly transplanted into portions of the restoration areas unaffected by project construction.

4.4.6 Pre-construction Surveys in Developed Areas

Prior to initiation of construction, surveys will be conducted within the areas proposed for disturbance to avoid take of Smith's blue butterfly and the western snowy plover, if present. These surveys should not be read to suggest that any seacliff or coast buckwheat are known to be within the development envelope, but rather the surveys are just an additional precaution in order to avoid any take of Smith's blue butterfly.

Smith's Blue Butterfly

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

Western Snowy Plover

Pre-Construction Surveys and Construction Monitoring. Prior to the issuance of a building or grading permit by Sand City for the revised project, the applicant shall enter into an agreement with a qualified biologist selected by the applicant and approved by the Coastal Commission Executive Director, to provide on-site surveys monitoring for any western snowy plover nests during the nesting season. The retained biologist shall conduct surveys along the sandy beach and strand habitat prior to construction if the construction is expected to begin or continue during prime plover nesting season. If any plover nesting is observed on site, the biologist will immediately establish exclosures around the nesting area during fledging, along with appropriate signage and protective measures to avoid take of the plover. The biologist and construction manager will be responsible for directing construction activities away from beach and strand areas if active nests are found. Based on the conservation and management activities at Oceano Dunes SVRA, which have been the most successful in the state in promoting breeding despite the noise and commotion from off-road vehicle recreation, it is not expected that noise from construction on the site will result in nest abandonment, particularly given the focused monitoring and care of a biologist on site.

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

4.4.7 Habitat Protection During Construction

A part-time biologist will be retained to manage special status species and snowy plover habitat or potential habitat. The biologist will be retained prior to initiation of any construction activities on the site and will monitor site preparation and grading activities. When grading is actively in progress, full-time monitoring will occur. The biologist will be present to assist in avoiding any take of special status species and will have the authority, in consultation with the site superintendent, construction manager, and property owner to limit or stop construction activities in the area, if necessary. The biologist will be trained in plover management and protection techniques and empowered to manage access to the beach, impound unrestrained pets and otherwise ensure the HPP is followed. The biologist will use his or her best efforts to work with other land managers or their designees in the Sand City area, if available, to assist in pursuing regional plover management and protection goals.

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

A temporary fence and signage will be erected no more than 20feet beyond the limit of grading in order to assure that construction activities do not encroach into habitat areas. The biologist will coordinate with the site superintendent, construction manager and/or property owner concerning the placement of these fences and signs. Signs will be placed on the fence at appropriate intervals alerting equipment operators of the presence of sensitive species. Signs will include the following language:

“NOTICE: SENSITIVE HABITAT AREA. GRADING PROHIBITED.”

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

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

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

Preservation and Establishment of Dynamic 1-2-Acre Nesting Protection Zone²

Based on consultation with, and direction from, the retained biologist, consistent with the protection and recovery measures contained in this HPP, the applicant will establish (upon opening of the resort) an initial 1-2-acre "nesting protection zone" on the sandy beach and/or strand in a way designed to attract snowy plovers to nest during the annual nesting season. The area will preserve potential snowy plover nesting habitat. The 1-2-acre area will be "free-floating" or dynamic, meaning that its location would or could change each nesting season based on recommendations of the retained biologist, balancing public access. The biologist may consider past nesting, weather events, predation threats, and on-the-ground biological and habitat conditions and factors in defining the initial area size and in deciding whether to divide the 1-2-acres into different locations and area sizes on the sandy beach and strand. The retained biologist will use fencing, signage or any other measure in this HPP, as is decided necessary to protect the plover, in order to establish the dynamic protection zone while allowing for lateral access along the beach.

Dynamic Nesting Protection Zone Expansion Mechanism

If the biologist identifies numerous plover nests, the 1-2-acre nesting protection zone may be relocated or expanded, if necessary, for the protection of the plover nest(s), balancing public access with the plover protection. In such an event, if necessary, additional expansion area of up to three to five acres will be provided within the area bounded by the 10 MSL contour line on the sandy beach, the 2063 bluff crest recession line, and the two resort beach trails on the north and south (with a 25 foot buffer), respectively, while facilitating lateral and vertical beach access.

² If the resort is projected to open during the plover breeding season, the dynamic nesting protection zone will be established at the earliest date (during that calendar year) prior to the resort opening, consistent with the completion of construction.

Adaptive Management and Access Plan

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

Annual Resort Operations Review

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

Mandatory Employee Biological Education

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

Predator Management Plan

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

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

The applicant proposes a coordination program with the City and State Parks for plover protection along the Sand City coastline. Thus, the retained biologist would work with Sand City and State Parks officials to ensure that protection efforts are mutually re-enforcing. Part of the required coordination would include evaluation of obtaining conservation easements or

other habitat protection agreements with neighboring landowners designed to enhance the existing plover protection. As noted below, 15 percent of the Monterey Bay Shores Environmental Trust funds would be available to assist the City in covering costs of the coordination effort, including all conservation, adaptive management and/or avoidance measures determined to be needed..

4.4.9 Permanent Protection of Restored Habitat Areas

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

Monitoring and Maintenance

After construction is complete and the project is operational, the Monterey Bay Shores Environmental Trust, its successors and/or assigns along with proceeds from Sand City transient occupancy tax will continue to provide funding for the retained part-time biologist to monitor the success of the restoration efforts relative to the snowy plover and perform other functions identified herein. The biologist may participate in the annual monitoring work on the plover conducted by the Point Reyes Bird Observatory and may also participate in larger patrol/resource management efforts focused on plover recovery in Sand City and the Monterey region. The biologist may coordinate with adjacent parks to provide similar signage and access directions. The biologist will also track the success of dune restoration efforts and monitor use of the site by Smith's blue butterfly. The goal of engaging a part-time biologist on the site is to ensure a quick response to problems that may arise in resource protection.

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

1. A brief summary or list of project activities accomplished during the reporting year;
2. A brief description of new project impacts, if any;
3. A brief description of any conservation strategy implemented;

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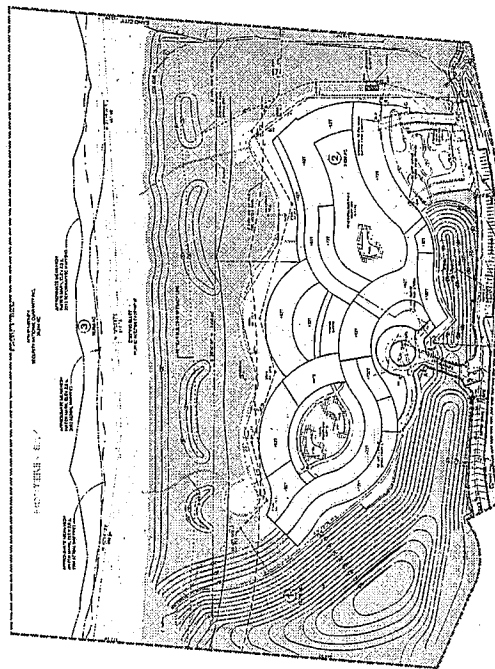
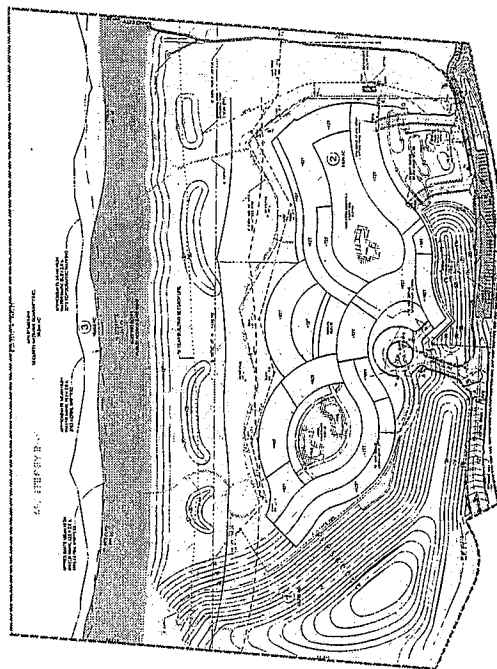
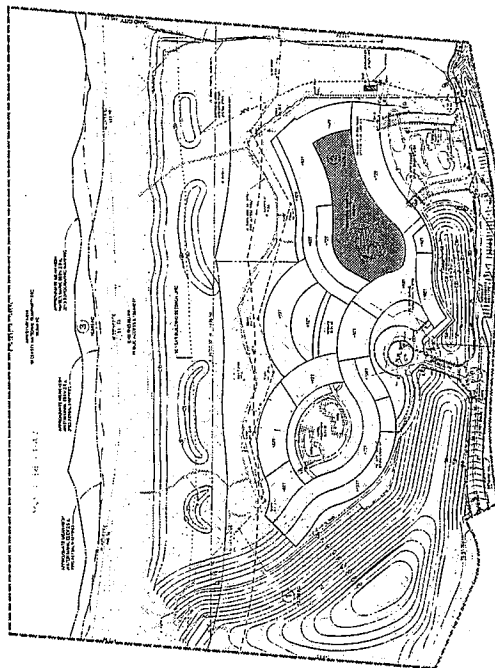
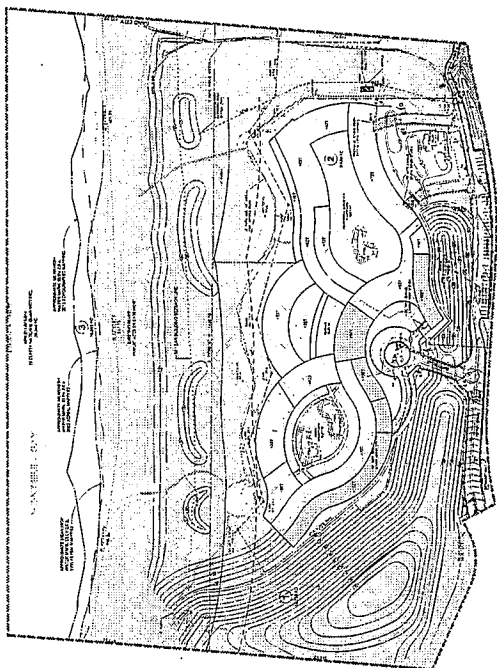
4. A discussion of monitoring results (compliance, effects and effectiveness monitoring) and survey information;
5. A description of circumstances that made adaptive management necessary and what new management approaches have been implemented;
6. A description of any changed or unforeseen circumstances that occurred and how they have been dealt with;
7. A discussion of funding expenditures, balance, and accrual; and
8. A description of any minor or major amendments.

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

Table 1 Vegetation Performance Criteria

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

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



Public Access Easement (4.67 acres) Conservation Easement (15.65 acres) Habitat Restoration (20.56 acres) Botanic Garden (0.93 acres)

not to scale

Source: Bestor Engineers 2013

Figure 7

Land Use Easements and Open Space

Monterey Bay Shores Habitat Protection Plan

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

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

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

4.5 SPECIFIC MANAGEMENT TECHNIQUES FOR EACH MANAGEMENT AREA

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

4.5.1 Management Area 1: Beach and Strand

Avoidance of Take and Sensitive Habitat

The retained part-time biologist will conduct surveys within this management area for snowy plover prior to, and throughout, the breeding season (mid-March through mid-September), prior

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to, during, and after construction and annually thereafter so long as the Pacific Coast distinct population segment of the western snowy plover remains listed under the federal Endangered Species Act.

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

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

Control of Exotic Species

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

Habitat Protection During Construction

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

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

Beach and Strand Activity Restrictions

- Post signs at points of vertical access requiring pets to be leashed and requiring users to pack out what they pack in to the beach.

- Limit vertical access points, as determined by the biologist in coordination with the construction manager or resort/property manager, during snowy plover nesting season if necessary to protect nesting and breeding by the plovers.
- Place refuse containers with lids that tightly close at all beach access points and regularly clean refuse areas.

Monitoring and Maintenance

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

Success Criteria

Success criteria are used to set a minimum standard at which habitat restoration or revegetation activities are able to be self-sustaining or have met a specific goal. For instance, documented use of the restored habitat areas by one successful nesting western snowy plover pair within ten (10) years following completion of construction would meet the specific goal of attracting nesting plovers back to the project site. However, the return of a special status species to an area should not be the sole criteria used to judge the success of habitat restoration activities because many special status species, including birds, are highly mobile and may not return to a site for many years regardless of its habitat restoration efforts. Therefore, a second criterion, such as the success of revegetation efforts, can be used to judge the success of habitat restoration activities. For the purposes of this HPP, if snowy plover are not observed utilizing the restored habitat areas within ten (10) years after construction, success will be defined by documenting that the proposed native coastal strand vegetation goals for Management Areas 1 and 2 have been established. If plover does not return to the site, the need for adaptive management may be required.

Permanent Protection

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

4.5.2 Management Area 2: Foredune / Secondary Dune

Avoidance of Take and Sensitive Habitat

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

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

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

Recontouring of Existing Topography

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

Control of Exotic Species

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

Habitat Protection During Construction

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

Revegetation and Habitat Enhancement

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

Site Preparation

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

Planting Specifications

Install seedlings just after the first rains in the fall and following spraying of the low dunes with water. Seed mixes and installation recommendations shall follow those listed in the *Landscape Plan, Monterey Bay Shores* (Appendix C, Rana Creek 2011).

Monitoring and Maintenance

A biologist will monitor the success of the restoration efforts relative to the snowy plover at least until the plover is de-listed as a threatened species. The biologist will have the ability to direct use of sensitive beach and strand areas accordingly, in coordination with the resort/property owner.

Success Criteria

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

Permanent Protection

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

4.5.3 Management Area 3: Back Dune

Pre-construction Surveys

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

Transplant and Salvage

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

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

Recontouring

The windward face of the large dune in the southeast portion of this management area will be recontoured along additional dunes as shown on the project plans. Although a percolation pond overflow area is also planned for this management area, the design of the pond can be contoured to meet the appropriate habitat restoration goals. Actual use of the percolation pond will only occur if there is any overflow during a rare 100+ year storm event.

Slope Stabilization

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

Control of Exotic Species

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

Habitat Protection During Construction

Habitat protection will be conducted as described in Section 4.4.7.

Revegetation and Habitat Enhancement

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

Seed mixes and installation recommendations shall follow those listed in the *Landscape Plan, Monterey Bay Shores* (Appendix C, Rana Creek 2011).

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

Retained Biologist

The part-time biologist will monitor the success of the restoration efforts, including slope stabilization and habitat restoration to determine:

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

Monitoring Transects

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

Photo Documentation

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

Smith's Blue Butterfly

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

Maintenance

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

Success criteria

Leeward slopes

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

Windward slopes

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

4.5.4 Management Area 4: Developed

Pre-construction Surveys

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

Landscape Restrictions

Transition planting zones will be established between development areas and the habitat restoration areas. The transition zones will include native species but will contain no sensitive plants. Native plant species will be selected to sustain and recover from periodic disturbance when maintenance or emergency access is required. Development areas will contain a mix of native species compatible with the dune landscape. Species will be drought resistant, conforming to applicable local water conservation policies. A percolation pond is also planned for this management area along the easterly boundary of the site. The design of the pond will be contoured to meet the appropriate habitat restoration goals in the adjacent Management Areas.

Lighting Restrictions

Lighting at the resort will be designed to minimize adverse impacts to wildlife and to avoid take of the covered species. Possible seasonal limitations may be implemented, as determined by the retained biologist and in coordination with the resort operator. In general, the project design calls for lighting to be directed away from the beach and foredune areas.

4.6 SPECIES-SPECIFIC MITIGATION MEASURES

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

4.6.1 Smith's Blue Butterfly

Minimization of impacts

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

Mitigation for impacts

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

4.6.2 Western Snowy Plover

Minimization of Impacts

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

Mitigation for impacts

- Expansion of beach and strand habitat in vicinity of project.
- Monitor beach access during breeding/nesting season.
- Lighting restrictions for project facilities within and adjacent to western snowy plover habitat.
- Creation of minor dune topography in beach expansion area.
- Establishment of coastal strand vegetation.
- Establishment of a retained part-time biologist position specifically to monitor western snowy plover activity and recovery on the site and in the region.

4.6.3 Monterey Spineflower

Mitigation for Impacts

- Revegetation and enhancement of coastal dune scrub habitat.

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

4.7 OTHER MITIGATION MEASURES

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

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

4.0 MEASURES TO MINIMIZE AND MITIGATE IMPACTS TO SPECIAL STATUS SPECIES

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APPENDIX A

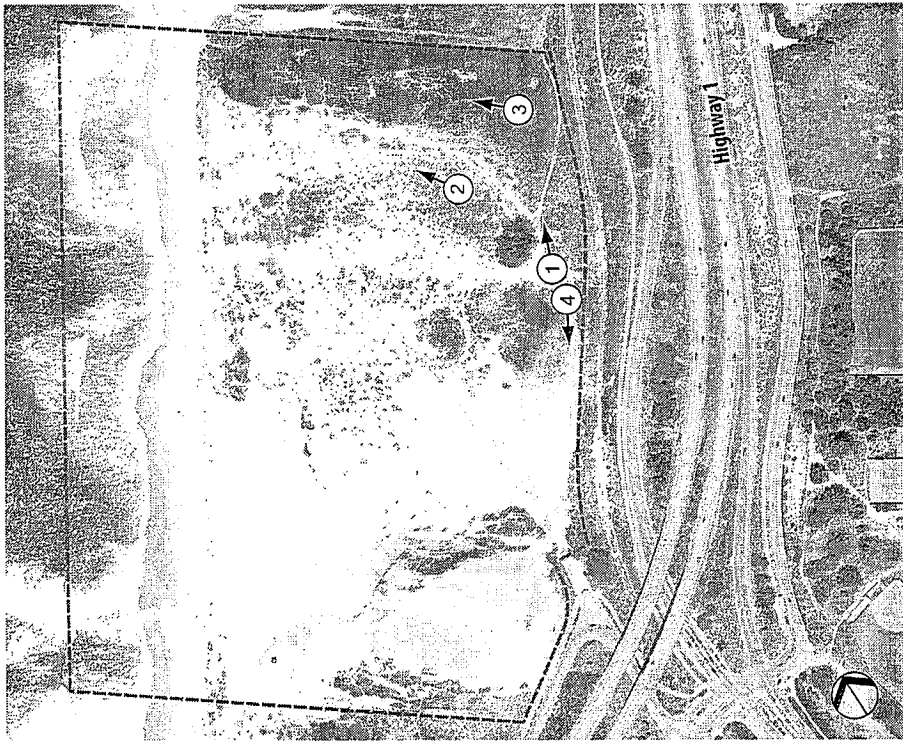
SITE PHOTOGRAPHS



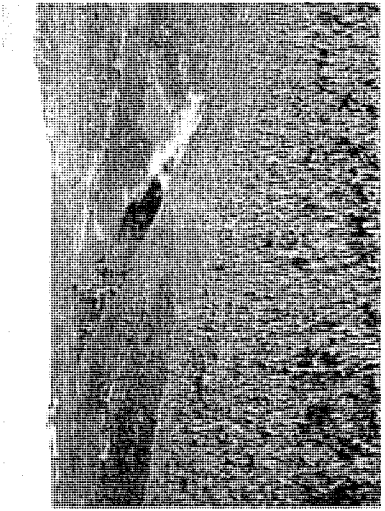
① Monterey cypress trees, ice plant dominated community, and access road



② Pioneer dune vegetation mixed with ice plant



□ Project Boundary



③ Ice plant dominated areas surrounding coastal scrub vegetation with seaciff buckwheat



④ Access road, ice plant dominated dune, and pioneer dune species mixed with ice plant

Source: Google Earth 2012



Figure 1

Site Photographs

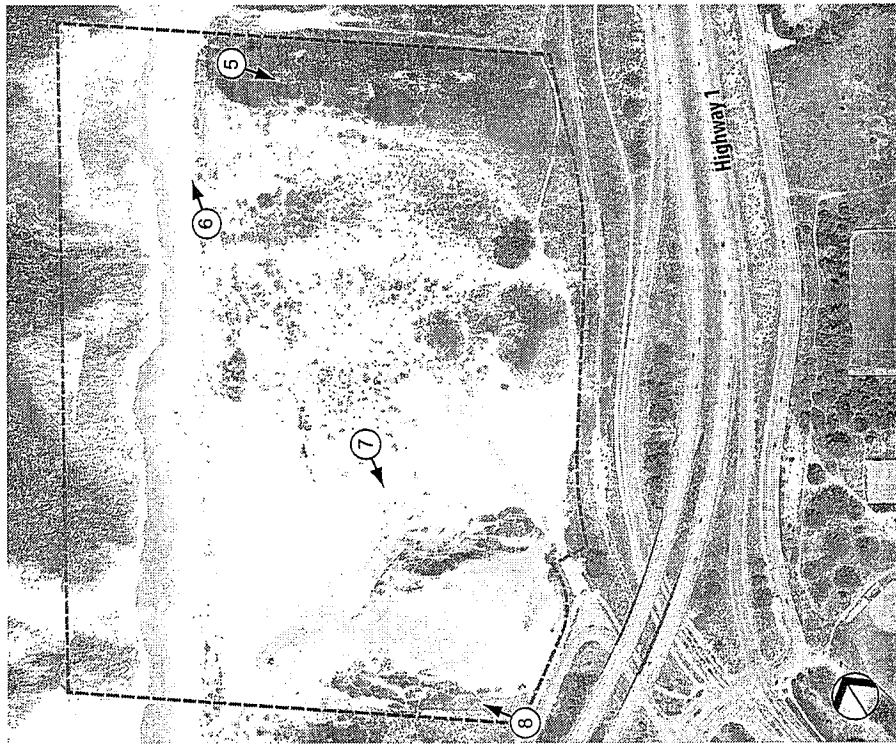
Monterey Bay Shores Habitat Protection Plan - Appendix A



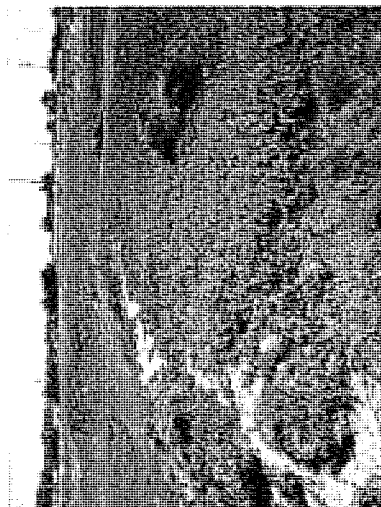
⑦ Sand pit north of main dune area, with ice plant patches present



⑧ Sparse native vegetation mixed with ice plant, south of main dune area



Project Boundary



⑤ Ice plant dominated areas and pioneer dune vegetation mixed with ice plant



⑥ Ice plant patches, coastal strand areas, and ocean view

Source: Google Earth 2012

Figure 2

Site Photographs

Monterey Bay Shores Habitat Protection Plan - Appendix A



APPENDIX B

DUTIES OF THE RETAINED BIOLOGIST

APPENDIX B

DUTIES OF THE RETAINED BIOLOGIST

Selection

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

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

Pre-Construction and Construction Activities

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

The biologist will survey and monitor the site for snowy plover during the prime snowy plover nesting season (March 1 through September 30) immediately prior to any construction-related activities on the site. If snowy plovers are observed in any area likely to be affected by the project construction, construction in that area will be postponed until all snowy plover chicks have fledged, unless otherwise approved by the biologist.

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

Monitoring

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

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

Reporting

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

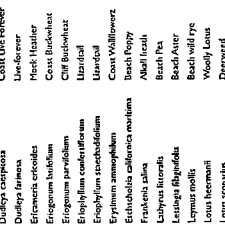
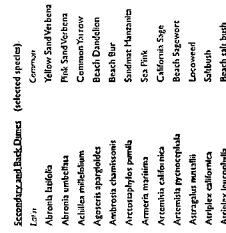
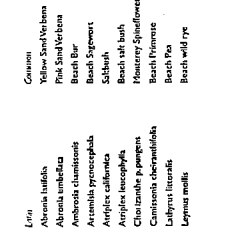
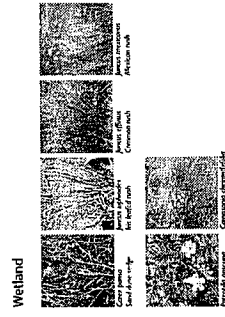
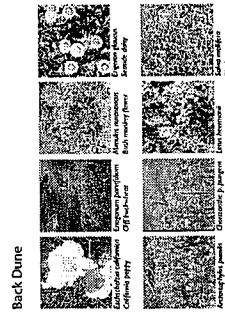
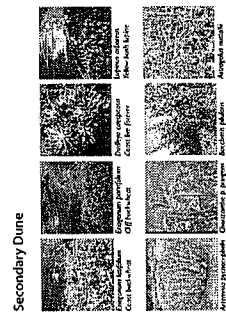
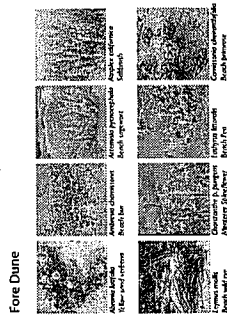
1. A brief summary or list of project activities accomplished during the reporting year;
2. A brief description of new project impacts, if any;
3. A brief description of any conservation strategy implemented;
4. A discussion of monitoring results (compliance, effects and effectiveness monitoring) and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

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

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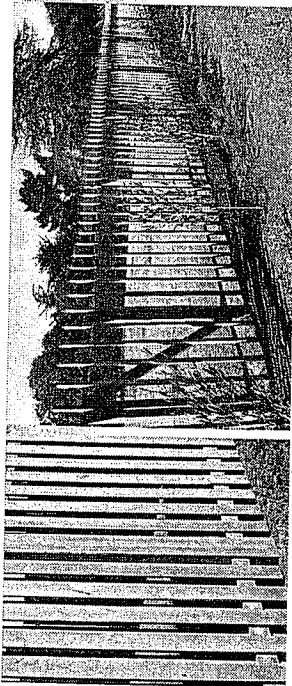
APPENDIX C

LANDSCAPE PLAN



PLANT COMMUNITIES
Monterey Bay Shores





6' Fence On Southern Property Line & Adjacent Northern Property Line
 The fence along the north and a section of the fence along the south will have a simple 6' x 4" vertical slat fence boards with 1/2" spacing between boards. Top and 1/2" gapping between boards.

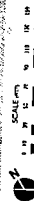


Split Rail Fence

The split rail fence, similar to what is shown above, will run along the entire eastern boundary of the property. The fence will be located on the southern property line from the 100' mark to the 150' mark. The fence will be located on the 100' mark to the 150' mark. The fence will be located on the 100' mark to the 150' mark.

Retaining Wall

The retaining wall at the fence on the 100' mark to the 150' mark will be a concrete retaining wall. The wall will be located on the 100' mark to the 150' mark. The wall will be located on the 100' mark to the 150' mark.



LANDSCAPE SITE ELEMENTS

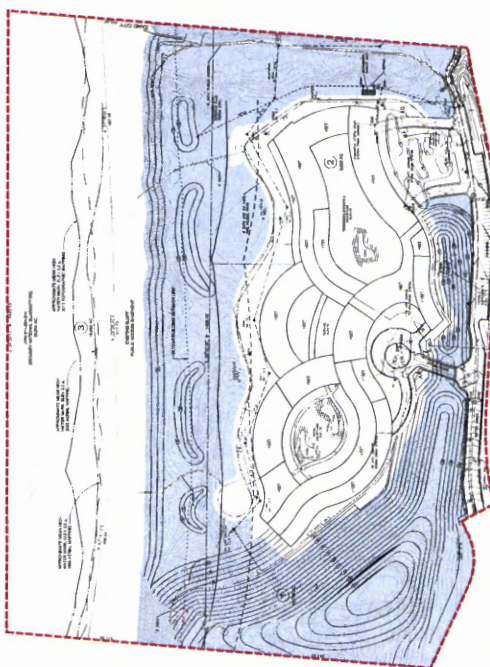
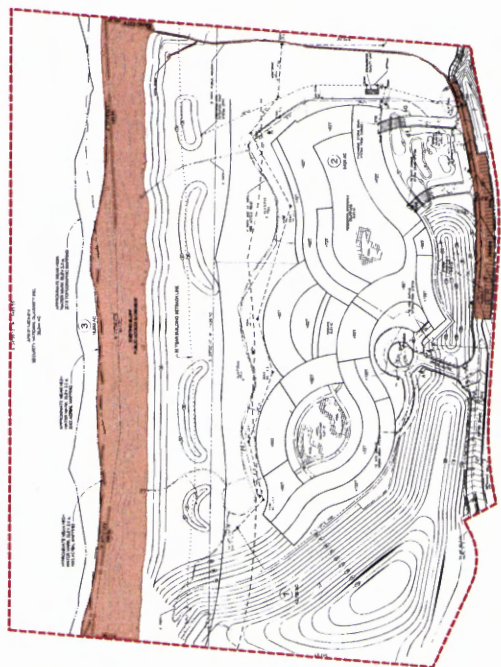
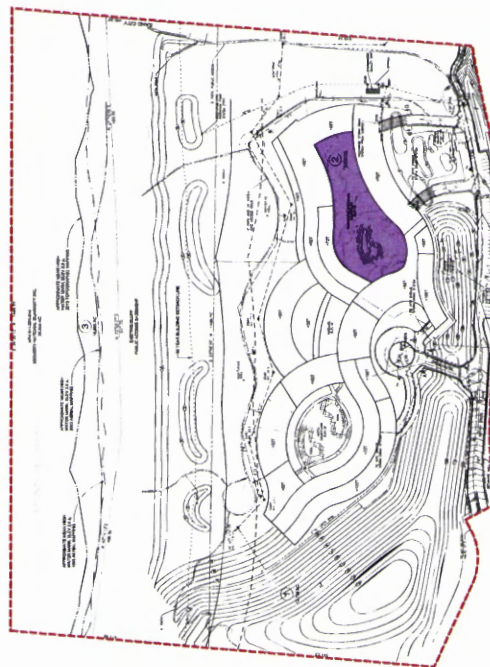
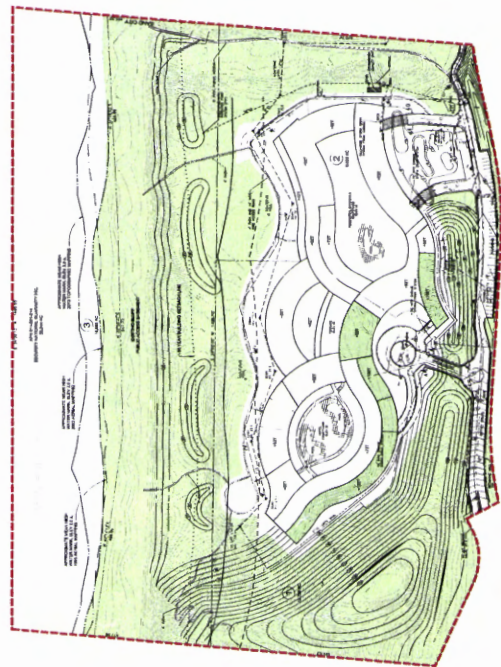
Monterey Bay Shores

EcoSport, Wellness Spa and Residences



October 2013

RANA CREEK



Public Access Easement (4.67 acres)



Conservation Easement (15.65 acres)



Habitat Restoration (20.56 acres)



Botanic Garden (0.93 acres)

not to scale



Figure 7

Land Use Easements and Open Space

Monterey Bay Shores Habitat Protection Plan

Source: Bestor Engineers 2013



DUNE
LANDFORM
APPROXIMATION



Planning for Success.



ACCESS, SIGNAGE, AND LIGHTING PLAN

MONTEREY BAY SHORES RESORT

Sand City, California

PREPARED FOR

Security National Guaranty, Inc. (“SNG”)

October 2013

EMC PLANNING GROUP INC.
A LAND USE PLANNING & DESIGN FIRM

301 Lighthouse Avenue Suite C Monterey California 93940 Tel 831-649-1799 Fax 831-649-8399
www.emcplanning.com

Exhibit 23 Access, Signage, Lighting Plan
A-3-SNC-98-114 Settlement Agreement
1 of 102

MONTEREY BAY SHORES RESORT

Access, Signage, and Lighting Plan

PREPARED FOR
Security National Guaranty, Inc. (“SNG”)
Mr. Ed Ghandour
505 Montgomery Street, Suite 1150
San Francisco, CA 94111
Tel 415.874.3121

PREPARED BY
EMC Planning Group Inc.
301 Lighthouse Avenue, Suite C
Monterey, CA 93940
Tel 831.649.1799
Fax 831.649.8399
contactus@emcplanning.com
www.emcplanning.com

October 2013

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I.0

INTRODUCTION

I.1 PURPOSE

This Access, Signage, and Lighting Plan for the proposed modified Monterey Bay Shores eco-resort has been prepared as an update to the 1998, 2008 and 2011 versions prepared by EMC Planning Group Inc. This document has been prepared in accordance with the Sand City Local Coastal Program (“LCP”) as well as additional development constraints, including public access, imposed by the California Coastal Act and the Coastal Commission (2013). EMC Planning Group Inc. has prepared this plan for Security National Guaranty Inc. (SNG) (the “Applicant”). The purpose of this document is to summarize the access, signage, lighting, and planting elements of the proposed Monterey Bay Shores eco-resort (the “Resort”) and recommend specific implementation measures, management requirements, and maintenance needs.

I.2 ORGANIZATION OF THE DOCUMENT

This plan outlines access, signage, lighting, and planting provisions for the Resort along the beaches of Sand City, including public and Resort accessways.

The proposed Resort is described in Section 2.0 of this document, Project Description, with particular detail given to the access component of the Resort, including public and Resort accessways.

Section 3.0, Access, evaluates the proposed Resort based on forms and means of access identified in LCP policies. This section describes the proposed public accessways, which have been developed based on review of the coastal public access policies contained in the California

Coastal Act and the LCP, as well as proposed Resort accessways. A discussion of resource and habitat protection in access areas is also included.

Section 4.0, Signage, discusses the location, content and intent of Resort guest signs public access signs, informational and interpretive signs, safety and hazard signs, restricted access signs, and private property and boundary signs that will be installed on the site.

Section 5.0, Lighting, introduces the types of lighting that will be installed along the entry driveway, the entry road, the entry to the tunnel, the courtyard, the public access parking lot, and the accessways, as well as the type of signage lighting that will be used.

Section 6.0, Planting Zones, introduces each of the proposed planting zones on the site. A list of typical plant species that may be included in each zone is provided consistent with the Habitat Protection Plan (“HPP”) prepared for the Resort (EMC Planning Group, Inc. 2013). A Landscape Plan has been prepared for the project that illustrates the location and composition of each planting zone. The Landscape Plan is included as [Appendix A](#).

Section 7.0, Accessway Implementation, Management and Maintenance discusses implementation, management and maintenance of accessways, signage and planting zones. This section reviews the LCP policies that relate to offers of public access dedication, management and development of proposed accessways, and design guidelines for accessways. This section also addresses potential management agencies and discusses funding and management ideas for the project's proposed public accessways. Protective measures intended to maintain the accessways and other improvements are discussed.

Section 8.0. References and Report Preparation provides a list of references used in preparing the plan.

2.0

PROJECT DESCRIPTION

2.1 LOCATION

The Resort site (APN 011-501-14) is located on the shore of Monterey Bay in the northern portion of the City of Sand City, about one mile north of Monterey and about 28 miles south of Santa Cruz. The gross site area is 39.04 acres, 32.09 acres of which lie above the mean high tide line. The site is located within the greater Monterey Peninsula urbanized area and is within the limits of the Sand City Redevelopment Agency redevelopment project boundary. [Figure 1, Regional Location](#), illustrates the site in its regional setting.

Former Fort Ord property to the north is owned by the California State Department of Parks and Recreation (“DPR”) and the smaller adjacent parcel by Mountain Lake Development Corp. (approximately 0.45 acres). Approximately 16 acres of property to the south is owned by the Monterey Peninsula Regional Park District (“MPRPD”). Property to the east is owned by the Union Pacific Railroad and the California Department of Transportation. Monterey Bay is directly to the west.

With the exception of the two privately owned parcels (1 acre and 0.45 acre), land uses to the north and south are proposed to ultimately become public park developed by state and regional park agencies. Land use immediately to the east is devoted to transportation. State Highway 1, a paved bicycle trail, and the disused Monterey line of the Union Pacific Railroad provide vehicular, bicycle, and potential rail access to and from the Monterey Peninsula. Beyond these transportation facilities to the east are Seaside High School and residential areas, and to the south are the Edgewater Shopping Center in Sand City (a large commercial box shopping center including Target and Costco as anchor tenants), and commercial, and industrial areas in Seaside. [Figure 2, Project Vicinity](#), illustrates the local vicinity.

The site is owned by the Applicant, who is proposing the Resort on the site. The site was used for approximately 60 years for sand mining by Lonestar Industries. No or minimal reclamation

activities have occurred since the mine closed in 1986. The site encompasses a gross area of 39.04 acres, of which approximately 32 acres lie above the mean high tide line. The site contains approximately 1,495 feet of beach frontage.

2.2 LAND USE

The LCP Land Use and Implementation Plans allow four land uses on the site: 1) Visitor-Serving Commercial (CZ-VSC); 2) Visitor-Serving Residential (CZ-VS-R2); 3) Residential (CZ-R2); and 4) Public Recreation (CZ-PR). The location of these uses is illustrated in [Figure 3, Sand City LCP Land Use Map](#). LCP Land Use Plan policy 6.4.1 and the LCP Implementation Plan Planned Unit Sand City LCP Amendment 2-97, approved June 11, 1997, allow permitted land uses at this site to be intermixed provided that they do not exceed the maximums established for the individual use areas and ratios of visitor serving to residential use.

Site Plan

[Figure 4, Site Plan](#), presents the proposed plans for the modified Resort. The modified Resort includes the construction of a 368-unit mixed-use resort with a residential component designed to integrate development within the existing dune complex. The Resort facilities will be accessed from the west end of California Avenue through an entry driveway into the site. The Resort will include the following uses:

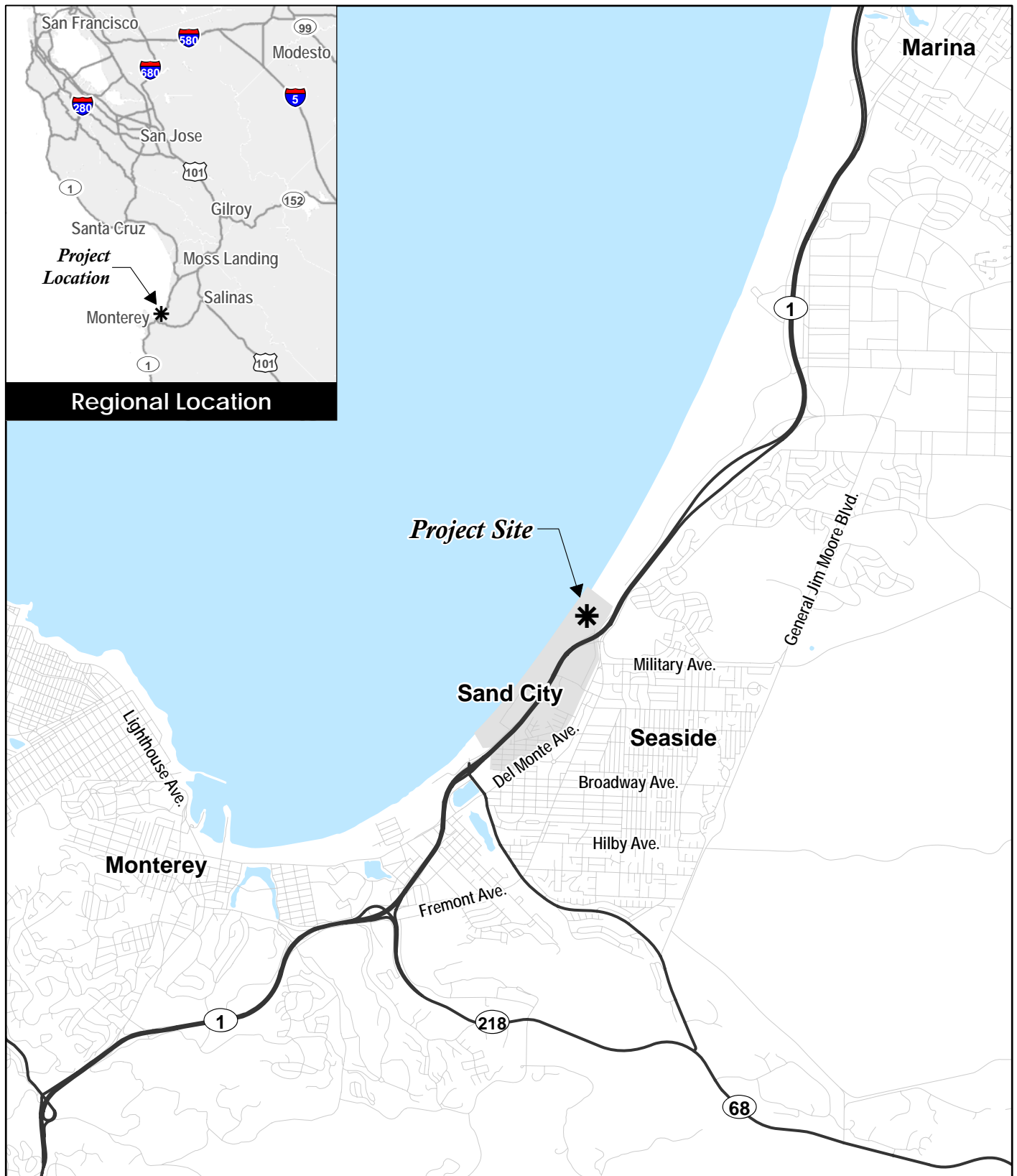
- A 184-room hotel located south of the central lobby building area;
- 92 visitor-serving condominium units (rental pool condo hotel) located south of the lobby building area enveloping a courtyard in the backside and above the hotel units;
- 92 residential condominium units located north of the lobby and a main program building enveloping a courtyard;
- A program facilities building including a reception/lobby, restaurant, retail and wellness spa;
- Auxiliary facilities including conference center, meeting rooms, theater and parking all located in the underground building at levels 22' and above;

Main access to the resort is through the terminus of California Ave., then through a tunnel ending in a plaza or courtyard on the westerly side in front of the lobby, with direct access to underground parking for both the hotel and residential units. Secondary access for service to the hotel and the residential condominiums in on the north easterly end of the

resort below existing grade along with fire trucks access provided on the north end of the resort wrapping westward in front of the resort with a turnaround, all connecting to guest trails to the beach; and

- Open space, public access and surface parking with 46 spaces on the easterly side, trails to the beach, vista point, and habitat and dune restoration areas.

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Source: ESRI Streetmap North America 2010

Figure 1

Location Map

Access, Signage, and Lighting Plan



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Legend

 Project Boundary
 Sand City Limit Line
 Adjacent Parcels



0 1,000 feet

Source: Google Earth 2012, Monterey County GIS 2010

Figure 2
Site Vicinity

Access, Signage, and Lighting Plan

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LEGEND:

City Limits ———

Coastal Land Use Classifications

- Residential Medium Density (R-2)
- Residential High Density (R-3)
- Visitor Serving Residential Light Density (VS-R1)
- Visitor Serving Residential Medium Density (VS-R2)
- East Dunes Specific Plan (Proposed)
- Visitor Serving Commercial (VSC)
- Light Commercial (C-1)
- Heavy Commercial (C-2)
- Coastal Dependent Industrial (CDI)

- Industrial Manufacturing (IM)
- Industrial Park (IP)
- Public Recreation (PR)
- Public Facilities (PF)
- Habitat Reserve (HP)

Non-Coastal Land Use Classifications

- East Dunes Specific Plan
- Regional Commercial (C-4)
- Mixed Use Development (MU-D)
- Public Facilities (PF)
- Habitat Preserve (HP)



not to scale

Source: City of Sand City 2011

Figure 3

Sand City LCP and Land Use Map

Access, Signage, and Lighting Plan

Exhibit 23 Access, Signage, Lighting Plan

A-3-SNC-98-114 Settlement Agreement

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Design Intention

The Resort differs in a number of ways from the originally proposed project. With respect to building layout, design, and size, the Resort will be set back a substantially greater distance (as discussed in the 2008 EIR Addendum) from the ocean than the original layout of the project. Thus, there will be a greater buffer between the Resort and the lower beach. The elimination of these significant construction and operational activities will help reduce the temporary and long-term impacts to potential snowy plover habitat or breeding activity on the lower beach.

The landscape plan is also designed specifically to take into account the re-creation of types of habitat on or near the beach and strand that are more likely to attract plover nesting and activity. The Resort has been sited to avoid disturbance of sea cliff buckwheat plants located in the swale area on the northern property line, which are potential habitat for the Smith's blue butterfly.

The basic arrangement of uses was primarily influenced by:

1. the large remnant dune on the southwest corner of the site which rises to over 160 feet above Monterey Bay;
2. a balance to minimize visibility of the buildings from Highway 1 while maintaining a blue waters view;
3. the need to maintain a minimum building setback from the shoreline;
4. a desire to provide public recreation and beach access;
5. a desire to stabilize and protect sensitive dune habitat areas;
6. the need to provide for vehicular and pedestrian access to the proposed buildings; and
7. by development constraints imposed by the Coastal Commission.

The buildings have been sited and designed to integrate with one another and with the terrain. Appurtenant features, such as signage and lighting, are designed to complement the natural surroundings and protect habitat values while meeting their functional needs in serving Resort residents, guests, and members of the public.

Access to the site is limited by the configuration of adjoining land uses to an extension of the west end of California Ave through the southeast corner of the site. California Ave does, however, sit at a major Hyw 1 interchange with on/off ramps in both south and north directions, so access to the resort is very convenient. The access arrangement efficiently accommodates the needs of all users, including visitors who arrive by auto or bus, and bicyclists, pedestrians, service vehicles, and the general public who wish to access the shoreline. By keeping these access facilities along the easterly margin of the site, and by providing garages beneath the buildings for

guest and resident automobiles, along with a portion of the buildings sited underground, vehicles are kept away from the shoreline areas, allowing the shoreline experience itself to be free of the presence of vehicles.

Lot Subdivision

Proposed subdivision of the property will create three parcels. Parcel 1 contains mainly the hotel and visitor serving rooms and condos, along with common areas, the lobby and underground parking and the main entry into the Resort from California Ave.. Parcel 2 contains mainly the residential component of the Resort, along with underground parking, service and condo access to the underground areas, fire access and the public parking area along with access and trails for the public to the beach. Parcel 3 contains the foredune and beach area along with the public trail, vista point and Resort trails to the beach and will be maintained as open space. A future common interest subdivision will further subdivide the visitor serving units and residential units into a condominium regime with CC&R's and cross easements, and those will be recorded as part of the Subdivision Map. Access easements will be granted along the entry drive and public parking area and the northern access route to the beach.

2.3 ACCESS AREAS

The Resort includes designated access areas that will provide access to the beach and upland viewpoints for use by Resort residents and guests, as well as the general public. This section contains a brief description of the access areas. Refer to Section 3.0 Access for additional details.

Public Access Area

Public access areas will include the entry drive to the public parking area and bike path, the northern access route and vista point, and the entire beach and shoreline bluff face. Access to Fort Ord Dunes State Park will be possible along the beach and in the future from the upland area (outside the property boundaries) if the Department of Parks and Recreation (DPR) constructs a connecting trail. Public access parking will be provided along the northeast side of the Resort, past the tunnel with 46 spaces, 3 of which are Americans with Disabilities Act (ADA) compatible. Entry to the Resort will be through private street providing public access from 5 a.m. to one hour after sunset.

Resort Access Area

Resort access routes will provide beach and vista point access that is intended for use by Resort guests and residents. A continuous Resort-access walkway will be provided to the seaward side of the buildings with two beach access routes and an access route to the southern vista point. The walkway will also serve as emergency and maintenance vehicle access as required by local fire code. Resort and public access routes will not directly connect. Connections will be possible from the beach area and in the upland area by way of the front entry of the Resort buildings and the fire access road.

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3.0

ACCESS

This portion of the Access, Signage, and Lighting Plan has been developed to be consistent with the forms and means of access identified in Sand City LCP Policies 2.3.1, 2.3.2, 2.3.3, 2.3.4, 2.3.7, 2.3.8, 2.3.11, and 2.3.14 and the development constraints imposed by the Coastal Commission. The Resort provides public, resident and guest access routes that implement these policies. Access through proposed dune stabilization and restoration areas will be protected, as required in Policy 2.3.6.

3.1 FORMS OF ACCESS

The typical forms of access include lateral beach access, vertical beach access, blufftop or upland paths, and scenic overlooks, including vista points. An accessway is the right-of-way or easement area in which a physical path or stairway is provided, or within which beach access is allowed.

Lateral Access

Lateral accessways provide access along the water's edge. Lateral accessways allow for walking and running along the shoreline, sunbathing, surfing, fishing, and other beach-oriented activities. Lateral accessways should be a minimum of 25 feet of dry, sandy beach at all times of the year, or should include the entire sandy beach area if the width of the beach is less than 25 feet. Lateral accessways should be defined to provide the public and property owner with the maximum amount of certainty possible to determine where public rights of access exist. Currently the public has no lateral access on the beach.

Vertical Access

Vertical accessways provide a connection between the first road, trail, or use area nearest the sea and the publicly owned tidelands or established lateral access way. Vertical accessways are usually used for walking and running, and should extend from the road to the shoreline. A vertical accessway should be a minimum of ten feet in width to allow for pedestrian use.

Blufftop or Upland Paths

Blufftop or upland paths provide access along the shoreline bluff or along the coast inland from the shoreline. A blufftop or upland trail can also link inland recreational facilities to the shoreline. Blufftop access for the public will be provided in the vista point or scenic overlook location, and will not connect with the two trails for use by the Resort guests and owners. The use of blufftop accessways shall be limited to walking and coastal viewing.

Scenic Overlooks

A scenic overlook is a location that provides the public with a unique or special view of the coast. Scenic overlooks or vista points are considered access destinations and proper access paths and support facilities should be provided where appropriate, as determined by the use and location of the overlook. Scenic overlooks should be accessible from a public road or an upland trail, and should be wheelchair accessible.

3.2 LCP PUBLIC ACCESS POLICY

The California Coastal Act states that new development projects between the nearest public road and the sea shall provide public access unless: (1) access is inconsistent with public safety, military security needs, or protection of coastal resources, (2) adequate access exists nearby, or (3) agriculture would be affected adversely.

Much of the Sand City coastline is in public ownership. The DPR and the MPRPD each owns most of the land north and south of the site, except for the adjacent half acre to the north. Fort Ord Dunes State Park is located directly north of the site and opened to the public in Spring 2008. The adjacent beaches are open for public use; however, currently there is minimal direct public access to the Sand City beaches due to intervening private property and the lack of designated access points and developed pathways. The Resort's beach is currently privately held and the public has no lateral access across the lower beach of the site.

Most projected public accessways in Sand City will be provided by the public park agencies and through future development proposals, such as the Resort and along Tioga Ave. to the south. The Land Use Plan portion of the Sand City LCP sets forth guidelines for developing public accessways and designates a general system of shoreline access. [Figure 5, Sand City LCP Public Access Provisions](#), show the accessways planned as part of the LCP. [Figure 4, Site Plans](#), show that a vertical public accessway and vista point is planned on the site. Relevant Sand City LCP Land Use Plan policies are discussed for each of the public access elements included in this section.

Lateral Access Policies

Sand City LCP Policies 2.3.2 and 2.3.4 require new shorefront development to include site-specific locations for lateral access in their development proposals. The Sand City LCP

Implementation Plan requires lateral access easements to include a minimum of 25 feet of sandy beach from the mean high tide line. The Sand City LCP Land Use Plan Public Access Provisions map does not require blufftop access on this property.

Vertical Access Policies

Sand City LCP Policy 2.3.1 requires new shorefront development to provide vertical accessways. Under Sand City LCP Policy 2.3.4, these accessways are to be located in areas where the least number of improvements would be required to make it usable by the public and where there is sufficient beach area. Accessways should be distributed throughout an area to prevent crowding, parking congestion and misuse of sensitive coastal resources. Under Sand City LCP Policy 2.3.8, the public should be clearly directed to the designated accessways. The Sand City LCP Implementation Plan requires vertical access easements to be a minimum of ten feet wide.

Scenic Overlook Policies

The Sand City LCP Public Access Provisions Map designates eight scenic overlook areas. Sand City LCP Policy 2.3.7 requires the provision of public vista points in these areas. Sand City LCP Policy 2.3.3 states that vista points shall be located and designed to take full advantage of views to and across the bay. This policy and the Sand City LCP Implementation Plan require vista points to be accessible from a public road. One of these designated vista points is located on the site.

Bicycle Path Policy

Sand City LCP Policy 2.3.14 and the Sand City LCP Implementation Plan require new development to include plans for a connection with the regional bikeway system.

Facilities Policy

Sand City LCP Policy 2.3.3 requires public access areas to provide adequate facilities, including trash receptacles, signs, and trail improvements. These facilities should be placed at an adequate distance from access areas to be usable by visitors.

Parking Policy

Sand City LCP Policy 2.3.11 requires the provision of adequate parking for public access routes. This policy also requires parking areas to be screened from public viewpoints.

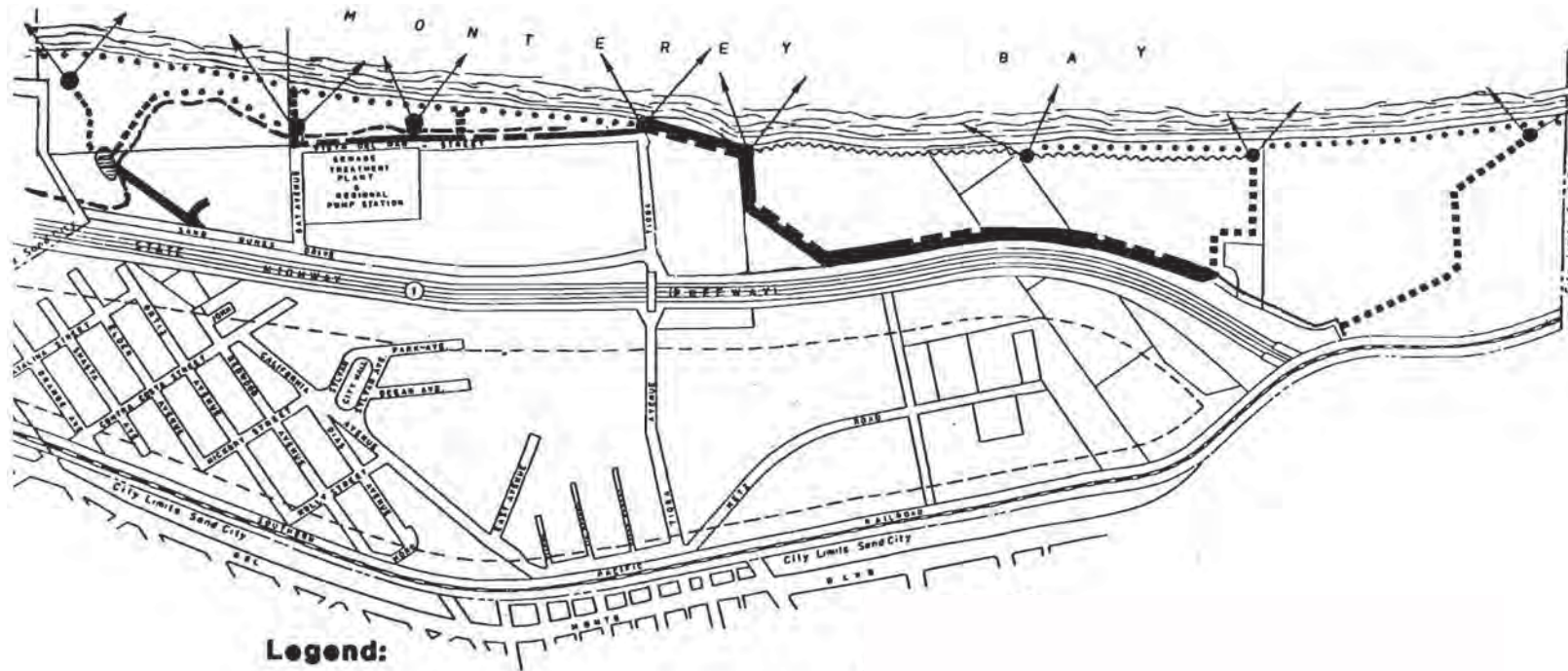
3.3 RESORT ACCESSWAY FACILITIES AND LOCATIONS

The Resort includes designated access areas that will provide access to the beach and upland viewpoints for use by Resort residents and guests, as well as the general public. This section contains detailed descriptions of the location and type of access facilities. Resort and public access routes will not directly connect. Connections will be possible from the beach area and in the upland area by way of the front entry of the Resort buildings and the fire access road. Proposed access areas and facilities are shown on [Figure 6, Resort Coastal Access](#).






Lateral Access

Public Lateral Access

A lateral public access easement will be provided along the entire beachfront of the property seaward of the 20-foot mean sea level (MSL) contour line. The public access easement will provide for public access along the entire sandy beach area and portions of the lower bluff face. Portions of the beach will provide seasonal western snowy plover exclosures without impeding lateral access. Upland lateral access will be provided along the entry drive to the Resort. A paved sidewalk/bike path will be provided along the east side of the entry drive and public parking area, connecting to the Monterey Bay Sanctuary Scenic Trail at the south and extending to the



Legend:

-  **BLUFFTOP ACCESS**
-  **FLOATING VERTICLE ACCESS (GENERALIZED LOCATIONS)**
-  **LATERAL ACCESS (SANDY BEACH)**
-  **PROPOSED BICYCLE PATH (GENERALIZED LOCATION)**
-  **VISTA POINTS**
-  **FLOATING PLAN LINE (GENERALIZED LOCATIONS)**



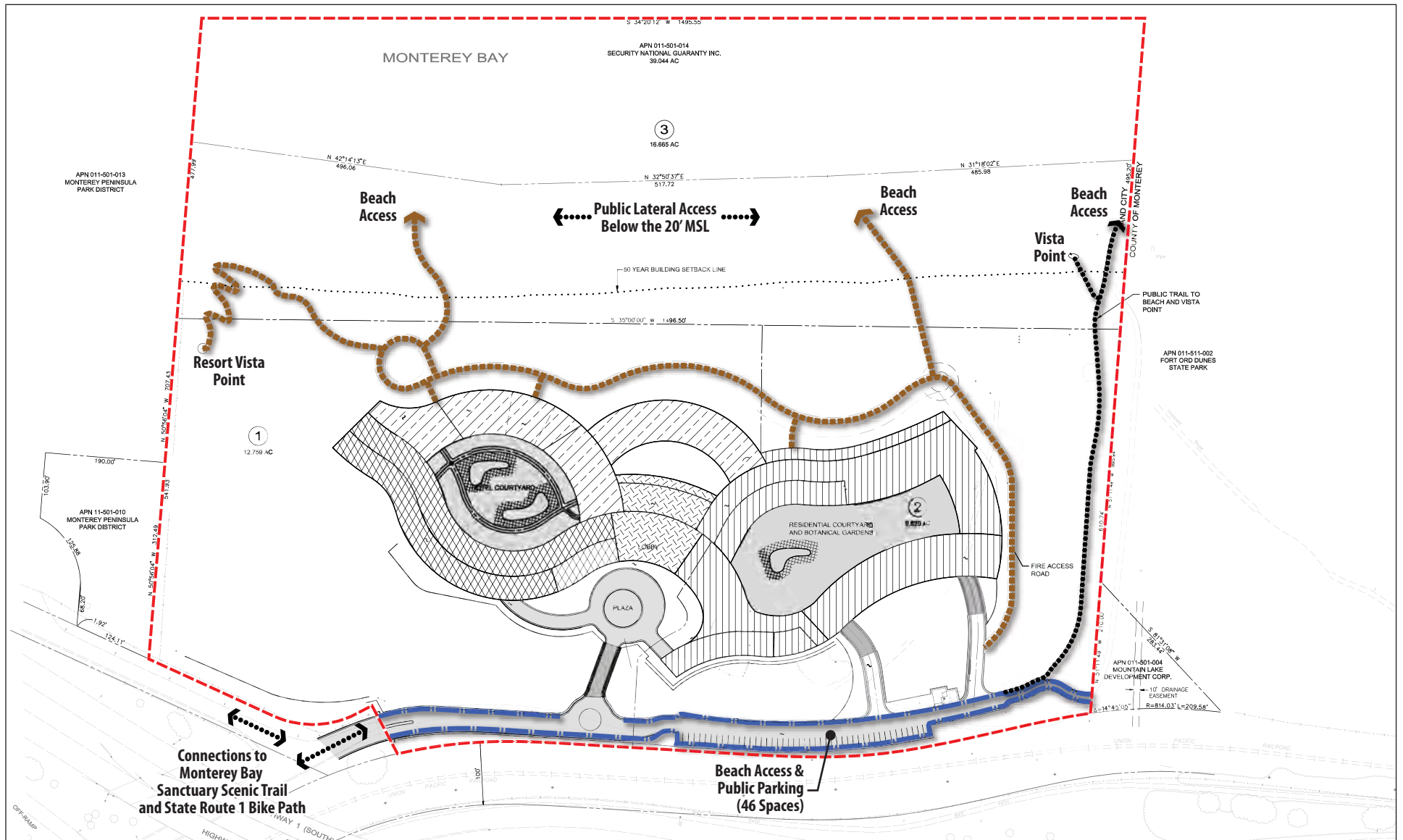
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Source: City of Sand City 1982

Sand City LCP Public Access Provisions

Access, Signage, and Lighting Plan

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Source: Bestor Engineers 2013

Figure 6
Resort Coastal Access

Access, Signage, and Lighting Plan

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Resort entry and the public access parking lot. At the north end of the public access parking lot, the walking path will continue northward on the east side of the parking lot and then join the access road to the well which will serve as a dual access road. The portion of the walking path to the east of the parking lot will be either concrete or compacted decomposed crushed rock. Bicycle lanes will be provided between the Monterey Bay Sanctuary Scenic Trail and the public access parking lot along the easterly property line.

Resident and Guest Lateral Access

An access promenade for Resort residents and guests will consist of a concrete walkway to the seaward side of the Resort buildings, extending from the northern end of the buildings to and around the blufftop swales. The curvilinear promenade will undulate with the underlying topography. The paved portion of the promenade will be four feet wide, with additional width of concrete paver/planter blocks to either side to provide a support surface for emergency and maintenance vehicles. The walkway will serve as emergency vehicle access as required by local fire code, with a turn-around surrounding the bluff-top on the south. The concrete pavement will have an integral earth tone color and finish to blend with the surrounding dune landscape.

Vertical Access

Public Vertical Access

A public vertical access is required by the Sand City LCP. Public vertical access will be provided for pedestrians along the northern edge of the project site, beginning at the public access parking lot, then joining the well access road as a dual purpose road, then continuing to the beach. The accessway will consist of a compacted decomposed rock path, five feet wide, from the south end of the public parking lot to the point where sand conditions require use of a boardwalk. The accessway will continue as an up to ten-foot-wide boardwalk from that point to the beach bluff, where a stairway may be required. A public access easement will be recorded.

The public vertical accessway addresses all of the Sand City LCP access policies. Vertical access to the beach will be accomplished without major structures. The top of the beach is only 10 to 15 feet higher than the tide zone. The accessway will be located at the northern edge of the buildings at the site.

Resident and Guest Vertical Access

Two vertical accessways providing access to the beach are planned for the use of Resort residents and guests. One accessway will be located in the northern portion of the site to provide beach

access from the residential condominiums area and one accessway will be located in the southern portion of the site to provide beach access from the hotel and visitor serving condos area. These accessways will be boardwalks that lead from the paved promenade to the top of the bluff. A stairway will continue between the end of the boardwalk and the beach.

Scenic Overlooks

Public Vista Point

A public access overlook is required by the Sand City LCP. The public access vista point will be located on a low bluff near the northern edge of the Resort, close to the Fort Ord Dunes State Park. The vista point will be accessed from a spur boardwalk from near the termination of the public access boardwalk, at an elevation of about 30 feet above MSL. Benches and interpretive signs will be located at the vista point, and will be situated in a visually unobtrusive manner. A trash container will be located at the vista point trail junction.

The vista point will be located within a public access easement as described in the earlier discussion of vertical access. The design of the public access easement will allow room for the vista point to be relocated along the blufftop should shoreline or dune erosion occur.

Resident and Guest Vista Point

A vista point for residents and guests will be provided at the southern edge of the site. The vista point accessway will begin at the end of the paved promenade near the blufftop swale. The accessway will switchback up the dune to the vista point at about 90 feet above MSL, about 60 feet above the elevation of the promenade. Benches, interpretive signs, and a trash container will be located at the vista point, and will be situated in a visually unobtrusive manner.

Bikeways

The Monterey Bay Sanctuary Scenic Trail is planned to extend at least from Davenport in Santa Cruz County to Pacific Grove. The Sand City portion of this regional bike path was completed in 1998 across the former landfill to the south of the site, and connects to the Fort Ord bike path. Access from the Resort will be provided where the trail intersects the entry to the Resort. The Fort Ord bike path is located east of the Resort, separated from the site by the Union Pacific Railroad right-of-way, and serves as a temporary segment of the Monterey Bay Sanctuary Scenic Trail. The Monterey Bay Sanctuary Scenic Trail Master Plan (TAMC January 2008) shows the trail diverging from the Fort Ord bike path at Sand Dunes Drive and continuing to Marina on the west side of the railroad tracks.

The Resort will provide Class 2 bicycle lanes from the entry through the east side of the parking area to the northern-most public parking area as illustrated in [Figure 6, Resort Coastal Access](#). The primary circulation link providing vehicular and bicycle access between the Resort and the public road network is an extension of the entry driveway as a private street northward from California Avenue near the southbound ramp to Highway 1. This private street will incorporate Class 2 bicycle lanes (a striped lane on each side of the street) from California Avenue to the end of the parking lot. A bicycle rack will be located at the point where the bike lanes end. Shared bicycle and pedestrian access will continue along the remainder of the public parking area.

Bicycle rental is planned through the Resort concierge desk. Residents and guests will be able to rent bicycles for use on the Monterey Bay Sanctuary Scenic Trail.

Facilities

The Resort coastal accessways include the facilities required by the Sand City LCP: trash receptacles, signage, and trail improvements. Trash and recycling receptacles will be provided at each end of the public access parking lot and at the vista points (or the vista point trail junction). Signage will be located at appropriate points, as described in Section 4.0 Signage. In addition to the facilities required by the Sand City LCP, the Resort will provide lighting, bicycle racks, and benches. Lighting is described in Section 5.0 Lighting. Bicycle racks will be provided at the north end of the Sand Dunes Drive parking lot. Bicycle racks for the use of guests will be provided inside the Resort complex. Benches will be provided at the vista points and at several locations adjacent to the public access parking lot. The proposed facilities are consistent with other locally developed regional and state park public access points. Proposed locations of public facilities are shown on [Figure 5, Sand City LCP Public Access Provisions](#).

Parking

The Resort will provide a public parking area in the eastern portion of the site along the entry driveway extension. The 46 spaces will provide adequate parking for the public vertical accessway and scenic overlook. The parking area will be landscaped with appropriate vegetation to assist in screening the area from public view. Parking lot access will be controlled by an electronic gate and closed to the public from one hour after sunset to 5 a.m. in the morning.

3.4 RESORT ACCESSWAY DESIGN DETAILS

Pedestrian Paths and Boardwalks

Several types of pedestrian paths and boardwalks will be utilized depending on the particular setting. These include paved walkways, compacted decomposed rock paths, boardwalks, and stairs.

Paved Walkways

In locations where very high levels of use are expected, and other improvements are present, concrete sidewalks or walkways will be used. The sidewalks leading into the Resort from California Avenue and the promenade to the seaward side of the Resort buildings will be constructed of poured concrete. The concrete will be colored and textured to blend with the adjacent sands. A light wash fluid finish will create an aged concrete appearance instead of a full exposed aggregate appearance. Pervious concrete will be used where appropriate. A special finish, such as simulated slate, may be used at building entrances. [Figure 7, Decorative Pavement](#), shows an example of a decorative pavement treatment.

Compacted Decomposed Rock Paths

In locations with stable soil conditions, and where a less formal surface is appropriate, compacted decomposed rock will be used for the pedestrian paths. A material with a buff color will be selected to blend with the adjacent sands. [Figure 8, Compacted Rock Pathway](#), shows an example of a compacted rock path.

Boardwalks

Boardwalks are segmented plank walkways that provide access to and over fragile or unstable areas. Unconsolidated sand dunes are usually too unstable for on-ground access trails. Boardwalks provide a solid walking surface and as wind erosion occurs, boardwalks can be moved by segment without the use of large machinery, thereby avoiding disturbance of dune vegetation. Boardwalks have proven successful in aiding dune stabilization because they offer public access to the beach along routes that are not impeded by deep sand or vegetation. Pedestrians most often choose to use paths that are easy to walk on rather than trails that are undefined and damaging to plant life. Wooden boardwalks are used at several beaches in the Monterey Bay area.



Figure 7
Decorative Pavement
Access, Signage, and Lighting Plan

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Figure 8
Compacted Rock Pathway
Access, Signage, and Lighting Plan

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The boardwalks will be constructed of nominal dimension two-inch and four-inch standard or pressure-treated Douglas fir/hemlock lumber and/or composite lumber. When possible, wood used for the boardwalks will be certified by the Forest Stewardship Council or obtained from a re-cycled source. Where path alignment is level and stable, the boardwalk surface will be laid along a wooden footing or sleeper and nailed more permanently in place. Where the landforms undulate and are subject to water- or wind-borne sand erosion, boardwalk surfaces will be connected by PVC-coated cable or equivalent. The boardwalks will be approximately four or five feet in width, allowing adequate room for pedestrian use. Every 200 feet (maximum) there will be a wide spot to facilitate wheelchair passing and/or resting. All boardwalk surfaces will be placed at a relatively level grade not exceeding five percent (1:20). [Figure 9, Boardwalks](#), illustrates the proposed design of the wooden boardwalks.

Stairways

Where slopes in dune areas are too steep for boardwalks (in excess of five percent or 1:20), stairways will be used. Pole/cable steps will be placed from the bluff down to the surf zone, similar to steps at Marina State Beach. The steps will be fastened at the beach bluff and can be adjusted to fit the changing sand surface conditions. The boardwalks will be constructed of nominal dimension two-inch and four-inch pressure-treated Douglas fir/hemlock lumber and/or composite lumber. When possible, wood used for the stairways will be certified by the Forest Stewardship Council. Similar steps will be used on the accessway to the southern vista point if grades are too steep for boardwalks. [Figure 10, Stairways](#), illustrates an example of the proposed stairway design for beach access.

Vista Points

Vista points will be on-grade decks located about ten feet back from the edge of the bluff. The vista points will contain informational signage, benches, and have trash receptacles located nearby. A three-foot high railing will be constructed on the non-access sides with an adequate gap to ensure views from wheelchairs are not blocked. [Figure 11, Vista Points](#), illustrates conceptual vista point designs. The decks will be constructed of standard or pressure-treated wood and/or composite lumber, with ramped access from the trail. When possible, wood used for the vista point decks or railings will be certified by the Forest Stewardship Council. The observation decks will be designed to allow them to be disassembled and relocated using manual labor. Associated benches, trash receptacles, and signs will utilize anchoring mechanisms designed to allow the facilities to be manually detached, relocated and re-anchored landward.

Bikeways

Designated bicycle ways will be constructed in accordance with the California Department of Transportation Highway Design Manual. The Resort will provide Class 2 bicycle lanes along the extension of the west end of California Ave. and into the entry driveway and to the area adjacent to the public parking area.

Fencing

Low fencing will be provided along the sides of the vertical accessway from the public parking area to the vista point to keep pedestrians away from dune stabilization and restoration areas. Fencing will be used adjacent to other accessways as necessary to prevent access into fragile habitat of unstable dune areas. A steel post and vinyl-coated cable fencing will be used as illustrated in [Figure 12, Habitat Fencing](#).

As shown in [Appendix A, Landscape Plan](#), security fencing will be installed along both the northern and southern property lines, with split rail fencing along majority of the public trail to the beach (west of the adjacent parcel to the north) and the easterly property line. In addition to No Trespassing / Private Property signage, redwood picket fencing approximately six feet high and blended into the landscape will be used to provide deterrents against trespassing.

Retaining Walls

Retaining walls are located along the eastern property boundary, in the main entry, along the entry drive, entry and exit of the tunnel, along the public parking area, along the service access road, residential condo access road and on the easterly side of the resort buildings as shown on [Figure 4, Site Plan](#). Where retaining walls are required to support sand dune formations and are highly visible, walls will mimic the undulating dune topography that is found on the site, especially at the entrance to the project. In other locations, where full walls are not necessary, split rail fencing will be installed in a similar undulating fashion. Examples of the types of retaining walls proposed are shown in [Appendix A, Landscape Plan](#).



Figure 9
Boardwalk

Access, Signage, and Lighting Plan

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Figure 10
Stairways

Access, Signage, and Lighting Plan

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Figure 11
Vista Points

Access, Signage, and Lighting Plan

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Figure 12

Habitat Fencing

Access, Signage, and Lighting Plan

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Maintenance and Public Safety

The construction and maintenance of the vertical, lateral and blufftop paths will have public safety as a primary focus. The paths will be constructed in areas determined to be safe from significant hazards. Upkeep of the paths will focus on keeping the paths clear of loose sand or other hazards and evaluated for condition of the materials. In the event that an accessway becomes unsuitable for use, the trail will be closed and appropriate signs will be posted until repairs can be made. Safety signs will be posted to inform residents, guests and the general public of possible hazards, such as surf areas, tsunami potential, areas with unstable cliffs and areas with significant slope. These signs are discussed further in Section 4.5, Safety and Hazard Signs.

3.5 RESOURCE AND HABITAT PROTECTION IN ACCESS AREAS

Sand City LCP Policy 2.3.6 requires public accessways to be guided away from stabilized or restored dunes. The policy requires accessways to consist of boardwalks or other appropriate pathways to protect dune vegetation. The Resort contains areas slated for dune stabilization and restoration. The dune areas on the site have been previously exposed to extensive human disturbance and destabilization effects of mining. In an attempt to stabilize and restore the dune areas on the site, a Habitat Protection Plan (“HPP”) was prepared by EMC Planning Group Inc. (2013). The HPP describes a program for long-term avoidance, restoration, enhancement and protection of the sensitive species located on the site.

Appropriate accessways have been developed in recognition of the sensitivity of coastal dune habitats. The accessways were located and designed to ensure protection of the dune vegetation, in accordance with Sand City LCP policy. The Resort will provide access through dune stabilization and restoration areas, but will provide appropriate boardwalks, stairways, and fencing to protect these areas from trampling by pedestrians. In addition, the boardwalks through dune stabilization and restoration areas will have educational, informational, and interpretive signs to inform visitors about the coastal dune habitat and endangered species that are found in the habitat. The signs will emphasize the need to protect endangered plants and animals and their habitats. Appropriate barriers (symbolic and/or physical, as required) will be provided where necessary to keep pedestrians away from sensitive areas.

Sand City LCP Policy 2.3.9 requires seasonal public access restrictions to be identified. Access to certain areas may be seasonally limited for environmental protection reasons, based on criteria established in the HPP. Protective measures include a combination of techniques, including: 1) routing pedestrian pathways away from the most sensitive areas, 2) temporary fencing of some

areas during construction to avoid disturbance of native plantings while they are becoming established, 3) seasonal or permanent fencing of particularly sensitive areas to avoid disturbance, 4) seasonal restrictions on uses in some areas to protect special status species during critical periods of their life cycles, 5) limitations on the number of users that can be supported in particularly sensitive dune habitat areas, and 6) public education as to the sensitivity of the coastal dune habitat.

4.0 SIGNAGE

4.1 SIGN TYPES AND DESIGN PARAMETERS

To accentuate coastal access opportunities for the public, appropriate signage should be placed in access areas. The Sand City LCP identifies four policies that address signage: 2.3.3, 2.3.9, 2.3.12, and 2.3.13. The Access, Signage, and Lighting Plan proposes the use of six types of signs on-site:

- 1) Resort identification signs;
- 2) public access and directional signs;
- 3) informational and interpretive signs;
- 4) safety and hazard signs;
- 5) restricted access -habitat restoration signs; and
- 6) private property and boundary signs.

All signs at the Resort will be subject to the City design standards identified in Sand City LCP Policy 5.3.4, and the developer/owner will obtain a design permit to assure conformance with these standards. In compliance with Sand City LCP Policy 2.3.12, all signs on the Project site will be designed according to the following design standards:

- 1) Highway direction and other public signs will be designed to complement the visual character of the area.;
- 2) Wood signs and wood supports with painted and/or carved graphics, or signs mounted on retaining walls or gateway structures will be used to a great extent.
- 3) Low, free-standing signs will be used to a great extent elsewhere; and

- 4) Signs may be internally or background illuminated, and will have overall low levels of lighting.

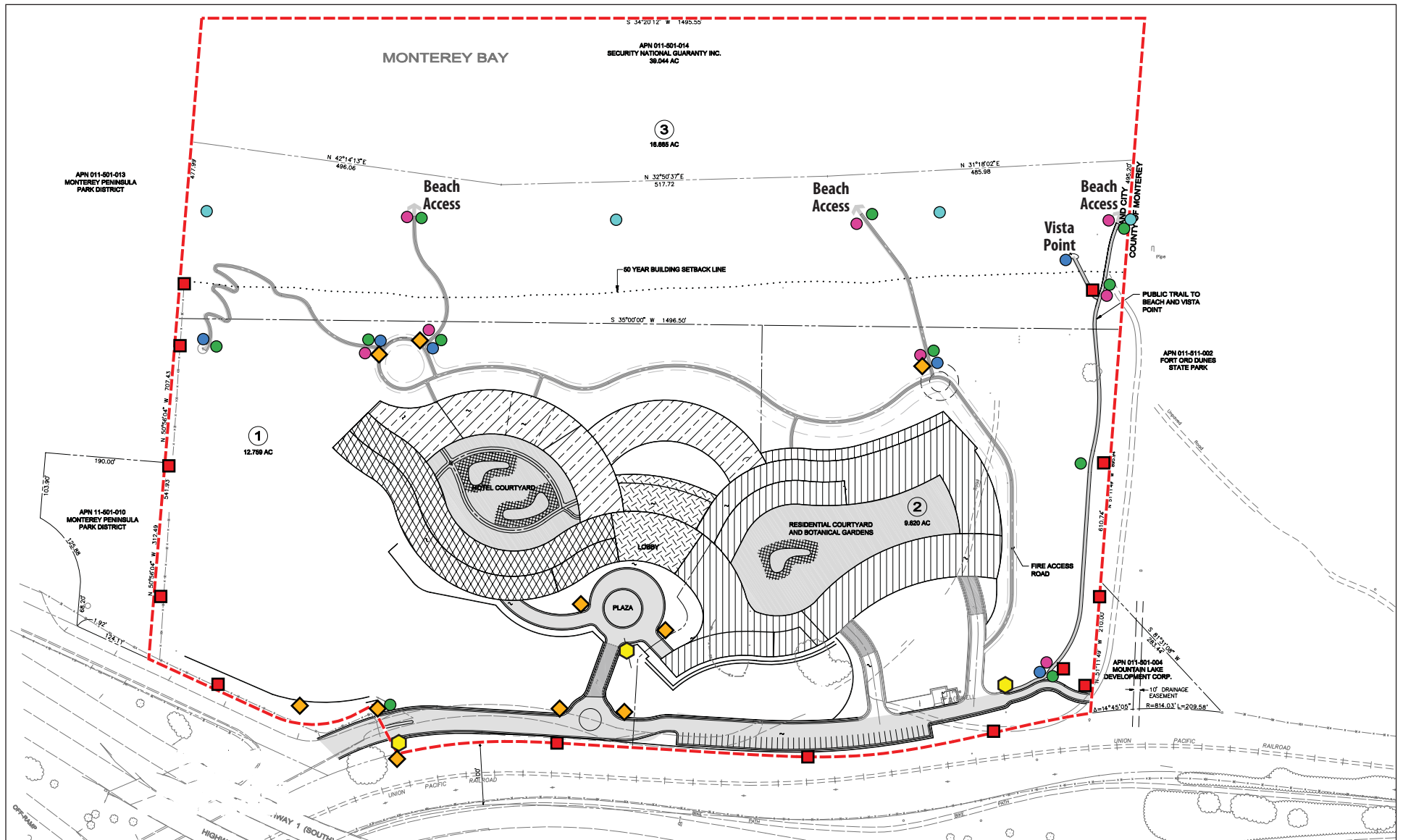
Figure 13, *Conceptual Sign Locations*, shows the approximate locations of each type of sign that will be used.

4.2 RESORT IDENTITY SIGNS

Resort signage will be provided at the entrance to the project site at the west end of the extension of California Ave. and at both sides of the entry road, the tunnel entrance, leading into the Resort facilities so as to be directed at southbound and northbound traffic on State Route 1. At the entry to the project site from California Ave. Resort signage will be situated on the retaining wall outside the main entry and on the two gateway structures at the entry. The entry signage will be consistent with the entry design submitted to Sand City. The signs will identify the Monterey Bay Shores 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 wash the sign after dark at both the main project site entryway and the entry signs into the Resort at the tunnel.

4.3 PUBLIC ACCESS AND DIRECTIONAL SIGNS

Directional signs will provide guidance to the Resort facilities, residential area, delivery area, employee parking, public access parking, and exit. Standard roadway signs will be used as required. Signs directing the general public to the public access parking area and the public accessway will be provided along the entry and at the public access parking lot, and will be consistent with standard state designs for coastal access. Public access and directional signs will generally be oriented toward the main entry driveway; public access signs will be provided so as to be visible from the junction with the regional bicycle trail. The signs will lead the public to the public parking spaces and to the public vertical accessway and vista point. Sign style and colors will match the style and colors of the Resort architecture.



0 220 feet

Project Boundary

Boundary

Resort

Access/Directional

Informational/Interpretive

Habitat Protection

Safety

Dune

Source: Bestor Engineers 2013

Figure 13
Conceptual Sign Locations

Access, Signage, and Lighting Plan

Exhibit 23 Access, Signage, Lighting Plan

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4.4 INFORMATIONAL AND INTERPRETIVE SIGNS

Informational and interpretive signs will be oriented to accessway users. The signs will be constructed of wood or other appropriate materials, weather-proofed, and supported on wooden posts. [Figure 14, Interpretative Signs](#) shows examples of such signs. Signs in locations of high visual sensitivity, such as at the vista points, will be low in stature to preserve views and to minimize visibility of the signs from the bay or shore. Signs will generally be oriented to protect the sign from the effects of the sun and weather.

Interpretive signs will address issues of relevance to the site. Potential themes include dune ecology, an explanation of erosion and attempts to restore the dunes, protected species, or information about the Monterey Bay area, such as points of interest, history, surface or subsurface geography, or the Monterey Bay Sanctuary. The signs used for these purposes will be clearly written with graphics to illustrate important species and ecological principles.

The Resort accessways will provide the public, residents, and guests with views of coastal sand dune habitat. Since this habitat is unique to the Monterey Bay area, interpretive signs will enhance the public accessways and benefit visitors by giving them information on dune vegetation and wildlife. The signs will emphasize the environmental sensitivity of the coastal dune habitat and the need to protect endangered species and their habitat.

Signs describing the sensitivity of the habitat will be strategically placed in advance of areas where people might wander off the paths and into restoration areas. In particular, such signs will be placed at the beginning of the public accessway near the north end of the public access parking lot, and at the trail junction leading to the southern vista point.

4.5 SAFETY AND HAZARD SIGNS

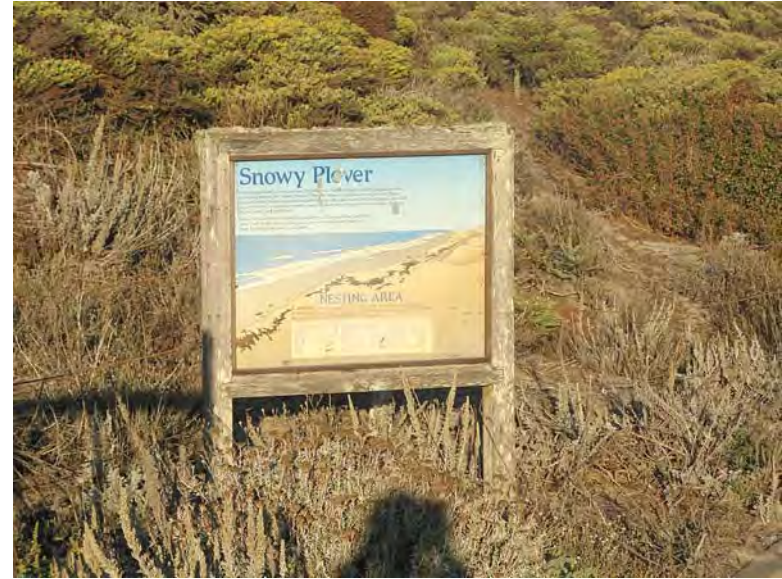
Safety and hazard signs will be posted in areas available for public use to warn of possible safety risks, as required by Sand City LCP Policy 2.3.13. Safety signs will inform visitors of potential risks while in the area (i.e., strong rip currents, unstable cliffs, mountain lions). The signs will be placed in visible areas: at trailheads, along access paths, and/or before stairways. The signs will be of a size that is consistent with the area in which they are located, and will not create unsightly visual barriers or distractions for visitors. Wording of the signs will be clear and concise and may contain illustrations if necessary. Safety and hazards signs will either use wood-trim or match similar state parks signs. The safety and hazard signs will be posted and maintained by the designated public accessway management entity as discussed in Section 7.0, Accessway Implementation, Management and Maintenance. [Figure 15, Safety and Hazards Signs](#), illustrates effective types of safety and hazard signs.

4.6 RESTRICTED ACCESS HABITAT RESTORATION SIGNS

Restricted Access Habitat Restoration signs will be placed around the perimeter of all dune stabilization and restoration areas, as well as in temporary and permanent habitat restoration areas. The signs will inform visitors of the purpose of the restoration areas and instruct visitors to avoid entering the sensitive habitat restoration areas. The style will be consistent with the hazard and safety signs. Typical signs will include language of “Private Property-Keep Out of Dunes” or “Keep out of Dunes-Sensitive Restored Habitat Areas” or similar language and placed where appropriate. [Figure 16, Restricted Access Habitat Restoration Signs](#), illustrates typical habitat protection signs.

4.7 PRIVATE PROPERTY AND BOUNDARY SIGNS

The signs will include a logo for the Monterey Bay Shores Resort or its hotel, visitor serving or residential owners use, identifying the boundary between the adjacent private, county, or state lands. The signs will be constructed of a material that is weatherproof, and will be of a size that is noticeable from a distance as shown on [Figure 17, Private Property and Boundary Signs](#). The style will be consistent with the hazard and safety or private property signs. Typical signs will include commonly used language such as “No Trespassing-Private Property,” similar to the signs currently placed along the property line. Signs may be placed seventy-five feet apart along the property perimeter on the fencing or free standing.



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Figure 15

Safety and Hazard Signs

Access, Signage, and Lighting Plan

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Figure 16
Restricted Access Habitat Restoration Signs

Access, Signage, and Lighting Plan

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Upper Beach Signage Example



Lower Beach Signage Example

Figure 17
Boundary Signage

Access, Signage, and Lighting Plan

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5.0 LIGHTING

Various forms of high-efficiency exterior lighting are proposed at the Resort. Exterior lighting was selected to minimize glare and energy usage while addressing the various lighting conditions and functional requirements. This section discusses the location and type of exterior lighting to be installed throughout the Resort. Lighting locations are shown in [Figure 18, Conceptual Exterior Lighting Locations](#). [Figure 19, Typical Lighting Styles](#), shows representative lighting fixtures.

5.1 RESORT MAIN ENTRY DRIVE

The main entry drive will be illuminated up to an average of 0.75-foot candle with decorative full cut-off fixtures mounted at a height of 14 to 16 feet and placed 20 to 30 feet on center as necessary to achieve the desired average lighting level. The lamps will be compatible in style to either those used along the segment of Sand Dunes Drive south of Tioga Road or those compatible with the Resort design, and will be placed starting from the main entry, past the tunnel and through the public parking area and north to the residential access road. Lighting north of the parking area, beyond the dune restoration area, will be of lower height (5-7 feet) so as not to interfere 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. Lighting will extend to the opposite side of the spur street that stubs to the north, in order to provide lighting onto the beginning of the northern accessway and the residential road intersection.

5.2 RESORT ENTRY ROAD THROUGH TUNNEL

The Resort entry road will be illuminated from the main entry driveway on the east side of the tunnel, through the tunnel, and into the Plaza circle at the Resort lobby area and around the entry area, residential lobby area, and the parking garage entry areas with a mix of bollard-type fixtures integral to 36 to 42-inch high decorative posts and with decorative full cut-off fixtures mounted at a height of 14 to 16 feet. The main tunnel into the resort plaza, as well as the two access tunnels for service/employees and residential condominium access, will be lit using customary wall/ceiling mounted lighting required for such access road and safety. The bollard fixtures will have a cut-off feature directing an average of 0.75-foot candles onto the road surface and adjacent sidewalks.

5.3 SERVICE AND RESIDENTIAL ACCESS ROADS

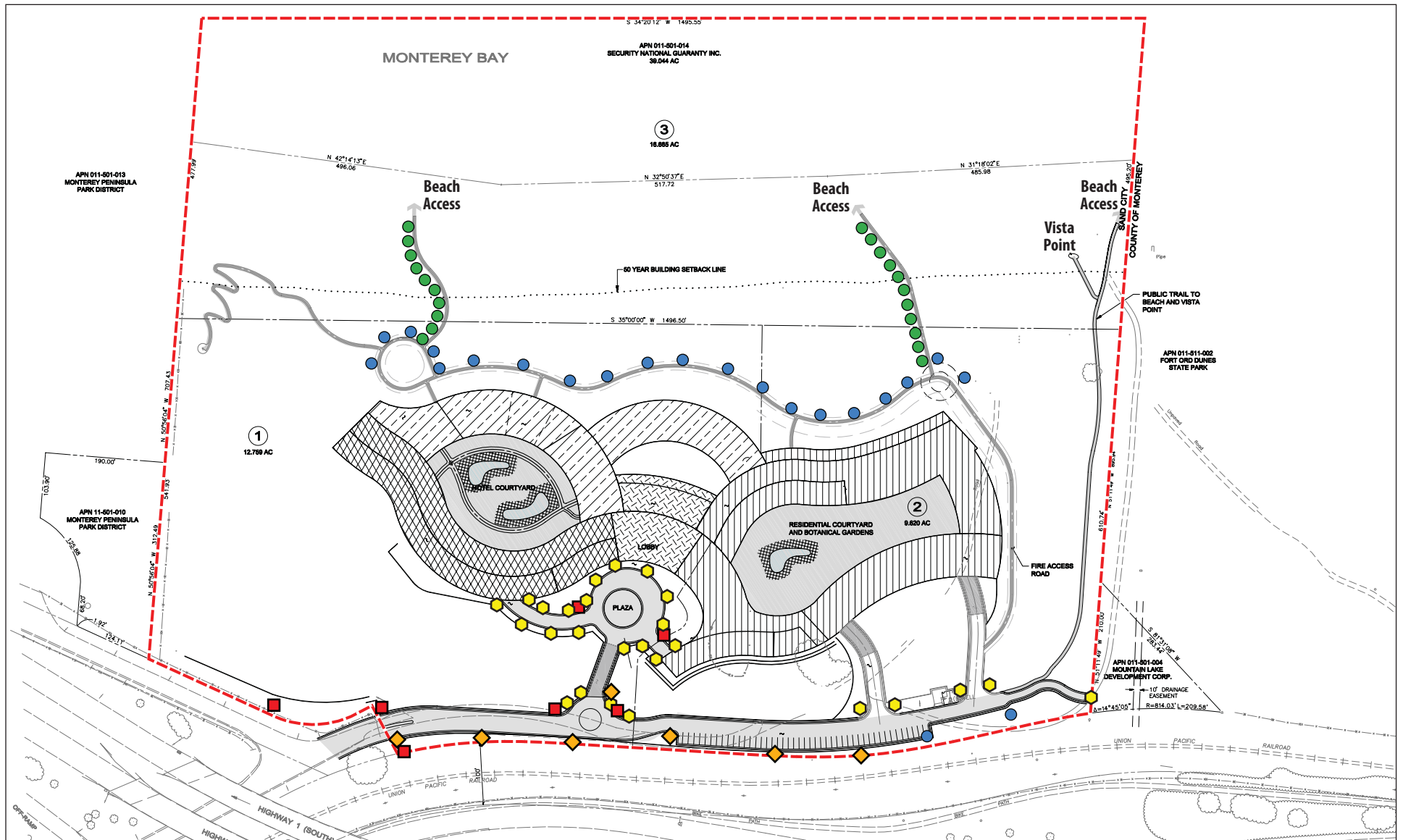
The service and residential entry road leading to the tunnels will be illuminated from main entry driveway to the parking garage entry with bollard-type fixtures integral to 36 to 42-inch high decorative posts. The bollard fixtures will have a cut-off feature directing an average of 0.75-foot candles to one side onto the road surface.

5.4 PARKING STRUCTURE

The parking structure will contain wall-mounted fixtures with a cut-off feature directing an average of one foot candle with 50-watt lamps. The lamps will be mounted and completely concealed within aluminum fixtures painted to match architectural detail. Although the majority of the parking garage lighting will be interior to the building, lights will also be mounted at garage entrances.

5.5 BUILDING LIGHTS

Exterior building lights will be specified by the building architect during the design of construction drawings. The lights will be full cut-off, down-lit, or recessed into overhangs or eaves. The decorative fixtures will be selected to match architectural details.



Source: Bestor Engineers 2013

Figure 18
Conceptual Exterior Lighting Locations

Access, Signage, and Lighting Plan

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Bollard-Mounted Path Light



Low Path Light



Landscape Down-Light



LED Path Light



LED Fiber Optic Pool Light



Sand Dunes Drive Street Light

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5.6 PEDESTRIAN PATHS

The paved promenade will be illuminated at an average of 0.5 foot candles. The lights will be mounted on 42-inch bollards on the beach side of the path, at the edge of the emergency vehicle surface. The lamps will be fully enclosed with full cut-offs directing light only back toward the resort, and away from the beach. Timers will turn every other light Sunday through Thursday at midnight and Friday and Saturday an hour later. A minimal amount of light will remain on overnight for security and safety. Lighting will be similar to that along portions of the Monterey Bay Sanctuary Scenic Trail south of the site, and in Monterey along the Presidio Curve section.

No separate lighting will be provided for the walkways along the parking area or the well access road, as these will be illuminated by the street lighting. The public accessway is not open for use at night and no lighting will be provided. Lighting will be provided at the two guest and resident accessways, to allow residents and guests to safely return from the beach after dark. Low voltage, LED, or fluorescent pathway lighting will be used, with flush-mount low-profile ground level lights mounted off one side of the boardwalk. Average lighting level will be about 0.25 foot candles to result in the least possible light disturbance in the dune area. Timers will turn off lights Sunday through Thursday at midnight and Friday and Saturday an hour later. The pathway to the southern vista point will not be illuminated.

5.7 HOTEL COURTYARD/POOLS

Principal pathway and sidewalk lighting near the buildings will be provided by bollard lighting. The courtyard and pool areas will feature in-pool LED or fiber optic lighting, and LED landscape accent lighting. These lighting systems will allow for a variety of intriguing lighting moods with minimal energy expenditure.

5.8 PROJECT IDENTITY SIGNAGE LIGHTING

The project identity signage lighting at the main entry to the site, the gateway posts, and on both sides of the Resort entry road (along the east side of tunnel) will be 34-watt fluorescent down-lights or back-lights shielded in a small overhanging structure above the sign or the signage will be backlit (alternatively). The down-lights will be directed towards the sign face with the lamps fully enclosed within aluminum fixtures, and not easily visible to passers-by. Supplemental light to prevent shadowing will be provided by ground-level high efficiency up-lights, which will be screened with low shrubs to eliminate direct view of the bulbs from Highway 1.

5.9 LIGHTING EFFICIENCY

Lighting will be selected for high efficacy, including fluorescent bulbs (50 to 100 lumens per watt), LED bulbs (about 100 lumens per watt), and metal halide bulbs (from 65 to 115 lumens per watt). Incandescent bulbs, which range from 12 to 18 lumens per watt, will not be used for landscape lighting. Low pressure sodium (100 to 200 lumens per watt) or high pressure sodium (about 100 lumens per watt) if used, will be at wattages of 150 or less to prevent overly bright street lighting.

6.0 PLANTING ZONES

Specific planting zones have been designated for the project site based on the development plan and the restoration and management goals for specific areas of the site. Planting zones have been identified in the *Landscape Plan, Monterey Bay Shores* (“*Landscape Plan*,” [Appendix A](#), Rana Creek 2013). The following is a discussion of the location and intent of each planting zone. A list of typical plant species that may be included in each planting zone is included in [Section 6.1](#).

6.1 PLANTING ZONES

The following eight planting zones are proposed on the project site and are shown on the *Landscape Plan*:

- Beach
- Coastal Bluff Living Roof
- Hotel and Residential Landscapes
- Holistic Garden
- Fore Dune
- Wetland
- Secondary Dune
- Back Dune

Each of these zones will be planted with species native to the region. [Table 1, Plant Species Recommended for Each Planting Zone](#), identifies the species proposed for each zone.

Table 1 Plant Species Recommended for Each Planting Zone

Common Name	Scientific Name
Beach	
Beach wild rye	<i>Leymus mollis</i>
Saltgrass	<i>Distichlas spicata</i>
Coastal Bluff Living Roof	
Beach bur	<i>Ambrosia chamissonis</i>
Thrift, sea pink	<i>Armeria maritima</i>
Saltbush	<i>Atriplex californica</i>
Beach salt bush	<i>Atriplex leucophylla</i>
Beach primrose	<i>Camissonia cheiranthifolia</i>
Monterey ceanothus	<i>Ceanothus cuneatus rigidus</i>
Sand dune sedge	<i>Carex pansa</i>
Seaside daisy	<i>Erigeron glaucus</i>
Beach poppy	<i>Eschscholzia californica maritima</i>
Beach strawberry	<i>Fragaria chiloensis</i>
Beach pea	<i>Lathyrus littoralis</i>
Beach wild rye	<i>Leymus mollis</i>
Douglas's blue grass	<i>Poa douglasii</i>
Hotel and Residential Landscapes	
Bishop pine	<i>Pinus muricata</i>
Bog monkey flower	<i>Mimulus guttatus</i>
Brown headed rush	<i>Juncus phaeocephalus</i>
Coffeeberry	<i>Rhamnus californica</i>
Common rush	<i>Juncus effusus</i>
Common yarrow	<i>Achillea millefolium</i>
Gowen cypress	<i>Cupressus goveniana</i>
Mock heather	<i>Ericameria ericoides</i>
Monterey ceanothus	<i>Ceanothus cuneatus rigidus</i>
Monterey cypress	<i>Cupressus macrocarpa</i>

Monterey pine	<i>Pinus radiata</i>
Sand dune sedge	<i>Carex Pansa</i>
Sandmat manzanita	<i>Arctostaphylos pumila</i>
Seaside daisy	<i>Erigeron glaucus</i>
Thrift, sea pink	<i>Armeria maritima</i>
Yellow bush lupine	<i>Lupinus arboreus</i>
Meditation Garden	
Common rush	<i>Juncus effusus</i>
Mexican rush	<i>Juncus mexicanus</i>
Brown headed rush	<i>Juncus phaeocephalus</i>
Iris leafed rush	<i>Juncus xiphioides</i>
Bog monkey flower	<i>Mimulus guttatus</i>
Silverweed	<i>Potentilla anserina</i>
Fore Dune	
Beach bur	<i>Ambrosia chamissonis</i>
Beach pea	<i>Lathyrus littoralis</i>
Beach primrose	<i>Camissonia cheiranthifolia</i>
Beach sagewort	<i>Artemisia pycnocephala</i>
Beach salt bush	<i>Atriplex leucophylla</i>
Beach wild rye	<i>Leymus mollis</i>
Monterey spineflower	<i>Chorizanthe p. pungens</i>
Pink Sand verbena	<i>Abronia umbellata</i>
Saltbush	<i>Atriplex californica</i>
Yellow sand verbena	<i>Abronia latifolia</i>
Secondary and Back Dune	
Alkali heath	<i>Frankenia salina</i>
Beach aster	<i>Lessingia filaginifolia</i>
Beach bur	<i>Ambrosia chamissonis</i>
Beach dandelion	<i>Agoseris apargioides</i>
Beach morning glory	<i>Calystegia macrostegia</i>
Beach pea	<i>Lathyrus littoralis</i>

Beach poppy	<i>Eschscholzia californica maritima</i>
Beach primrose	<i>Camissonia cheiranthifolia</i>
Beach sagewort	<i>Artemisia pycnocephala</i>
Beach salt bush	<i>Atriplex leucophylla</i>
Beach wild rye	<i>Leymus mollis</i>
Black sage	<i>Salvia mellifera</i>
Blue witch	<i>Solanum umbellatum</i>
California sage	<i>Artemisia californica</i>
Cliff buckwheat	<i>Eriogonum parvifolium</i>
Coast buckwheat	<i>Eriogonum latifolium</i>
Coast live forever	<i>Dudleya caespitosa</i>
Coast wallflower	<i>Erysimum ammophilum</i>
Coffeeberry	<i>Rhamnus californica</i>
Common yarrow	<i>Achillea millefolium</i>
Coyote bush	<i>Baccharis pilularis</i>
Deerweed	<i>Lotus scoparius</i>
Douglas's blue grass	<i>Poa douglasii</i>
Live-forever	<i>Dudleya farinosa</i>
Lizardtail	<i>Eriophyllum confertiflorum</i>
Lizardtail	<i>Eriophyllum staechadifolium</i>
Locoweed	<i>Astragalus nuttallii</i>
Mock heather	<i>Ericameria ericoides</i>
Monterey ceanothus	<i>Ceanothus cuneatus rigidus</i>
Monterey spineflower	<i>Chorizanthe pungens</i> var. <i>pungens</i>
Pink sand verbena	<i>Abronia umbellata</i>
Saltbush	<i>Atriplex californica</i>
Sandmat	<i>Cardionema ramosissimum</i>
Sandmat manzanita	<i>Arctostaphylos pumila</i>
Sea pink	<i>Armeria maritima</i>
Seaside painted cups	<i>Castilleja latifolia</i>
Silver beach lupine	<i>Lupinus chamissonis</i>

Woolly lotus	<i>Lotus heermanii</i>
Yellow sand verbenia	<i>Abronia latifolia</i>
Wetland	
Sand dune sedge	<i>Carex pansa</i>
Iris leafed rush	<i>Juncus xiphioides</i>
Mexican rush	<i>Juncus mexicanus</i>
Common rush	<i>Juncus effusus</i>
Silverweed	<i>Potentilla anserine</i>
Beach primrose	<i>Camissonia cheiranthifolia</i>

Source: Rana Creek 2013

6.2 HABITAT MANAGEMENT AREAS

The HPP identifies four specific management areas that have been designated for the project site by combining the features identified in the *Landscape Plan*. Management Areas 1, 2 and 3 are the focus of proposed restoration activities and Management Area 4 comprises the developed area. A brief description of each management area is as follows.

Management Area 1 - Beach and Strand (4.04 acres)

This management area includes the beach and strand habitat from the mean high tide line inland to approximately the existing 20-foot elevation contour and is shown on the *Landscape Plan* as “beach.” The area currently supports beach and strand vegetation and is accessible through lateral beach access. Specific management considerations in this area include avoidance of take of special status species and potential habitat, control of exotic species, habitat protection during construction, beach and strand activity restrictions, monitoring and maintenance and permanent protection.

Management Area 2 - Foredune / Secondary Dune Area (6.28 acres)

The westerly edge of this management area is currently comprised of a relatively steep bluff that rises about 20- to 30-feet above the beach and strand toward the bay. At the top of the bluff, the topography transitions to a more level plateau. A portion of the eastern boundary of Management Area 2 contains slopes of the abandoned sand pit, which steeply drops from about the 40-foot elevation contour to the 10-foot elevation contour at near a 1:1 slope. The vegetation

types found in this management area include bare sand and iceplant- dominated areas with some pioneer dune vegetation along the level plateau. Management Area 2 will include the following communities identified on the *Landscape Plan*: foredune, secondary dune, and wetland (the wetland community does not currently exist. This community will be established as part of a percolation basin). Special management considerations in this area include avoidance of take of special status species and potential habitat, recontouring of existing topography, control of exotic species, habitat protection during construction, revegetation and habitat enhancement, monitoring and maintenance and permanent protection.

Management Area 3 - Back Dune Area (9.81 acres)

Management Area 3 follows the southern and eastern property boundaries and includes the large dune in the southeast corner of the site, additional areas previously disturbed through sand mining activities, and the area above the underground garage. Although the existing habitats in this area are primarily ruderal/disturbed, bare sand and iceplant mats, there are also remnant coastal scrub species and patches of Monterey spineflower. Several smaller dune formations, impacted by previous mining, also exist. This Management Area is identified on the *Landscape Plan* as “Back Dune.” Special management considerations in this area include preconstruction surveys, transplant and salvage, recontouring of existing topography, slope stabilization, control of exotic species, habitat protection during construction, revegetation and habitat enhancement, monitoring and maintenance and permanent protection.

Management Area 4 - Developed Area (11.67 acres)

Management Area 4, the proposed development area, includes most of the sand pit and the plateau north of the pit. Most of the pioneer dune vegetation identified on the site is included in this management area along with bare sand, ruderal/disturbed and iceplant dominated areas. A contiguous strip of coastal scrub/iceplant mix occurs at the northern edge of the property and is included in this management area. The Resort project has been created with the intent of minimizing impervious areas and incorporating as much vegetation as feasible. Management Area 4 can be broken down into two parts: 1) planted/landscaped areas, which include landscaping, gardens, landscaping in the entry and along the entry drive, etc. and a strip approximately 25-40' around and outside the project's buildings and access roads, and 2) impervious areas, which include buildings, a parking area and the access roads. The topography in Management Area 4 will be modified through a combination of excavation and fill. Special management considerations in this area include preconstruction surveys, landscape restrictions, and lighting restrictions as described in this document.

6.3 EROSION CONTROL AND REVEGETATION

A combination of suitable soil stabilization techniques, such as sand drift fencing, straw bundles and hydromulching will be used to mechanically stabilize sand for erosion control until plants become established. To ensure that proposed revegetation efforts will be successful, physical characteristics of the restoration areas must be compatible with the plant species considered for revegetation in the *Landscape Plan* and consider the habitat requirements of the listed wildlife species. These characteristics include topography, soil conditions, hydrology, and microclimatic features. Additional details regarding erosion control and revegetation can be found in the *Landscape Plan* and the HPP.

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7.0

IMPLEMENTATION, MANAGEMENT, AND MAINTENANCE OF ACCESSWAYS

This section addresses implementation, management and maintenance of accessways within the Resort site. This portion of the plan has been developed in accordance with Sand City LCP Policies 2.3.9 and 2.3.10 that address implementation of public accessways. Key elements of this section include the present or future relocation of improvements, and construction of improvements in a manner to allow simple periodic maintenance and repair of erosion damage.

7.1 IMPLEMENTATION OF PUBLIC ACCESSWAYS

Implementation of public accessways includes dedication of public access easements over the accessways, identification of design guidelines, development review of the accessways, and funding sources for the proposed accessways.

Dedication of Easements over Accessways

Sand City LCP Policy 2.3.10 requires new development to dedicate and improve accessways, which shall be opened to the public when accessway easements are offered to a public or private agency. The access easement dedicated shall remain with the property owner (including access improvements) if it has not been offered to (at the owner's discretion) and accepted by an appropriate public or private agency. Accessways whose title is maintained in private ownership shall remain open to the public during authorized public access hours subject to a deed restriction recorded on or prior to the time of reversion of the offer of easement dedication.

Public access and conservation easements will be recorded over the public access and some of the dune and habitat restoration areas. Other areas within the habitat restoration areas will

remain as open space but not subject to conservation easements. These easements will specify maintenance standards and rules for use that will provide for the preservation and maintenance of these areas in perpetuity. Refinements of the public access and conservation easements will be developed in conjunction with preparation of final improvement plans. For the Resort, all areas remain private with dedications of easements and public access as noted herein.

Design Guidelines

Sand City LCP Recommended Implementation Action 2.4.2 requires the development of design guidelines for accessways and improvements using the State Coastal Conservancy Access Standards. The Access, Signage, and Lighting Plan for the Resort was written with consideration of the Coastal Access Standards adopted by the State Coastal Conservancy in December 1981 and is consistent with its specifications.

Review Procedure for Development of Public Accessways

The Access, Signage, and Lighting Plan for the Resort will be reviewed and approved by the Sand City Design Review Committee. The review of the proposed public accessways, public facilities, and signage should be concluded prior to issuance of a building permit for public access paths or facilities.

Funding for Public Accessways

Sand City LCP Recommended Implementation Action 2.4.1 requires the development of a financing program for public accessways and their improvements. Funding for coastal accessways is not a priority of state moneys and often needs to come from other sources. The Applicant plans to construct the proposed public access improvements shown on the Resort Coastal Access map (Figure 6) on the site in conjunction with the overall construction of the Resort and will offer easements over the improvements, but may seek reimbursement of some costs for public access improvements. Other possible funding sources will be explored by the Applicant, including grants from the State Coastal Conservancy, moneys from the U. S. Land and Water Conservation Fund, use of state tideland oil and gas revenues, and moneys from voluntary state income tax donations for coastal accessways.

7.2 MANAGEMENT OF PUBLIC ACCESSWAYS

The management of public accessways is essential during both the development and subsequent operation of the accessways. Sand City LCP Policy 2.3.9 states that 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 concerns:

- identification of the types of uses to be allowed;
- the need for any seasonal restrictions;
- the type of improvements needed, such as signs, gates, trash receptacles, and boardwalks;
- the proposed location, types and amount of parking facilities; and
- identification of the number of users that can be supported.

The Applicant, owner or operator for the Resort, or his agent or assignee, will assume responsibility for the above items unless the responsibility is assumed by another private agency or public entity at a later time, at owner's discretion, if easements are offered to other private or public agencies in the future.

List of Possible Management Agencies

The Applicant and owner will offer to dedicate easements over the public accessways for the Resort. As long as the owner retains ownership of the dedicated easements, it shall retain the management responsibilities. The easements may be offered to the City of Sand City by the owner, if the owner chooses to do so. The City currently has no such accessways under its management and could become eligible for funding for such a project.

In the event that the City does not accept dedication of easements over the public accessways, the applicant may transfer management responsibilities to a non-profit entity. If a non-profit entity cannot accept management responsibilities of the public accessways, the following agencies may have programs that could accept management and maintenance responsibilities:

- the County of Monterey;
- the State Lands Commission;
- the State Department of Parks and Recreation;
- the State Department of Transportation; or
- the State Department of Fish and Game.

Review of Management Responsibilities

Management of coastal accessways includes maintenance and operational concerns. Maintenance should include upkeep of paths, benches, tables, and other public facilities. If offered by the owner, the cleaning and upkeep of these facilities should be the responsibility of a public or private agency, in which case operational needs, such as the opening and closing of access gates or seasonal closing of paths, should be monitored by that public or private agency. The public access paths will be maintained by the developer, owner, or operator until management is offered to and accepted by a public or private agency, if preferred by the owner or developer. Additional management programs will include trash removal and litter pick-up.

7.3 MAINTENANCE PROGRAM FOR ACCESSWAYS

The potential effect of erosion on blufftop paths is a concern in the upkeep and maintenance of the proposed accessways. The coastal bluffs on the site could gradually and episodically recede landward in the future. Improvements in the coastal recession zone will be subject to damage and will need to be relocated or reconstructed prior to being damaged.

Buildings near the shoreline in the City of Sand City are required to be set back from the shoreline in conformance with the requirements for the 50-year erosion setback established by Moffatt and Nichol in the Shore Erosion Study adopted by the City of Sand City (1990). The 50-year Low Risk Level (worst case) condition of 178 feet (plus addition for slope) setback is illustrated on the Site Plan ([Figure 4](#)). While each building within the Resort is set back at the 75 years/2.6'/yr line established by the Coastal Commission and substantially further than the required minimum, allowing for a buffer zone and safety margin beyond the economic life of the resort, some improvements are seaward of the required setback line. These include pedestrian pathways (including boardwalks and stairways) and vista points (including observation decks, benches, trash receptacles, and signage).

In order to minimize coastal recession, protective measures will be taken to reduce erosion. The erosion control measures will help to slow the coastal erosion process, but improvements may eventually need to be relocated or reconstructed to avoid erosion damage.

Erosion Control Measures

Vegetation

Plants that are capable of survival in the harsh beach environment are long-lived, rhizomatous or stoloniferous perennials with extensive root systems. They are capable of rapid upward and seaward growth through accumulating sand.

Although vegetation has very limited usefulness for stabilizing areas subject to direct wave impact, it is useful for dune stabilization and entrapment of airborne sand. Areas in the planting zone along the shore will contain native plantings consistent with the *Landscape Plan* and HPP.

Sand Redensification

In general, the textural characteristics and density of beach and dune sands affect the stability and configuration of the beach, bluff and dune environment. Native in-place dune sands and beach sands are generally in a dense configuration, except on the surface. In order to provide the maximum erosion resistance for any sand fills placed at the project site, the sand fills should be mechanically or hydraulically re-densified during placement. According to the 1990 Public Amenities Maintenance Plan, the sands found on site have good engineering characteristics and can be readily re-densified with standard techniques used by most grading and general engineering contractors.

Relocation of Improvements

If the coastal bluff recedes landward due to erosion over the next 75 years, it may approach various improvements at the Resort, even though the main structures have been set farther landward beyond the buffer and safety margin zone at the 75 years/2.6'/yr setback line determined by the Coastal Commission.

The beach access stairways will probably be impacted first because of their mandatory location at or slightly inset onto the coastal bluffline. Pole/cable steps will be placed from the bluff down to the surf zone. The steps will be fastened at the beach bluff and can be adjusted to fit the changing sand surface conditions. Since this type of stairway is very flexible and adjustable, relocating the stairways to compensate for coastal erosion will be easily accomplished.

Portions of the pedestrian boardwalks are seaward the 50-year erosion setback line. The boardwalks will be segmented, wooden walkways laid along a wooden footing or sleeper and nailed more permanently in place, or constructed with cables holding each segment to the next. The boardwalks can be detached and relocated by segment manually, without the use of large machinery, thereby avoiding disturbance of dune vegetation.

The proposed vista points and their associated facilities, including observation decks, benches, trash receptacles, and signage, are seaward of the 50-year erosion setback line. The observation decks will be designed to allow them to be disassembled and relocated using manual labor. If the benches, trash receptacles, and signs are to be anchored to the ground, the anchoring mechanisms will be designed to allow the facilities to be manually detached, relocated and re-anchored landward.

The proposed public access easement areas include sufficient area inland of the 50-year erosion limit to allow for the relocation of these facilities for some time in the future, should erosion occur.

Reconstruction of Improvements

In some cases, if relocation of improvements is not feasible, such as relocation of vista point observation decks, reconstruction of improvements may be necessary. Reconstruction differs from relocation in that it typically involves demolition of the improvement in one location and replacing those improvements at a new location using new materials. In most cases, relocation of the improvements threatened by coastal erosion will be possible at the Resort. Reconstruction may also become necessary as the building materials reach the end of their useful life.

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8.2 REPORT PREPARATION

EMC Planning Group Inc.

Michael J. Groves, AICP, Senior Principal
Principal-in-Charge

Janet Ilse

Biologist/Senior Planner, Project Manager

Richard James, MUP, AICP

Principal Planner

Michelle Normandin

Designer/Senior Planner

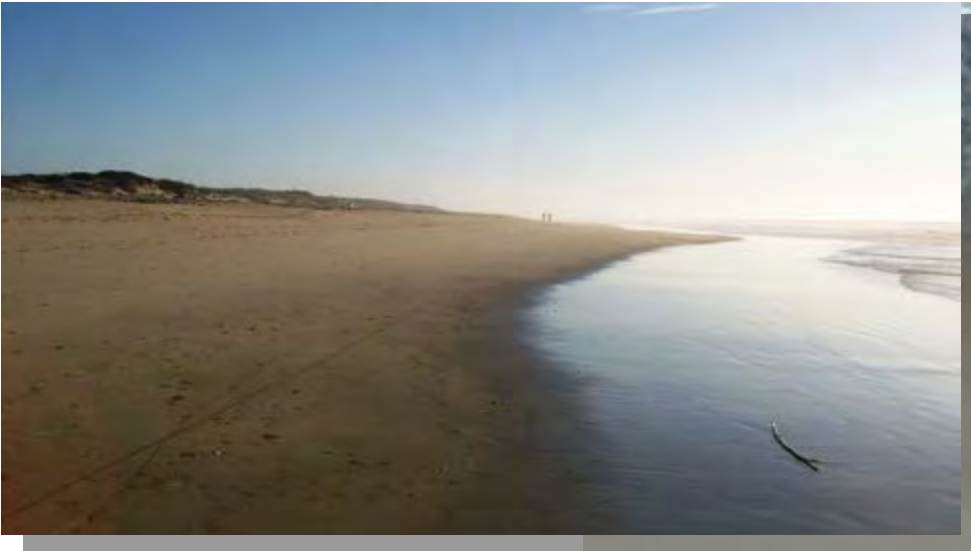
E.J. Kim

Production and Graphics

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APPENDIX A

LANDSCAPE PLAN



Beach

The beach is characterized by stretches of loose, wind swept, sandy dunes with sparse pioneering species adapted to high winds, wave action, salt spray and shifting sands. Snowy Plovers, while not present at this site have the potential to use the beach. This plan provides for 1.9 acres of floating lower beach habitat appropriate for seasonal snowy plover nesting. The beach will be monitored, and when snowy plover nest is found, an enclosure will protect the site from disturbance.



Fore Dune

Fore dunes are colonized with dune grass and other pioneer species. One of these dune plants is the Federally listed threatened species Monterey Spineflower (*Chorizanthe pungens*). These dune plant species have long, underground stems (rhizomes) that send shoots upward and roots downward. These rhizomes anchor the dune grass, creating places where other dune plants can survive. These early pioneering species are low growing and salt-tolerant.



Coastal Bluff Living Roof

The living roofs at the Monterey Bay Shores project are an analog to the coastal bluff community type. Coastal bluffs have shallow soils and plants found there are adapted to winds and salt spray. These species selected for Monterey Bay Shores are low growing perennials that survive on poor soils.



Wetland

Wetland community types are comprised of plants that are tolerant of seasonal and perennial wetland hydrology. These plants are rare in the dune landscape but are found in areas over hardpan soil or where natural seeps occur in the back dunes.



Hotel and Residential Landscapes

The hotel and residential landscapes at Monterey Bay Shores are comprised of California native plants that have been chosen for their appropriateness to the site, their low water use, and their attractiveness. The palette is comprised of grasses, showy perennials, and trees adapted to the site conditions.



Secondary Dune

The secondary dune community is comprised mostly of shrubs and small herbs exposed to constant winds and salt spray, typically found on ocean bluffs and cliffs. Live-forever and lizard tail are characteristic plants. The Monterey Spineflower will be restored over 3.39 acres, along the fore and secondary dunes. Cliff Buckwheat, another important secondary dune species will be restored over 1.4 acres. Cliff Buckwheat provides habitat for the Federally listed endangered Smith's Blue Butterfly. Northern coastal scrub grows along the coast and is characterized by bush monkey flower, lizard tail, coyote bush and California sagebrush.



Holistic Garden

This space will provide a beautiful view from the terrace above and from the spa. There will be a path to stroll through and it will have some screening elements to provide privacy to the adjacent condo rooms.



Back Dune

Creating habitat for Smith's blue butterfly is the focus of back dune restoration activities. Host plants and larval food plants such as the Cliff Buckwheat (*Eriogonum parvifolium*) will be reintroduced. Typical features associated with back dune ecology include: grasslands, forested areas, and seasonal wetlands. Back dune plant species are adapted to a variety of moisture and wind conditions.

LANDSCAPE PLAN

Monterey Bay Shores
Ecoresort, Wellness Spa, and Residences



Beach



Distichlis spicata
Saltgrass



Leymus mollis
Beach wild rye

Latin

Leymus mollis
Distichlis spicata

Common

Beach wild rye
Saltgrass

Latin

Abronia latifolia
Abronia umbellata
Ambrosia chamissonis
Artemisia pycnocephala
Atriplex californica
Atriplex leucophylla
Chorizanthe p. pungens
Camissonia cheiranthifolia
Lathyrus littoralis
Leymus mollis

Common

Yellow Sand Verbena
Pink Sand Verbena
Beach Bur
Beach Sagewort
Saltbush
Beach salt bush
Monterey Spineflower
Beach Primrose
Beach Pea
Beach wild rye

Fore Dune



Abronia latifolia
Yellow sand verbena



Ambrosia chamissonis
Beach bur



Artemisia pycnocephala
Beach sagewort



Atriplex californica
Saltbrush



Leymus mollis
Beach wild rye



Chorizanthe p. pungens
Monterey Spineflower



Lathyrus littoralis
Beach Pea



Camissonia cheiranthifolia
Beach primrose



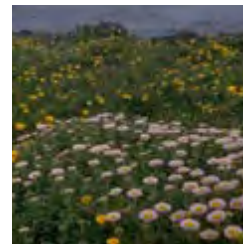
Coastal Bluff Living Roof



Carex pansa
Sand dune sedge



Armeria maritima
Sea pink



Erigeron glaucus
Seaside daisy



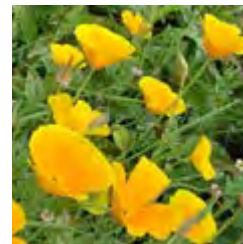
Leymus mollis
Beach wild rye



Poa douglasii
Douglas's Blue Grass



Ambrosia chamissonis
Beach bur



Eschscholzia californica
California poppy



Fragaria chiloensis
Beach Strawberry

Latin

Ambrosia chamissonis
Armeria maritima
Atriplex californica
Atriplex leucophylla
Camissonia cheiranthifolia
Ceanothus cuneatus rigidus
Carex pansa
Erigeron glaucus
Eschscholzia californica maritima
Fragaria chiloensis
Lathyrus littoralis
Leymus mollis
Poa douglasii

Common

Beach Bur
Thrift, Sea Pink
Saltbush
Beach salt bush
Beach Primrose
Monterey Ceanothus
Sand dune sedge
Seaside Daisy
Beach Poppy
Beach strawberry
Beach Pea
Beach wild rye
Douglas's Blue Grass

Secondary and Back Dunes (selected species)

Latin

Abronia latifolia
Abronia umbellata
Achillea millefolium
Agoseris apargioides
Ambrosia chamissonis
Arctostaphylos pumila
Armeria maritima
Artemisia californica
Artemisia pycnocephala
Astragalus nuttallii
Atriplex californica
Atriplex leucophylla
Baccharis pilularis
Calystegia macrostegia
Camissonia cheiranthifolia
Cardionema ramosissimum
Castilleja latifolia
Ceanothus cuneatus rigidus
Chorizanthe p. pungens
Dudleya caespitosa
Dudleya farinosa
Ericameria ericoides
Eriogonum latifolium
Eriogonum parvifolium
Eriophyllum confertiflorum
Eriophyllum staechadifolium
Erysimum ammophilum
Eschscholzia californica maritima
Frankenia salina
Lathyrus littoralis
Lessingia filaginifolia
Leymus mollis
Lotus heermanii
Lotus scoparius
Lupinus chamissonis
Rhamnus californica
Salvia mellifera
Poa douglasii
Solanum umbellatum

Common

Yellow Sand Verbena
Pink Sand Verbena
Common Yarrow
Beach Dandelion
Beach Bur
Sandmat Manzanita
Sea Pink
California Sage
Beach Sagewort
Locoweed
Saltbush
Beach salt bush
Coyote Bush
Beach Morning glory
Beach Primrose
Sandmat
Seaside Painted Cups
Monterey Ceanothus
Monterey Spineflower
Coast Live Forever
Live-forever
Mock Heather
Coast Buckwheat
Cliff Buckwheat
Lizardtail
Lizardtail
Coast Wallflower
Beach Poppy
Alkali heath
Beach Pea
Beach Aster
Beach wild rye
Woolly Lotus
Deerweed
Silver Beach Lupine
Coffeeberry
Black sage
Douglas's Blue Grass
Blue Witch

Secondary Dune



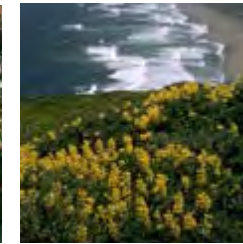
Eriogonum latifolium
Coast buckwheat



Eriogonum parvifolium
Cliff buckwheat



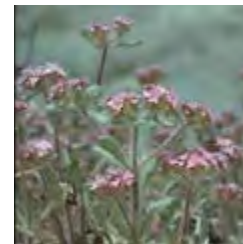
Dudleya caespitosa
Coast live forever



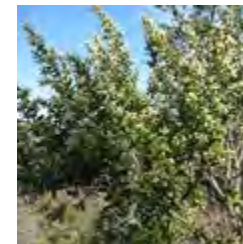
Lupinus arboreus
Yellow bush lupine



Artemisia pycnocephala
Beach Sagewort



Chorizanthe p. pungens
Monterey Spineflower



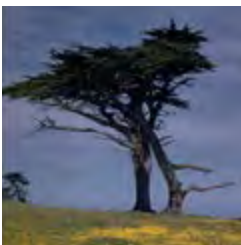
Baccharis pilularis
Coyote bush



Astragalus nuttallii
Locoweed



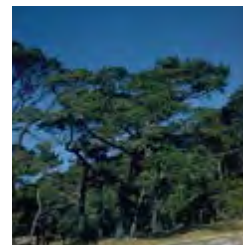
Hotel and Residential Landscapes



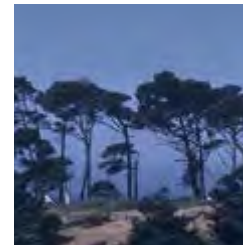
Cupressus macrocarpa
Monterey cypress



Cupressus goveniana
Gowen cypress



Pinus radiata
Monterey Pine



Pinus muricata
Bishop pine



Juncus effusus
Common rush



Rhamnus californica
Coffeeberry



Ericameria ericoides
Mock heather



Ceanothus cuneatus rigidus
Monterey Ceanothus

Main Entrance Trees (selected species)

Latin

Cupressus macrocarpa
Cupressus goveniana
Pinus radiata
Pinus muricata

Common

Monterey cypress
Gowen cypress
Monterey Pine
Bishop pine

Hotel Courtyard, Main Entrance, and Transitional Landscape

Gardens (abbreviated list)

Latin

Achillea millefolium
Armeria maritima
Juncus effusus
Juncus phaeocephalus
Carex Pansa
Mimulus guttatus
Rhamnus californica
Lupinus arboreus
Ceanothus cuneatus rigidus
Ericameria ericoides
Erigeron glaucus
Eriogonum latifolium
Eriogonum parvifolium
Eschscholzia californica maritima
Leymus mollis
Lupinus chamissonis
Mimulus aurantiacus
Poa douglasii
Salvia mellifera
Lyonothamnus floribundus

Common

Common Yarrow
Thrift, Sea Pink
Common rush
Brown headed rush
Sand Dune Sedge
Bog monkey flower
Coffeeberry
Yellow Bush Lupine
Monterey Ceanothus
Mock Heather
Seaside Daisy
Coast Buckwheat
Dune Buckwheat
Beach Poppy
American Dune Grass
Silver Beach Lupine
Bush monkey flower
Douglas's Blue Grass
Black sage
Catalina ironwood

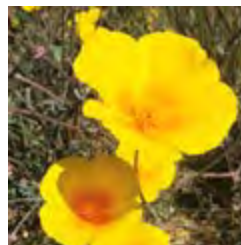
Latin

Carex pansa
Juncus xiphioides
Juncus mexicanus
Juncus effusus
Potentilla anserina
Camissonia cheiranthifolia

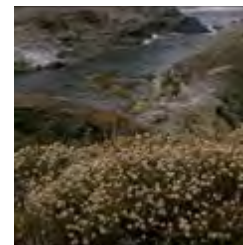
Common

Sand Dune Sedge
Iris Leafed Rush
Mexican Rush
Common Rush
Silverweed
Beach Primrose

Back Dune



Eschscholzia californica
California poppy



Eriogonum parvifolium
Cliff buckwheat



Mimulus aurantiacus
Bush monkey flower



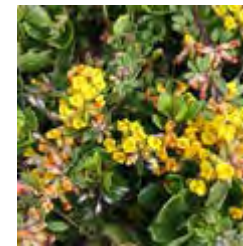
Erigeron glaucus
Seaside daisy



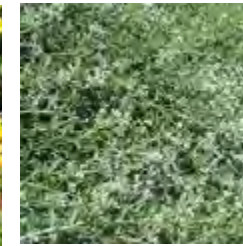
Arctostaphylos pumila
Sandmat manzanita



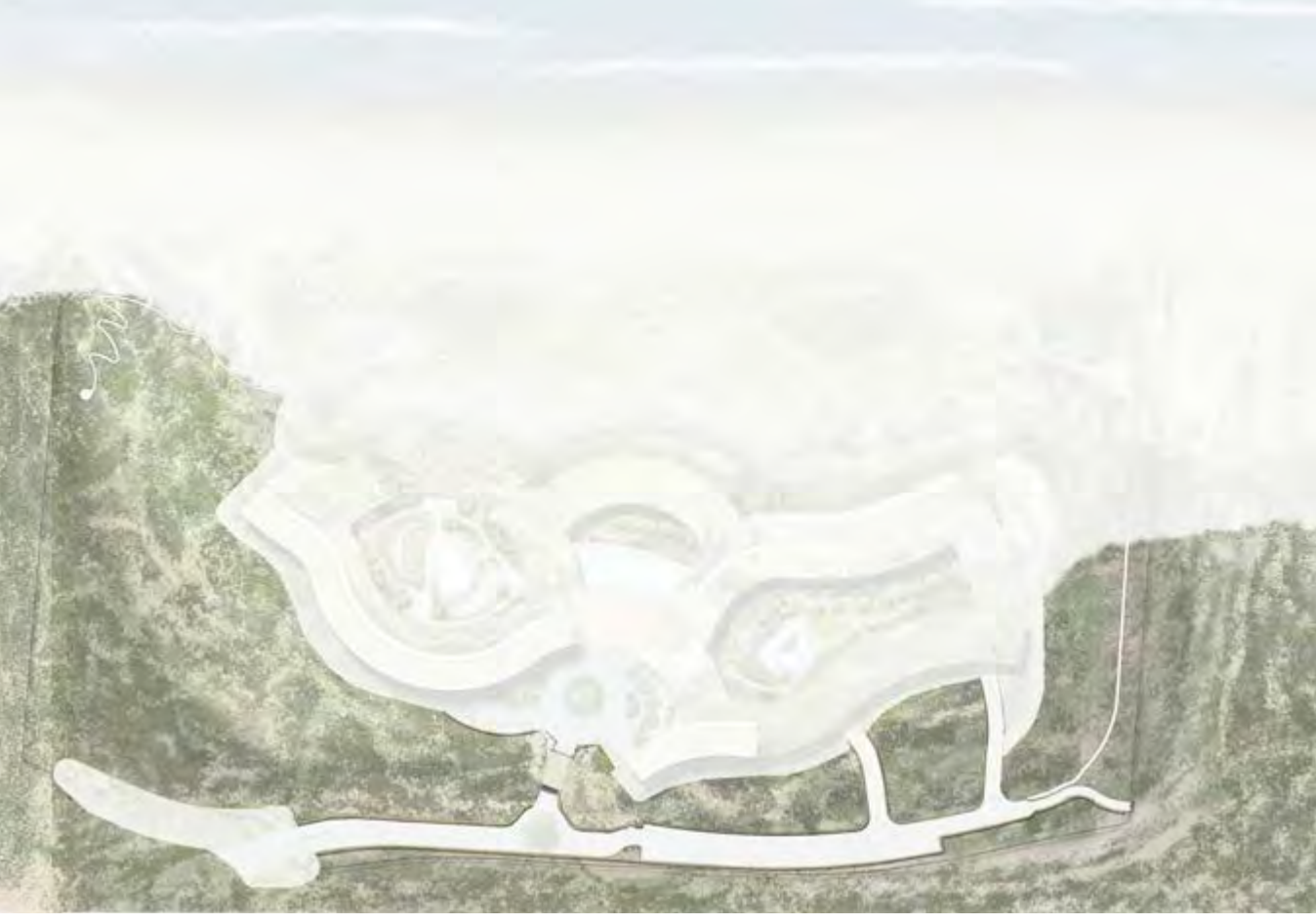
Chorizanthe p. pungens
Monterey Spineflower



Lotus heermanii
Woolly lotus



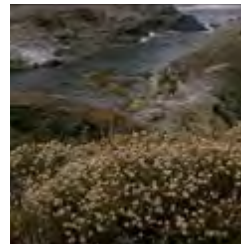
Salvia mellifera
Black sage



Transitional Landscape



Dudleya caespitosa
Coast live forever



Eriogonum parvifolium
Cliff buckwheat



Eriogonum latifolium
Coast buckwheat



Erigeron glaucus
Seaside daisy



Arctostaphylos pumila
Sandmat manzanita



Rhamnus californica
Coffeeberry



Artemisia pycnocephala
Beach Sagewort



Salvia mellifera
Black sage

PLANT COMMUNITIES
Monterey Bay Shores

Ecoresort, Wellness Spa, and Residences





6' Fence On Southern Property Line & Adjacent Northern Property Line

Fencing along the north and a section of the south property lines will have a roughly 6'0" tall x 6" wide redwood fence boards with pointed/tapered tops and ~3" spacing between boards.



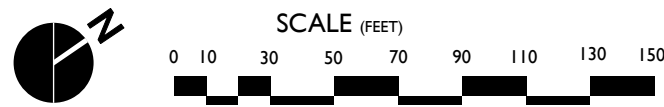
Split Rail Fence

The split rail fence, similar to what is shown above will run along the entire eastern property line. This fence will also follow the southern property line from the bluff to the adjacent property boundary, where the fence will transition to a 6' fence.



Retaining Wall

The retaining wall at this location will undulate similar to the photo above. It will mimic the undulating dune topography that is found on the site, especially at the entrance to the project.



LANDSCAPE SITE ELEMENTS

Monterey Bay Shores

Ecoresort, Wellness Spa, and Residences

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

ORDER WR 2009-0060

In the Matter of the Unauthorized Diversion and Use of Water
by the California American Water Company

Parties

**Water Rights Prosecution Team¹
California American Water Company**

Interested Parties

**Monterey Peninsula Water Management District, City of Carmel by the Sea,
City of Seaside, Seaside Basin Watermaster, Pebble Beach Company,
Monterey County Hospitality Association, City of Monterey, City of Sand City,
Division of Ratepayers Advocates of the California Public Utilities Commission,
Public Trust Alliance, Carmel River Steelhead Association,
Ventana Chapter of the Sierra Club, California Sportfishing Protection Alliance,
Planning and Conservation League, California Salmon and Steelhead Association,
National Marine Fisheries Service**

SOURCE: Carmel River

COUNTY: Monterey

CEASE AND DESIST ORDER

BY THE BOARD:

INTRODUCTION

The California American Water Company (Cal-Am or CAW) diverts water from the Carmel River in Monterey County. The water is used to supply the residential, municipal, and commercial needs of the Monterey Peninsula area (peninsula) communities. In 1995 the State Water

¹ The Water Rights Prosecution Team includes: (1) James Kassel, Assistant Deputy Director for Water Rights, (2) John O'Hagan, Manager, Water Rights Enforcement Section (3) Mark Stretars, Senior Water Resource Control Engineer, (4) John Collins, Environmental Scientist and (5) Staff Counsels Reed Sato, Yvonne West and Mayumi Okamoto. In addition, for purposes of complying with *ex parte* prohibitions, Kathy Mrowka, Senior Water Resource Control Engineer, is also treated as a member of the Prosecution Team.

Resources Control Board (State Water Board) adopted Order WR 95-10 ([WR 95-10](#)). Among other matters, the order found that Cal-Am was diverting about 10,730 acre feet per annum (afa) of water from the Carmel River without a valid basis of right and directed that Cal-Am should diligently implement actions to terminate its unlawful diversion. Alleging that 13 years after the adoption of Order 95-10 Cal-Am continues to divert about 7,150 afa from the river without a valid basis of right, the Prosecution Team (Prosecution Team or PT) seeks issuance of a cease and desist order under Water Code section 1831, subdivision (d). Cal-Am requested a hearing. This order (1) finds that Cal-Am: (a) failed to comply with the requirements of Order 95-10, and (b) is in violation of Water Code section 1052; and (2) issues a cease and desist order (CDO).

The State Water Board finds as follows:

1.0 LEGAL REQUIREMENTS FOR ISSUING A CEASE AND DESIST ORDER

The State Water Board may issue a cease and desist order as provided in Water Code section 1831. Section 1831 provides in part:

- a) When the board determines that any person is violating, or threatening to violate, any requirement described in subdivision (d), the board may issue an order to that person to cease and desist from that violation.
- b) The cease and desist order shall require that person to comply forthwith or in accordance with a time schedule set by the board.
- c) The board may issue a cease and desist order only after notice and an opportunity for a hearing pursuant to Section 1834.
- d) The board may issue a cease and desist order in response to a violation or threatened violation of any of the following:
 - (1) The prohibition set forth in Section 1052 against the unauthorized diversions and use of water.²
 - (2) Any term or condition of a permit, license, certification, or registration issued under this division.
 - (3) Any decision or order of the board issued under this part.

Section 1832 provides:

Cease and desist orders of the board shall be effective upon issuance thereof. The board may, after notice and opportunity for hearing, upon its own motion or upon receipt of an application from an aggrieved person, modify, revoke, or stay in whole or in part an cease and desist order issued pursuant to this chapter.

² Water Code section 1052, subsection (a) provides "[t]he diversion or use of water subject to this division other than as authorized in this division is a trespass."

2.0 NOTICE OF PROPOSED CEASE AND DESIST ORDER

On January 15, 2008, the Assistant Deputy Director for Water Rights³ issued a notice of proposed cease and desist order (draft cease and desist order or draft CDO) to Cal-Am. (SWRCB-7.) Among other matters, the draft CDO alleges that:

- 1) In 1995 the Board adopted Order 95-10. The order required Cal-Am to “diligently implement” measures to terminate its illegal diversions from the river (pp. 2 and 3, Facts 5 and 9).
- 2) Cal-Am has failed to comply with Condition 2 of Order 95-10. Condition 2, requires Cal-Am to terminate its unauthorized diversions from the river (p. 5, Finding 3).
- 3) Since 1995 Cal-Am has illegally diverted at least 7,164 afa from the river (p. 5, Finding 1).
- 4) Cal-Am’s diversions continue to have adverse effects on the public trust resources of the river and should be reduced (p. 5, Finding 2).
- 5) The ongoing diversion is a violation of Water Code Section 1052 prohibiting the unauthorized diversion or use of water (p. 5, Finding 1).

The draft CDO seeks to compel Cal-Am to reduce the unauthorized diversions by specified amounts each year, starting in water year 2008-09 and continuing through water year 2014. For example, in 2008-09 Cal-Am would be required to reduce its unauthorized diversions by 15 percent; another 15 percent reduction would be required in water year 2009-2010, etc. (Staff Exhibit 7.)

3.0 REQUEST FOR HEARING

On February 4, 2008, Cal-Am requested a hearing. (CAW-8, p. 2, ¶ 4.) Cal-Am’s request for hearing states, in part, that:

- 1) the terms and conditions of Order 95-10 are being met (id., p.2, ¶ 1);
- 2) the water diverted from the Carmel River is necessary to protect public health and safety (ibid.);
- 3) the schedule of reduction conflicts with the requirements of the California Public Utilities Commission (ibid.); and
- 4) the schedule for reducing diversions is not supported by the recitals in the draft cease and desist order and is unworkable (ibid.).

4.0 NOTICE OF HEARING

On March 5, 2008, the State Water Board issued a notice of hearing for this proceeding. (CAW-10.) The notice stated that the purpose of the hearing is to receive evidence to

³ The Assistant Deputy Director for Water Rights who issued the draft is James W. Kassel.

determine whether to adopt the draft CDO issued to Cal-Am. (*Id.*, p. 5, Purpose of Hearing.)

The key issue noticed for hearing is as follows:

Should the State Water Board adopt the draft CDO? If the draft should be adopted, should any modifications be made to the measures in the draft order? What is the basis for each modification?

(*Id.*, p. 6, Key Issue.)

4.1 Persons Intervening in the Proceeding

The notice also provided that persons wishing to participate in the proceeding must file a Notice of Intent to Appear. In addition to the Prosecution Team and Cal-Am, the following persons filed Notices of Intent to Appear and participated in the hearing:⁴

Planning and Conservation League
Public Trust Alliance
Carmel River Steelhead Association
Sierra Club, Ventana Chapter
California Sportfishing Protection Alliance
National Marine Fisheries Service
California Salmon and Steelhead Association
Monterey Peninsula Water Management District
Seaside Basin Watermaster
Division of Ratepayers Advocates, California Public Utilities Commission
City of Monterey
City of Seaside
City of Sand City
City of Carmel-by-the-Sea
Monterey County Hospitality Association
Pebble Beach Company

5.0 BACKGROUND

5.1 The Carmel River and Cal-Am Facilities on the River

The Carmel River is a central coast stream that flows into Carmel Bay about five miles south of the City of Monterey. The river drains a watershed area of about 255 square miles. Cal-Am owns and operates the San Clemente Dam, the Los Padres Dam and 21 downstream wells that divert water from the underflow of the river. (See Figure 1, Carmel River Watershed and Figures 2 and 3, Alluvial Groundwater Basin Showing The Location of the California American

⁴ Intervention by the Defenders of Wildlife and Mr. George T. Riley was denied. (May 13, 2008, Rulings on Procedural Issues, p. 4-5, Standing of Persons Filing Notices of Intent to Appear.)

Water Company Wells.) During 1994, the wells supplied “. . . about 69 percent of the water needs of Cal-Am’s customers. The balance of the water supplied to Cal-Am customers is supplied from: (1) San Clemente Dam and Los Padres reservoirs in the upper reaches of the Carmel River and (2) pumped ground water in the City of Seaside.”⁵ (Order 95-10, pp. 2-6.)

5.2 Cal-Am’s Rights to Divert and Use Water from the Carmel River

Order 95-10, section 4.3 (pp. 24, 25) found that Cal-Am has the following rights to divert and use water from the river:

- 1) A pre-1914 appropriative right for 1,137 afa.
- 2) Riparian rights for use within the Carmel Valley on parcels which adjoin the surface watercourse or which overlie water flowing in the subterranean channel. These rights cannot be used to serve water outside the valley or non-riparian parcels within the valley. The order recognized 60 afa of use.
- 3) An appropriative right to divert up to 3,030 afa of water to storage in Los Padres Reservoir from October 1 to May 31 pursuant to the conditions in License 11866. The actual diversion is limited to 2,179 afa due to siltation at Los Padres Reservoir.
- 4) Order 95-10 further found that Cal-Am was diverting about 10,730 afa without a valid basis of right (p. 36, ¶2).

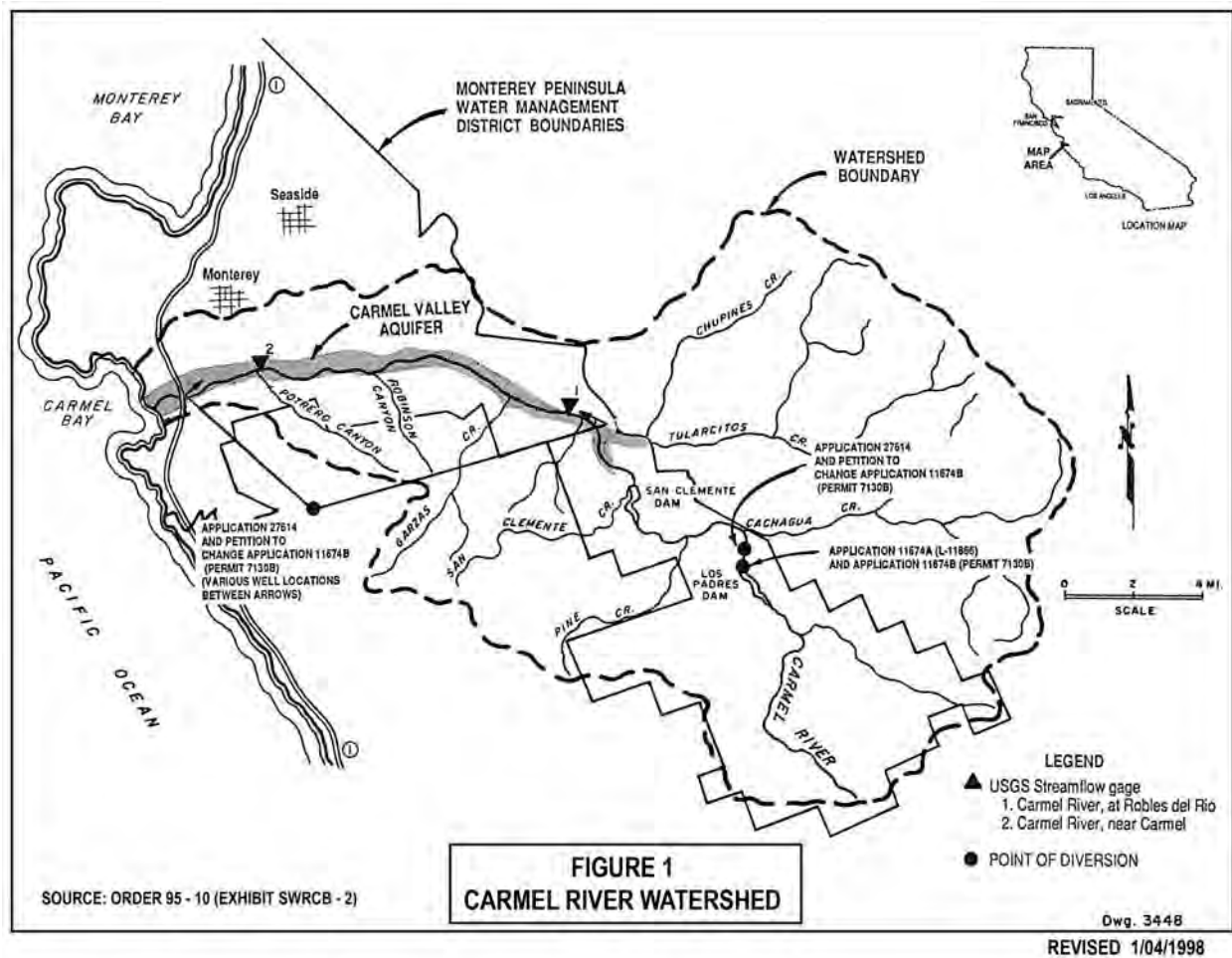
The foregoing findings are binding on Cal-Am.⁶

On November 30, 2007, both the Monterey Peninsula Water Management District (MPWMD) and Cal-Am jointly obtained an additional right to divert water from the river. The State Water Board issued Permit 20808A authorizing the diversion of 2,426 afa water from the river to underground storage in the Seaside Groundwater Basin from December 1 of each year to May 31 of the succeeding year at a maximum instantaneous rate of diversion of 6.7 cubic feet per second (cfs). Thus, Cal-Am’s current legal rights to water in the river that may be used to

⁵ The relative quantity of water delivered from the wells to Cal-Am customers has not materially changed because Cal-Am has failed to develop any meaningful new source of supply. (See 14.0 Cal-Am Has Not Complied with Condition 2 of Order 95-10, *infra*.)

⁶ See Wat. Code, § 1126, subd. (d); see also *People v. Simms* (1982) 32 Cal.3d 468, 477 [principles of *res judicata* and collateral estoppel apply to administrative decision in appropriate circumstances]; *Pacific Lumber Co. v. State Water Resources Control Bd.* (2006) 37 Cal.4th 921, 944 [discussing the characteristics of administrative proceedings that may be the basis for collateral estoppel]. These findings are also binding on the Monterey Peninsula Water Management District, Pebble Beach Water Company, Carmel River Steelhead Association, Residents Water Committee, Ventana Chapter of the Sierra Club, the California Department of Parks and Recreation, Willis Evans, John Williams, and the California Department of Fish and Game. (Order 95-10, p.7, 2.0 Complaints; p. 9, 2.6 Interested Persons.)

supply peninsula cities is the 3,316 afa recognized in Order 95-10⁷ plus 2,426 afa under Permit 20808A⁸ for a total of 5,742 afa.



⁷ 851 afa is subtracted from this number to adjust for storage loss due to siltation at Los Padres Reservoir.

⁸ As will be discussed, *infra*, the actual amount of additional water supply that may be generated by this project is uncertain, but certainly much less than the face value of the permit.

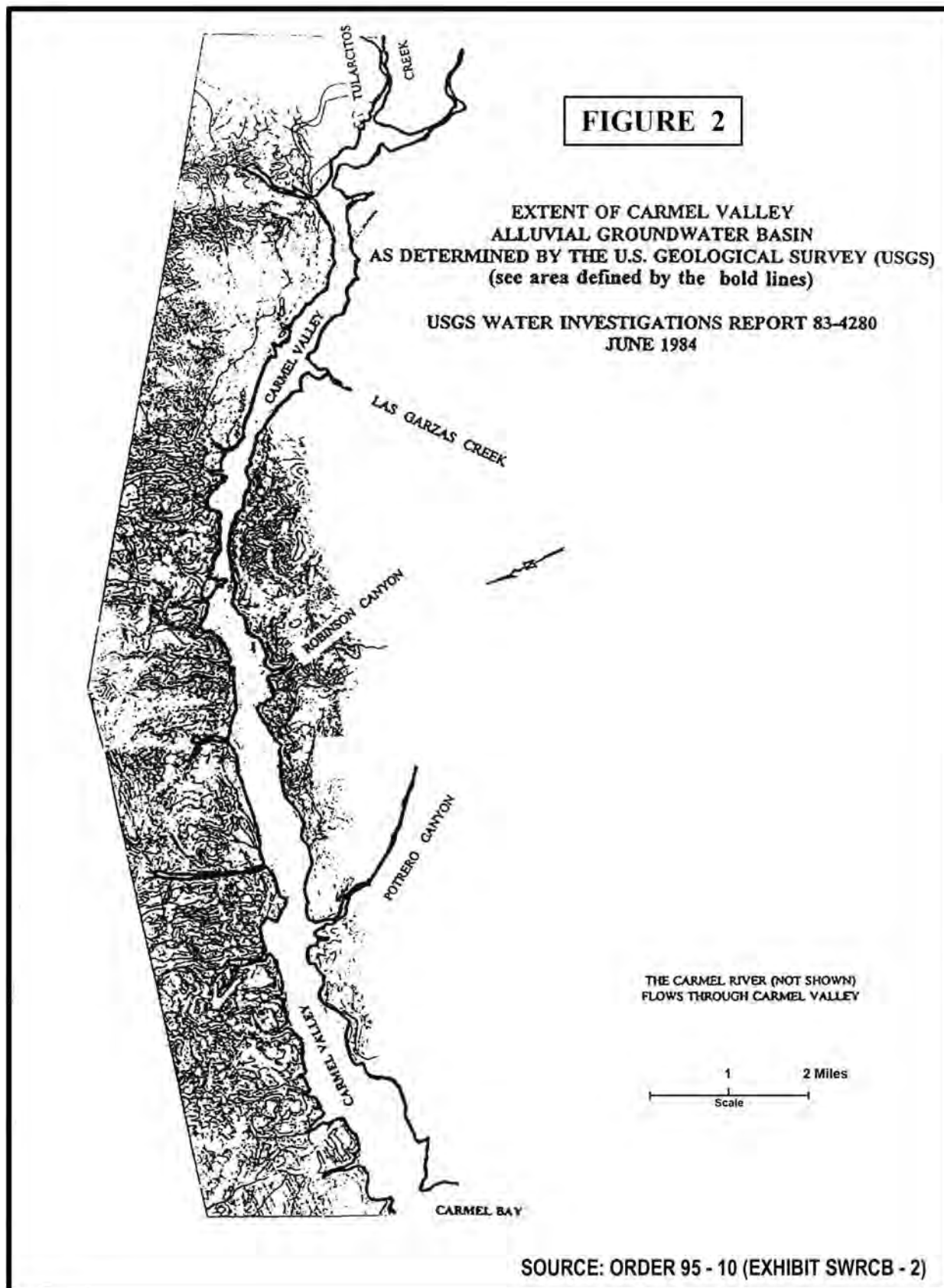
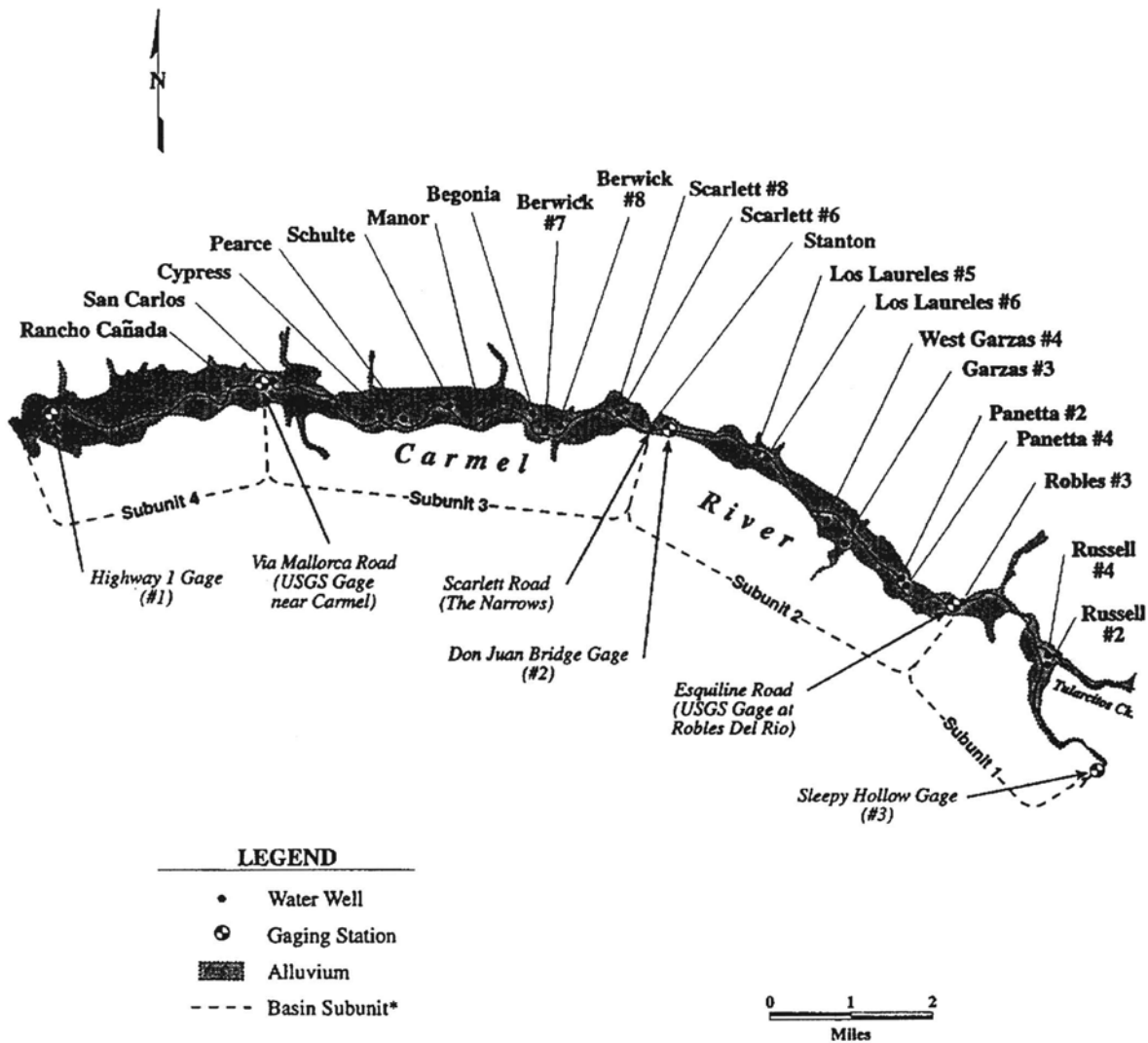


FIGURE 3

ALLUVIAL GROUNDWATER BASIN SHOWING THE LOCATION OF THE CALIFORNIA-AMERICAN WATER COMPANY WELLS



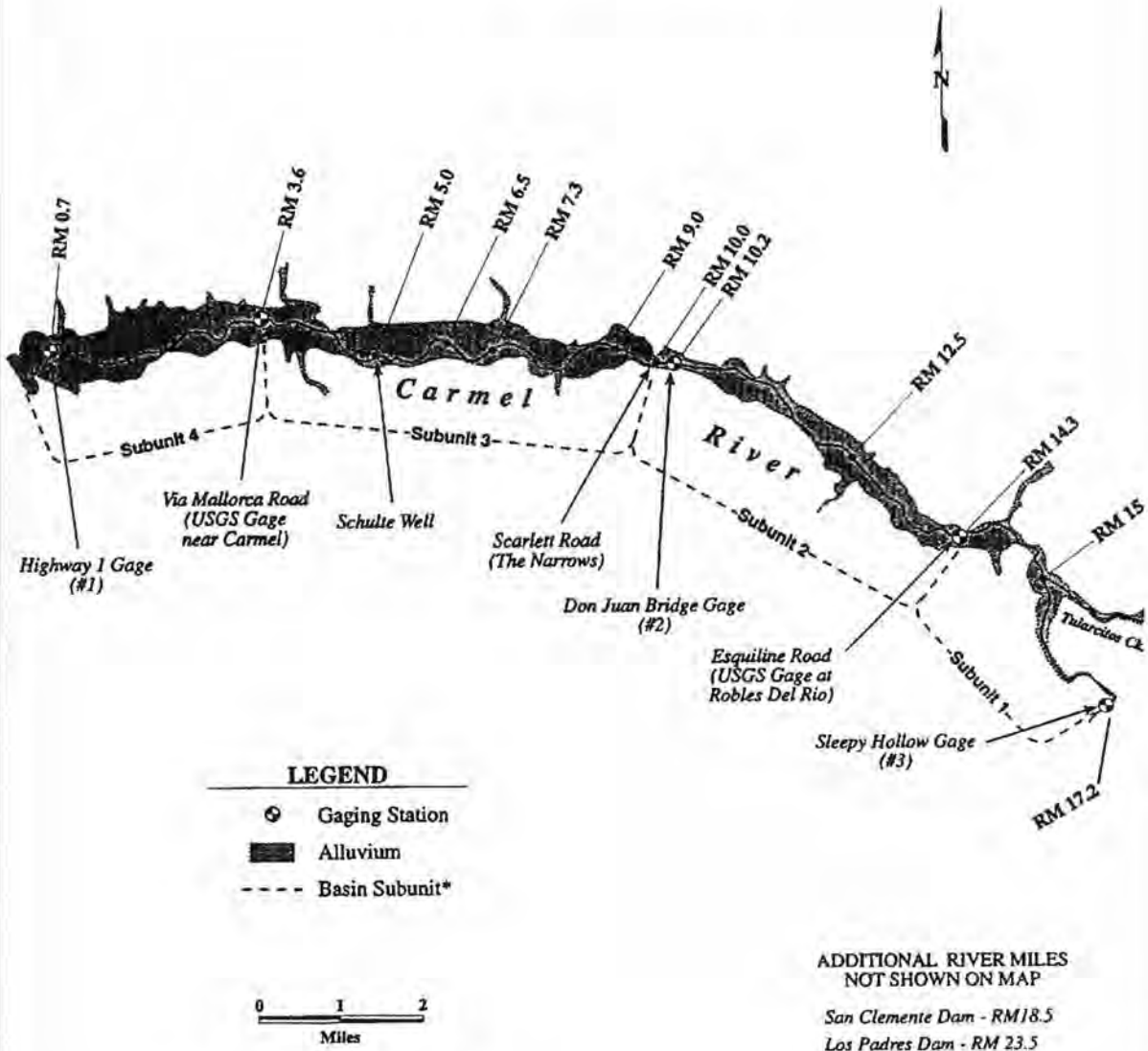
SOURCE: ORDER 95 - 10 (EXHIBIT SWRCB - 2)

* Subunits 1-4 form the Carmel Valley Groundwater Basin. The subunit boundaries are: 1. Via Mallorca Road (USGS Gage Near Carmel), 2. Scarlett Road (The Narrows), 3. Esquiline Road (USGS Gage at Robles Del Rio), 4. Sleepy Hollow Gage.

Streamgaging will occur at the Highway 1 Gage (#1), Don Juan Bridge Gage (#2), and Sleepy Hollow Gage (#3).

FIGURE 4

**ALLUVIAL GROUNDWATER BASIN
IDENTIFYING RIVER MILES (RM)**



SOURCE: ORDER 95 - 10 (EXHIBIT SWRCB - 2)

* Subunits 1-4 form the Carmel Valley Groundwater Basin. The subunit boundaries are: 1. Via Mallorca Road (USGS Gage Near Carmel), 2. Scarlett Road (The Narrows), 3. Esquiline Road (USGS Gage at Robles Del Rio), 4. Sleepy Hollow Gage. Streamgaging will occur at the Highway 1 Gage (#1), Don Juan Bridge Gage (#2), and Sleepy Hollow Gage (#3).

5.3 Effects of Cal-Am's Diversions on the Carmel River in 1995

Order 95-10, section 5.0 (pp 25-29) found that fish and wildlife were being adversely affected by Cal-Am's legal and illegal diversions. Section 5.5 states:

To summarize, Cal-Am diversions have historically had an adverse effect on:
(1) the riparian corridor along the river below RM⁹ 18.5; (2) wildlife that depend on riparian habitat; and (3) steelhead and other fish which inhabit the river.

Cal-Am's combined diversions from the river have the largest single impact on instream beneficial uses of the river, although diversions by other water users also contribute to the adverse effects on fish and wildlife. (Order 95-10, 5.0 Effect of Cal-Am Diversion on Instream Beneficial Uses, p. 25.)

5.4 Conditions Imposed on Cal-Am by Order 95-10

The following conditions in Order 95-10 are particularly pertinent to this proceeding:

1. Cal-Am shall forthwith cease and desist from diverting any water in excess of 14,106 afa from the Carmel River, until unlawful diversions from the Carmel River are ended.
2. Cal-Am shall diligently implement one or more of the following actions to terminate its unlawful diversions from the Carmel River: (1) obtain appropriative right permits for water being unlawfully diverted from the Carmel River; (2) obtain water from other sources of supply and make one-for-one reductions in unlawful diversions from the Carmel River, provided that water pumped from the Seaside Aquifer shall be governed by condition 4 of this Order not this condition; and/or (3) contract with another agency having appropriative rights to divert and use water from the Carmel River.
3. (a) Cal-Am shall develop and implement an urban water conservation plan. In addition, Cal-Am shall develop and implement a water conservation plan based upon best irrigation practices for all parcels with turf and crops of more than one-half acre receiving Carmel River water deliveries from Cal-Am. Documentation that best irrigation practices and urban water conservation measures have already been implemented may be substituted for plans when applicable.
(b) Urban and irrigation conservation measures shall remain in effect until Cal-Am ceases unlawful diversions from the Carmel River. Conservation measures required by this Order in combination with conservation measures required by the District shall have a goal of achieving 15 percent conservation in the 1996 water year and 20 percent conservation in each subsequent year.¹⁰ To the extent that this requirement conflicts with prior commitments (allocations) by the District, the Chief, Division of Water Rights shall have the authority to modify the conservation requirement. The base for measuring

⁹ "RM" means river mile. See Figures 3 and 4.

¹⁰ Footnote 23 of the Order provides that "[e]ach water year runs from October 1 to September 30 of the following year."

water conservation shall be 14,106 afa. Water Conservation measures required by the order shall not supersede any more stringent water conservation requirements imposed by other agencies.

Litigation followed the adoption of Order 95-10.¹¹ The parties negotiated changes to some of the conditions in Order 95-10. Accordingly, on February 19, 1998, the State Water Board adopted [Order WR 98-04](#), replacing Condition 4 of Order 95-10 with the following:

4. Cal-Am shall maximize production from the Seaside Aquifer for the purpose of serving existing connections, honoring existing commitments (allocations), and to reduce diversions from the Carmel River to the greatest extent practicable during periods of low flow. Cal-Am shall minimize diversions from the Seaside Aquifer whenever flow in the Carmel River exceeds 40 cfs at the Highway One Bridge from November 1 to April 30. The long-term yield of the basin shall be maintained by using the practical rate of withdrawal method.

5.5 Decision 1632

The State Water Board adopted [Decision 1632](#) and Order 95-10 on the same day, July 6, 1995. Decision 1632 approved Application 27614 by MPWMD and the issuance of a permit to appropriate water from the Carmel River via the New Los Padres Project.¹² Up to 42 cfs of water could be taken by direct diversion, and up to 24,000 afa could be diverted to storage. The decision included numerous conditions to mitigate (1) the effects of the proposed project on the fish and wildlife in the river and (2) the effects of existing diversions from the river. Condition 11, specifically prohibited the MPWMD from diverting water pursuant to Decision 1632 unless Cal-Am had obtained an alternate supply of water for its illegal diversion from the river. Condition 11 recognizes that a contract between Cal-Am and MPWMD could be one means by which Cal-Am could obtain a legal supply of water. This means of providing a legal water supply for Cal-Am did not become available, however, because in 1995 the voters of MPWMD rejected the bond issue proposed to finance the project. (CAW, Exb. 32, pp. 2, 5-7.)

¹¹ MPWMD, CAW, the Sierra Club, the Carmel River Steelhead Association and the California Sportfishing Protection Alliance filed petitions for writs of mandate in Monterey County Superior Court (*Monterey Peninsula Water Management District, et al. v. State Water Resources Control Board* (Monterey County Superior Court No. M 33519), *Monterey Peninsula Water Management District, California-American Water Company v. State Water Resources Control Board* (Monterey County Superior Court No. M 33520), and *Sierra Club, Inc. et al. v. State Water Resources Control Board* (Monterey County Superior Court No. 105610) against the State Water Board, challenging certain provisions in Decision 1632 and Order 95-10.

¹² See Figure 1.

5.6 Administrative Civil Liability Issued to Cal-Am

Condition 3(b) of Order 95-10 (p. 40) required Cal-Am to develop and implement an urban water conservation plan to conserve 15 percent during the 1996 water year and 20 percent during each succeeding water year. Cal-Am failed to conserve 20 percent during 1997 and on October 20, 1997, Administrative Civil Liability Complaint No. 262.10-03 (ACL) was issued to Cal-Am. (PT-4.) The ACL proposed the imposition of civil liability on Cal-Am in the amount of \$168,000 for its failure to conserve water as required by Condition 3(b) and for the continuing unauthorized diversion of water from the river. This ACL Complaint was superseded on August 19, 1998, by ACL Complaint No. 262.5-6. (PT-5.) Both ACL complaints allege that Cal-Am's ongoing diversions from the river are unauthorized and illegal. (PT-4, ¶¶ 1, 3-6; PT-5, ¶¶ 1, 3-6.)

The initial ACL complaint was superseded in response to a Cal-Am settlement proposal. Cal-Am proposed that, in lieu of paying the civil liability, it would join in a number of transactions and undertakings with the Pebble Beach Community Services District (PBCSD) that would increase the amount of potable water conserved within PBCSD by approximately 400 to 500 afa. Cal-Am's proposal took effect pursuant to ACL Complaint No. 262.5-6, which states that the increased conservation would help to reduce damage to and to restore the public trust resources of the river. (PT- 5, ¶ 10.) The proposed civil liability was suspended pending compliance with the measures Cal-Am was to undertake with the PBCSD. The final order also required Cal-Am to reduce its illegal diversions from the river by 15 percent.

5.7 Cal-Am is an Investor-Owned Public Utility

Cal-Am is an investor-owned public utility holding a Certificate of Public Convenience and Necessity from the California Public Utilities Commission (PUC). Cal-Am must obtain approval from the PUC to: (a) charge higher rates; (b) recover expenses which are appropriate and prudently incurred; and (c) provide a fair return on Cal-Am's invested capital. (Exb. CAW-029, p. 2, 4-10.)

6.0 OFFICIAL NOTICE

As a preliminary matter, we will address papers requesting that official notice be taken of the official acts of other agencies. The State Water Board may take official notice of such acts as may be judicially noticed by the courts of this state. (Cal. Code of Regs., tit. 23, § 648.2.) The courts may take official notice of the “[o]fficial acts of the legislative, executive, and judicial departments of the United States and of any state of the United States.” (Evid. Code, § 452, subd. (c).) Factual statements contained in officially noticed papers are subject to the rules against hearsay. Neither the parties nor the State Water Board may rely upon statements of fact in officially noticed papers to bypass normal evidentiary rules.

6.1 Request for Official Notice by the Sierra Club

On November 10, 2008, the Sierra Club filed papers requesting that official notice be taken of five actions of the National Marine Fisheries Service (NMFS). (November 10, 2008, Sierra Club, Request for Official Actions of National Marine Fisheries Service etc.) The actions are:

- 1) The August 18, 1997 listing of the steelhead population within the California Central Coast as threatened under the Endangered Species Act¹³ (ESA). (62 Fed.Reg. 43937.)
- 2) The January 5, 2006 listing reaffirming the threatened status of the steelhead population within the California Central Coast under the Endangered Species Act. (71 Fed.Reg. 834, 859.)
- 3) The September 2, 2005 listing of the Carmel River as critical habitat for the steelhead. (70 Fed.Reg. 52488.)
- 4) The July 10, 2000 promulgation of a section 4(d) rule under the ESA defining exceptions to the “takings” prohibitions of the act. (65 Fed.Reg. 42422.)
- 5) The December 30, 1997 proposed rule under section 4(d) of the ESA pertaining to “takings” of West Coast Steelhead. (64 Fed.Reg. 73479 at 73483.)

The State Water Board will take official notice of the requested actions. Some of the foregoing actions have been codified at 50 Code of Federal Regulations at sections 223.102 and 223.203. Official notice is also taken of these provisions.

6.2 Notices of Potentially Relevant Information by Sierra Club

On March 25, 2009, the Sierra Club filed a Notice of Potentially Relevant Information. The notice referenced and attached a report prepared by the MPWMD staff for the March 26, 2009

¹³ 16 U.S.C. § 1531, et seq.

board meeting of MPWMD. Entitled "Carmel River Fishery Report for February 2009," the report consists of three pages of summarizing information addressing (1) aquatic habitat and flow conditions in the Carmel River, (2) the breaching of the sand bar for the Carmel River Lagoon by Monterey County Public Works, (3) the adult steelhead count at the San Clemente Dam for the early months of 2009 (See Figure 1), (4) the adult steelhead count at Los Padres Dam for the same period, and (5) a report of fish released from the Sleepy Hollow Steelhead Rearing Facility on February 20, 2009. While not expressly requesting that official notice be taken of the MPWMD staff report, the Sierra Club expresses the view that official notice may be taken of the staff report. Thereafter, on April 10, 2009, counsel for Cal-Am filed a paper entitled "Partial Opposition to Sierra Club Notice of Potentially Relevant Information." Cal-Am objects to official notice being taken of the staff report on the basis that the report is not an official act of an agency.

On May 21, 2009, the Sierra Club filed a second Notice of Potentially Relevant Information. The notice referenced and attached a report prepared by the MPWMD staff for the May 21, 2009, board meeting of MPWMD. Entitled "Carmel River Fishery Report for April 2009," the report consists of three pages updating the information addressed in the previous report. Counsel for the Sierra Club contends, without supporting papers, that the staff report was prepared in the regular course of business by MPWMD employees. The State Water Board declines to take official notice of the reports offered by the Sierra Club. In our view, the nature of the information is such that Cal-Am should have the opportunity to fully test the offer of such information and to rebut the information before it is admitted into the record. In addition, it is late in this proceeding to attempt to augment the record in a material way. Further, reopening the evidentiary record would substantially delay reaching a decision on the evidentiary record that ended on August 8, 2008.

Finally, on July 16, 2009, the Sierra Club filed a Notice of Potentially Relevant Information. The notice identifies four items that are relevant to some of the issues in this proceeding. These documents are:

1. PUC Decision 09-07-023, dated July 9, 2009, which among other matters, provides that outdoor watering may be restricted, adopts a rationale for rationing the use of water for outdoor irrigation and authorizes the use of flow restrictors on water meters for the repeated waste of water. Appended to the PUC decision are:

- (a) Settlement Agreement between the Division of Ratepayers/Advocates, MPWMD and Cal-Am on Water Conservation and Rationing.
 - (b) Rule 14.1, Water Conservation and Rationing Plan, for MPWMD, as amended and effective on February 11, 2009.
2. PUC Decision 09-02-009, dated February 20, 2009, which among other matters provides that Cal-Am may provide confidential customer water use information to MPWMD.

Official notice is taken of these papers.

6.3 Request for Official Notice by Cal-Am

On February 3, 2009, Cal-Am filed a request for official notice. Cal-Am requests that the State Water Board take official notice of the draft Environmental Impact Report (EIR) for the Coastal Water Project published by the California PUC on January 30, 2009. Official notice is taken of the publication of the draft EIR.

6.4 Request by the Public Trust Alliance

On February 11, 2009, the Public Trust Alliance (PTA) filed a request for official notice. PTA requests that the State Water Board take official notice of the recent opinion of the California Supreme Court (Opinion No. S155589), *Morongo Band of Mission Indians v. State Water Resources Control Board* (2009) 45 Cal.4th 731. The State Water Board takes official notice of the opinion.¹⁴

6.5 Request by the National Marine Fisheries Service

On August 26, 2009, NMFS filed written comments on the draft cease and desist order released by the State Water Board on July 27, 2009. Among other matters, the comments note that findings made in "Section 17.4 Mitigation Measures to be Implemented Pursuant to Settlement" of the draft CDO are based upon a 2006 agreement that is no longer in effect and that a new agreement, dated March 3, 2009, between the National Oceanic and Atmospheric Administration (NOAA), the California Department of Fish and Game (DFG) and Cal-Am is now

¹⁴ A request for official notice or other notification is not required for the State Water Board to consider decisional law of the courts of this state. (See Evid. Code, §§ 451, 455.)

the controlling agreement. The State Water Board will treat the letter as a request that official notice be taken of the 2009 agreement and official notice is taken of the agreement.

7.0 EVIDENCE PERTAINING TO PUBLIC TRUST RESOURCES

The May 13, 2008 Ruling on Procedural Issues provided that “consideration would be given to the public trust within the context of the enforcement proceeding. . .”¹⁵ (Evidence Pertaining to Public Trust Resources Within an Enforcement Proceeding, p. 4, § 4.0.)

Based upon the Notices of Intent¹⁶ filed by some intervening parties, it appeared that these parties would seek to have the State Water Board apply the public trust doctrine to Cal-Am’s legal diversions in addition to the unauthorized diversions subject to the notice of hearing. Cal-Am filed a motion seeking to exclude such testimony from this proceeding. (CAW, Prehearing Brief on Procedural Matters, III. Scope of Hearing, pp. 8-15.) The May 13, 2008, Rulings on Procedural Issues provided that any attempt to apply the public trust doctrine to Cal-Am’s legal diversions was outside the scope of the issues noticed for this proceeding. Further, the Hearing Officers declined to initiate an ancillary proceeding to consider whether to apply the public trust doctrine to Cal-Am’s legal diversions. (*Ibid.*)

8.0 HEARING HELD

On April 1, 2008, the State Water Board held a public hearing in Monterey to receive public policy statements from anyone concerned with the draft CDO issued to Cal-Am. Seven days of evidentiary proceedings were held in Sacramento on June 19 and 20; July 23, 24, and 25; and August 7 and 8, 2008.

¹⁵ “The extent of harm to the public trust may be relevant to determining how long the schedule should be for achieving compliance. A cease and desist order may also include measures to avoid or mitigate adverse effects on public trust uses during a period of continuing violations before full compliance is achieved. Where the parties propose different remedies, public trust impacts will also be relevant to the . . . choice of remedies.” (*Ibid.*)

¹⁶ Persons seeking to intervene in a State Water Board proceeding must file a Notice of Intent. The Notice of Intent requires the filer to indicate the name of proposed witnesses and the subject of proposed testimony.

9.0 CAL-AM HAS BEEN PROVIDED A FAIR HEARING

Alleging the State Water Board has failed to provide due process protection, Cal-Am requests that this action be dismissed. (October 9, 2008 Closing Brief, p. 25, 8-17; also see CAW April 23, 2008, Motion to Ensure Due Process.) In its April 23, 2008 Motion to Ensure Due Process, Cal-Am states the State Water Board must afford Cal-Am its constitutional due process protections and alleges, that “[t]he structure of the proceeding gives rise to concerns that such protections do not exist in this proceeding.” Cal-Am has not alleged that those participating in the proceeding are or may be biased; rather, Cal-Am seeks a hearing that contains no appearance of bias. In Cal-Am’s view, the specific matters giving rise to an appearance of bias include the involvement of the following persons in this proceeding: (1) Mr. James W. Kassel, Assistant Deputy Director for Water Rights; (2) Ms. Kathy Mrowka, Senior Engineer in the Compliance Unit of the Division of Water Rights; and (3) Mr. M. G. (Buck) Taylor, Senior Staff Counsel assisting the Hearing Officers in this proceeding. Cal-Am made no allegation of improper bias on the part of either Hearing Officer.

During the conduct of administrative proceedings, the adjudicative function must be separated from the investigative, prosecutorial, and advocacy functions within an agency. (Gov. Code, § 11425.10, subd. (a)(4).) Cal-Am’s appearance of bias claims arise out of the fact that some of the personnel in this proceeding have had responsibilities in other proceedings or other State Water Board activities that are claimed to be inconsistent with their roles in this proceeding. More specifically, Mr. Kassel, who is part of the Prosecution Team in this proceeding, has general managerial responsibilities over personnel who include staff assisting the Hearing Officers in this proceeding. In addition, Ms. Mrowka, a witness called by the Prosecution Team in this proceeding, assisted the Hearing Officers and the State Water Board at the time Order 95-10 was adopted, and has reviewed and drafted responses to quarterly compliance reports filed by Cal-Am since the adoption of Order 95-10.

Cal-Am’s fair hearing argument relies on the view that an appearance of bias, without evidence of actual bias, is sufficient to deny due process. In *Morongo Band of Mission Indians v. State*

Water Resources Control Bd (2009) 45 Cal.4th 731, the California Supreme Court rejected that view.¹⁷ The court concluded:

In construing the constitutional due process right to an impartial tribunal, we take a more practical and less pessimistic view of human nature in general and of state administrative agency adjudicators in particular. In the absence of financial or other personal interest, and when rules mandating an agency's internal separation of functions and prohibiting ex parte communications are observed, the presumption of impartiality can be overcome only by specific evidence demonstrating actual bias or a particular combination of circumstances creating an unacceptable risk of bias. Unless such evidence is produced, we remain confident that state administrative agency adjudicators will evaluate factual and legal arguments on their merits, applying the law to the evidence in the record to reach fair and reasonable decisions.

(*Id.* at p. 741.)

Both separation of functions and *ex parte* prohibitions were in effect throughout this proceeding.

The March 5, 2008 Notice of Hearing included the following:

Hearing Officer and Hearing Team

State Water Board Members Arthur G. Baggett, Jr., and Gary Wolff will preside as hearing officers over this proceeding. Other members of the State Water Resources Control Board may be present during the pre-hearing conference, the meeting to receive public policy statements, and the hearing. State Water Board staff hearing team members will include Staff Counsel Buck Taylor, Engineering Geologist Paul Murphey, Water Resources Control Engineer Ernest Mona and Environmental Specialist Jane Farwell. The hearing staff will assist the hearing officers and other members of the [State Water Board] throughout this proceeding.

A staff prosecutorial team will be a party in this hearing. State Water Board prosecutorial team members will include Yvonne West, Staff Counsel, and Reed Sato, Director of the Office of Enforcement. Other members of the Prosecution Team from the Division of Water rights include Jim Kassel, Assistant Deputy Director for Water Rights, John O'Hagan, Supervising Water Resource Control Engineer, Mark Stretars, Senior Water Resource Control Engineer, and John Collins, Staff Environmental Scientist.

¹⁷ Cal-Am's appearance of bias test was supported by only one published opinion. (*Quintero v. City of Santa Ana* (2003) 114 Cal.App.4th 810, 817 (*Quintero*).) In addition, Cal-Am inappropriately cited the Court of Appeal's opinion in *Morongo Band of Mission Indians v. State Water Resources Control Board*, even though California Supreme Court had granted review. (See Cal. Rules of Court, rule 8.1105, subd. (d)(1) [when the California Supreme Court grants review, the Court of Appeal's opinion is no longer considered published; see also *id.*, rule 8.1115 [unpublished opinions should not be cited or relied on].) In *Morongo Band of Mission Indians v. State Water Resources Control Board*, the California Supreme Court disapproved of *Quintero* to the extent that it is inconsistent with the Supreme Court's decision. (45 Cal.4th 731, 740.)

The Prosecution Team is separated from the hearing team, and is prohibited from having *ex parte* communications with the hearing officers, other members of the State Water Board and members of the hearing team regarding substantive issues and controversial procedural issued within the scope of this proceeding.¹⁸

In addition, on May 13, 2008, various procedural rulings were made addressing Cal-Am's *ex parte* concerns. The rulings enlarged and made more explicit the prohibition against *ex parte* contacts within the State Water Board as follows:

Cal-Am's motion may be understood as a request for clarification as to the role of the Board personnel who were copied on the email and of other personnel. Those persons are: Michael Laufer, Andy Sawyer, Larry Lindsay, Les Grober, Vicky Whitney, Tom Howard, and Dorothy Rice. These persons and Chief Deputy Director Jonathan Bishop are not involved in the day-to-day work of this proceeding but as part of management will be kept advised of the work of this proceeding. Some of these persons also exercise authority over the work of members of the hearing team in this proceeding. As a matter of practice in this and other water right proceedings, the State Water Board applies the same *ex parte* rules to supervisors and managers who are substantially involved in an advisory function, either through their supervision on the work of the hearing team members in the proceeding or through advice to Board members in the proceeding, as apply to hearing team members. These supervisory and management personnel do not accept *ex parte* communications from the Prosecution Team or the parties.

(April 13, 2008, Rulings on Procedural Issues Involving Considerations of a Cease and Desist Order Against California American Water (Cal Am) for Unauthorized Diversion of Water from the Carmel River in Monterey County.)¹⁹

The separation of investigatory and prosecutorial and adjudicatory functions is facilitated by the manner in which the Division of Water Rights is organized. The Division is divided into three major sections: the Permitting Section, the Hearings and Special Programs Section and the Enforcement Section. The first point at which all three sections share common management is

¹⁸ In addition to the foregoing, the hearing notice included an attachment entitled "Information Concerning Appearance at the Water Rights Hearing." The attachment provided the following guidance re *ex parte* contacts:

7. *Ex Parte* Contacts: During the pendency of this proceeding, commencing no later than the issuance of the Notice of Hearing, there shall be no *ex parte* communications between either the State Water Board members or State Water Board hearing staff and any of the other participants, including the members of the prosecution team, regarding substantive issues with the scope of this proceeding. (Gov. Code, §§ 11430.10-11430.80.) Communications regarding non-controversial procedural matters are permissible and should be directed to the State Water Board staff attorney on the hearing team, not State Water Board members. (Gov. Code § 11430.20.) A document regarding *ex parte* communications entitled "*Ex Parte* Questions and Answers" is available upon request or from our website at: <http://www.waterboards.ca.gov/docs/exparte.pdf>.

¹⁹ This discussions goes on to state that the hearing notice will be updated to make clear the role of supervisors and managers in this proceeding. The May 13, 2008 rulings on procedural issues were sent to all of the parties, but no subsequent hearing notice was issued regarding the *ex parte* issue.

at the level of the Assistant Deputy Director for Water Rights (Assistant Deputy Director), Mr. Kassel's position. (RT, Ph. 2, Vol.1, pp. 222, 17 - 223, 25.)

9.1 Mr. Kassel's Involvement in this Proceeding has not Violated Cal-Am's Due Process Rights

Mr. Kassel issued the draft CDO to Cal-Am. As the Assistant Deputy Director, he has managerial responsibilities over all the functions within the Division of Water Rights, including the Hearings and Special Programs Section and the Enforcement Section. However, his role as a manager over the Hearings and Special Programs Section is circumscribed once a notice of proposed cease and desist order is issued. That is, he is prohibited by *ex parte* rules from communicating with the hearing staff, the Hearing Officers and all the State Water Board members in regard to this matter. (CAW-10, p. 3, ¶ 4.)

Mr. Kassel testified during this proceeding at the request of counsel for Cal-Am. In response to questions from Cal-Am's counsel, Mr. Kassel testified to the following: (1) he approved the issuance of the draft CDO; (2) the draft CDO was prepared under his direction and the direction of Mr. O'Hagan; (3) before sending the draft CDO to Mr. Turner at Cal-Am, he discussed the draft order with Mr. O'Hagan and his counsel; (4) in accordance with his delegation of authority from the State Water Board (the delegation requires him to inform his superiors of controversial issues), copies of the draft CDO were provided to his supervisor (Ms. Whitney) and her supervisor (Mr. Howard); (5) following issuance of the draft order, he discussed the order with a number of persons outside of the State Water Board and the State Water Board's public affairs officer; (6) since issuance of the draft CDO order, Mr. Kassel has not spoken to anyone employed by the State Water Board about this matter other than members of the Prosecution Team and Enforcement Section; (7) his supervisor, Ms. Whitney, is responsible for supervising the Hearings and Special Programs Section with regard to an enforcement proceeding; and, finally, (8) that only he is responsible for the management and supervision of the Enforcement Section with regard to an enforcement proceeding. (RT, Ph. 2, Vol. 1, p. 216,13 – p. 231,25.)

Mr. Kassel's testimony shows that he and the management of the Division of Water Rights have separate duties and responsibilities with regard to the (a) adjudicative and (b) investigative, prosecutorial and advocacy function in enforcement proceedings and that the separated duties and responsibilities are consistent with the *ex parte* prohibitions set forth in the March 5, 2008 Notice of Hearing and with the separation of functions required by the due process requirements of the Administrative Procedures Act. (See Gov. Code, §§ 11425.10, subd. (a)(4), 11425.30.)

We conclude that Mr. Kassel's involvement in this matter has not violated Cal-Am's due process.

9.2 Ms. Mrowka's Involvement in this Proceeding has not Violated Cal-Am's Due Process Rights

Ms. Mrowka is a Senior State Water Board Engineer. She was a member of the hearing team that assisted the State Water Board when Order 95-10 was adopted in 1995. (PT-2, p.2, Order 95-10 and Decision 1632, ¶ 1.) Among other matters, Condition 13 of the Order 95-10 required Cal-Am to file quarterly compliance reports. Ms. Mrowka reviewed the reports and drafted correspondence to Cal-Am for the Division. (PT-2, p. 6, *Compliance With the Order*.) Cal-Am did not introduce testimony or other evidence nor does the record contain testimony or other evidence demonstrating that Ms. Mrowka's evaluations of Cal-Am's quarterly compliance reports were prepared as part of an investigation leading to the issuance of the draft CDO.

For some years, Ms. Mrowka has served within the Permitting Section of the Division of Water Rights. (PT-1; RT, Ph. 1, Vol. 1 p. 31, 21 – p. 32, 6.) No one in the Enforcement Section has any managerial or supervisory responsibility over the Permitting Section. (*Id.*, p. 23, 8-18.) Finally, no one within the Division of Water Rights consulted with Ms. Mrowka before issuance of the draft CDO. (*Id.*, p. 91, 24 – p. 92, 4.)

Ms. Mrowka's direct testimony consists of a series of statements summarizing: (1) her professional background; (2) a description of the Carmel River watershed; (3) the background and history leading up to Order 95-10; (4) the contents of Order 95-10 and changes to the order; (5) her views on the intent of Order 95-10, as amended; and (5) Cal-Am's compliance, or lack thereof, with the requirements of Order 95-10. With minor exceptions, her testimony is no more than a summary of information found in the State Water Board's public records. The staff of the Enforcement Office discussed the draft CDO with Ms. Mrowka only after she was asked if she would appear as a witness. (*Id.*, p. 94, 5-25.) Ms. Mrowka was asked to be a witness shortly before the Notices of Intent to appear were due, that is after the draft CDO was already issued.²⁰ (*Id.*, p. 95, 1-4.) Ms. Mrowka, did not discuss her testimony or opinions on the draft CDO with any member of the hearing team. (*Id.*, p. 23, 15-19.)

Prior to this proceeding, Ms. Mrowka: (1) had not previously met or worked with Hearing Officer Wolff or any other member of the State Water Board as part of a hearing team other than

²⁰ The March 5, 2008, Notice of Hearing required the Notices of Intent to be filed by March 14, 2008.

Hearing Officer Mr. Baggett; and (2) had not worked with Mr. Baggett as part of a hearing team since 2004. (*Id.*, p. 20, 23-25.)

Ms. Mrowka's testimony shows she did not participate in an investigation leading to the issuance of the draft CDO for this proceeding, nor has she participated in the advocacy or prosecution of this case other than as a witness. Further, she has not assisted the State Water Board in its adjudicative functions for four years. Accordingly, we conclude that Ms. Mrowka's participation as a witness in this proceeding has not violated the requirement that the State Water Board must separate its (a) adjudicatory function from its (b) investigative, prosecutorial and advocacy functions and that her involvement in this proceeding has not violated Cal-Am's due process.

9.3 Other Due Process Concerns

Cal-Am contends that its due process rights were violated when Cal-Am's compliance with Order 95-10 was discussed during a meeting with State Water Board staff and Mr. Turner, the President of Cal-Am, because both Ms. Mrowka and Mr. Taylor were present. (October 9, 2008, Closing Brief, p. 25, 14; RT, Ph. 1, Vol. 1, p. 92, 16 -19; RT, Ph. 1, Vol. 2, p. 455, 19 – p. 456, 23.) The meeting occurred on December 13, 2007, before the draft CDO was issued. (RT, Ph. 1, Vol. 1, p. 92, 16-19.) The draft CDO was issued on January 15, 2008. Cal-Am alleges that this meeting reflects an improper mixing of advisory and prosecutorial roles and the action should be dismissed. (October 9, 2008, Closing Brief, p. 25, 15-17.)

Cal-Am points to nothing in the transcripts or exhibits, nor have we found anything in the record, that shows that Mr. Taylor was involved in the investigation, prosecution or advocacy functions of this proceeding. Further, Cal-Am has not pointed to anything in the record showing that Ms. Mrowka was involved in the investigation leading up to the issuance of the draft CDO. Indeed, her testimony shows quite the opposite. Ms. Mrowka was not identified as a member of the Prosecution Team in the Notice of Hearing and only became involved in this proceeding when asked if she would testify as a witness. (See 9.2 above, Ms. Mrowka's Involvement in this Proceeding Does Not Violate Due Process, ¶ 3.) We conclude that Cal-Am's due process concerns with regard to Ms. Mrowka's and Mr. Taylor's participation in a meeting with Cal-Am are not supported by the record in this proceeding.

9.4 The State Water Board Complied with *Ex Parte* Prohibitions

In its April 23, 2008 Motion to Ensure Due Process, Cal-Am also made claims that certain communications among staff were *ex parte* communications and that the composition of the Prosecution Team creates an appearance of bias. These communications include:

(1) Mr. Kassel sending copies of the notice of proposed CDO sent to Cal-Am to Thomas Howard, State Water Board Chief Deputy Director, to Victoria Whitney, Deputy Director for Water Rights, and to Andy Sawyer, Assistant Chief Counsel; and (2) Mr. Larry Lindsay sending copies of an email sent to the parties to various members of State Water Board management. Cal-Am also contends that listing Mr. Kassel as a member of the Prosecution Team creates an appearance of bias. We find that our Hearing Officers' April 13, 2008 responses to these concerns are appropriate and, by reference, affirm and adopt those responses in this order. (April 13, 2008, Rulings on Procedural Issues Involving Considerations of a Cease and Desist Order Against California American Water (Cal-Am) for Unauthorized Diversion of Water from the Carmel River in Monterey County.)

9.5 Cal-Am's Request for Dismissal Denied

Cal-Am's request that this proceeding be dismissed for lack of due process is unsupported by either the law or the record in this proceeding. More specifically, the record demonstrates there has been no improper mixing of the: (a) adjudicatory and (b) investigatory, prosecutorial and advocacy functions of the State Water Board. We conclude that Cal-Am has been provided a fair hearing and that its request for dismissal should be denied.

10.0 ORDER WR 95-10 DOES NOT AUTHORIZE CAL-AM TO DIVERT WATER FROM THE RIVER IN EXCESS OF ITS WATER RIGHTS

The notice of proposed CDO alleged two bases for issuing a CDO: (1) violation of condition 2 of Order 95-10; and (2) unlawful diversion of water in violation of Water Code section 1052. (Draft CDO at p. 5, Staff Exhibit 7.) Cal-Am contends that a CDO may be issued only on the first basis, that is, for a violation of Order 95-10. Further, Cal-Am contends that Order 95-10 authorizes Cal-Am to divert water from the Carmel River (even though Cal-Am does not hold water rights for those diversions) and that a CDO may not be issued for a violation of Water Code section 1052.

Cal-Am contends that Order 95-10 required the imposition of a physical solution and authorized Cal-Am to continue its diversions from the river in exchange for the performance of mitigation measures. (April 23, 2008, CAW Opposition to Pre-Hearing Briefs, p. 5, 10 – 6, 15; Cal-Am's October 9, 2008 Closing Brief, B. The State Water Board Can Issue a CDO Against Cal-Am Only If The Board Finds Cal-Am is Threatening To Violate Or has Violated Condition 2 Of Order 95-10, p. 5, 13 - 7, 9.) Cal-Am states "Order 95-10 is a unique, interim physical solution, which provides CAW with a non-traditional authorization to extract water in excess of its water rights." (Oct. 9, 2008 Closing Brief, p.4, 22-p.5, 1.)

The concept of a physical solution is a judicial development following the adoption of article X, section 2 of California's Constitution in 1928. Article X, section 2 provides, in part:

The right to water or to the use of flow of water in or from a natural stream or water course in this state is and shall be limited to such water as shall be reasonably required for the beneficial use to be served, and such right does not and shall not extend to the waste or unreasonable method of use or unreasonable method of diversion of water.

The judiciary, and the State Water Board in appropriate circumstances, may impose a physical solution, providing a practical remedy that avoids waste or unreasonable use and is consistent with the water rights of the parties. (*City of Barstow v. Mojave Water Agency* (2000) 23 Cal.4th 1224, 1249.) This is an equitable remedy developed by the courts to comply with article X, section 2. (*Ibid.*) The doctrine is used to develop solutions that maximize the beneficial use that can be obtained from a limited supply of water among competing claimants who have valid water rights. (See [State Water Board Order WR 2004-0004](#) at p. 15.) The courts have never used the physical solution doctrine to authorize the diversion and use of water in the absence of a legal right to divert and use water. (See *People v. Shirokow* (1980) 26 Cal.3d 301, 309 ["The rights not subject to the statutory appropriation procedures are narrowly circumscribed . . . and include only riparian rights and [pre-1914 rights]."]; *id.* at pp. 308-309 [water right permitting requirements are in furtherance of article X, section 2 of the California Constitution; Wat. Code, § 1025 [same]; cf. *City of Barstow v. Mojave Water Agency* (2000) 23 Cal.4th 1224, 1243 [A physical solution must protect water right priorities to the extent those priorities do not lead to unreasonable use].)

The State Water Board has no power to authorize the diversion and use of water except in compliance with the Water Code. Section 1225 of the Water Code provides that "[n]o right to

appropriate or use water subject to appropriation shall be initiated or acquired except in compliance with the provisions of this division.” Persons seeking authorization to appropriate water must file an application with the State Water Board.²¹ (Cal. Code Regs. tit. 23, § 650.)

Even assuming that the State Water Board has the authority to authorize the appropriation of water as a physical solution – without following the statutory procedures for approving a new appropriation – nothing in Order 95-10 suggests that the State Water Board intended to do so.

Cal-Am cites language indicating that the State Water Board issued Order 95-10 instead of referring the matter to the Attorney General for enforcement, but that language merely indicates that the board was using its prosecutorial discretion, not that the board believed it was conferring a water right.

In conclusion, we find that the conditions in Order 95-10 requiring Cal-Am to mitigate the adverse effects of its unlawful diversions do not authorize Cal-Am to divert water from the river in excess of its water rights. Accordingly, the State Water Board may issue a CDO for the unauthorized diversion of water in violation of Water Code section 1052, even if the State Water Board concludes that Cal-Am is in compliance with Order 95-10.

11.0 ORDER 95-10 REQUIRES CAL-AM TO DILIGENTLY IMPLEMENT ACTIONS TO TERMINATE ITS UNLAWFUL DIVERSIONS

Condition 2 of Order 95-10 (p. 40.) states:

2. Cal-Am *shall diligently implement* one or more of the following *actions to terminate its unlawful diversions* from the Carmel River: (1) obtain appropriative right permits for water being unlawfully diverted from the Carmel River, (2) obtain water from other sources of supply and make one-for-one reductions in unlawful diversions from the Carmel River . . . and/or (3) contract with another agency having appropriative rights to divert and use water from the Carmel River. (Italics added.)

Notwithstanding the plain meaning of Condition 2, Cal-Am has taken the position that Condition 2 of Order 95-10 merely requires it to *pursue* actions to obtain supplemental water supplies. (CAW-8, p.2, ¶1.) By the use of such semantics, Cal-Am seeks to convert the requirement to

²¹ Cal-Am has an application (A30215) to appropriate water from the Carmel River that might lead to a permit authorizing the diversions and use of water. In the absence of a final environmental impact report (EIR) prepared pursuant to the California Environmental Quality Act (Pub. Resources Code § 21000 et seq.), the State Water Board may not act upon the application. The MPWMD is the lead agency and has not certified a final EIR. (CAW - 032, pp. 2, 7-25.)

implement actions to terminate its unlawful diversions into a requirement that it merely pursue such actions.

Order 95-10 determined Cal-Am's water rights, or lack thereof, and the effect its diversions were having on fish and wildlife. (Order 95-10, pp. 25-29.) The order found that Cal-Am was diverting substantial amounts of water in excess of its rights (*id.* at pp. 17-24) and that its diversions, legal and illegal, were having an adverse effect on fish, wildlife and riparian habitat in and along the river. (*Id.* at pp. 24-29.)

Having found that Cal-Am was diverting water in violation of Water Code section 1052, the State Water Board could have initiated an enforcement action. (Wat. Code, § 1052, subds. (b)-(d).) But the State Water Board found that there were circumstances militating against the use of its enforcement options. The order states in part:

In the short term, Cal-Am cannot significantly reduce its extraction from the wells along the Carmel River. As previously stated, most of Cal-Am's supply is obtained from wells along the river. The people and businesses of the Monterey Peninsula must continue to be served water from the Carmel River in order to protect public health and safety.

Cal-Am introduced exhibits during the hearing which show that during 1980 and 1981, on the basis of available information the [State Water Board] was not of the opinion that the water pumped by the wells would require a permit from the Board. Further, Cal-Am does not contend that the wells are not extracting water from the subterranean stream. Indeed, Cal-Am has filed an application to appropriate water with the [State Water Board].

Cal-Am also supports the New Los Padres Project proposed by the District as one means for providing a reliable and legal supply of water for its customers. Finally, Cal-Am has cooperated with the District, [Department of Fish and Game], and others to develop and implement measures to mitigate the effect of its diversions on the instream resources of the river.

Under circumstances such as these, the imposition of monetary penalties makes little sense. Rather, the [State Water Board's] primary concern should be the adoption of an order which, until a legal supply of water can be developed or obtained, will require that Cal-Am: (1) minimize its diversions from the Carmel river, (2) mitigate the environmental effects of its diversions, and (3) prepare a plan setting forth: (a) specific actions to develop or obtain a legal supply of water and (b) the dates specific actions will have occurred so that progress can be objectively monitored.

(Order 95-10 at pp. 37-38 [citations omitted].)

Finally, the order states:

5. The [State Water Board] can request the Attorney General to take action under Section 1052. Alternatively, the [State Water Board] *can suspend such a referral provided that Cal-Am takes appropriate actions* to: mitigate the effect of its diversions on the environment and develop and diligently pursue a plan for obtaining water from the Carmel River on other sources consistent with California water law. The [State Water Board's] primary concern should be the adoption of an order requiring Cal-Am to (1) prepare a plan setting forth (a) specific actions which will be taken to develop or obtain a legal supply of water and (b) the dates specific actions will have occurred so that progress on the plan can be objectively monitored; (2) minimize its diversions for [sic] the Carmel River; and (3) mitigate the environmental effects of its diversions.

(*Id.* at pp. 39-40 [italics added].)

Condition 1 of the order places a cap on Cal-Am's diversions from the river until unlawful diversions are ended. Condition 2 requires Cal-Am to diligently implement one or more actions to terminate its unlawful diversion. (*Id.* at p. 40.) Condition 3 requires Cal-Am to implement water conservation measures to reduce its diversions from the river. Condition 4 requires Cal-Am to maximize production from the Seaside aquifer to reduce its diversions from the river. (*Id.* at pp. 40-41.) Conditions 5 through 10 are measures aimed at mitigating the adverse environmental effects of Cal-Am's diversions. (*Id.* at pp. 41-43.)

When the order is viewed in its entirety, we conclude that Condition 2 requires that Cal-Am diligently implement actions to terminate its unlawful diversions. We also conclude that Cal-Am's failure to comply with Condition 2 is adequate reason for the State Water Board to conclude that its suspension of an enforcement action for violations of section 1052 of the Water Code is no longer appropriate.

12.0 THE STATE WATER BOARD IS NOT ESTOPPED FROM ISSUING A CEASE AND DESIST ORDER

Cal-Am contends that the State Water Board is equitably estopped from issuing a cease and desist order pursuant to Water Code section 1052 and that "[t]he Board must allow CAW to continue to extract in excess of its water rights." The contention is based on the *City of Long*

Beach v. Mansell (1970) 3 Cal.3d 462, 487-501. Four elements must be present in order to apply equitable estoppel:²²

- 1) the party to be estopped must be appraised of the facts;
- 2) the party to be estopped must intend that his conduct shall be acted upon, or must so act that the party asserting the estoppel had a right to believe it was so intended;
- 3) the party asserting estoppel must be ignorant of the true state of facts; and
- 4) the party asserting estoppel must rely upon the conduct to his or her injury.

Cal-Am's contention founders on the second, third and fourth elements necessary to prove estoppel. Order 95-10 requires Cal-Am to diligently implement actions to terminate its unlawful diversions. As discussed in the Section 10.0, Order 95-10 does not authorize Cal-Am's unauthorized diversions, and the State Water Board never intended Order 95-10 to be interpreted that way. Cal-Am has been on continuous notice that its unlawful diversions are viewed as a violation of Water Code section 1052 and subject to enforcement since the adoption of Order 95-10.

Cal-Am contends that until it received the notice of proposed CDO that initiated these proceedings, it had not received any communication from the State Water Board indicating that Cal-Am might be in violation of the law. This contention is inconsistent with Order 95-10, which found that Cal-Am was illegally diverting from the Carmel River. However, even if it were true, it would not provide a basis for estoppel. Even where an agency has not taken an enforcement action for over a period of many years, it is not reasonable to assume the law will never be enforced. (*Feduniak v. California Coastal Com'n* (2007) 148 Cal.App.4th 1346, 1369.)

Moreover, the State Water Board made clear in subsequent communications, not just in Order 95-10, that Cal-Am was in violation of Water Code section 1052. In 1997 and 1998 the State Water Board issued an ACL to Cal-Am for failing to comply with Condition 3(b) of Order 95-10. An ACL may be issued for violations of Water Code Section 1052. Both ACL's allege that Cal-Am is in violation of section 1052 and find that such violations are occurring. (PT-4, ¶¶ 1, 3-6; PT- 5, ¶¶ 1, 3-6). The ACL's were issued because Cal-Am failed to implement the conservation measures required by condition 3(b). In addition, on June 5, 1998, the Chief, Division of Water Rights, advised MPWMD that Order 95-10 "... is only an interim measure to provide some relief during development of a water supply project and does not provide a basis

²² *Lents v. McMahon* (1989) 49 Cal.3d 393, 399. Estoppel may be asserted against the government where justice and right require it, but will not be applied against the government if to do so would effectively nullify a strong rule of policy, adopted for the benefit of the public. (*Ibid.*)

of right for continued diversion of water.” (PT-6, p.3.) Mr. Larry Foy of Cal-Am was sent a copy of the letter. Thus, Cal-Am has been and is on notice that the State Water Board could take action under Water Code section 1052 if it was dissatisfied with Cal-Am's progress in complying with Order 95-10.

Thus, the second and third elements for estoppel clearly have not been established. The State Water Board clearly did not intend for Cal-Am to believe its diversions were legal, and Cal-Am knew its diversions were illegal. The fourth element, detrimental reliance, has not been established, either. Cal-Am introduced evidence that it has invested in the planning of long-term water supply projects, but offers no explanation as to how it has been harmed by that investment.

Even if the four elements for estoppel have been established, estoppel will not be applied to a public agency if a strong public policy will be violated. (*Phelps v. State Water Resources Control Board* (2007), 157 Cal.App. 4th 89, 114.) In particular “[p]ublic policy must be considered where a party raises estoppel to prevent enforcement of environmental statutes.” (*Ibid.*) In providing authority for the State Water Board to issue CDOs, the Legislature has declared, “that the state should take vigorous action to . . . prevent the unlawful diversion of water.” (Wat. Code, § 1825.) Preventing the State Water Board from issuing a CDO would be inconsistent with this policy. This principle applies with particular force under the circumstances presented here, where Cal-Am's claim of estoppel is based on a State Water Board decision to forego enforcement in reliance on an order intended to eliminate Cal-Am's unlawful diversions, but those unlawful diversions have not been eliminated over a decade later.

The proposed CDO does not seek to punish Cal-Am for failure to diligently implement actions to terminate its unlawful diversions. Rather the proposed CDO seeks to bring Cal-Am into compliance by compelling Cal-Am to annually reduce the unauthorized diversions by specified amounts starting in water year 2008 and continuing through water year 2014. (CAW- 7.)

If the State Water Board cannot compel Cal-Am to reduce its unlawful diversions, Cal-Am will have obtained a de facto right to divert the water from the river in violation of the statutory requirements for obtaining appropriative water rights, a result contrary to law and public policy. As this State Water Board explained in Order WR 2004-0004:

[A]fter the enactment of the 1913 Water Commission Act, a water user cannot establish a new water right simply by using water; the water user either must have an existing water right under some theory or must acquire an appropriative right by complying with Division 2 of the Water Code. The exclusive means of obtaining an appropriative right to divert and use water from a surface stream is by complying with the provisions of Division 2 of the Water Code. (Wat. Code, § 1225.) Equitable estoppel is not available. The [State Water Board] cannot give the respondents, through equitable estoppel, a water right that it could not give them in the absence of following the statutorily prescribed procedures. (*American Federation of Labor v. Unemployment Insurance Appeals Board* (1996) 13 Cal.4th 1017, 1039 [56 Cal.Rptr.2d 109,122].)

Also, the California Supreme Court has made it clear that a water user cannot prescriptively acquire a water right against the state. (*People v. Shirokow* (1980) 26 Cal.3d 301 [162 Cal.Rptr. 30].) Based on the *Shirokow* decision, a water user cannot obtain equitable relief such as estoppel against the [State Water Board]'s enforcing the requirement that water users must obtain appropriative water rights under the Water Code if they do not have other water rights.

(*Id.* at p. 14.)

13.0 RES JUDICATA AND COLLATERAL ESTOPPEL ARE NOT A BAR TO ISSUING A CEASE AND DESIST ORDER

Cal-Am contends that the doctrines of *res judicata* and collateral estoppel preclude consideration of the same claims and issues raised by the draft CDO as were decided by Order 95-10.²³ (Oct 9, CAW Closing Brief, 3. The Law Bars a Finding by the State Water Board that CAW has Committed a Trespass if it Complies With Order 95-10, pp 7-10.) *Res judicata* is a doctrine providing that when there is a final judgment on the merits of an issue, the same parties may not relitigate the same issue, giving the former judgment conclusive effect in subsequent litigation. (*People v. Barragan* (2004) 32 Cal.4th 236, 252.)²⁴ In its primary aspect, known as claim preclusion, it operates to bar a second suit between the same parties on the same cause of action. (*Ibid.*) In its secondary aspect, known as collateral estoppel, the prior judgment operates in a second suit as a conclusive determination as to issues in the second suit that were actually litigated and determined in the first suit. (*Ibid.*) The elements for applying the doctrine are: (1) a claim or issue raised in the present action is identical to a claim or issue

²³ MPWMD and the Seaside Basin Watermaster (SBW) make the same contention. (Oct. 9, 2008 Brief, p. 2, 18 - p. 4, 7.)

²⁴ The doctrine of collateral estoppel has been applied to the decisions of administrative agencies. (*People v. Sims* (1982) 32 Cal.3d 468; see also *Pacific Lumber Co. v. State Water Resources Control Bd.* (2006) 37 Cal.4th 921, 944.)

litigated in a prior proceeding; (2) the prior proceeding resulted in a final judgment on the merits; and (3) the party against whom the doctrine is being asserted was a party or in privity with a party to the prior proceeding. (*Ibid.*) The doctrine will not be applied if injustice would result or if the public interest requires that the new action not be foreclosed. (*Citizens for Open Access to Sand and Tide, Inc. v. Seadrift Ass'n* (1998) 60 Cal.App. 4th 1053, 1065; 71 Cal.Rptr. 2d 77.)

Cal-Am contends, correctly, that Order 95-10: (1) determined Cal-Am's rights to the use of water from the Carmel River; and (2) identified the effects of Cal-Am's diversions from the river on fish and wildlife along the lower 18.5 miles of the stream in 1995. (See sections 5.2 and 5.3 of this order.) Cal-Am also contends, correctly, that some of the parties to the first proceeding are also parties to this proceeding. Those parties include Cal-Am, MPWMD, the Pebble Beach Company (PBC), Sierra Club, Carmel River Steelhead Association (CRSA), and the California Sportfishing Protection Alliance (CSPA). While some of the issues presented in this case are identical to those adjudicated in Order 95-10, some of the issues clearly are not identical.

For example, the issues are identical, and findings in Order 95-10 are binding on Cal-Am and other parties to Order 95-10, insofar as the extent of Cal-Am's rights for water diversion and use from the Carmel River are concerned, except where Cal-Am obtained water rights through the State Water Board's issuance of a water right permit after Order 95-10 was issued. On the other hand, issues concerning the appropriate remedy for violations that are occurring or threatening to occur at the time of these proceedings are not necessarily identical to issues concerning the appropriate remedy for violations occurring when Order 95-10 was issued over a decade ago.

In particular, there is no basis for Cal-Am's claim that principles of *res judicata* or collateral estoppel preclude the issuance of a CDO for the unauthorized diversion or use of water in violation of section 1052 of the Water Code. That issue was not considered or decided in Order 95-10. At the time Order 95-10 was issued, the State Water Board did not have authority to issue a CDO for the unauthorized diversion or use of water. (See Stats. 2002, ch. 652, § 6 [amending Wat. Code, § 1831 to authorize issuance of a CDO for the unauthorized diversion or use of water or for violation of a State Water Board order]. See also Stats. 1980, ch. 933, § 13, p. 2968 [under the prior version of Wat. Code, § 1831, a CDO could be issued only for violation of a term or condition of a water right permit or license].) Obviously, the issue of whether a CDO may be issued under current law, based on violations that are occurring or are threatened

currently, presents a different issue from the issue whether a CDO could have been issued in 1995 based on violations then occurring and the law then in effect.

Cal-Am also contends that because its illegal diversions have continued unabated since the adoption of Order 95-10, no new evidence should be allowed as to the effects of its diversions from the river. Prior to the presentation of evidence on May 13, 2008, the Hearing Officers ruled that evidence as to the effects of Cal-Am diversions on the public trust resources would be considered within the context of this enforcement proceeding. Such evidence may be relevant to the State Water Board's consideration of what remedy may be most appropriate in this proceeding:

For example, the extent of harm to the public trust may be relevant to determining how long the schedule should be for achieving compliance. A cease and desist order may also include measures to avoid or mitigate adverse effects on public trust uses during a period of continuing violations before full compliance is achieved. Where the parties propose different remedies, public trust impacts will also be relevant to the . . . choice of remedies.

(May 13, 2008, Ruling On Procedural Issues at p. 4.)

This issue of how impacts on public trust resources should affect the remedy adopted in a CDO is somewhat different from the issue presented in Order 95-10. If Cal-Am's unauthorized diversions are continuing for a longer period than was anticipated in 1995 or those diversions are claimed to have impacts that differ from what those impacts were understood to be in 1995, those are relevant issues for the State Water Board's consideration.

Finally, the following events have occurred since the adoption of Order 95-10, on July 6, 1995:

- 1) The New Los Padres Project was not constructed. Order 95-10 was predicated, in part, upon the anticipated construction of the New Los Padres Project by MPWMD and Cal-Am's ability to use the water developed by that project to substitute a legal supply of water for its illegal diversions. (See Decision 1632, Cond. 11; Order 95-10, Cond. 2 (3).)
- 2) California Central Coast Steelhead has been determined to be a threatened species under the federal rare and endangered species act.
- 3) The Carmel River has been designated as habitat critical to the survival of the steelhead.
- 4) Cal-Am has made no meaningful progress in implementing actions to reduce its unlawful diversions from the Carmel River for 13 years. (See section 14.1 of this order.)

Because a CDO looks forward -- establishing appropriate terms to obtain compliance and to avoid or reduce impacts of threatened or continuing violations, as opposed to imposing penalties for past violations -- the State Water Board can and should consider this kind of evidence. The State Water Board is not limited to the facts as determined in Order 95-10. (See also Wat. Code, § 1832 [After notice and an opportunity for a hearing, the State Water Board may modify a CDO].)

We conclude that the doctrines of *res judicata* and collateral estoppel are not a bar to the Prosecution Team and other parties introducing evidence as to (1) whether a CDO should be issued, and (2) what modifications, if any, should be made to the remedies proposed in the draft CDO.

14.0 CAL-AM IS COMMITTING VIOLATIONS FOR WHICH A CEASE AND DESIST ORDER MAY BE ISSUED

14.1 Cal-Am has not Complied with Condition 2 of Order 95-10, and is Violating the Prohibition in Section 1052 of the Water Code Against the Unauthorized Diversion or Use of Water

As discussed above, the draft CDO alleges two bases for issuing a CDO: (1) Cal-Am is violating Condition 2 of Order 95-10, which requires Cal-Am to diligently implement actions to terminate its unlawful diversions; and (2) Cal-Am is unlawfully diverting water in violation of Water Code section 1052.

The Prosecution Team's case-in-chief that Cal-Am has not complied with Condition 2 may be summarized as follows:

- 1) Cal-Am has the legal right to divert only 3,376 afa from the Carmel River.
- 2) Cal-Am has annually diverted an average of 10,978 afa from the river since Order 95-10 was adopted. (PT Exb. 11A; RT, Ph. 1, Vol. 1, p. 40, 12-14.)
- 3) Cal-Am has diverted an average of 7,632 afa without a basis of right for the past 13 years.²⁵ (Id., p. 41, 12-14.)
- 4) Thus, Cal-Am has not diligently implemented actions to terminate its unlawful diversions as required by under Condition 2.

The Prosecution Team presented evidence sufficient to support all four contentions. Further, Cal-Am offered no evidence to rebut the first three contentions made by the Prosecution Team.

²⁵ Between 1995 and 2007 Cal-Am's unlawful diversions ranged between 9,471 afa and 7,007 afa. Water year 1998/1999 was the year in which unlawful diversions were lowest. (PT Exb. 11A, John Collins written testimony, Table 1.)

Notwithstanding the foregoing, Cal-Am contends that it is in compliance with Condition 2 and that if Cal-Am is in compliance with Condition 2, the State Water Board is precluded from issuing a CDO based on Cal-Am's violation of section 1052 of the Water Code.

Cal-Am advanced the following propositions in support of its contention that the State Water Board is precluded from issuing a CDO if Cal-Am is in compliance with condition 2 of Order 95-10:

- 1) Order 95-10 is an interim physical solution that authorizes Cal-Am to extract water in excess of that permitted under its water rights. (CAW Oct. 9, 2008, Closing Brief, pp. 4-6.)
- 2) Equitable estoppel precludes the issuance of a CDO. (CAW Oct. 9, 2008, Closing Brief, p. 15, 10 – p.17, 5.)
- 3) The doctrines of collateral estoppel and *res judicata* bar a finding by the State Water Board that Cal-Am has committed a trespass if Cal-Am has complied with Order 95-10. (CAW Oct. 9, 2008, Closing Brief, p. 7, 10 – p.10, 9.)

Each of these contentions is addressed and rejected earlier in this order. Thus, Cal-Am is in violation of the prohibition in section 1052 of the Water Code against the unauthorized diversion or use of water, which would establish adequate grounds for issuance of a CDO even if no violation of Order 95-10 had been proven.

We also conclude, as explained in section 14.2, below, that Cal-Am has not complied with Condition 2 of Order 95-10 requiring that Cal-Am diligently implement actions to terminate its unlawful diversions.²⁶ Violation of Condition 2 of Order 95-10 provides a second basis for issuing a CDO.

14.2 Efforts by Cal-Am to Comply with Condition 2 of Order 95-10

Cal-Am presented evidence that it has made efforts to comply with the requirements of Condition 2. Initially, Cal-Am looked to MPWMD to construct the New Los Padres Project approved by the State Water Board in Decision 1632 for a legal source of water. Before proceeding with the project, however, MPWMD sought to obtain public approval of the New Los Padres Project and authorization to fund the project. In late 1995, the project approval vote failed. (CAW-029, p.2, 21-25.)

²⁶ Cal-Am contends that Condition 2 of Order 95-10 does not require Cal-Am to reduce its unlawful diversions, so long as Cal-Am maintains an effort to acquire alternative water supplies. (CAW Oct 9, 2008 Closing Brief, pp. 10-12.) This argument is addressed and rejected in Section 11.0 above.

In 1996, Cal-Am began pursuing the Carmel River Dam and Reservoir Project. This project has not proceeded for a number of reasons, including but not limited to the following. First, in 1996 the United States Fish and Wildlife Service (USFWS) listed the California Red-legged Frog as a threatened species and in 1997 NMFS listed the steelhead population as a threatened species under the Endangered Species Act. Second, on August 6, 1998, the PUC required that Cal-Am prepare a long term contingency plan describing how the company would obtain a supply of water if the new dam project did not go forward. Third, in 1998 Assembly Bill 1182 was enacted. (Stats. 1988, ch. 797.) The bill requires the PUC, as opposed to Cal-Am, to study all available alternatives to the proposed Carmel River Dam and prepare a long-term contingency plan. (CAW-032, p. 2, 26 - p. 3, 2.) The PUC's planning process involved a four-step process culminating in Plan B in 2002. (CAW-032, p. 3, 7 - p. 4, 11.) In Plan B, the principal alternative to the Carmel River Dam Project is the Coastal Water Project, a proposed 10,370 acre-feet (af) desalinization project.²⁷ (CAW-029, p. 3, 1-3.) On February 11, 2003, Cal-Am requested the PUC to replace the proposed dam project with the Coastal Water Project. (CAW-032, p. 5, 25-27.) During the hearing, the PUC was preparing an EIR for the Coastal Water Project. On January 30, 2009, the PUC gave notice that a draft EIR was available for public comment for the Coastal Water Project. Project approval awaits a PUC decision on a final EIR and on the Coastal Water Project.

While pursuing the Coastal Water Project, Cal-Am has evaluated, to some degree, smaller project alternatives for obtaining a legal water supply including: (1) the evaluation of 3 million gallons per day (MGD) and 7 MGD desalinization plants; (2) additional groundwater production from the Paralta well in the Seaside groundwater basin (the inland area of the Seaside groundwater basin); (3) injection of treated wastewater at the mouth of the Carmel River and deep bedrock sources; (4) dredging the San Clemente and Los Padres Reservoirs; (5) importing water from the Arroyo Seco, Lower Salinas and Big (or Little) Sur Rivers; (6) purchasing water from the State Water Project and from local Carmel Valley holders of water rights; and (7) surface impoundments in the Seaside/Fort Ord area and Laguna Seca. (CAW-029, p. 4, 13-23.)

²⁷ CAW contributed substantial resources to the study of project alternatives required by the PUC (CAW-032, p. 5, 23-25; CAW-032C, p. 3, 2 - p. 6, 19; CAW-032D p. 3, 26 - p. 10, 18.) Subject to PUC approval, CAW can recover the cost for studying project alternatives.

Beyond mere evaluation, Cal-Am has gone forward on several projects, including: (1) gathering information for seeking approval of Cal-Am's water right Application 30215A, an application to appropriate up to 2,964 afa from the Carmel River; (2) negotiations seeking to obtain a temporary water supply from (a) the Margaret Eastwood Trust and Clint Eastwood from the Odello well fields and (b) water rights associated with the Rancho Cañada Golf Course; (3) a negotiated agreement to temporarily obtain water surplus to the needs of Sand City from the desalinization plant being built by the city; and (4) implementation of Phase I of the Aquifer Storage and Recovery project (ASR). (CAW-029, p. 3, 17- p. 4, 5; p. 4, 24 - p. 5,17.) Cal-Am's failure to complete negotiations to obtain a temporary water supply from the Eastwood Trust, Odello well fields and from the Rancho Cañada Golf Course is not explained.

On November 30, 2007, both MPWMD and Cal-Am jointly obtained an additional right to water from the river, Permit 20808A. This permit is a spin-off from the permit authorized in Decision 1632 in 1995 for MPWMD for the development of the New Los Padres. Permit 20808A authorizes the diversion of up to 2,426 afa of water from the Carmel River to underground storage in the Seaside groundwater basin from December 1 of each year to May 31 of the succeeding year at a maximum instantaneous rate of diversion of 6.7 cfs. The project is commonly identified as the Phase I ASR project. Thus, Cal-Am's current legal rights to water in the river that may be used to supply peninsula cities is the 3,316 afa recognized in Order 95-10²⁸ plus 2,426 afa under Permit 20808A, for a total of 5,742 afa. As will be discussed *infra*, the actual amount of additional water supply that may be generated by this project is uncertain, and certainly much less than the face value of the permit.

We are fully cognizant of the complex legal and institutional framework within which Cal-Am must operate to develop or obtain additional supplies of water. However, we find that nearly 14 years after the adoption of Condition 2 in Order 95-10, Cal-Am has implemented astonishingly few actions to reduce its unlawful diversions from the river. Most of Cal-Am's efforts toward obtaining additional water supplies have been directed toward large projects that could provide enough water both to offset its illegal diversions and to provide water for growth in its service area. We understand why such projects are desirable from the viewpoint of a utility, its customers and the PUC. Nevertheless, Cal-Am's only achievements toward reducing its illegal diversions have been the work done on two projects yielding small amounts of water. Significantly, these projects are in place largely due to the efforts made by other agencies, i.e.,

²⁸ 851 afa is subtracted from this number to adjust for storage loss due to siltation at Los Padres Reservoir.

MPWMD and the City of Sand City. But for the efforts of these agencies, Cal-Am would not have made any reductions in its illegal diversions from the river during the past 14 years, except conservation savings compelled by the ACLs issued by the State Water Board in 1997 and 1998. We conclude that Cal-Am should have made and should make greater efforts toward implementing smaller projects, and that Cal-Am should make such efforts irrespective of whether the PUC approves the Coastal Water Project or one of its alternatives.

Condition 2 of Order 95-10 requires Cal-Am to diligently implement measures to terminate its unlawful diversions, and not merely to evaluate, propose, or otherwise pursue lawful alternatives. While Order 95-10 requires Cal-Am to implement these measures diligently, not instantaneously, it has taken far too long, and the reductions in Cal-Am's unlawful diversions to date have been too small to satisfy the requirement for diligence. In reaching this conclusion, we are mindful that (a) the steelhead are threatened, (b) miles of the steelhead's critical habitat, the river, are dry five to six months of the year and (c) the manager of MPWMD estimates that the earliest that Cal-Am will be able to eliminate its illegal pumping from the river with deliveries from the proposed Coastal Water Project is 2016; 21 years after the adoption of Order 95-10. (RT, Ph. 2, Vol. IV, p. 953, 7 – p. 954, 23.)

15.0 CAL-AM'S DIVERSIONS CONTINUE TO HAVE AN ADVERSE EFFECT ON FISH, WILDLIFE AND RIPARIAN HABITAT OF THE CARMEL RIVER, INCLUDING THE THREATENED STEELHEAD

Order 95-10 found that fish and wildlife were being adversely affected by Cal-Am's legal and illegal diversions. (Order 95-10, pp. 25-29.) The order states:

Cal-Am's diversions, standing alone, are not the sole cause of current conditions in the Carmel River. Other causes include the diversion and use of water by other persons and, significantly, a series of dry and critically dry years during the late 1980s and early 1990s. Nevertheless, Cal-Am's combined diversions from the Carmel River constitute the largest single impact to instream beneficial uses of the river.

(Order 95-10, p. 25.)

Cal-Am is responsible for approximately 85 percent of the total water diversions from the Carmel River and its associated subterranean flow. (PT- 45, p. 1, ¶ 2.)

Wells supply about 69 percent of the water needs of Cal-Am's customers. The balance of the water supplied to Cal-Am customers is supplied from: (1) San Clemente Dam and Los Padres reservoirs in the upper reaches of the Carmel River and (2) pumped groundwater in the City of Seaside.

(Order 95-10, p. 2.)

Order 95-10 concludes

[t]o summarize, Cal-Am diversions have historically had an adverse effect on: (1) the riparian corridor along the river below RM 18.5, (2) wildlife that depend on riparian habitat, and (3) steelhead and other fish which inhabit the river.

(*Id.* at p. 28.)

A fisheries biologist for the National Marine Fisheries Service, Ms. Joyce Ambrosius, testified during the hearing that Cal-Am's diversions result in a number of adverse impacts to steelhead. (RT. Ph. 1, Vol. 1, p. 45, 18-21.) As a result of direct diversions of water by Cal-Am and others, the Carmel River usually goes dry downstream from the Narrows (River Mile 9.5) by July of each year. From July until the winter rains begin, the only water remaining in the lower river is in isolated pools that gradually dry up as the groundwater table declines in response to pumping. Surface flow into the Carmel River Lagoon normally recedes after the rainy season in late spring and ceases in summer as rates of water extraction from the river and alluvial aquifer exceed the flow in the river. (PT-39, p. 4.) This results in the loss of river habitat and food production needed by juvenile steelhead. Steelhead are stranded in pools, and predation increases. (RT. Ph. 1, Vol. 1, p. 65.) Competition for food increases in the areas of the river that remain wetted. (*Id.*, p. 44.) Cal-Am's illegal diversions also reduce the flow to the lagoon, which is very important to ocean survival of steelhead smolts. (*Id.*, p. 44; CRSA-3, p. 7. See also PT-39, p. 4; PT-45, p. 3, ¶ 2 and p. 7, last ¶ - p. 7, ¶ 1.)

Riparian vegetation along the Carmel River has died off due to Cal-Am's diversions, and this has caused bank erosion. To fix the bank erosion, many property owners have installed riprap to protect their property. Riprap is destructive to stream habitat because it decreases the amount of riparian vegetation allowed to grow on the bank. The erosion also increases sedimentation in the river that adversely impacts the fish, and there is a decrease in the availability of large woody debris to the river.²⁹ (RT, Ph. 2, Vol. 1, p. 45, 1-11; CRSA-3, p. 5.)

²⁹ Although not directly stated in the testimony, sedimentation is a problem because it (1) cements the gravel needed for spawning habitat and (2) settles and blankets bottom-dwelling organisms that are part of the food chain. Large woody debris is important because it provides cover for fish and reduces predation.

Since the adoption of Order 95-10, a number of regulations have been enacted for the protection of the South-Central California Coast (SCCC) steelhead Distinct Population Segment (DPS) (*Oncorhynchus mykiss*). These regulations include:

- 1) The August 18, 1997 listing of the steelhead population within the California Central Coast as threatened under the Endangered Species Act (ESA). (62 Fed.Reg. 43937.)
- 2) The January 5, 2006 listing reaffirming the threatened status of the steelhead population within the California Central Coast under the Endangered Species Act. (71 Fed.Reg. 834, 859.)
- 3) The September 2, 2005 listing of the Carmel River as critical habitat for the steelhead. (70 Fed.Reg. 52488.)

We find that Cal-Am's illegal diversions continue to have an adverse impact on fish, wildlife and the riparian habitat of the Carmel River. The regulations listing the SCCC steelhead as a threatened species and the Carmel River as critical habitat for the steelhead underscore the importance of reducing and terminating Cal-Am's illegal diversions from the Carmel River at the earliest possible date and of adopting conditions to mitigate the effect of the diversions.

16.0 PROJECTS AND ACTIONS THAT MAY AFFECT CAL-AM'S NEED TO DIVERT WATER FROM THE CARMEL RIVER

The following sections discuss projects and actions that may affect Cal-Am's need to divert water from the Carmel River.

16.1 Adjudication of the Seaside Groundwater Basin

Cal-Am produces water from the Seaside groundwater basin to serve customers in its main system. (MPWMD HS-13; RT, Ph. 2, Vol. V, p. 1324, 20 – p. 1325, 8.) Cal-Am gets approximately 25 percent of its supply from the Seaside basin. (RT, Ph. 2, Vol. III, p. 753, 11-12.) Currently, Cal-Am may extract up to 3,504 afa from the basin. However, the basin has been adjudicated.³⁰ (MPWMD-HS13, RT, Ph. 2, Vol. III, p. 754, 13-16.) The judgment ordered mandatory reductions of the operating yield by 10 percent triennially beginning in 2009 until the operating yield equals the natural safe yield. (SBW-1, p. 2, 17-21.) Each triennial reduction will be implemented unless: (1) the basin is replenished from new water sources or (2) the level of

³⁰ A judgment has been entered in the Monterey Superior Court case, *California American Water Company v. City of Seaside et al*, Monterey Superior Court, Case No. M66343, dated March 27, 2006. The judgment adjudicated and limited rights to produce groundwater from the Seaside Groundwater Basin and implemented a physical solution for the management and protection of the basin. (SBW-2, ¶ 2.)

the groundwater is sufficient to prevent seawater intrusion. (*Id.*) The watermaster appointed pursuant to the judgment in the adjudication anticipates that the 10 percent reduction will be ordered every three years, and that this will result in a 417 af reduction in the water available to Cal-Am in 2009, and eventually a reduction of 2,010 afa by 2021. (SBW-1, p. 3, 4-9.) The 417 afa reduction represents about a 2.8 percent reduction in the supply of water available to Cal-Am and its customers.³¹ We find that the adjudication will decrease the supply of water available to Cal-Am for its customers. Nevertheless, we conclude that Cal-Am should be prohibited from increasing its diversions from the river to offset the loss in production from the groundwater basin. Water to offset the loss of groundwater production may be found by aggressively implementing: (1) the retrofit program; (2) the program to reduce the use of potable water for outdoor irrigation; and (3) the main replacement program and demand management by programs such as MPWMD's Regulation XV, prohibiting waste and non-essential water use. (MPWMD-SP3.) Such efforts may offset the loss of groundwater production over a period of years.

16.2 Aquifer Storage and Recovery Project

Cal-Am and MPWMD have developed a small supplemental supply of water by diverting water from the river during periods of high flow for storage in the Seaside groundwater basin. Water diverted during periods of high flow is piped to the basin and injected via wells into the groundwater. Water stored in the basin can be subsequently recovered for use. Permit 20808A authorizes the diversion of up to 2,426 afa of water from the river to underground storage in the basin from December 1 of each year to May 31 of the succeeding year at a maximum instantaneous rate of diversion of 6.7 cfs. The average annual quantity of water that may be obtained by the operation of the ASR project is estimated to be 920 af. A witness for MPWMD estimated that 400 af per year will become available in 2009, with the remaining 520 af available in 2010. (MPWMD-HS14B; RT, Ph. 2, Vol. III, p. 814, 11-22, p. 822, 23 – p. 830,10.)

Cal-Am and MPWMD may only divert water from the river when minimum flow requirements in the river are being met. Depending upon the water year type, the quantity that may be diverted to storage can range from zero up to 2,426 af. When no carry-over storage is available from the

³¹ Between 1996 and 2007 Cal-Am diverted approximately 10,967 afa from the Carmel River. (MPWMD- Exhibit DF2.) This includes the legal and illegal diversions occurring within the limit set on diversions by Conditions 1 and 2 of Order 95-10. During 2008 Cal-Am could produce up to 3,504 afa from the Seaside basin. (MPWMD- Exhibit DF5, slide 7, Status of Cal-Am's Compliance with Seaside Basin Adjudication in WY 2008.) These combined sources provide a supply of 14,471 afa to Cal-Am.

previous year and no water may be diverted from the river in the current year, no water will be available from ASR operations. (RT, Ph. 2, Vol. III, p. 816, 16 -21.)

Permit 20808A is derived from and based upon Permit 20808 issued to MPWMD for the construction of the New Los Padres Dam. Permit 20808 was authorized by Decision 1632. Condition 11 of the decision provides: "Permittee shall not divert water under this permit unless and until California American Water Company (Cal-Am) has obtained an alternate supply of water for its illegal diversions from the Carmel River." Accordingly, any new water supply derived from Permits 20808 and 20808A must first be applied to reduce Cal-Am's illegal diversions from the river. We conclude that water developed by the ASR project should be used to reduce illegal diversions from the river. Although the operation of the ASR project under Permit 20808A is outside the scope of this proceeding, the water diverted illegally from the river by Cal-Am is within the scope of the proceeding. Accordingly, we conclude that Cal-Am's illegal diversions from the river should be reduced to the extent that water is available from the ASR project to supply Cal-Am customers.

16.3 Sand City Desalinization Project will Reduce Cal-Am's Diversions from the Carmel River

The City of Sand City is constructing a 300 afa desalinization plant. The plant was scheduled to deliver water to Cal-Am in the first quarter of 2009. (Sand City-1, p. 1, 20-23.) Of the 300 afa, 94 afa will be used to replace water being diverted from the Carmel River by Cal-Am for existing water use within Sand City; thus, once the plant becomes operational the city should no longer receive water illegally diverted from the Carmel River. The balance of the plant's production, 206 afa, is for future growth. Pending the need for the remaining 206 afa, Cal-Am may use the water to meet the needs of its customers. (Sand City 1, p. 3, 16-21.) Thus, using the production from the Sand City desalinization plant, Cal-Am can permanently reduce diversions from the river by 94 afa and, temporarily, by another 206 afa. Assuming the desalinization plant is operated at a constant rate and no production is used for future growth, the plant could reduce diversions from the river by about 0.8 af per day, or about 0.4 cfs.

16.4 Reduction of System Losses

Unaccounted loss is defined as the difference between metered production and metered consumption. (RT, Ph. 2, Vol. IV, pp. 1004-1005.) As a general statement, all large water supply systems have losses between the point where water is diverted and the point where

water is delivered for use; such losses may be referred to as real losses. Cal-Am is no exception. The industry standard for unaccounted losses is 10 percent of total annual production. Cal-Am's losses are about 12 percent. (RT, Ph., 2, Vol. III, p. 746, 4 - 9.)

MPWMD has adopted a regulation requiring Cal-Am to reduce its losses to 7 percent. (MPWMD-SP3, p.1, Rule 160, G.) The prosecution team estimates that 549 afa could be saved if Cal-Am reduced its system losses from 12 percent to 7 percent. (RT, Ph. 2, Vol. 1, p. 53, 24 - p. 54, 4; PT-49, p. 2.) Some unknown fraction of Cal-Am's losses may be due to faulty meter readings. (RT, Ph. 2, Vol. III, p. 811, 1 - p. 812, 1.) The General Manager of MPWMD is of the opinion that water supply mains must be replaced to reduce Cal-Am's real system losses. (RT, Ph. 2, Vol. III, p. 811, 21 – p. 812, 1.) Cal-Am proposes to undertake a 10 to 12 year program to replace its larger mains. However, Cal-Am is seeking PUC approval before commencing work on its main replacement program. (*Id.*, p. 812, 2-7; *id.*, p. 812, 9-17.) No evidence was introduced to substantiate that 10 or more years would be required to reduce system losses to an acceptable level.

Given the chronic shortage of water available for supply within Cal-Am's service area, evidenced by the nearly 14 years of ongoing illegal diversions from the river, about half of the 12 percent system loss may be viewed as preventable "waste or unreasonable use or unreasonable method of diversion" under Water Code section 100. The State Water Board has authority to compel Cal-Am to reduce its system losses. (Cal. Const., art. X, § 2; *Environmental Defense Fund v. East Bay Muni. Dist.* (1980) 26 Cal. 3d 183.) We are of the opinion that Cal-Am can proceed with a main replacement program at any time and that Cal-Am's wish to obtain PUC approval before proceeding with a main replacement program is only to assure that the funds expended for main replacement may be recovered from its customers.³²

We conclude that Cal-Am should be required to: (a) reduce its system losses by about 549 afa; and (b) immediately commence work to reduce the losses. Further, we are of the opinion that with the application of sufficient resources it should be feasible for Cal-Am to accomplish the

³² In general, private businesses acting illegally are not excused from immediately complying with the law in order to make sure they can recoup their costs from their customers.

work of replacing its mains within eight years.³³ Thus, Cal-Am should be required to reduce its diversions from the river by about 68 af per year until it has achieved 549 afa of savings.³⁴

16.5 Water Conservation

Order 95-10 included a condition requiring Cal-Am to develop and implement an urban water conservation plan. (Condition 3.) The condition required that conservation measures have a goal of achieving a 15 percent reduction in water usage in 1996 and 20 percent in each subsequent water year. Compliance with this condition is not at issue in this hearing. However, ten years have passed since the 20 percent reduction goal was ordered, and consideration should be given to how additional conservation measures may reduce the need to illegally divert water from the river. MPWMD and Cal-Am work together to implement conservation measures in the peninsula cities. (PUC Decision 09-07-023, pp. 1-2; Attachment 1 [Settlement Agreement Among the Division of Ratepayer Advocates, MPWMD and Cal-Am On Water Conservation and Rationing Issues for the Monterey Peninsula; Attachment 2, Rule 14.1 [Water conservation and Rationing Plan, Monterey District'].) MPWMD has a greater array of regulatory tools. (MPWMD-SP12, p.10, 15 – p.11, 26 and p. 20, 3-5.) Block rate pricing of water also affects the use of water. Cal-Am must obtain approval from the PUC to impose or modify block rates. MPWMD has a retrofit program for toilets, showerheads and faucets. Retrofits are required for all title changes and for use and expansion changes. An estimated 664 afa has been saved since 1987. About two-thirds of the properties within MPWMD have been retrofitted. (MPWMD-SP12, p. 9, 8-16; RT, Ph. 2, Vol., IV, p. 1066, 12 - p. 1068, 11.) In our view, most of the remaining properties will probably be retrofitted within the next eight years, i.e., within 30 years of 1987. Over eight years, as much as 330 afa of water may be saved through continued retrofitting of properties, or roughly 41 af of additional savings per year for eight years.³⁵ We conclude that water saved by retrofitting properties should be used to reduce Cal-Am's diversions from the river.

Reduction in the use of potable water for outdoor use offers the possibility for additional water savings. (MPWMD-SP12, p. 7, 15 -20.) Outdoor water usage is estimated to be about 500 afa;

³³ Time can be saved on reducing system losses if Cal-Am does not wait for PUC approval before beginning work.

³⁴ The State Water Board recognizes that it is unlikely that exactly 68 af will be saved for each year Cal-Am replaces system mains to reduce losses and that during any given year the water saved may be more than or less than 68 af.

³⁵ The State Water Board recognizes that the actual amount of water saved by the retrofitting program during any given year may be more or less than 41 af.

less than 5 percent of total potable water use. (RT, Ph. 2, Vol. IV, p. 1062, 8-23.) MPWMD recognizes that reductions in outdoor irrigation could save about 100 afa. (MPWMD-SP12, p. 8, 6-9.) Service addresses that use less water are rewarded with a lower block rate. An increasing block rate structure has been in place since 1997. Cal-Am has requested additional blocks for non-residential users in the current General Rate Case filing with the PUC (MPWMD-SP12, p.18, 6-9.) We conclude that the use of potable water for outdoor irrigation should be reduced. Greater efforts to minimize the use of potable water for outdoor irrigation will result in incremental water savings. We are of the opinion that it may be feasible to save 100 af over eight years, or roughly 12 af per year.³⁶ We also conclude that the water saved by reducing the use of potable water for outdoor irrigation should be used to reduce Cal-Am's diversions from the river.

16.6 Demand Management

Water conservation is a concept that encompasses a wide variety of potential actions in addition to retrofit programs and reducing the use of potable water for outdoor recreating. Water conservation also includes programs to encourage or require people to use less water. MPWMD has enacted regulations that may be used to manage user demand. (MPWMD-SP3 [MPWMD Regulation XV].) Cal-Am has entered into an agreement with MPWMD for the coordinated exercise of their respective powers in order to manage user demand. (PUC Decision 09-07-023, attachment [Settlement Agreement Among the Division of Ratepayer Advocates, MPWMD, and Cal-Am On Water Conservation and Rationing Issues].) In the agreement, Cal-Am agrees to implement Rule 14.1 Water Conservation and Rationing Plan as set forth in Appendix A in accord with MWPMD's Regulation XV as modified by Ordinance 137. Among other matters, the agreement provides that demand management or rationing may be initiated in response to a final CDO by the State Water Board. Joint Cal-Am and MPWMD efforts to manage user demand may be used to reduce Cal-Am's need to illegally divert water from the river. We conclude that Cal-Am, in conjunction with MPWMD, should undertake demand management to reduce Cal-Am's need to illegally divert water from the river.

³⁶ The State Water Board recognizes that the actual amount of water saved by reducing the quantity of water for outdoor use may be greater or less than 100 af and that the quantity of water saved in any given year may be more or less than 12 af.

16.7 Small Projects

Cal-Am introduced evidence that it had entered into negotiations to obtain a temporary supply of water from the Margaret Eastwood Trust and Clint Eastwood from the Odello well fields and from the Rancho Canada Golf Course. Cal-Am's failure to complete negotiations was not explained. (See section 14.2, ¶ 5, *supra*.) Other small projects that could provide a temporary supply of water may also be available. The addition of temporary small water supply projects would reduce Cal-Am's need to illegally divert water from the river. We conclude that Cal-Am should be required to develop small projects to provide a temporary supply of water for its customers and to reduce the illegal diversions from the river.

16.8 Cal-Am has Options for Responding to the Loss of Supply.

The subjects discussed in Section 16.2 through 16.7 illustrate the range of projects and actions that are available to Cal-Am to respond to the provisions in this order requiring that illegal diversions from the river be reduced (Condition 2) and for the loss of supply from the Seaside Groundwater Basin. In general, it is up to Cal-Am and to determine how it may best serve its customers while reducing its unlawful diversions from the Carmel River. Efforts to reduce the use of potable water may aid Cal-Am efforts to serve its customers while reducing illegal diversions from the river. Cal-Am can also seek to serve its customers and reduce illegal diversions by developing and operating temporary water supply projects until the proposed Coastal Water Project or the Regional Project sponsored by the Marina Coast Water District is constructed and becomes operational.

17.0 EFFORTS TO MITIGATE THE EFFECTS OF CAL-AM'S DIVERSIONS ON FISH AND WILDLIFE

This section addresses efforts to mitigate the effects on fish and wildlife of diversions, principally Cal-Am's, from the Carmel River. Mitigation efforts must be viewed in a larger context because the effects of Cal-Am's illegal diversions cannot be isolated from its legal diversions and the diversions of others. The following discussion is relevant to an understanding of what actions may be appropriate for consideration in the CDO adopted by the State Water Board.

17.1 Releases from San Clemente Dam³⁷

Because the Carmel River usually goes dry downstream from the Narrows (River Mile 6.5) by July of each year, DFG annually negotiates with Cal-Am and MPWMD a flow bypass for San Clemente Dam. The objective of the negotiations is to keep as much stream channel wetted below San Clemente Dam as possible during the low flow season. Per the agreements, releases from SCD are generally around 5 cfs during late summer. (PT-39, p. 4, ¶ 2.) The operation of San Clemente Dam pursuant to the bypass flow agreements with DFG is outside the scope of this proceeding.

17.2 Steelhead Rescue Efforts

Because the Carmel River bed begins to go dry in July downstream from the Narrows, MPWMD and the CRSA³⁸ make organized efforts to rescue steelhead stranded in pools. Rescue efforts are labor-intensive. Fish are scooped into buckets and transported to the lagoon or to upstream areas that have water. (CRSA-3, p. 6.) MPWMD annually rescues steelhead stranded due to dewatering between the Narrows and the Lagoon. From 1995 through 2005, a total of 208,015 juvenile steelhead were rescued. (PT-39, p. 5.)

The annual rescue effort only saves a portion of the steelhead lost in the lower river. Further, once rescued, the fish are subject to mortality due to a variety of factors such as capture, adverse conditions from competition and overcrowding in upper river segments or in the Sleepy Hollow Fish Facility (facility). MPWMD has spent over \$300,000 to improve rearing operations at the facility. The improvements, involving operational protocols, have resulted in increasing rearing survival. (MPWMD-KU1, pp.1, 6.) Nevertheless, fish mortality has been over 50 percent at the facility for a variety of reasons including high water temperatures, disease and predation. The fish that survive the summer and fall are released back into the river once winter flow reconnects the lower river to the lagoon. The State Water Board lauds the efforts being made by MPWMD and CRSA to rescue juvenile steelhead, but rescuing juvenile steelhead and rearing them over the summer cannot assure the recovery of steelhead populations and is not an acceptable long-term solution. (PT-39, p. 5, 12-14.) We find that these desperate efforts

³⁷ See Figure 1 for the location of San Clemente Dam.

³⁸ For more than 35 years, volunteers associated with the Carmel River Steelhead Association have been rescuing and rearing steelhead stranded on the Carmel River. (CRSA-3, pp. 5-6.) A voluntary effort of this duration is an extraordinary achievement.

and their tenuous success underscore the importance of reducing Cal-Am's diversions from the river by all practicable measures. Further, we conclude that Cal-Am should be prohibited from increasing diversions from the river and should be required to reduce the quantity of water diverted from the river for existing service connections.

17.3 Preservation of Riparian Vegetation

A close connection has been demonstrated between groundwater diversions and both the health of the riparian vegetation and channel stability. Plant stress is directly related to soil water availability and depth to groundwater. MPWMD determined that mitigation in the form of irrigation can be used to prevent plant mortality along the riparian corridor, thus contributing to habitat for wildlife and stable riverbanks. A monitoring system was implemented to measure plant stress, soil moisture, and depth to groundwater. When necessary, supplemental irrigation is applied to help mitigate the effects of unacceptable vegetation stress. (MPWMD-TC16, pp. 3-4.) For example, in 2007 MPWMD applied a total of 11.81 af of supplemental irrigation water to offset stress to riparian vegetation associated with water diversions from the Carmel River. (*Ibid.*, p.18.) We find that the recovery of riparian habitat and associated channel stability in the lower part of the river will not occur until the level of the underflow in the river is close enough to the surface of the river bed to supply water to the roots of riparian vegetation. Thus, significant improvements in the preservation of riparian habitat and increased channel stability will not be possible until Cal-Am's illegal pumping from the river is terminated. Some marginal improvement to riparian habitat and channel stability may be possible if Cal-Am is required to reduce its pumping from the river. Thus, we conclude that Cal-Am should be prohibited from increasing its diversions from the river. In addition, we find that Cal-Am should be required to reduce the quantity of water diverted from the river for existing service connections.

18.0 WATER NECESSARY FOR PUBLIC HEALTH AND SAFETY

Under the heading titled "8.1 Considerations Mitigating Against the Use of Punitive Enforcement Options," Order 95-10 found that "[i]n the short term Cal-Am cannot significantly reduce its extraction from wells along the Carmel River." The order went on to state "[t]he people and businesses on the Monterey Peninsula must continue to be served water from the Carmel River to protect public health and safety." The order did not make a finding of what quantity of water was necessary for public health and safety in Cal-Am's service area. Indeed,

condition 3 of the order required a 20 percent reduction in the quantity of water diverted from the river. No single fixed quantity of water per customer will protect public health and safety in all water supply systems. The quantity of water required to protect public health and safety will vary from system to system and will vary, over time, within a particular system depending upon how the water supply system is built, modified and operated, and upon measures taken by the end users of water to conserve the use of water. Fourteen years have passed since Order 95-10 was adopted, making it appropriate to consider requiring Cal-Am to further reduce its illegal diversions from the river, even without a substitute supply.

Cal-Am contends that reducing the quantity of water currently being diverted from the river would jeopardize its ability to deliver water to its customers. (Nov. 11, 2008, CAW Reply Brief, p. 17.) Having sufficient water to operate a water treatment and supply system is a valid concern. Simply stated, sufficient water must be taken into the treatment system to meet daily user demand for water. If water is not available to supply user demand, some areas of Cal-Am's system will not have enough water to maintain pressure for delivery to users or for an emergency, such as a fire. We should not give too much weight to this contention, however, for three reasons. First, Cal-Am continues to make new connections to its system. If Cal-Am were truly concerned that the existing supply of water is inadequate, it could act to end new connections pursuant to Water Code section 350, et. seq., or seek an order from the PUC prohibiting new service connections in accordance with Public Utility Code section 2708. Second, having sufficient water to operate its system reliably is typically a problem for one day a year, although it could be for as long as 3 to 5 days at a time. (RT, Ph. 2, Vol. V, p. 1292, 2-7.) Finally, having enough water to meet user demand can also be accomplished by reducing user demand. Such reductions can be accomplished by water conservation and standby rationing programs similar to that administered by MPWMD. (MPWMD - SP12, p. 4, 17-25; MPWMD - SP3, Regulation XV.)

MPWMD is a special-purpose district created to provide water resource management in the Monterey Peninsula area. It regulates all water distribution systems within its boundaries, including Cal-Am's. (MPWMD-1, p. 4, 1 – p. 6, 21; RT, Ph. 2, Vol. IV. p. 925, 14-25.) In the interim between the adoption of Order 95-10 and the hearing for this proceeding, MPWMD has treated the quantity of water that Cal-Am is taking from the river as part of the supply of water available to serve the needs of peninsula communities. (RT, Ph. 2, Vol. IV, p.1008, 25 – p.1011, 24; p. 936, 5 - 21.) During this proceeding, MPWMD and many peninsula cities took the position that all of the water being diverted from the river by Cal-Am is necessary for public

health and safety. (RT, Ph. 2, Vol. IV, p. 1046, 13-21.) Further, MPWMD and many peninsula cities also wish to have water for growth. MPWMD's water allocation program sets aside water for growth within the limits of the supply of water available within its jurisdiction, including the water being illegally diverted from the river by Cal-Am. (RT, Ph. 2, Vol. IV, p. 953, 7 – p. 954, 23; p. 1046, 13 – p. 1047, 21; Carmel-1, p. 2, 3-22; Monterey-1, p. 2, ¶ 4; City of Seaside-4, p. 3, 19 - 24.) An unintended consequence of this arrangement may be that because the peninsula cities have had water both for existing uses and for growth, their residents have had little incentive to support or pay for a project or projects to obtain a legal supply of water that can be substituted for the illegal diversions from the river. In addition, diverting water from the river for growth is unacceptable when (a) Cal-Am has no legal right to divert the water, (b) the steelhead in the river has been declared a threatened species, (c) the river has been designated critical habitat for the steelhead and (d) miles of the river bed are dry for five to six months a year. Accordingly, we conclude that water should not be diverted from the river for growth and that the quantity of water that is illegally diverted by Cal-Am should be reduced over a period of years until illegal diversion from the river is ended.

The water available to supply Cal-Am's customers, from all sources (including Cal-Am's illegal diversions from the Carmel River), is in rough equilibrium with current customer needs. MPWMD's regulations to encourage conservation, the reduction of losses within Cal-Am's water system, and other measures can offset modest reductions in supply that are gradually implemented without presenting a threat to public health and safety. An immediate and substantial reduction in the quantity of water that Cal-Am diverts from the river could present a threat to public health and safety unless Cal-Am's customers can be required to scale back their use of water by an amount equal to the quantity of reduced diversions. MPWMD's regulation adopted to curtail consumption within the peninsula communities depends heavily upon public education and the cooperation of water users. (MPWMD-SP12, p. 18, 21 - p. 20, 11; RT, Ph. 2, Vol. IV. p. 1029, 4 – p. 1036, 6.) Effective control over the quantity of water used by many thousands of users through voluntary cooperation is an uncertain undertaking at best. Thus, an immediate and substantial reduction in the quantity of water that Cal-Am diverts from the Carmel River could present a threat to public health and safety.³⁹ The State Water Board concludes that an order requiring Cal-Am to immediately make substantial reductions in the

³⁹ The peninsula area economy is also dependent upon the vitality of the hospitality industry. A marked and substantial reduction in the quantity of water that Cal-Am may divert from the river would, in all likelihood, affect the number of visitors that can be served by the hospitality industry and the economy of the area. (MPHA-001, p. 4, 9-17; MPHA-010, p. 3, 14-25.)

quantity of water illegally diverted from the river could present an unacceptable risk to public health and safety. On the other hand, modest reductions in the quantity of water Cal-Am diverts from the river that are gradually implemented can be offset by the types of projects and actions previously described in this order⁴⁰ and do not present a threat to public health and safety. Thus, the State Water Board also concludes that Cal-Am should be required to make modest and continuing reductions in the quantity of water diverted from the Carmel River until such time as it has developed a project or projects capable of providing a new source of water to supply the needs of its customers to substitute for its unlawful diversions of water from the Carmel River.

19.0 OTHER MATTERS

19.1 Pebble Beach Company should be Subject to Limitations Imposed upon Cal-Am's Diversions from the Carmel River

The State Water Board strongly supports the use of recycled water for nonpotable water uses where recycled water is available in order to maximize the beneficial use of the state's scarce water supplies. In the past, the State Water Board has required that recycled water be used, instead of potable water for nonpotable uses, such as irrigation, pursuant to Water Code sections 13550 and 13551. (E.g., Decision 1625; see also Decision 1623-Amended; see also Order WQ 84-7 [requiring dischargers in water short areas who propose to discharge treated wastewater to the ocean to evaluate the potential for water reclamation].) Water recycling promotes the constitutional policy that the water of the state be put to beneficial use to the maximum extent possible. (Cal. Const., art. X, § 2; Wat. Code, §§ 100, 275.)

Pebble Beach Company (PBC) has a 365 afa water entitlement⁴¹ from MPWMD for developing properties within Del Monte Forest. The entitlement is used for making new service connections to Cal-Am's water system. The entitlement was granted as part of a contractual arrangement wherein PBC agreed to financially guarantee public financing of a wastewater reclamation project. PBC seeks to have its water entitlement for new growth excluded from any limitation that may be placed upon Cal-Am's withdrawals from the Carmel River. (Oct. 14, 2008, Closing Brief of PBC, p. 13, 20-22.). In addition, PBC contends that, during 2005-06, it relied upon findings and representations by the State Water Board when undertaking additional financial

⁴⁰ Section 16.0. Projects and Actions that may Affect Cal-Am's Need to Divert Water from the Carmel River, subsections 16.1 – 16.4.

⁴¹ In addition to PBC's 365 afa, the entitlement includes 10 afa for S. Lohr and 5 afa for W. Griffin, who are subject to conditions contained in this order.

arrangements to further upgrade the wastewater reclamation plant and when acquiring a reservoir to store reclaimed wastewater.

The Pebble Beach Community Services District (PBCSD) and the Carmel Area Wastewater District (CAWD) operate the CAWD-PBCSD Wastewater Reclamation Project. (PBC-2, p. 1, 25-27.) The project provides reclaimed wastewater for irrigation of the golf courses and other recreational open spaces located in the unincorporated Del Monte Forest area of Monterey County. (PBC 1, p. 2, 7-9.) The project was designed to deliver not less than 800 afa of reclaimed water and to free an equal amount of potable water for other uses. Operationally, some potable water was necessary to control salinity levels in the reclaimed water used for golf course irrigation and to meet irrigation needs during times of peak demand. (PBC-1, p. 2, 16-23.) During 13 years of operation, between 1994-95 and 2006-07, the project supplied an average of 706 afa of reclaimed water; 267 afa of potable water was required for salinity control and to meet peak irrigation demand. (PBC-2, p. 3, 1-28.) Public project financing was facilitated by private financial guarantees. The PBC guaranteed: (a) \$33.9 million in capital costs for the project, and (b) net project operating deficiencies. In return for the financial guarantee, PBC was granted a 365 afa potable water entitlement by MPWMD for future development of lands owned by PBC. (PBC-1, p. 3, 19 – p. 4, 2.) Based on this entitlement, water has been sold to over 500 homeowners in the Del Monte Forest. (RT, Ph. 2, Vol. II, p. 556, 14-15.)

During 2005-2006, the project was upgraded through the addition of 325 af of storage for reclaimed water and by improvements to the wastewater treatment plant to reduce the level of salinity in the reclaimed water. During 2009, these improvements should result in the project being able to operate without the need for potable water. (*Id.*, p. 4, 1-17.) The upgraded project cost \$34 million. PBC obtained the funds for the upgrade by selling 175 afa of the entitlement obtained from MPWMD to landowners in Del Monte Forest. (PBC-1, p. 3, 25 – p. 4, 2.)

A footnote in Order 95-10 recognizes the supply of water made available to Cal-Am customers by the project:

In addition to supplies from the Carmel River and pumped ground water in the area of Seaside, reclaimed water is available to some Cal-Am users from the Carmel Area Wastewater District Pebble Beach Community Services District Wastewater Reclamation Project. The Project will provide 800 acre-feet of reclaimed water for the irrigation of golf courses and open space in the Del Monte Forest. In return for

financial guarantees, the Pebble Beach Company and other sponsors received a 380 af of potable water entitlement from the District for development within Del Monte Forest. As of the end of fiscal 1993-1994, the District had not allocated the remaining 420 af of project yield.

(Order 95-10 at p. 6, fn. 2.)

On March 27, 1998, the Chief, Division of Water Rights, wrote MPWMD and Cal-Am concerning the relation of the project to the water being diverted from the river by Cal-Am and Order 95-10.

(PBC-7.) The letter states, in part:

The [State Water Board] has recognized that the Pebble Beach Company and other sponsors were project participants in, and assisted in funding, the wastewater reclamation project which enabled Cal-Am to reduce its delivery of potable water to Del Monte Forest property and thereby reduce the demand on the Carmel River by at least 500 afa and potentially 800 afa. Upon completion of the Del Monte Forest property, 380 afa will be diverted from the Carmel River by Cal-Am for delivery to these lands. Thus, there will be no net increase in Carmel River diversions in the future over the level of past documented diversions as a result of developing these projects. As a result of the reclamation project and especially during the interim period while the Del Monte Forest property is being developed, the net diversion from the Carmel River to serve Del Monte Forest properties will be less than the level that would have occurred if the wastewater reclamation project had not been developed. Thus under Footnote 2 of Order WR 95-10, the 380 afa is available to serve the projects.

As a result, Order WR 95-10 does not preclude service by Cal-Am to the Del Monte Forest property under the 380 afa entitlement granted by the District. As you are aware, the [State Water Board] is requiring Cal-Am to maintain a water conservation program with the goal of limiting annual diversions from the Carmel River to 11,285 afa until full compliance with Order WR 95-10 is achieved. While Cal-Am has been exceeding the limit, it is not the intent of the [State Water Board] to penalize the developers of the wastewater reclamation project for their efforts to reduce reliance upon the potable water supply via utilization of treated wastewater.

Thus, the [State Water Board] will use its enforcement discretion to not penalize Cal-Am for excess diversions from the Carmel River as long as their diversions do not exceed 11,285 afa plus the quantity of potable water provided to the Pebble Beach Company and other sponsors under this entitlement for use on these lands. This enforcement discretion will be exercised as long as the wastewater reclamation project continues to produce as much as, or more than, the quantity of potable water delivered to the Del Monte Forest property, and the reclaimed water is utilized on lands within the Cal-Am service area.

Footnote 2 of Order 95-10 deals with the issue of water use for purposes of projects in the Del Monte Forest. Consequently, the order does not provide discretion to address any projects involving the use of the unassigned 420 afa (800 afa minus 380 afa identified in the footnote equals 420 afa) developed by the wastewater treatment facility.

On October 18, 2001, the Chief, Division of Water Rights, sent another letter to MPWMD concerning this subject. The letter stated in part:

You specifically asked whether the use of a portion of the original Pebble Beach Company water entitlement from the CAWD reclamation project can be used on non-Pebble Beach Company properties within (1) the Del Monte Forest and (2) outside the Del Monte Forest. Cal-Am may distribute the new potable water supply anywhere in its service area, subject to the Carmel River diversion requirements of Order 95-10 (and any subsequent modification approved by the State Water Resources Control Board) and requirements (a) and (b) above.⁴²

(PBC-8.)

The letter expresses an intent not to penalize Cal-Am for excess diversions from the Carmel River to supply Pebble Beach as long as their diversions do not exceed 11,285 afa plus the quantity of potable water provided to the PBC and other sponsors under the entitlement from MPWMD.⁴³

The letters cannot be understood as a binding commitment that the State Water Board will never take an enforcement action that might affect PBC or others relying on the entitlement from MPWMD. Because the March 27, 1998 letter expressly identifies the State Water Board's action as an exercise of enforcement discretion, it serves as a warning that Cal-Am's excess diversions constitute an ongoing violation and that the State Water Board could take enforcement action. Nevertheless, as noted in the March 27, 1998, letter to MPWMD, the reclamation project constructed with PBC funding guarantees will not result in a net increase in diversions from the Carmel River and, in the interim before while Del Monte property is being developed, the net diversions from the river to serve Del Monte Forest properties will be less than the level that would have occurred if the reclamation project had not been developed.

⁴² The reference to the "requirements of (a) and (b) above" refers to the following: "Continual records must be maintained, on both a monthly and total annual basis, to document that (a) the new use of potable water does not exceed the historic quantity of potable water provided by the California-American Water Company (Cal-Am) to the Del Monte property and (b) the quantity of treated wastewater put to beneficial use equal or exceeds the potable water use."

⁴³ The letter of October 18, 2001, is also problematic. It should be noted, however, that the letter expressly states that Cal-Am's diversions from the river for the PBC are subject to Order 95-10 and any subsequent modification to the order approved by the State Water Board. This order is such a modification.

We conclude, therefore, that the State Water Board should not prohibit any increased diversions from the river by Cal-Am for deliveries made under PBC's entitlement from MPWMD.

Nevertheless, any water users who receive water under the PBC entitlement should not be exempted from any conservation program or other effort to reduce Cal-Am's unauthorized diversions.

19.2 Any Monterey Peninsula Community that Wishes to Develop Water from a New Source for Growth Must First Apply Water from the New Source to Reduce its Share of the Water Being Illegally Diverted by Cal-Am; Only after its Share of Illegal Diversions from the River is Ended may Water from the New Source be Used for Growth

Some additional water has been developed for growth in Cal-Am's service area since entry of Order 95-10. The City of Sand City independently made an effort to develop water for growth within its jurisdiction. The city sought assurances from the State Water Board that any new water it developed would not be reduced to offset Cal-Am's illegal diversions from the river. (Sand City -1, Attachment A.) Whatever assurances may have been provided in the past, such assurances should not be provided in the future. All communities receiving water from Cal-Am are obtaining some portion of that water from illegal diversions from the river. Any community or combination of communities seeking to develop a new source supply must first apply water from a new source to reduce its share of the water being illegally diverted by Cal-Am. Water from a new source of supply should not become available for growth until after the community has fully substituted water from the new source for its share of the water being illegally diverted from the river by Cal-Am. Monterey Peninsula communities and their residents have little incentive to support efforts to develop new water supplies to replace the water being illegally pumped from the river by Cal-Am if water can be obtained for growth without having to reduce their pro-rata share of water illegally pumped from the river. Nearly 14 years after the adoption of Order 95-10, Cal-Am is unable to tell the State Water Board what project may be built to end its illegal diversions, when a project will be approved or when construction might be commenced. Indeed, there is no assurance that any project will be approved during the next several years.

19.3 Affirmation and Adoption of Rulings by the Hearing Officers

Unless otherwise expressly addressed in this order, all rulings of the Hearing Officers are affirmed and adopted by this order.

CONCLUSIONS

Order 95-10 does not authorize Cal-Am to divert water from the Carmel River in excess of its water rights, and Cal-Am is illegally diverting water from the Carmel River in violation of Order 95-10 and Water Code section 1052. The doctrines of *res judicata* and collateral estoppel are not a bar to the State Water Board's adoption of a CDO.

Condition 2 of the Order 95-10 requires Cal-Am to diligently implement actions to terminate its unlawful diversions. Cal-Am has diverted an average of 7,602 afa from the river without a basis of right for the past 14 years, and in the roughly 10-year period since it achieved the 20 percent reduction required by Condition 3 of Order 95-10, Cal-Am has not made any meaningful progress toward reducing the amount of its unlawful diversions. Further, Cal-Am has not diligently implemented smaller water supply projects that could have enabled Cal-Am to reduce its illegal diversion from the river and to alleviate the serious condition affecting the survival of steelhead.

Thus, Cal-Am has not diligently implemented actions to terminate its unlawful diversions under Condition 2. Cal-Am's only action reducing its illegal diversions has been the work done on two projects yielding small amounts of water: the ASR project and the Sand City Desalinization Plant. Significantly, these projects are in place due largely to the efforts made by other agencies, i.e., MPWMD and the City of Sand City.

The lower 6.5 miles of the riverbed are dry for five to six months of each year, due primarily to Cal-Am's diversions.⁴⁴ Cal-Am's diversions from the river continue to have an adverse effect on the fish, wildlife and riparian habitat of the river, including the threatened steelhead. Since the adoption of Order 95-10, the California Central Coast steelhead has been declared as threatened under the Endangered Species Act, and the Carmel River has been declared as critical habitat for the survival of the steelhead.

⁴⁴ See discussion under Section 15.0, *supra*.

The adjudication of the Seaside groundwater basin will decrease the supply of water available to supply Cal-Am's customers by 417 af in 2009, or by about 2.8 percent of the available supply. Other projects or regulatory actions can make additional water available to Cal-Am, including: (1) the Phase I and II ASR project; (2) the City of Sand City Desalinization Project; (3) the development of temporary small water supply projects (4) the reduction of system losses within the Cal-Am distribution system; (5) the retrofit program; (6) reducing the use of potable water for outdoor irrigation; and (7) other measures to reduce consumer demand for potable water.

MPWMD's water allocation program sets aside water for growth within the limits of the supply of water available within its jurisdiction. MPWMD views water illegally diverted from the river by Cal-Am as available water supply for growth. Because water has been available for growth, the peninsula cities and their residents have had little incentive to support or pay for a project or projects to obtain a legal supply of water that can be substituted for the illegal diversions from the river.

In consideration of the foregoing, we conclude that Cal-Am should be prohibited from further degrading conditions in the river by diverting water from the river for new service connections, and that Cal-Am should be required to reduce the amount of water being diverted from the river to serve existing service connections.⁴⁵ In reaching this conclusion, we are particularly mindful that (a) the lower 6.5 miles of the Carmel River bed are dry for 5 to 6 months of each year, (b) the steelhead is a threatened species, (c) the river has been declared to be critical habitat for the steelhead, and (d) the earliest date which Cal-Am's illegal diversions may be brought to an end is 2016, some 21 years after the adoption of Order 95-10.

⁴⁵ Cease and desist orders are exempt from the requirements of CEQA. (*Pacific Water Conditioning Ass'n., Inc. v. City Council* (1977) 73 Cal. App.3d 546,556.)

ORDER

NOW, THEREFORE, IT IS ORDERED THAT Cal-Am shall cease and desist from the unauthorized diversion of water from the Carmel River in accordance with the following schedule and conditions.⁴⁶

1. Cal-Am shall diligently implement actions to terminate its unlawful diversions from the Carmel River and shall terminate all unlawful diversions from the river no later than December 31, 2016.
2. Cal-Am shall not divert water from the Carmel River for new service connections or for any increased use of water at existing service addresses resulting from a change in zoning or use. Cal-Am may supply water from the river for new service connections or for any increased use at existing service addresses resulting from a change in zoning or use after October 20, 2009, provided that any such service had obtained all necessary written approvals required for project construction and connection to Cal-Am's water system prior to that date.⁴⁷
3. At a minimum, Cal-Am shall adjust its diversions from the Carmel River in accordance with the following:
 - a. Commencing on October 1, 2009,⁴⁸ Cal-Am shall not divert more water from the river than the base of 10,978 afa,⁴⁹ as adjusted by the following:
 - (1) Immediate Reduction: Commencing on October 1, 2009, Cal-Am shall reduce diversions from the river by 5 percent, or 549 afa.

⁴⁶ Attachment 1 to this order, "Table 1, Projected Reductions in Illegal Diversions from the Carmel River," shows the reductions in illegal diversions from the Carmel River that should result from conditions 1, 2 and 3 of this order.

⁴⁷ Multiunit residential, commercial or industrial sites may currently be served by a single water meter. The installation of additional meters at an existing service will not be viewed as a new service connection provided that the additional metering does not result in an increase in water use. Metering each unit of a multiunit building tends to increase accountability in the use of water and the effectiveness of water conservation requirements.

⁴⁸ Each water year runs from October 1 to September 30 of the following year.

⁴⁹ Cal-Am diverts 3,376 afa under legal rights and, on average, 7,602 afa without a basis of right. (3,376 + 7,602 = 10,978 afa).

- (2) Annual Reductions: Commencing on October 1, 2011, the base shall be further reduced by 121 af per year through savings that will accrue from reduced system losses, the retrofit program, the reduction of potable water used for outdoor irrigation, demand reduction and similar measures. The 121 af reduction shall be cumulative. For example, 121 af shall be reduced in the first year and 242 af shall be reduced in the second year. Commencing on October 1, 2015, annual reductions shall increase to 242 af per year. The 242 af per year reduction shall also be cumulative. Annual reductions shall continue until all unlawful Cal-Am diversions from the river have been terminated.
- (3) ASR Project: The amount of water diverted to underground storage under Permit 20808A (Application 27614A) as of May 31 of each year and which will be supplied to Cal-Am customers after that date shall be subtracted from the base.⁵⁰ On June 1 of each year, Cal-Am shall submit an operating plan to the Deputy Director for Water Rights specifying the quantity of water it intends to supply from ASR Project for its customers after May 1 of each year. Water pumped from the project for delivery to customers should be consistent with the requirements of paragraph "c" below.
- (4) Sand City Desalination Plant: Once the Sand City Desalinization Plant becomes operational, 94 af shall be subtracted from the base. In addition, based on actual production from the plant, any other water that is produced and not served to persons residing within the City of Sand City shall be subtracted from the base amount for each water year.
- (5) Small Projects: Water produced from new sources developed pursuant to Condition 4 of this order shall be subtracted from the base.
- (6) Pebble Beach: Within 90 days following adoption of the order, the Pebble Beach Company shall certify, under penalty of perjury, the total quantity of water annually used under its water entitlement from MPWMD (for the funding assurances provided for the construction and expansion of the CAWD-PBCSD

⁵⁰ This condition shall apply to Phase I and Phase II of the ASR project.

wastewater reclamation project).⁵¹ Ten percent (10%) of the amount reported shall be added to the adjusted base to allow Cal-Am to divert water from the river to supply water for PBC water entitlements initiated in the following 12 months. Thereafter, the PBC shall annually submit, on September 30, a report to the Deputy Director for Water Rights accounting for any additional water that is diverted from the Carmel River as the result of an increased use of its MPWMD water entitlement. Increased diversions from the river by Cal-Am to satisfy PBC entitlements from MPWMD shall be added to the adjusted base, and are not subject to section 2 of this order. Water Diverted from the river by Cal-Am for PBC entitlements can only be served to properties that have received a PBC entitlement from MPWMD and which are located in the Cal-Am's service area. Cal-Am shall not divert water from the Carmel River after December 31, 2016, to supply PBC's water entitlement from MPWMD.

- b. Either Cal-Am or the MPWMD may petition the State Water Board Deputy Director for Water Rights for relief from annual reductions imposed under condition 3., a (2). No relief shall be granted unless all of the following conditions are met: (a) Within 18 months of the adoption of this order, Cal-Am has imposed a moratorium on new service connections pursuant to Water Code section 350 or has obtained an order prohibiting new connections from the PUC pursuant to Public Utility Code section 2708 or MPWMD has imposed a moratorium on new service connections under its authority; (b) the demand for potable water by Cal-Am customers has been reduced by 13 percent;⁵² and (c) a showing is made that public health and safety will be threatened if relief is not granted. Any relief granted shall remain in effect only as long as (a) a prohibition on new service connections remains in effect, and (b) the 13 percent conservation requirement remains in effect.
- c. ASR project water stored in the Seaside groundwater basin under Permit 20808A (Application 27614A) should be used to mitigate the effect of Cal-Am's illegal diversions from the river. ASR water should be supplied to Cal-Am customers only during months when water is most needed in the river to preserve steelhead.

⁵¹ Water currently diverted from the river by Cal-Am to supply PBC entitlements is accounted for in the existing base.

⁵² For purposes of measuring compliance, the 13 percent reduction shall be measured against the adjusted base required by this condition for the year in which the conservation requirement is imposed.

Commencing no later than June 1 of each year, Cal-Am should use stored groundwater to supply the needs of its customers and reduce diversions from the river. Consistent with Cal-Am's operating plan, water should be pumped from the groundwater basin at the maximum practicable rate for as long as possible. This condition shall apply to both Phase I and Phase II of the ASR project. The river's habitat and fish may receive greater benefits from a substitution regime that differs from that called for by this condition, a regime requiring that substitution commence at a different date, at a different rate or be coordinated with the level of flow in the river. In addition, it may be desirable to hold stored water from one year to the next to assure that more water is available for the steelhead and its habitat in years when the potential for steelhead survival may be greater. Several substitution trials may be necessary to determine which regime will have the greatest benefit. The National Marine Fisheries Service and the California Department of Fish and Game are encouraged to negotiate different substitution regimes with Cal-Am. The State Water Board will honor such agreements, provided Cal-Am submits the written agreement to the Deputy Director for Water Rights no later than May 1 of each year and the written agreement is approved by the Deputy Director.

4. Cal-Am shall reduce its illegal diversions from the river at the same rate ASR Project water is pumped from the groundwater basin as long as stored water is available under the operating plan.
5. Cal-Am shall implement one or more small projects that, when taken together, total not less than 500 afa to reduce unlawful diversions from the river. Within 90 days of entry of this order, Cal-Am shall identify to the Deputy Director for Water Rights the projects that it will implement and shall implement the projects within 24 months of entry of this order. Cal-Am may petition the Deputy Director for additional time in which to implement the projects. However, no time extension shall be considered unless the petition is accompanied by detailed plans and time schedules for each project. Detailed justification shall be provided for additional time. Detailed justification shall be provided for any request for an extension to allow Cal-Am time to obtain prior approval from the PUC. To the maximum practicable extent, small projects shall be operated to reduce illegal diversions from the river during the months when surface flow in the river begins to go dry and through the months when surface flow in the river disappears below river mile 6.5.

6. Starting three months following adoption of this order, Cal-Am shall post quarterly reports on its website and file the quarterly reports with the Deputy Director for Water Rights. The quarterly reports shall include the following:
- (a) Monthly summaries of the quantity of water it diverts from the river.
 - (b) Monthly summaries of the quantity of ASR project water diverted from the river under Permit 20808A and stored in the Seaside ground water basin. The monthly reporting shall also state the quantity of water beneficially used under Permit 20808A and the current balance of water in storage.
 - (c) Monthly summaries of the quantity of water being produced by the Sand City desalinization plant. The reporting shall identify new service connections within Sand City and thereafter report the quantity of water being delivered to the new connections. The monthly reports shall specify the quantity of water used to reduce diversions from the river during the reporting period.
 - (d) Monthly summaries of the quantity of water saved by reducing system losses.
 - (e) Monthly summaries of reductions in demand for potable water due to conservation actions such as increased water rates, MPWMD's retrofit program, efforts to reduce potable water for outdoor water use and demand reduction initiatives.
 - (f) Monthly summaries identifying all new service connections. The report shall include the Cal-Am account number, the service address, the name of each authority granting any approval required for connecting to Cal-Am's system and the name of each authority granting any approval required before commencing construction; the issuer of the each approval and the date of each approval shall be separately listed for each service address.
 - (g) Monthly summaries identifying existing service addresses that receive an increased supply of water due to a change in zoning or use. The report shall include Cal-Am account number, the service address and the name of each authority authorizing a change of use or of zoning and the date of such change.

- (h) Each quarterly report submitted by Cal-Am shall be certified under penalty of perjury and shall include the following declaration: *“I declare under penalty of perjury, under the laws of the State of California, that all statements contained in this report and any accompanying documents are true and correct, with full knowledge that all statements made in this report are subject to investigation and that any false or dishonest statement may be grounds for prosecution.”*
7. Starting six months after adoption of this order, Cal-Am shall file quarterly reports of its progress toward implementing Condition 3 (small project implementation) and note specifically any problems with its schedule of implementation.
8. The Deputy Director for Water Rights is authorized to modify the timing and the content of the reporting required by all of the provisions of this order to more effectively carry out the intent of this order.
9. Cal-Am shall comply with all requirements of Order 95-10, except as follows:
- (a) Condition 1 of Order 95-10 is superseded by Condition 2 of this order.
- (b) Condition 3(b) of Order 95-10 is superseded by Condition 2 of this order.
- (c) The last sentence of Condition 4 is deleted because the Seaside groundwater basin watermaster will determine the manner in which water may be withdrawn from the groundwater basin.
- (d) All other conditions of Order 95-10 shall remain in full force and effect until fully implemented.
10. The Deputy Director for Water Rights is directed to closely monitor Cal-Am’s compliance with Order 95-10 and this order. Appropriate action shall be taken to insure compliance with these orders including the issuance of additional cease and desist orders under Water Code section 1831, the imposition of administrative civil liability under Water Code section 1055, and referral to the Attorney General under Water Code section 1845 for injunctive relief and for civil liability. If additional enforcement action becomes

necessary, the Deputy Director is directed to consider including in such actions all Cal-Am's violations of Water Code section 1052 since the adoption of Order 95-10.

11. The conditions of this order and order 95-10 shall remain in effect until (a) Cal-Am certifies, with supporting documentation, that it has obtained a permanent supply of water that has been substituted for the water illegally diverted from the Carmel River and (b) the Deputy Director for Water Rights concurs, in writing, with the certification.

CERTIFICATION


The undersigned Clerk to the Board does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the State Water Resources Control Board held on October 20, 2009.

AYE: Chairman Charles R. Hoppin
Vice Chair Frances Spivy-Weber
Board Member Arthur G. Baggett, Jr.

NAY: Board Member Tam M. Doduc

ABSENT: None

ABSTAIN: Board Member Walter G. Pettit



Jeanine Townsend
Clerk to the Board

ATTACHMENT 1

TABLE 1
PROJECTED REDUCTIONS IN ILLEGAL DIVERSIONS FROM THE CARMEL RIVER
(all amounts are in acre-feet)

Water Year (Oct - Sept)	Base Amount ¹	<u>Mandatory</u> Cumulative Annual Reduction ²	<u>Estimated</u> ASR Project Operational Yield ³	<u>Estimated</u> Sand City Desalinization Plant ⁴	<u>Estimated</u> Small Project Output ⁵	<u>Estimated</u> Coastal Water Project Output ⁶	Total to Base Amount	Total Estimated Amount Diverted from Carmel River	Estimated Amount Diverted w/o Valid Basis of Right
2009-10	10,978	549	145	75	0	0	769	10,209	6,833
2010-11	10,978	549	145	290	0	0	984	9,994	6,618
2011-12	10,978	670	145	280	0	0	1,095	9,883	6,507
2012-13	10,978	791	145	270	0	0	1,206	9,772	6,396
2013-14	10,978	912	145	260	0	0	1,317	9,661	6,285
2014-15	10,978	1,033	145	250	0	0	1,428	9,550	6,174
2015-16	10,978	1,275	145	240	0	0	1,660	9,318	5,942
2016-17	10,978	1,517	145	230	0	11,730	1,892	3,376	0

- 1) Cal-Am diverts 3,376 afa under legal rights and, on average, 7,602 afa without a valid basis of right (60 afa of the 3,376 afa is assumed diverted under riparian right to riparian vegetation along Carmel River).
- 2) Reduction in 2009-2010 and 2010-2011 is initial amount of 5% (549 ac-ft). Starting October 1, 2011, add 121 af each year until October 1, 2015, when the annual reduction becomes 242 afa.
- 3) Average amount diverted for Phase 1 ASR project from water year 1994-1995 to 2006-2007 (R.T. Phase 1, Vol. I pp. 41-42). Amount may increase when Phase 2 of the ASR project becomes operational.
- 4) Number may vary based on actual production from desalinization plant. Assumes 3 months of operation in 2009-10.
- 5) Production from small projects cannot be estimated at this time.
- 6) Estimated production of Coastal Water Project (R.T. Phase 2, Vol. V, p. 1333).



United States Department of the Interior

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



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MAY 11 2009

May 6, 2009

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

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

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

Dear Mr. Watson:

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

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

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

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

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

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

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

Western snowy plover:

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

Smith's blue butterfly:

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

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

Western snowy plover:

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

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

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

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

Smith's blue butterfly:

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

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

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

Sincerely,



David M. Pereksta
Assistant Field Supervisor

CALIFORNIA COASTAL COMMISSION

NORTH COAST DISTRICT
1385 8th Street, Suite 130
ARCATA, CA 95521
(707) 826-8950

**MEMORANDUM**

FROM: John D. Dixon, Ph.D.
Ecologist

TO: Michael Watson

SUBJECT: Monterey Bay Shores Resort

DATE: March 20, 2014

Document reviewed:

EMC Planning Group, Inc. October 2013. Habitat Protection Plan, Monterey Bay Shores Resort, Sand City, California. A report to Security National Guaranty (SNG).

The restoration portions of the Habitat Protection Plan (HPP) are contained in Chapter 4, which repeatedly references the Landscape Plan (Appendix C) as containing biological objectives, cover goals, seed mixes, and installation recommendations. It is even stated (footnote on page B-1) that the Landscape Plan will take precedence over the HPP if there are conflicts. However, the Landscape Plan is conceptual and contains no specificity. The first page presents generalized descriptions of habitat types, the second page is devoted to species lists that are simply examples (e.g., "selected species," "abbreviated list," and only two species for "beach"), and the third page shows infrastructure, such as fences. The HPP itself lacks detail and is internally inconsistent in some areas (e.g., a goal of 80% cover (p. 4-8) or 50% cover (p. 4-28) for back dune vegetation; fencing 20 ft (p. 4-14) or 10 ft (p. B-2) beyond the grading limit).

The HPP should be a stand-alone document and guide the restoration. The HPP should provide detailed guidance on plant propagation (e.g., container type, hardening prior to planting, size or age at planting, etc.), planting methods (broadcast or hydro seeding, application rates, container density and spacing, mycorrhizal inoculation, fertilizer application, etc.), and irrigation (method and timing of application). Plant palettes specific to each vegetation type should be based explicitly on documented native vegetation within the Monterey dune complex. Reference areas should be identified and the results of quantitative surveys included in the HPP. Each discrete restoration area should be shown as a polygon on a map that includes the planned final restoration contours. Performance standards (success criteria) for biodiversity and vegetative cover should be provided for each vegetation type (as characterized by a specific plant palette and planting plan and any modifications based on slope and aspect) rather than on management areas. Biodiversity and vegetative cover similar to natural reference areas should be achieved within 15 years. Cover criteria should be

assessed based on the analysis of high resolution aerial photographs coupled with on-the-ground observations. I recommend that performance standards be assessed every five years. All areas outside the development footprint should be restored with native vegetation appropriate to the habitat. Within the development footprint, native species chosen for ornamental reasons that are not characteristic of dune communities must not be invasive. Non-native ornamental species that could persist in the dune environment without irrigation or other maintenance should not be used.

On page 4-16, it is stated that “beach-raking” will be prohibited during the snowy plover breeding season. I recommend that all beach grooming be prohibited, except for the hand removal of litter.

SNG Information Needs

HAZARDS

1. **Foundation details.** HKA refers to “structural slabs and piers or piles” as primary means of support, but omits detail on such parameters (e.g., how many, how deep, how large, where located, etc.). Need detailed foundation plans.
2. **Foundation/structural modularity.** Since erosion/hazard response based on contingency planning and removal, need details on the way in which buildings and related development can be decommissioned in parts. Or simply provide the contingency plan for removal of development when it is time [in conjunction with recorded NFS condition]
3. **Setback line.** 2013 HKA Geotechnical update indicates the 2063 and 2088 bluff setback lines were plotted based on methodology developed by Moffit and Nichol Engineers as updated by HKA in 2008. Please provide a detailed explanation of the methodology to aid in our verification of the agreed upon 75 year setback.
4. **Flood elevations and uprush.** The 2013 HKA report identifies the 75-year storm bluff crest setback but not a 2088 flood elevation. The proposal includes development at 22 feet. Need details on the estimated 2088 flood elevation and the storm frequency that would be expected to flood the lowest floor elevations, including with expected changes over time (e.g., SLR). Please provide projected 2088 flood elevation
5. **Fire road requirements.** Need evidence of fire road requirements for project, and alternatives to limit fire roads as needed to address visual impacts.

VISUAL

6. **Visual Simulations.** Please provide visual simulations from both north and south Highway One, from across water in Monterey, from beach below, from Rec trail, and from Fort Ord Dunes State Park beach access trail, all at approximately 200 foot intervals (for Highway One simulations, starting from approaching the site from the south at approximately ¼ mile, and from the north from the road crest where site first in view, and one extra from the dune view line). Visual simulations need to show all development (including but not limited to dune manipulation, fences and roads (including with vehicles driving and parked), 16-foot light standards, retaining walls, tunnel (note plans show it as road, not tunnel), and signs). Need all same visual simulations from a nighttime perspective which accurately depicts light throw and glare. Identify/ describe all methods for developing simulations (distance, lens, etc.). Please provide visual simulations provided in hard copy full size, and in jpg/pdf format.
7. **Elevations/Cross Sections.** Please provide project elevations as seen from Highway One –at a point 5 feet above the pavement identified for each cross-section. Please also provide the project elevations as seen from the seaward side of the development and from Fort Ord Dunes SP, all with a graphic scale. Further, we have identified the following additional cross sections as necessary to our evaluation of visual impacts, including at a minimum: between S-S and R-R @ W-W 10+00; midway between Q-Q and R-R; midway between Y-Y and Z-Z; laterally through dune manipulation area; along CCC ‘dune line’ and offset (upcoast) from CCC dune line.
8. **Big dune manipulation.** The provided materials identify a large amount of dune manipulation and recontouring in the area of the large dune feature, though the materials do not indicate that it is

necessary for dune stabilization/restoration. Please provide an analysis supporting the need for the proposed significant dune recontouring and landform alteration.

9. **Buildings further into dunes.** The project plans indicate the resort development will be sited somewhat away from the large dune feature and will involve quite a bit of dune grading (landform alteration), recontouring, and retaining. Please provide an analysis of the feasibility for siting the development further back into the dunes.
10. **Program elements.** All hotel versus non-hotel elements need to be clearly shown in a cross section view. In addition, need floor plans for each finished floor elevation (22' to 112') identifying the program element (type of room), number of rooms in program, size of rooms, number of program modules, and other development features.
11. **Fencing.** Need details on fencing purpose, and alternatives for less visually obtrusive means to means to achieve such purpose.
12. **Roof details.** Need roof details, including on how living roofs integrate with dunes behind, and identification of all proposed roof elements (e.g., wind, solar, elevator, etc.).
13. **Secondary roads.** The project plans show a secondary road access to the adjacent parcel and which is not part of this project, please remove.
14. **Screening plan.** Need details on how development visible from public viewing areas can be screened from view.

OTHER

15. **Room rates.** Need identification of hotel room and rental pool room rates, and the location and number of low-cost visitor accommodations.
16. **Water/Well.** The proposed project seems to indicate water for the project will be provided from multiple sources. Please provide evidence of how water will serve project and how the the proposal method is in compliance with the LCP>.
17. **Stormwater.** Need evidence of how SWPP complies with State Board construction permit No. 2012-0006-DWQ, SWRCB NPS statewide permit 2013-0001-DWQ, and RWQCB Resolution R3-2013-0032.
18. **Subdivision.** Need clear depiction of all proposed subdivision, including residential components.
19. **Access rights.** Need description of what is meant where plan notes indicate that SNG proposes to retain access rights over public access easements.
20. **Hard and electronic copies.** Need 4 full size hard copies of all plan sets, and 2 full size hard copies of everything else, all as modified by these notes. Need also one reduced set of each hard copy (11x17 or 8.5x11), and one pdf set of each hard copy. All copies need graphic scale.



January 2, 2013

California Coastal Commission
Central Coast District Office
Dan Carl, Deputy Director
Madeline Cavalieri, District Manager
Mike Watson, District Planner
725 Front Street, Suite 300
Santa Cruz, CA 95060-4508

REF: REGARDING MONTEREY BAY SHORES PROJECT, SAND CITY [SNG]

Dear Dan, Madeline and Mike,

Enclosed please find the responses and submittals to staff's additional requests dated December 5, 2013.

HAZARDS:

1. Foundation Detail: See Haro, Kasunich and Associates response dated 12-23-13.[1 copy]
2. Foundation/Structural Modularity: See Haro, Kasunich and Associates response dated 12-23-13.
3. Setback Line: See Haro, Kasunich and Associates response dated 12-23-13.
4. Flood Elevations and Uprush: See Haro, Kasunich and Associates response dated 12-23-13.
5. Fire Road Requirements: See letter from City of Monterey Fire Marshall dated 01-02-14. See revised Fire Access Road in compliance with Fire Code requirements TM-1 and TM-2 as revised by Bestor Engineers. The Fire Access Road and the access to the project comply with LCP Policies 6.4.21 through 6.4.23.[1 copy] . Seaside County Sanitation District Will Serve letter dated April 17, 2008 [1 copy]. To be updated within few days.

VISUAL:

6. Visual Simulations: See attached MBS View Analysis, Updated 12-20-13. Pages 1-2 show the location and direction of the 16 available view simulations. Pages 3-38 show the views Before and After the project construction.[2 copies]
7. Elevations/Cross Sections: Elevations and additional cross sections are shown in the revised TM-2, TM-3, TM-4 and TM-6 sheets of the Vesting Tentative Map, as well as the 5 feet above pavement Highway 1 view with the line of sight clearly demarcated at that elevation.[4 copies]
8. Big Dune Manipulation: See Haro, Kasunich and Associates response dated 12-23-13 [1 copy] as well as additional supplemental material and response provided by Rana Creek, in Dune Recontouring and Site Screening, dated December 2013.[2 copies]
9. Buildings Further into Dunes: See response provided by Haro, Kasunich and Associates dated 12-23-13.[1 copy]
10. Program Elements: Program Elements and cross-sections at various locations of the project are provided in the following revised documents: MBS Program Elements [2 copies], MBS Sections , MBS Sections-Color Unit Types provided by WATG [2 copies], and sheet TM-5 of the Vesting Tentative Map as revised by Bestor Engineers showing the Buildings Program Areas.[4 copies]
11. Fencing: Fencing details and responses are provided in the Landscape Plan by Rana Creek, dated 12-23-13 and in the response entitled Dune Recontouring and Site Screening dated December 2013 by Rana Creek. [2 copies]
12. Roof Details: Roof details are provided in the revised Landscape Plan by Rana Creek, dated December 2013, Sheet No. 4. [2 copies]
13. Secondary Roads: The proposed access road extension to the adjacent parcel in the north has been eliminated as shown in the Vesting Tentative Map as revised by Bestor Engineers, sheet TM-2, [4 copies], as well as in the Landscape Plan as revised by Rana Creek, December 2013 [2 copies]. The existing road providing access over the project site is shown in both plans. The adjacent parcel to the north has recorded easement rights for ingress and egress, utilities and beach access affecting the project site.
14. Screening Plan: Additional screening plans are provided in the response entitled Dune Recontouring and Site Screening dated December 2013 by Rana Creek [2 copies], as well in the Vesting Tentative Map as revised by Bestor Engineers, sheet TM-2 [4 copies].

OTHER:

15. Room Rates: No room rates have been determined at this time. See also Coastal Act section 30213.
16. Water/Well: A Water Distribution Permit has been issued by the MPWMD for the project. 90 acre-feet of the owner's adjudicated water rights which have been granted under the Court Order Adjudicating the Seaside Basin [April 2006, amended February

2007. See Findings of WDS Permit approval August 2010] have been reserved for the project, which will be delivered to the project through a Master Connection by California American Water Company pumped from their inland wells. The owner's water rights will be pumped inland to the project site by Cal-Am and delivered to the site. Under the Conditions of Approval by the MPWMD the owner may not pump in excess of the 149 ac-ft from the Seaside Basin between the water supplied by Cal-Am [up to 90 ac-ft] and use of the on-site PCA Well. The on-site well serves as a back-up water source for the project and has reserved 1 ac-ft for the adjacent parcel to the north.

Please see the following documents attached herewith [1 copy], including the MPWMD Water Distribution Permit Approval, as part of the Responses:

- A. Final Approval of Application to Amend California American Water Distribution System to Serve the Monterey Bay Shore Ecoresort, dated November 24, 2010.
- B. MPWMD Final Approval letter, dated November 24, 2010.
- C. Advice Letter 850 issued by the Public Utilities Commission, dated November 10, 2010, authorizing Annexation of the MBS site to the Cal-Am Service Area.
- D. Deed Restriction regarding the Water Distribution Permit granted to SNG for its Monterey Bay Shores project, recorded November 24, 2010.
- E. Acceptance by SNG of Permit Conditions for a Water Distribution Permit to serve the Monterey Bay Shores project, dated October 20, 2010.
- F. Public Utilities Decision, dated March 24, 2011, finding that the Front Loading delivery of water by Cal-Am to the Monterey Bay Shores project falls outside of the moratorium.
- G. The MPWMD Water Distribution Permit complies with LUP Policies 6.4.10, 6.4.11, 6.4.12, 6.4.13, 6.4.14, 6.4.16 and 6.4.17 addressing water and services provisions of the Local Coastal Plan as Approved by the MPWMD. Water service is available, it is adequate, does not impact Cal-Am or the community, there is adequate sewer service available with a will serve letter, the demand is consistent with the Adjudication of the Seaside Basin and water availability, water conservation methods and reuse for irrigation are utilized, and drought resistant species are proposed as part of the Landscaper Plan. Harvesting of rain water and grey water is used for irrigation. The private well on the site is used as a backup/supplemental source of water consistent with LUP Policy 4.3.27 and under the Conditions of Approval no more than 149 ac-ft can be pumped in total between the water supplied by Cal-Am to the project [90 ac-ft] from inland wells and the PCA Well on the site. The WDS Permit and availability to service the project is consistent with IP Coastal Zone Overlay District, Permit Conditions (c)8 and (c)10 as well as IP Sections 3.2 and 4.2. The project does not use any of Sand City's water allocation, but rather its own adjudicated water rights as Approved by MPWMD.

17. Stormwater: Please see update of SWPPP dated December 31, 2013 provided by Bestor Engineers to address current construction codes. Bestor Engineers has advised SNG that the SWPPP will be updated following final design of the project and prior to construction permits being issued to conform with the current code requirements.[1 copy]

18. Subdivision: See updated Vesting Tentative Map, sheets TM-1 through TM-6 for subdivision , including residential components as provided by Bestor Engineers.[4 copies]
19. Access Rights: The owners shall retain rights over the public access easements means that the fee title to the land is held by the owners subject to the public access easements rights (PAE) and the Coastal Commission conditions.
20. Color Rendering of the project set regionally [2copies].
21. Typical Unit Plans.[1 copy]

My team and I are available to meet or answer any questions you might have. We appreciate your favorable consideration of the project.

Sincerely,

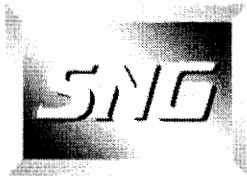
Ed Ghandour
President

cc. Steven Kaufmann, Esq.
Susan McCabe & Company

Thank you for the materials you recently submitted in response to our request for information presented to you (titled 'SNG Information Needs') and further clarified and discussed at the meeting we had in San Francisco on December 5, 2013 and since that time. In addition, thank you for further clarification in conversation and emails since your initial submittal, particularly in relation to conversations between your geotechnical consultants and our coastal engineer. We note that the materials and information you provided are helpful, but do not completely track our request. Toward that end, please provide the following as soon as possible:

- **Foundation.** Nothing has been provided pursuant to the 'foundation details' and 'foundation/structural modularity' requests. Please provide. See 'SNG Information Needs' document for further information.
- **Visual Simulations.** The visual analysis provided does not show the entire project, including because the proposed parking, tunnel, access roads, lighting, retaining walls, signs, fencing, and other related project elements are not shown. In addition, the simulations provided do not match to the requested locations along Highway 1. Please provide visual simulations of the entire proposed project at the locations previously identified. See 'SNG Information Needs' document for further information.
- **Elevations.** Nothing has been provided pursuant to the elevations portion of the 'elevations/cross sections' request. Please provide. See 'SNG Information Needs' document for further information.
- **Cross-Sections.** The cross sections provided omit a cross section through the CCC-identified dune line. Please provide. Please also provide verification that all cross sections (and all other plans/materials where topo is noted) are in relation to a current topo map.
- **Program Elements.** The materials provided do not track the request for additional detail on program elements, including at each finished floor elevation: identification of the number of rooms in each program element, the size of rooms, and number of program modules. Please provide. See 'SNG Information Needs' document for further information. In addition, the materials provided are internally inconsistent with respect to square footages (e.g., the floor plans show 572,004 square feet (excluding parking and courtyards) while sheet TM-3 shows 439,748 square feet). Please provide updated square footage calculations for all proposed development, including parking and courtyards.
- **Buildings Further Into Dunes.** The materials provided state that it is not feasible to locate the development further back into the dunes, but do not provide any sort of evidence documenting the reasons supporting such statement. Please provide the feasibility analysis requested. See 'SNG Information Needs' document for further information.
- **Subdivision.** New lot lines are obscured by the resort development overlay in the materials provided. Please submit VTM TM-1 (or an alternative plan sheet) with existing and proposed subdivision lines emboldened over light or shadowed development outline. See 'SNG Information Needs' document for further information.

- Sand Disposal. No information has been provided on the proposed method of sand disposal. The proposed disposal of 385,000 cubic yards of sand would require a significant number of truck trips (e.g., more than 100 truckloads every day if disposal is completed in 365 days). Please provide detail on the proposed sand disposal plan, including disposal and/or staging locations, routes of travel, and related methodology.



Security National Guaranty

January 16, 2010

Mr. Dan Carl
California Coastal Commission
725 Front Street, Suite 300
Santa Cruz, CA 95060

**REF: Email request Dated January 15, 2014
Monterey Bay Shores project**

Dan,

Thank you for your email of late yesterday afternoon to which I am responding this morning. SNG's complete Supplemental material (SNG Information Needs) was submitted to Staff on January 2, 2014. On December 24, 2013 the Coastal Commission entered into a Settlement Agreement ("SA") which set forth terms, process and timeline moving forward to which the parties must adhere to. It also set out the terms upon which the Executive Director would recommend Approval of the Monterey Bay Shores project based on V4.3 and the Vesting Tentative Map TM-1-TM-5 and most of the Conditions in Exhibit B. Being consistent with the Settlement Agreement in every respect would minimize any questions on interpretation that may have arisen, such as your "new" dune line.

I do want to thank your staff for facilitating the meeting on Monday January 6th, and following on various discussions on the phone and via email. This has been very helpful in moving the process along so we can meet the February 14, 2014 Public Hearing deadline pursuant to the Settlement Agreement. While I appreciate receiving your request late yesterday for additional information, it is beyond the 10 days deadline set by the Settlement Agreement and as such SNG has no obligations to provide additional material at this time. We staked the site early last week, the Dune View Line (as defined by the Settlement Agreement) and all building corners NW of that line, and despite multiple efforts on my part, to date no time has been set to walk the site by your staff. We informed you that the site is available after staking on January 6th. We went far beyond that and asked Bestor Engineers to stake what staff terms "the CCC identified dune line" or, Dune to Dune line, even though, that is not part of the Settlement Agreement and is totally inconsistent with its terms. That is being staked today at additional cost to SNG in order to accommodate Staff's request, yet, to date I have not received any explanation for why that line has any significance, or what staff's thinking is. SNG would like to continue

to accommodate Staff as much as it can, given the time constraints and the terms of the Settlement Agreement, but it must be consistent with the SA and the timeline described therein.

Please find responses to the 8 items you raised in the email of yesterday:

1. **Foundation:** We have previously requested our geotech engineers to speak with the Commission's engineer Leslie Ewing, and to provide responses to the SNG Information Needs. Haro Kasunich and Associates submitted their responses to numerous requests in their December 23, 2013 letter, which has been provided to you. That includes the question of Foundation Details and Foundation/Structural Modularity. Subsequently, John Kasunich also spoke with your engineer last week for over two hours concerning foundations and seawalls. As Kasunich indicated, detailed foundation designs are done after issuance of the CDP as part of the Construction Drawings (CDs). The MBS is not a single family house whose foundations are easy to design and the cost is relatively little. For the MBS, CD's are a complex matter that require geotech, civil and structural engineers as well as architects to analyze and design foundations so they can respond to seismic, liquefaction, dynamic instability, building code and public safety requirements over the life of the project, a matter that costs in the millions of dollars. That is why detailed designs are done as part of the CDs after issuance of the CDP or final approvals. In communicating with Kasunich, he has indicated to Ms. Ewing that piers/caissons will be used in this project, and he has also communicated to her that if any buildings/portions are damaged in the future, their removal or relocation will not be an issue. On the matter of seawalls, I have already indicated to Mike and Madeline in our meeting that we have no intentions of installing seawalls as part of the piers/caissons. The Settlement Agreement and Conditions address that from Condition (s) and (u) to (b) on Page 19, "Protective Measures Prohibited.

In order to provide further clarity and analysis on Foundation/Structural Modularity and respond to your additional request, I asked Kasunich to address those issues in greater detail and beyond what was provided in his December 23, 2014 Letter.

2. **Visual Simulations:** On January 2, 2013 we submitted 18 views with Before and After each. At all times previously, the focus was on blue-water views, not minor items that become part of the landscape. Following requests last Thursday for additional "granularity" on the viewsheds, including fences, lights & signage, SNG submitted by electronic email and by posting in Dropbox this Tuesday revised visuals that show the views with those additional elements. Based on your request of yesterday, it appears you had not looked at the new revised visuals. As for locations of the visuals, we took the liberty of focusing on visuals that matter: So, for instance, we had more visuals than you requested in the NE viewshed from Hyw 1 which addresses blue water views indicated by you to be of high priority, while only 2 viewshed from the lower beach. Why? Because adding additional views 200' apart does not add any value or new information beyond that provided already. Similarly along the swale north of the property line. The very lightly walked trail on Fort Ord in the swale is the only location where a person might walk, since there is no trail access in the north-east side of the swale. 18 viewsheds pretty much blankets the property and the important views covered in your request.

3. **Elevations:** The elevation Cross-sections are fully provided for in the VTM, TM-3, TM-4 and TM-5, as well as in the MBS Sections-in color and B/W, that were submitted January 2nd both in hard copies and electronic pdf files located in the Dropbox. Beyond those cross-sections and elevations, I believe we covered all requests under SNG Information Needs.
4. **Cross Sections:** There has been no CCC dune line referenced at any time until staff submitted a pdf map late Friday, January 10, 2010. The only Dune View Line that has been agreed to is the Dune View Line designated on V4.3 as part of the Settlement Agreement. The other line you submitted Friday is inconsistent with the Settlement Agreement and with staff's obligation in making its recommendation on the property. I must also add that the only line that the "CCC" has actually seen is the "Dune View Line" on the Conceptual Site Plan. The CCC has not seen, endorsed or adopted a dune view line, so the reference "CCC dune line" seems like an odd and inappropriate prejudgment at this point. In any event, as I indicated above, SNG has requested Bestor to go back to the site and stake that "new" line as an accommodation to your request. You will note when you do go to the site that the existing dune and existing Cypress grove block the view to the Monterey Bay, and since there are no blue water impacts, there is no need or justification for a cross-section on that line. You will see that when you visit the site and review the VTM. SNG would still like to know what you are thinking regarding this line and what's its use? I believe all cross-sections have been provided in our January 2nd submittal and are contained in VTM TM3, TM-4 and TM-6 and in the MBS Section done by WATG.
5. **Program Elements:** SNG submission on this item was completed on January 2nd when the SNG Information Needs items were submitted. They included the following items[both electronic and large scale hard copies]: MBS Program Elements, MBS Plan and Programs and TM-5, TM-3 & TM-1 of the VTM. Those items respond fully to floor plans, square footage per floor for each program, use type by modules, square footage or unit type, elevation of floors, location, parking and ramps, and the entire program/elements of the resort. TM-5 in addition provides full description of the Condo Hotel Subdivision and the Residential Subdivision with levels. Each Module is clearly indicated, and the cover sheet of the MBS Program Elements breaks it down further. After talking with Mike yesterday and WATG, it seems there was confusion on square footage, so we updated today the total square footage that was contained in the MBS Program Elements to include garages, courtyards, BOH, lobbies, etc. and consolidate in one table all the square footages of the project. That file has been uploaded into the Dropbox folder as "MBS Program Elements rev", revised January 15th with a Table on the first sheet. The MBS Program Elements file is very detailed. If you need further assistance, please let us know. TM-1 provides full description of the Subdivision of the property into 3 parcels and the condo-hotel and residential hotel subdivisions [see Notes].
6. **Buildings Further into Dunes:** HKA provided a response in his December 23, 2013 response to SNG Information Needs. He indicated that the buildings are located "as far south as possible for the limited retaining walls heights and building loads". Aside from safety issues which are of

paramount concern to SNG, it makes no sense to increase the loads against the buildings and garage ramps unnecessarily, even if it was possible. The cost becomes prohibitive, and peoples lives are endangered, as noted by Kasunich. As a practical matter, SNG's preference is to move it away. The current setbacks exceed the LCP requirements and nothing in the LCP mandates this approach. There are no view impacts, especially in the SE section of the resort, and it would merely result in a project that cannot be built? None-the-less, I have asked John Kasunich to provide additional support and analysis on this issue, beyond why building into the dunes further than is currently designed is high risk, costly and cannot be done.

7. **Subdivision:** We will have Bestor Engineers make a clearer "demarcation" of the subdivision lot lines so it is clearer.
8. **Sand Disposal:** We previously submitted full Sand Disposal Report by HKA which examined briefly 3 alternatives that SNG prefers, and 2 alternatives that are superior environmentally but present challenges in terms of permitting. TM-1 of the VTM outlines in the Notes the manner and preference for disposal of the excavated sand not necessary for the project. We noted 3 alternatives with preference. Traffic impacts had previously been analyzed in the Amended EIR. We have met with the Monterey Regional Waste Management District (MRWMD) numerous times and have come up with a plan to move the sand to their property for stockpiling. We are currently working logistics with them and Chapin Company to haul the sand in double loaded trucks (40 c-y). Their estimate is that in 3 months or less the entire transport would be completed. No staging locations are required- this is a short trip, about 6 miles upcoast, to the City of Marina, from the project site to the Marina. If the SCoup program comes up with a beach nourishment program that has been approved, then about 150,000 to 200,000 cu yards would be moved directly to the beach nourishment area under their management and control in cooperation with MRWMD and Chapin. The program being developed with MRWMD has significantly less impacts than that analyzed in the EIR. We anticipate to finalize agreements with MRWMD and Chapin during the CDP compliance time framework.

We should get to you the remaining items discussed above by EOD Monday or latest Tuesday morning, and again, let us know when you wish to visit the site. I would like to have a conference phone call with you, Steven Kaufmann and Staff so that we may go over any loose items or questions that you may have in the interest of time and efficiency, so that we can facilitate your questions before you complete your Staff Report. Please let me know when that is possible. We can facilitate a WebEx using GoTOMeeting so the conference call can utilize visuals and VOIP.

Looking forward to your feedback and cooperation and recommended approval consistent with the Settlement Agreement..

Sincerely,

Ed Ghandour/s/

Ed Ghandour
President

cc. Steven Kaufmann

Thomas Roth

Paul Kephart

Susan McCabe

Charles Lester

Mike Watson

Madeline Cavalieri



United States Department of the Interior



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

IN REPLY REFER TO:
08EVEN00-2014-TA-0211

April 7, 2014

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

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

Dear Mr. Watson:

The U.S. Fish and Wildlife Service (Service) is providing this letter to the California Coastal Commission (Commission) with regard to an application for a coastal development permit for the proposed Monterey Bay Shores Resort Development in Sand City, Monterey County, California (Project). You contacted Jacob Martin of my staff via electronic mail on March 26, 2014, stating that a staff report for the project (Staff Report) was available to the public and that written comments on that report, if received by April 7, 2014, would be provided to the Commission for their review and consideration in advance of their permit decision. The proposed Project includes the construction of a 184-room hotel, 184 (92 residential and 92 visitor-serving) condominium units, conference facilities, a restaurant, a spa, pools, landscaping, public access, and parking. The proposed Project development would total 1.34 million square feet of resort and residential facilities within an approximately 12-acre footprint. These facilities would be constructed on a 39-acre ocean-front site in Sand City, California.

The Service's responsibilities include administering the Endangered Species Act of 1973, as amended (Act), including sections 7, 9, and 10. Section 9 of the Act prohibits the taking of any federally listed endangered or threatened species. Section 3(19) of the Act defines "take" to mean "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct." Harm is further defined by the Service to include significant habitat modification or degradation that results in death or injury to listed species by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering. Harass is defined by the Service as intentional or negligent actions that create the likelihood of injury to a listed species by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding, or sheltering. The Act provides for civil and criminal penalties for the unlawful taking of listed species. Exemptions to the prohibitions against take may be obtained through coordination with the Service in two ways. If

a project is to be funded, authorized, or carried out by a Federal agency, and may affect a listed species, the Federal agency must consult with the Service pursuant to section 7(a)(2) of the Act. If a proposed project does not involve a Federal agency but may result in the take of a listed animal species, the project proponent should apply to the Service for an incidental take permit pursuant to section 10(a)(1)(B) of the Act. To qualify for an incidental take permit, project proponents must submit an application to the Service together with a habitat conservation plan (HCP) that describes, among other things, how the impacts of the proposed taking of federally listed species would be minimized and mitigated to the maximum extent practicable and how the plan would be funded. A complete description of the requirements for a HCP can be found at section 10(a)(2)(B) of the Act and at 50 Code of Federal Regulations 17.32.

As it is not our primary responsibility to comment on documents prepared pursuant to the California Coastal Act, our comments on the Staff Report will not constitute a full review of Project impacts. Rather, they address potential impacts of the proposed Project on species listed under the Act, including the federally endangered Smith's blue butterfly (*Euphilotes enoptes smithi*) and the federally threatened western snowy plover (*Charadrius nivosus nivosus*) and Monterey spineflower (*Chorizanthe pungens* var. *pungens*). We offer the following information and recommendations to aid in the conservation of sensitive wildlife habitats and federally listed species that occur in the proposed Project area as a means to assist the Commission and the Project proponent, Security National Guarantee (Applicant), in complying with the Act.

As background, the subject Project was originally proposed in 1998, but was never constructed. Subsequently, we received a draft habitat conservation plan (HCP) for the subject Project from Tom Roth (attorney to the Applicant) in February of 2006 and provided comments on that draft in June of the same year. We did not receive substantial information from the applicant regarding the proposed Project between July of 2006 and July of 2008. On July 16, 2008, representatives of the Applicant, including Mr. Roth, visited our Ventura Fish and Wildlife Office to present a briefing on a redesigned version of the Project. On August 18, 2008, we received a copy of a draft addendum to the final environmental impact report for the Project. On October 16, 2008, and October 27, 2008, we received draft and "final" copies of a "habitat protection plan" (2008 HPP). We provided comments to the Coastal Commission on the 2008 HPP in a letter dated May 6, 2009. We have received no further information from the applicant regarding the subject Project since 2008. On March 26, 2014, we received an electronic mail message from you that included a link to the Staff Report. The Staff Report indicates that the proposed residential and visitor-serving capacity of the Project has been expanded from that considered in 2008 (184 hotel rooms versus 160, and 184 condominium units versus 180). However, the Staff Report (page 98) indicates, and we agree, that the current version of the HPP (2013 HPP) (EMC Planning Group 2013, attached as exhibit 20 at page 203 of the Staff Report) is fundamentally unchanged from the version we commented on in 2009, and that comments in our 2009 letter (attached as exhibit 25 at page 481 of the Staff Report) therefore remain relevant to the currently proposed Project. We make several specific references to the HPP in the following discussion as well as refer the Commission to our May 6, 2009, letter for additional comments on the HPP.

The project site includes known occupied habitat for the Smith's blue butterfly, western snowy plover, and Monterey spineflower. The Smith's blue butterfly is dependent upon its host plant species, seaciff buckwheat (*Eriogonum parvifolium*) and coast buckwheat (*Eriogonum latifolium*), during all life stages and seaciff buckwheat plants occupied by Smith's blue butterfly are found in the project area (2013 HPP, page 3-3). Approximately 3.4 acres of habitat occupied by Monterey spineflower was located in the Project area during the most recent (2008) survey (2013 HPP, page 3-8). While we are concerned about potential take of Smith's blue butterfly and impacts to Monterey spineflower, our primary concern centers on the likely effects of the Project on the western snowy plover and its designated critical habitat.

Western Snowy Plover

Western snowy plovers have nested throughout much of the Project area (Point Blue Conservation Science, in litt. 2014). This includes nesting within the Project footprint in habitat that would be permanently destroyed during construction, and in areas seaward of the Project footprint that would be disturbed during construction and by the increased human use of the Project area following construction. We acknowledge that no western snowy plover nests have been recorded within the immediate Project footprint in the past 10 years (Point Blue Conservation Science, in litt. 2014); however, recent survey efforts have been limited and inconsistent in that area (David Dixon, Point Blue Conservation Science, pers. comm. 2014) and we are not aware of any changes to the habitat that would preclude successful nesting there. Successful western snowy plover nesting has been recorded within the broader Project area, seaward of the Project footprint, as recently as 2013. On a more regional scale, there have been 12 nests observed within Sand City (primarily in the Project area but also in areas within City limits and to the south) and 162 nests observed within Fort Ord Dunes State Park (adjacent to and north of the Project area) over the past 10 years (Point Blue Conservation Science, in litt. 2014). It should also be noted that western snowy plover chicks are precocial (active and able to move freely from hatching) and chicks hatched in nearby areas may currently feed and shelter within the Project area.

We have four primary concerns regarding the effects of the proposed Project on the western snowy plover: (1) the direct removal of habitat by construction activities, (2) the large increase in disturbance to the species and habitat by users of the proposed facilities, (3) the expected increase in predators associated with increased human presence; and (4) the interaction between habitat removal and the expected rise in sea level.

The Project area encompasses 39.0 acres, of which 28.0 would be disturbed by grading and 12.2 would be permanently converted to developed areas (Staff Report pages 39-40); it should also be noted that 7.1 of the 39.0 acres are below the high tide line. This calculates to approximately 88 percent of the habitat above the high tide line being disturbed during construction and 38 percent being permanently destroyed.

Pedestrians and their pets can cause harassment, as well as direct injury and mortality, of western snowy plovers (Service 2007). The City of Sand City (City) (2012, page 137) acknowledges that

increased human use of beaches within City limits has decreased the value of habitat for the western snowy plover. The proposed Project would contribute greatly to this ongoing loss, by bringing thousands of guests to the proposed resort annually and by facilitating increased public access. Proposed Project components include vertical public access at the north end of the Project area, a public viewpoint at the northwest corner of the Project area, horizontal public access across the Project area seaward of the proposed resort, connection to public roads and bike trails, and new public parking (Staff Report pages 118-119). This increase in human activity is likely to result in take in the forms of harm and/or harassment, as well as direct injury or mortality, of western snowy plovers both within the Project area and on habitat adjacent to the Project area.

The presence of humans facilitates increased populations of predators that prey on western snowy plovers. Human development and use of an area provides sources of food, water, and habitat features that benefit a variety of mammalian and avian predators (Service 2007). Therefore, the development of, and increased human presence associated with, the proposed Project would likely increase predation on western snowy plovers.

The Staff Report includes a discussion of sea level rise, shoreline erosion, and flooding (pages 46-66). The proposed Project would site resort facilities within areas that are projected (at a shoreline erosion rate of 2.6 feet per year) to be below the high tide line within 75 years due to sea level rise and shoreline erosion (Staff Report pages 62-63 and exhibit 9 at page 164). The Staff Report acknowledges that there is scientific uncertainty as to the rates of environmental change regionally and within the Project site (page 63) and that the shoreline could erode more quickly than the projected 2.6 feet per year. Our concern is that the setback between the high tide line and the developed area would be lost due to "coastal squeeze" (the process in which coastal habitat is lost because it is trapped between a rising sea and a hardened physical barrier (in this case the proposed resort)). Habitat for any listed species between the Pacific Ocean and the Project footprint would eventually be physically removed by sea level rise.

We expect that the proposed Project would result in take of the western snowy plover and would likely render the Project area unsuitable for the species. Habitat would be immediately lost upon construction and the amount of human disturbance and predation pressure would be increased both within the Project area and in adjacent areas. We expect take of the species would occur in the forms of harm, harassment, and/or direct injury or mortality. We respectfully disagree with the conclusion on page 100 of the Staff Report that "the project will protect the natural resources of the site." However, if the Commission chooses to permit the Project as proposed, then we strongly support the inclusion of Special Condition 15 of the Staff Report (Staff Report, page 33), which would require that the Applicant obtain all necessary permits from the Service and several other public agencies. Considering the following factors: (1) the Project area is relatively small, (2) much of it would be developed, (3) all of it would be subjected to increased human disturbance, and (4) all western snowy plover habitat therein would ultimately be lost to the combined effects of the development and sea level rise/shoreline erosion, we expect that off-site mitigation may be necessary to meet the Service's incidental take permit issuance criteria. Please also note that we have been providing input to the City of Sand City for approximately 15

years regarding the likely impacts to listed species of Ocean-front development within their City limits and the need for habitat conservation planning; copies of our letters to the City from 1999 and 2002 are enclosed for your information.

Much of the information provided in the 2013 HPP is inaccurate and outdated. In addition, we are concerned that its provisions are not adequate to avoid take of the western snowy plover. Specific comments regarding our concerns about the 2013 HPP are provided below:

- (1) The discussion of nesting activity in section 4.2.1 (pages 4-2 and 4-5) does not discuss the 2012 or 2013 breeding seasons, in which successful nests hatched within the Project area.
- (2) The biological objectives on pages 4-7 and 4-8 would not provide an undisturbed area where western snowy plovers would be free to establish nests. Instead, two areas would be surveyed for western snowy plovers (by a biologist retained by the Applicant) and if nests were found in the first of those areas (the “beach and strand”), the biologist would be “in coordination with the construction supervisor, resort manager or property owner...authorized to restrict access to nesting snowy plover areas through implementation of an adaptive management plan, and through the erection of exclosures and signage to protect nests during the breeding season.” We expect that in the above-described circumstances, increased human disturbance within the nesting habitat would preclude nesting and no nests would be found. In addition, if nests were found, their protection would be left at the discretion of a biologist of unknown qualifications who would report only to the Applicant. Furthermore, the second area surveyed (the “foredune/secondary dune”) would only be surveyed and no protection of any nests located is even described as “authorized.”
- (3) Western snowy plovers have nested in inland areas of the Project site, but preconstruction surveys are proposed only in beach and strand areas (page 4-13).
- (4) Eggs and chicks are the least mobile and, therefore, the most vulnerable life stages of the western snowy plover. For this reason, we typically recommend seasonal avoidance of disturbance in or near western snowy plover nesting habitat during the breeding season (generally March 1 through September 30, annually). No seasonal restriction for construction during the western snowy plover nesting season is proposed in the HPP. Rather, the HPP (page 4-13) appears to assume that surveys, exclosure “during fledging” of any nests found, and “focused monitoring and care” will be sufficient to prevent nest loss. Exclosure “during fledging” is not biologically relevant to the western snowy plover; exclosures can help to protect eggs in some situations, but western snowy plover chicks are precocial and, as such, cannot be contained within an exclosure once they have hatched. Also, it is not clear to us what “focused monitoring and care” entails or how this would reduce the likelihood of nest abandonment.

- (5) The HPP (page 4-13) presumes that take of western snowy plovers resulting from nest abandonment due to construction would not occur because successful nesting occurs at Oceano Dunes State Vehicular Recreation Area (ODSVRA). This argument is flawed in two primary ways. First, take of western snowy plovers occurs at ODSVRA almost every year, and the California Department of Parks and Recreation (CDPR) is working with us on an HCP to support issuance of an incidental take permit to address such take. Second, the ODSVRA encompasses more than 3,500 acres and includes more than 6 miles of shoreline, the southern third of which (approximately 300 acres) is seasonally closed to protect nesting western snowy plovers and California least terns (please see map available at: http://ohv.parks.ca.gov/?page_id=1208). The ODSVRA is several orders of magnitude larger than the proposed Project site; as such it is not comparable to a 39-acre site where 88 percent of the terrestrial habitat is proposed to be graded.
- (6) The HPP (page 4-15) mentions a “Dynamic 1-2 acre Nesting Protection Zone.” This zone is proposed to be established upon opening of the resort. It is not clear how this zone would be protected. Also, the location, orientation, and size of this zone are left to the discretion of a biologist of undetermined qualifications who would report only to the Applicant.
- (7) The HPP (page 4-16) indicates that a predator management plan would be developed, but does not provide any detail on what the plan would entail or any certainty that it would succeed.
- (8) The HPP (page 4-23) describes a success criterion for western snowy plover of one successful nesting pair within 10 years following construction and characterizes this threshold as “attracting nesting plovers back to the site.” This goal is biologically inadequate to maintain the current level of nesting and does not recognize that western snowy plovers currently nest within the Project area. In addition, defining success as successful nesting (eggs surviving to hatch) would not guarantee successful fledging (chicks surviving until they are mature enough to fly).

Western Snowy Plover Critical Habitat

Unit CA 22 of designated critical habitat for the western snowy plover includes approximately a third of the Project area (77 FR 36728, <http://criticalhabitat.fws.gov/crithab/>). Unit CA 22 was designated because it was occupied at the time of listing, is currently occupied, and is an important area for breeding and wintering western snowy plovers (77 FR 36766). The primary constituent elements (PCEs) (77 FR 367474) of critical habitat for the western snowy plover include:

- (1) Areas that are below heavily vegetated areas or developed areas and above the daily high tides;
- (2) Shoreline habitat areas for feeding, with no or very sparse vegetation, that are between the annual low tide or lowwater flow and annual high tide or highwater flow, subject to

inundation but not constantly under water, that support small invertebrates, such as crabs, worms, flies, beetles, spiders, sand hoppers, clams, and ostracods, that are essential food sources;

- (3) Surf- or water-deposited organic debris, such as seaweed (including kelp and eelgrass) or driftwood located on open substrates that supports and attracts small invertebrates described in PCE 2 for food, and provides cover or shelter from predators and weather, and assists in avoidance of detection (crypsis) for nests, chicks, and incubating adults; and
- (4) Minimal disturbance from the presence of humans, pets, vehicles, or human-attracted predators, which provide relatively undisturbed areas for individual and population growth and or normal behavior.

The Project would reduce the amount of PCE 1 immediately upon construction by placing development closer to the high tide line. The Project would degrade PCE 4 by facilitating the presence of thousands of additional people within and surrounding the project area. We expect that PCEs 2 and 3 would also be degraded by the large increase in human use of the Project area and surrounding areas. All PCEs would eventually be completely lost from the Project area as sea level rises and any remaining habitat between the ocean and the development is inundated.

Cumulative Effects to Western Snowy Plover

We are aware of two additional proposed projects with likely adverse effects on the western snowy plover in the vicinity of Sand City. The "Collections" project is another proposed resort within Sand City and would be located south of the Monterey Bay Shores site. The CDPR has proposed a campground within Fort Ord Dunes State Park, which is immediately north of the proposed Monterey Bay Shores site. The Collections would directly remove western snowy plover habitat (similar to Monterey Bay Shores) and both projects would facilitate the presence of thousands of additional visitors in western snowy plover habitat. We have enclosed copies of our comment letters to the City of Sand City and CDPR on these projects for your information. We are currently working with CDPR on a HCP that would address their project. We are very concerned about the combined adverse effects of these three projects on the western snowy plover. If all three are constructed, there is potential that the species could no longer successfully breed in the southern Monterey Bay area.

Smith's Blue Butterfly

The 2013 HPP (Staff Report exhibit 20, page 3-3) indicates that Smith's blue butterflies and their habitat were present on site during a 2006 survey, which is the most recent survey cited in the HPP. The Staff Report (page 95) indicates that the distribution of Smith's blue butterfly habitat had not substantially changed as of a 2008 survey. The Staff Report (page 97) indicates that Smith's blue butterfly habitat would be avoided during grading. We are concerned that this expectation of avoidance is based on surveys that are more than 5 years old. Seacliff and coast

buckwheat are plants that colonize new areas, including disturbed areas, from seed and may have become established in new areas since the 2006 and 2008 surveys. We are also concerned that the 2013 HPP does not appear to reflect the latest available data (e.g., the Staff Report relies on a 2008 survey that is not discussed in the HPP). In addition, as discussed in our 2009 letter, the HPP (either version) is inconsistent regarding avoidance of Smith's blue butterfly habitat during construction. The 2013 HPP indicates (page 3-4) that the project would "completely avoid the area where buckwheat plants occur," but also indicates (page 4-13) that surveyors would "flag each plant of seacliff or coast buckwheat within areas proposed for development." Given these inconsistencies and the time elapsed since the most recent survey, we are not confident that removal of currently existing Smith's blue butterfly habitat can or would be avoided during project construction. We have additional concerns regarding potential take of all life stages of Smith's blue butterflies during weed removal, during seed collection, and as dispersing adults; please see the last page of our 2009 letter for a detailed discussion of these concerns.

Monterey Spineflower

The Monterey spineflower is an annual plant that germinates from its seed bank each growing season. The 2013 HPP (page 3-8) indicates that 3.39 acres of habitat occupied by Monterey spineflower were found in the Project area in a 2008 survey. The Staff Report (page 95) indicates that surveys in 1997, 2000, and 2008 revealed that Monterey spineflower has been found in additional, and different, portions of the Project area since 1997, with a 21 percent increase in known occupied habitat from 1997 to 2008. The Staff Report also indicates that when considering all survey results, up to 7 acres of occupied habitat may occur within the Project area (i.e., 3.39 acres were observed occupied by mature plants in 2008, but the area occupied by the Monterey spineflower seed bank is likely substantially larger). The 2013 HPP (page 3-8) proposes grading of all known occupied Monterey spineflower habitat and reestablishment of the species "at a minimum 1:1 ratio" within 3.7 acres following Project development. Considering the discussion at page 95 of the Staff Report, we question whether establishment of 3.7 acres of occupied Monterey spineflower would in fact constitute a 1:1 replacement ratio. It is not clear to us from the species-specific mitigation measures for Monterey spineflower (2013 HPP pages 4-30 and 4-31) exactly where the reestablishment of this species is proposed. If the re-establishment area(s) would be seaward of the Project footprint, we would have the same concerns regarding "coastal squeeze" as discussed previously for western snowy plover.

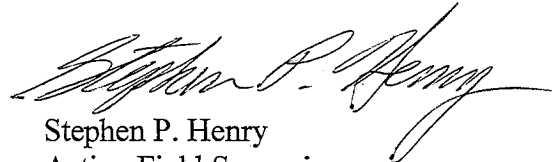
In summary, the Project is likely to cause adverse effects to listed species, including the likely take of western snowy plovers and Smith's blue butterflies. In addition, the provisions of the HPP are not sufficient to avoid this take, and it is unlikely that the take of western snowy plovers that would result from the Project, as proposed, could be adequately mitigated on-site within the Project area. If the Commission permits, and the Applicant wishes to continue to pursue, the proposed Project, then the Applicant should prepare a habitat conservation plan in support of an application for an incidental take permit to address take of the western snowy plover and Smith's blue butterfly, and adverse effects to Monterey spineflower.

Mike Watson

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This concludes our comments on the subject Project. We appreciate your consideration of our comments and we are available to discuss them further. If you have any questions, please contact Jacob Martin of my staff at (831) 768-6953.

Sincerely,



Stephen P. Henry
Acting Field Supervisor

Enclosures

Literature Cited

City of Sand City. 2012. Draft environmental impact report for the collection at Monterey Bay. November 2012. 213 pp.

U.S. Fish and Wildlife Service. 2007. Recovery plan for the pacific coast population of the western snowy plover. 271 pp. plus appendices.

In Litterae

Point Blue Conservation Science. 2014. Electronic mail messages with attached maps and data from Kriss Neuman, Point Blue Conservation Science, to Jacob Martin, U.S. Fish and Wildlife Service. March 17, 2014 and March 31, 2014.

Personal Communication

Dixon, David. Point Blue Conservation Science. Telephone conversation with Jacob Martin, Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service. March 31, 2014.