

CALIFORNIA COASTAL COMMISSION

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



W17a

Staff: Kevin Kahn/Rachel Pausch - SC
Staff report: 7/24/2026
Hearing date: 8/12/2026

STAFF REPORT CDP APPLICATION

Application Number: A-3-SNC-14-0001

Applicant: Sand City Collections LLC

Project Location: A 26.5-acre area north of Tioga Avenue and seaward of Highway 1 in the City of Sand City, consisting of an active materials recovery and construction operations area (known as the Sterling site, APN 011-012-005) and undeveloped dune areas (known as the McDonald and Granite sites (APNs 011-012-001 and 011-012-002, and APN 011-501-016, respectively)); as well as the Tioga Avenue right-of-way and areas seaward of it extending onto the sandy beach, as well as adjacent beach/shoreline areas, all immediately adjacent to the shoreline and the Monterey Bay.

Project Description: Construct a 100-room condominium hotel/resort complex including a restaurant, spa, onsite parking, and related amenities; construct a 25-unit lower cost tent cabin campground facility; dune habitat restoration and preservation, including removal of concrete slurry tailings on the beach/dune; public access improvements, including public beach access pathways and an extension of the Monterey Bay Sanctuary Scenic Trail and California Coastal Trail; offsite road improvements; and related improvements.

Staff Recommendation: Approval with Conditions

SUMMARY OF STAFF RECOMMENDATION

The Applicant proposes to construct a 100-room condominium-hotel/resort complex including a restaurant, spa, and related amenities; a 25-unit lower cost tent cabin campground facility; dune habitat restoration and preservation, including removal of

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concrete slurry tailings on the beach/dune; public access improvements, including public beach access pathways and an extension of the Monterey Bay Sanctuary Scenic Trail and California Coastal Trail; offsite road improvements; and related improvements. The project site is a nearly 30-acre area north of Tioga Avenue and seaward of Highway 1 in the City of Sand City on the Monterey peninsula, consisting of an area with active unpermitted materials recovery and construction operations and undeveloped dune areas immediately adjacent to the shoreline and the Monterey Bay. Much of the project site had historically been used for sand mining, although such activities ceased some three decades ago. That said, a variety of unpermitted materials (e.g., the shell of hardened concrete slurry and rubble/rock debris) remain along the shore, some of which appear to have been related to some of these long ago activities. The roughly 8-acre Sterling portion of the site (immediately north of Tioga Avenue) is currently used for unpermitted materials recovery and related operations, and is highly degraded as a result. The roughly 20-acre McDonald and Granite portions of the site have also been disturbed by previous sand mining and other activities, but no activity is currently occurring on these portions of the site. In addition, a large dune feature remains at the rear of the site adjacent to the Highway 1 right-of-way that straddles the Sterling and McDonald properties. The currently undeveloped portions of the site show evidence of dune recovery as the dunes exhibit signs of dune regeneration and stabilization, including via wind-driven dune re-establishment and re-colonization of a variety of native and non-native plant species.

Development at the project site has a long history. In addition to previous large resort proposals in the 1980s which were denied by the Commission (and the subject of litigation) or abandoned by the then applicants, in late 2013 the City of Sand City approved a CDP (for the current Applicant) for construction of a 340-unit resort and related facilities totaling some 570,000 square feet and covering some 11.5 acres of the site, and covering over 60% of the undeveloped dune portion of the site (and essentially all dune areas inland of the 15-foot elevation). This project was appealed to the Commission in early 2014, where the Commission found substantial issue and took jurisdiction over the CDP application at that time. Subsequently, on de novo review staff recommended denial of that application (based on numerous LCP conformance issues, including with respect to coastal hazards, public views, dune protection, and public coastal access), but the de novo hearing was postponed at the request of the Applicant in order to provide an opportunity to address the Commission's LCP conformance concerns through a revised project. Although staff began work with the Applicant at that time on a project that would meet LCP criteria at this critical coastal site, those discussions ultimately tailed off, but were picked up in earnest earlier this year, resulting in the current proposal, which thus represents the culmination of nearly 50 years of planning and permitting activity at this site.

The now proposed project has been significantly decreased in size to better address the complicated issues and constraints present at this beachfront site, and at a general level represents a substantial improvement over existing site conditions, including as it also proposes to address Coastal Act violations that exist across the project site, much of which is related to the legacy of both pre and post Coastal Act activities, including related to the former sand mining operations, as described in the Violation section of

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this report. Specifically, the project includes substantial site restoration and preservation, including with respect to removal of the concrete tailings and rock rubble/debris that flank the beach area that fronts the Sterling, McDonald, and Granite properties, removal of failing asphalt from Mar Vista Drive, and restoration of these and the remaining dune areas to dune habitat within which public beach and other access improvements would be sited.

In addition, the development footprint has been significantly reduced and further set back to better address coastal hazards and other resource concerns, and within this new development footprint – much of which is located in the footprint of the existing industrial operation and totals less than 2.5 acres, down from nearly 12 acres as approved by the City – will be important visitor-serving uses, including a 25-unit lower cost campground consisting of all-weather tent cabins. In fact, the on-site campground provides an exciting and important lower cost accommodations opportunity for the broader populace to stay and recreate in this area, where it will be located adjacent to California Coastal Trail (CCT) to help even facilitate walk-in/bike-in stays. Other proposed project amenities include adding CCT segments (made up of the Monterey Bay Sanctuary Scenic Trail at this location) and closing one of the remaining major gaps in this otherwise continuous trail system, as well as public parking, restrooms, trails, overlooks, and beach accessways. Critically, the debris removal along the beach also eliminates what is a significant obstacle at most times to lateral beach access, where doing so allows a continuous lateral beach accessway along the 15 miles of beach from Moss Landing to Monterey, and makes it so lateral access along the beach is possible for the full 30 miles from the City of Capitola to Monterey, bracketing the need to use the Highway 1 bridge at Moss Landing, all of which is a long sought and important benefit of the project.

Of course, a project of this size and complexity is not without its concerns, but staff has worked with the Applicant, the City, and other interested parties to address all such concerns as much as possible, and recommends a full suite of conditions to ensure that not only the violations are resolved, but that the resultant project results in a truly significant coastal resource benefit, including importantly in terms of dune restoration/protection and significantly enhanced public access opportunities. In that context, two additional things are noted. The first is that the Sand City LCP is unique inasmuch as the dune areas west of Highway 1 cannot be considered ESHA, and are to be considered developable, all of which has been confirmed – and required – by the courts. As a result, this is an atypical situation as it relates to dune habitat, but again, the end result is to focus development on the existing industrially-used areas (in a footprint that is less than 2.5 acres) and to restore and protect dunes otherwise (almost 25 acres). And second, this site will be subject to coastal hazards over time, but the conditions make clear that it is not ever going to be allowed shoreline armoring, and that if threatened by coastal hazards, it will need to be removed/relocated, where the conditions specify the triggers and expectations around that scenario.

Staff believes that the proposed project, as conditioned, represents an exciting opportunity to realize substantial coastal resource benefits at this largely degraded beachfront property. And staff notes that the Applicant and the City are in agreement

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with the staff recommendation. As such, staff recommends the Commission approve a CDP for the project as conditioned. The motion and resolution to do so are found on page 6 of the staff report.

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EXHIBITS

Exhibit 1 – Location Maps

Exhibit 2 – Site Photos

Exhibit 3 – Proposed Project Plans

Exhibit 4 – LCP Figures and Maps

Exhibit 5 – Debris Removal and Coastal Resource Conservation Area

Exhibit 6 – Dune Restoration Areas

1. MOTION AND RESOLUTION

Staff recommends that the Commission, after a public hearing, **approve** a coastal development permit for the proposed development. To implement this recommendation, staff recommends a **YES** vote. 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-14-0001 pursuant to the staff recommendation, and I recommend a **yes** vote.*

***Resolution:** The Commission hereby approves Coastal Development Permit Number A-3-SNC-14-0001 and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the Sand City certified Local Coastal Program and the public access and recreation policies of Chapter 3 of the Coastal Act. 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.*

2. 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 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.

3. SPECIAL CONDITIONS

This permit is granted subject to the following special conditions:

- 1. Final Access/Tioga Plans.** WITHIN 12 MONTHS OF CDP APPROVAL (i.e., by August 12, 2027), the Permittee shall submit two full size sets of Final Access/Tioga Plans with graphic scale to the Executive Director for review and written approval. Such Plans shall be prepared by a licensed professional or professionals (i.e., architect, surveyor, geotechnical engineer, etc.); shall be based on current professionally surveyed topographic elevations for the portion of the site involved; shall be substantially in conformance with the proposed plans (prepared by Creegan + D'Angelo Infrastructure Engineers, dated 6/23/2026, and dated received in the Coastal Commission's Central Coast District office on 6/23/2026); but shall be modified to achieve compliance with this condition, including that such Plans shall provide for and show the following:

- (a) Tioga Avenue Reconfiguration and Roundabout.** Roughly 200 feet of the seaward end of Tioga Avenue and all related development, as well as the area occupied by riprap, concrete, debris, and other materials located along the shoreline/beach fronting Tioga Avenue as well as areas up and downcoast of it, shall be removed and the area restored to native dune and beach (pursuant to the Dune Restoration Plan required by Special Condition 6). The remaining portion of Tioga Avenue seaward of Sand Dunes Drive shall be reconfigured as a public parking and public access area (the "Tioga Avenue parking area"). The seaward edge of Tioga Avenue parking shall roughly align with and be no further seaward than the City's desalination wellheads and no further south than the existing Sand City right-of-way on Tioga Avenue, as generally depicted in Exhibit 3.

The Tioga Avenue parking area shall include: (1) as many public parking spaces as possible while meeting all other criteria (see Special Condition 1(b); expected to be around 27 parking spaces), including applying a revised travel lane/parking stall orientation if necessary (e.g., diagonal spaces served by a travel lane loop); (2) bicycle racks that can accommodate at least 10 bicycles, with the racks placed nearest the beach; (3) a minimum 5-foot-wide wooden boardwalk from the new seaward end of Tioga Avenue that connects to the California Coastal Trail and extends seaward to a roughly 150 square-foot wooden overlook with wooden benches, connected to a minimum 5-foot wide wooden staircase to the beach, where its base shall be concrete sufficient to address wave attack; (4) public restrooms (with at least 4 unisex stalls and at least one ADA compliant), a sand shower, and a water fountain with water bottle refill station; (5) appropriately placed and configured drainage infrastructure equipped with filtration and treatment components; (6) an adequate number of enclosed trash and recycling containers commensurate with expected use; (7) directional and informational signage (including that parking spaces shall be conspicuously signed for free general public vehicle parking, and with appropriate directional signage at the intersection of Tioga Avenue and Sand Dunes Drive) that provides necessary information with the least amount of signs; (8) native landscaping (including in an

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amount sufficient to help provide screening and/or partial screening of the parking area and parked vehicles as seen from Highway 1 and coastal trails as much as feasible, and to transition to dune restoration otherwise); and (9) all-weather surfacing. The Tioga Avenue parking area shall be sited and designed, including parking space configuration and vehicular travel lanes, to occupy the least amount of space necessary to accommodate the above features; to allow for safe vehicular and emergency vehicle turnaround (e.g., a hammerhead or cul-de-sac at the seaward edge) if needed; to avoid public view impacts and to integrate into the natural surroundings as much as possible; and to facilitate public access as much as possible. There shall be no infrastructure or parking located within dune habitat south of the existing Sand City right-of-way on Tioga Avenue, unless the Permittee provides sufficient evidence to the Executive Director's satisfaction that it is infeasible to accommodate all required features outside of such dune area and impacts to dune habitat within the right-of-way are minimized as much as possible. Only free general public access parking is allowed in the Tioga Avenue parking area, and project-related parking (e.g., hotel, restaurant, spa, campground, etc.) shall be prohibited, where the latter shall be enforced by the resort operator (e.g., as rules promulgated to both guests and employees).

(b) Other Public Parking Requirements. A total of 21 free general public parking spaces shall be provided. The number of such spaces above 22 that can be accommodated in the Tioga Avenue parking lot can count towards this total (i.e., the first 22 parking spaces in the Tioga Avenue parking area do not count toward the required 21 free general public parking spaces), but the remainder shall be provided as near as possible to the Tioga Avenue parking area and in a way that maximizes their public utility and are conspicuously labeled for public parking use only (see Exhibit 3). These spaces shall be sited and designed overall to avoid public view impacts and to integrate into the natural surroundings as much as possible, and to clearly present as public parking if located near resort facilities (e.g., a separate parking areas or areas, siting nearest to Tioga Avenue parking area, different design versus resort parking, signage, etc.). These parking spaces shall be conspicuously signed for free general public vehicle parking, including with appropriate directional signage at the intersection of Tioga Avenue and Sand Dunes Drive integrated with other public parking signage (see also Section (a) above). Only free general public access parking (which shall be allowed 24 hours a day year-round) is allowed in these spaces, and project-related parking (e.g., hotel, restaurant, spa, campground, etc.) shall be prohibited, where the latter shall be enforced by the resort operator (e.g., as rules promulgated to both guests and employees).

(c) Public Trails. In addition to the minimum 5-foot-wide boardwalk that connects to coastal trail segments and the beach from the reconfigured Tioga Avenue parking area, the Plans shall include (1) a new section of the Monterey Bay Sanctuary Scenic Trail (MBSST)/California Coastal Trail (CCT) between Sand Dunes Drive and Playa Avenue, and (2) at least one public trail that provides

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beach and beach overlook access and is connected to the new MBSST/CCT section, as follows:

- 1. MBSST/CCT Trail Connection.** A Class I public trail segment that connects between MBSST/CCT trail segments just north of Playa Avenue (seaward of Highway 1), which is currently in place, and just south of Tioga Avenue (see Exhibit 3). The new trail segment shall consist of an 8-foot wide paved path for bicycle, pedestrian, and wheelchair use, and shall seamlessly match and connect to the trail segments located to the north and south. The new trail segment shall not traverse any vehicular use areas, and shall be sited and designed to provide separation from resort development sufficient to ensure public utility and dune protection.
- 2. Beach and Beach Overlook Trails.** A 5-foot wide wooden boardwalk oriented in a curvilinear manner that extends from the resort/campground area to the new MBSST/CCT trail connection and then extends out into the dunes, branching both up and downcoast near where the dunes transition to beach. The upcoast end shall terminate at a roughly 150 square-foot wooden overlook with wooden benches, and the downcoast end shall terminate at a sand ramp/ladder (or equivalent, including a delineated path if sufficient to provide the required access) that can provide safe and informal beach access (where, if a staircase is necessary, its base shall be concrete sufficient to address wave attack).

All such trail development shall be sited and designed to maximize public utility and minimize impacts on public views and dune resources. Trail lighting shall be prohibited, and trailside fencing shall be limited to low post and rope symbolic fencing where it is demonstrated to the Executive Director's satisfaction that such barriers are required for safety and/or habitat protection purposes. The trails shall also be consistent with all of the requirements of Special Condition 7.

- (d) Public Restrooms and Showers.** The Plans shall provide for public restrooms (with at least 4 unisex stalls, at least one of which shall be ADA compliant), outside shower facilities (for beach sand removal), and a water fountain with water filler in a convenient location adjacent to the Tioga Avenue parking area nearest the beach street end and to the public trails as described above. All such development shall be sited and designed to maximize its public utility and minimize its impact on public views. Restroom design shall be sited and designed to blend in with the visual character of the setting via use of low-slung natural materials, earth tone coloring, and dune/landscape screening.
- (e) Construction BMPs.** A summary of all measures that will be applied to limit construction impacts to coastal resources, all to a similar level of detail as applicable provisions associated with the required Resort Construction Plans (see Special Condition 4).

The Permittee shall undertake development in conformance with this condition and the approved Final Access/Tioga Plans.

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- 2. Final Debris Removal Plans.** WITHIN 12 MONTHS OF CDP APPROVAL (i.e., by August 12, 2027), the Permittee shall submit two sets of Final Debris Removal Plans with graphic scale to the Executive Director for review and written approval. Such Plans shall clearly identify the manner in which the remnant concrete tailings, rock, rubble, and pavement (collectively referred to as “debris”) will be removed from the Sterling, McDonald, Granite, and Monterey Peninsula Regional Park District’s Eolian Dunes Preserve properties, the Tioga Avenue street end, and the shoreline area between Tioga Avenue and the paved extent of Mar Vista Drive (see Exhibit 5 for required removal area, and see also Special Condition 9). In addition to the other requirements specified in this condition, such Plans shall include, at a minimum:
- a. Methodology.** The methods of removal, the location of any necessary temporary debris storage onsite, and the ultimate debris disposal location. The Debris Removal Plan may provide for the temporary storage and reuse of crushed debris for construction of the resort. Storage shall only be permitted outside of existing dune habitat areas.
 - b. Timing.** All debris removal shall be undertaken at the same time and shall be completed prior to or concurrent with commencement of the dune restoration required by Special Condition 6, but in no case shall it occur later than the deadlines specified in Special Condition 9.
 - c. Restoration.** Following the removal and disposal of all debris, all areas outside of the development envelope (shown in Exhibit 5) and outside trail development areas on the Sterling property and reconfigured end of Tioga Avenue shall be restored to high quality dune habitat per the parameters of Special Condition 6. Restoration may also be required on the McDonald and Granite properties (see Special Conditions 2(e) and 6).
 - d. Cal-Am/MST Coordination.** Development of the Plans, as well as all covered debris removal and restoration activities, shall be coordinated with California American Water Company and Monterey Salinas Transit (Cal-Am/MST), including the manner in which it relates to the Cal-Am/MST McDonald property debris removal and restoration project, where if debris removal in connection with that separate McDonald property project has not commenced within 30 months of the date of CDP approval (i.e., by February 12, 2029), then the Permittee shall be responsible for all debris removal and restoration on the McDonald property.
 - e. Granite and Eolian Dunes Preserve Properties.** Debris removal from the Granite and Eolian Dunes Preserve properties shall be limited to surficial areas (within 5 feet of the surface), and shall be accomplished in a manner that does not significantly exacerbate further inland debris movement onto the beach, and that does not significantly jeopardize bluff integrity, and shall be ongoing should any debris in the future become exposed. If complete debris removal and restoration on the shoreline downcoast of Tioga Avenue is not possible due to lack of other property owner consent, if applicable, then the Permittee shall perform the above-referenced surficial debris removal on the Granite property, and shall also (1) remove all subterranean/buried debris on that property (where

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such debris removal shall be accomplished in a manner that does not significantly jeopardize bluff integrity); (2) restore all of that property to high quality dune habitat (per the parameters of Special Condition 6); and (3) public access and recreation and/or habitat restoration is allowed as described in Special Condition 8(c).

- f. Construction BMPs.** A summary of all measures that will be applied to limit construction impacts to coastal resources, all to a similar level of detail as applicable provisions associated with the required Resort Construction Plans (see Special Condition 4).

The Permittee shall undertake development in conformance with this condition and the approved Final Debris Removal Plans.

- 3. Final Resort Plans.** PRIOR TO RESORT CONSTRUCTION, the Permittee shall submit two full size sets of Final Resort Plans with graphic scale to the Executive Director for review and written approval. Such Plans shall be prepared by a licensed professional or professionals (i.e., architect, surveyor, geotechnical engineer, etc.); shall be based on current professionally surveyed topographic elevations for the portion of the site involved; shall be substantially in conformance with the proposed plans (prepared by Creegan + D'Angelo Infrastructure Engineers, dated 6/23/2026, and dated received in the Coastal Commission's Central Coast District office on 6/23/2026); but shall be modified to achieve compliance with this condition, including that such Plans shall provide for and show the following:

- a. Driveway/Emergency Access Development Minimized.** All resort driveway development (i.e., providing access within the project site from Sand Dunes Drive/Tioga Avenue) shall be minimized to the maximum extent feasible. Vehicular access to the hotel, lobby, restaurant, campground and other project components shall be via driveway from the Sand Dunes Drive/Tioga Avenue intersection, and shall extend no further upcoast than the last upcoast hotel parking space (see Exhibit 3). An emergency vehicle access only travel lane shall be provided from Playa Avenue extending to the above-referenced upcoast end of the driveway, where such lane shall be 12 feet or less in width with removable bollards to remain raised on both ends (i.e., at Metz Road and where it meets the end of the resort driveway). Campground portage via golf carts or similar conveyances may occur over the emergency vehicle access lane, and non-vehicular public access is allowed over both the resort driveway and emergency vehicular access lane, where sidewalk facilities shall be provided along the resort driveway. All such driveway/emergency access development shall be sited and designed to avoid public view impacts, to integrate into the natural surroundings, and to enhance utility and value of the dune corridor and coastal trails as much as possible. No other road/driveway development is authorized by this CDP.
- b. Height Limits.** Development height shall be limited as follows: (1) within 100 feet of the seaward edge of the Highway 1 right-of-way, development height shall not exceed 25 feet above existing grade; (2) more than 100 feet from the seaward edge of the Highway 1 right-of-way, development height shall not exceed 45 feet

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above existing grade for all hotel development (including facilities commonly included in hotels such as restaurants, meeting rooms, shops for hotel guests, and spa facilities); (3) in all areas, development height shall not exceed 15 feet and one story above existing grade for all recreational structures (e.g., tent sites, restrooms, etc.); (4) notwithstanding the allowed maximums above, all development height shall be limited as much as necessary so that at least two-thirds of the existing blue-water view (from a point 4 feet above the seaward edge of the seaward southbound travel lane of Highway 1) looking seaward within the LCP-identified view cones (shown in Exhibit 4) is maintained. The Plans shall be submitted with documentation demonstrating compliance with the above height limits including, at a minimum, site plans and architectural elevations/cross-sections prepared and certified by a licensed architect (for structure elevations) and by a licensed surveyor (for topographic elevations) that clearly identify all components of the project and demonstrate how such components meet these height requirements.

- c. Setbacks and Development Envelope.** All resort development shall be located within a development envelope that is inland of the 50-year erosion setback line and outside of the mapped dune feature, as shown on Exhibit 5.
- d. Campground.** The Plans shall provide for an at-grade campground consisting of 25 campsites, one restroom/shower/water building (with an adequate number of unisex restrooms, shower stalls, exterior sinks for washup, spigots for water supply and a water bottle refill station, and trash and recycling facilities to meet expected demand), and a campground loading/unloading area. All campsites shall include a low-profile 10-foot by 10-foot platform for tent cabins with at least rudimentary amenities (e.g., bed platforms, storage areas, hangers for lights and other camp gear, etc.). All campground development shall be sited, designed, and operated to provide a separate and unique dune camping experience away from the sights and sounds of the resort development, to minimize alteration to dune landforms, to provide ocean views from each campsite, to provide a picnic table at each campsite, to provide adequate separation between individual campsites, to avoid public view impacts, to integrate into the natural surroundings (including via use of low slung natural materials, earth tone coloring, minimal downcast lighting, and dune/landscape screening), to limit noise and lights within the campground area, and to be screened to avoid views of the downcoast resort elements as much as possible. One centrally located fire feature that looks and feels like a natural beach fire but that is fueled by propane (or equivalent clean-burning fuel) shall be provided for free communal use for all campground users at night (from one-hour before sunset to no later than 10pm). Individual campsites shall not include utilities, although free wifi (with as good a signal and related strength as is provided to hotel/resort guests) shall be provided throughout the campground. The campground shall also be governed by the Public Access Management Plan (see Special Condition 7) as well as by Special Condition 14.

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- e. Landscaping.** The Plans shall include a landscape plan for the areas surrounding the hotel, restaurant, spa, lobby, campground facilities, and other related development within the development envelope as shown in Exhibit 5. Such landscaping shall rely on native dune vegetation that provides appropriate screening and softening of development features in public views as much as possible, and that provides a transition to more natural areas of the site, including the dune restoration areas. Low-profile barriers (e.g., low-set rough-hewn wooden split-rail or low post and rope symbolic fencing) and interpretive signage informing site users of the sensitivity of adjacent habitat areas shall be provided at transitions between development and protected dune areas. The landscape plan shall require that all non-native plants on the site, including invasive iceplant, 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 new dune landscaping shall consist of native, non-invasive dune species appropriate to the Sand City region of the Monterey Bay dune complex, be genetically appropriate for the location, and the plan shall include certification from a licensed landscape professional experienced with local native dune species showing this to be the case. The landscape plan shall provide that 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.
- f. Lighting Minimized.** Exterior lighting shall be wildlife-friendly, shall use bulbs/lamps that minimize the blue end of the visible spectrum (i.e., use correlated color temperatures ≤ 3000 K), 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 above (i.e., ≥ 90 degrees above nadir), from public viewing areas (including but not limited to views from Highway 1, the Eolian Dunes Preserve, the MBSST/CCT, the project’s public access amenities, the beach, and areas across Monterey Bay (e.g., Cannery Row)) and visible from restoration areas to the maximum extent feasible (including through uses of lowest luminosity possible (e.g., no more than 1,000 lumens near natural areas), warm temperature lighting, prohibiting lighting that blinks or flashes, directing lighting downward, etc.). If required for pedestrian and vehicular safety purposes, all lighting along the Sand Dunes Drive extension, the reconfigured Tioga Avenue parking area, and the coastal trail segments within the development envelope shall be limited to rustic pathway and roadway bollards 36 inches or less in height. Lighting of the public access pathways and beach access points outside of the development envelope shall be prohibited, and overhead light standards and decorative pole lights shall also be prohibited. All light fixtures shall be Dark Sky International approved or equivalent. The Plans shall be submitted with documentation demonstrating compliance with these lighting requirements.

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- g. Windows and Other Surfaces.** All windows shall be non-glare glass, and all other surfaces shall be similarly treated to avoid reflecting light. All windows shall be bird-safe (i.e., windows shall be frosted, partially frosted, or otherwise treated with visually permeable barriers that are designed to prevent bird strikes).
- h. Utilities.** The Plans shall clearly identify all utilities (e.g., sewer, water, stormwater, gas, electrical, telephone, data, etc.) and the way in which they will be connected to inland distribution networks. All such utilities shall be located underground, including that the Revised Final Plans shall provide for removal or undergrounding of all existing overhead utilities on the site and in areas between the site and Highway 1, including along Tioga Avenue.
- i. Stormwater and Drainage.** The Plans shall clearly identify all stormwater and drainage infrastructure and related water quality measures (e.g., pervious pavements, etc.) to be installed, with preference given to natural best management practices (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/or direction to existing stormwater inlets/outfalls. New stormwater outfalls are prohibited. 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. If such runoff cannot be adequately accommodated in extreme storm situations (i.e., greater than the 85th percentile 24-hour runoff event storm) on-site through the project's stormwater and drainage infrastructure, any excess runoff shall be conveyed inland off-site in a non-erosive manner. All drainage system elements shall be permanently operated and maintained, and the plans shall identify all maintenance parameters for all stormwater and drainage infrastructure and related water quality measures, including based on manufacturers recommendations, which shall be provided as part of the Plans. At a minimum, all traps/separators and/or filters shall be inspected to determine if they need to be cleaned out or repaired prior to October 15th each year, prior to April 15th each year, and during each month that it rains between November 1st and April 1st. Clean-out and repairs (if necessary) shall be done as part of these inspections. At a minimum, all traps/separators and/or filters shall be cleaned prior to the onset of the storm season, no later than October 15th of each year. Debris and other water pollutants removed from filter devices during clean-out shall be contained and disposed of in a proper manner. All inspection, maintenance and clean-out activities shall be documented in an annual report submitted to the City Public Works Department no later than June 30th of each year. It is the Permittee's responsibility to maintain the drainage system in a structurally sound manner and its approved state. In all cases, stormwater and drainage infrastructure shall be sited and designed to further the objectives of the Dune Restoration Plan (see Special Condition 6), including using best suited

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locations to avoid any adverse impacts on dune restoration activities, and directing drainage where it furthers dune restoration objectives.

- j. Foundations and Retaining Walls.** The Plans shall include plans for foundations, retaining walls, and related project components, which shall be prepared in consultation with licensed civil and structural engineers. All foundations, retaining, walls, and related components shall be sited and designed consistent with standard engineering and construction practices 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 removal as required by **Special Condition 12**). Building foundations shall be mat (and severable) foundations that are limited in size, areal extent, and depth to the maximum degree feasible for the buildings being supported, unless the Permittee submits evidence substantiating to the Executive Director's satisfaction that a mat foundation cannot be designed in compliance with current California Building Code requirements. In such case, alternative foundation systems are allowed, including a system of mat and piers, provided they are consistent with the conditions of this CDP. 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 Condition 12**). All foundations, retaining walls, and related project components shall be sited and designed to be removable, including in terms of limiting extent of excavation or disturbance beyond the immediate development footprint. Modularity is permissible if that will facilitate removal of such components and supported development in response to an eroding shoreline.
- k. Signage.** The Plans shall clearly identify all signs associated with the hotel, restaurant, spa, campground, and related project components, and all such 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, directing any allowed sign lighting downward, etc.); (3) to be of a unified design theme; and (4) to be subordinate to the dune setting. See Special Condition 7(c) for additional public access signage requirements.
- l. Fencing.** All existing site fencing shall be removed and replaced with the absolute minimum amount of fencing necessary to meet project objectives, including at the rear of the site adjacent to Highway 1. Replacement fencing, if any, shall be purpose driven, minimized, sited, and designed to be compatible with the dune landscape (e.g., low-profile rough-hewn wooden split rail, low rope and pole symbolic fencing, etc.) and to minimize public view impacts to the maximum extent feasible.
- m. Subsurface Elements.** The Plans shall clearly identify all subsurface elements associated with the project (e.g., underground parking, "back of house" operations, etc.).

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- n. Excess Sand.** All excess sand associated with excavation for development of the site shall be used in conjunction with the dune restoration required under **Special Condition 6**. The use of on-site sand for construction purposes (e.g., concrete production, sand bag barriers, etc.) shall be prohibited.

The Permittee shall undertake development in conformance with this condition and the approved Revised Final Plans.

- 4. Resort Construction Plans.** PRIOR TO RESORT CONSTRUCTION, the Permittee shall submit two sets of Construction Plans to the Executive Director for review and written approval. Such Plans shall, at a minimum, include the following:
 - a. Grading.** The Plans shall include a grading plan that limits site grading to the minimum necessary to construct the approved project. Grading outside of the development envelope, other than for debris removal identified in Special Condition 2 above, the approved dune restoration associated with Special Condition 6, and/or public access purposes (Special Condition 7), shall be prohibited. No grading or construction shall occur within or as to disturb the large dune feature identified on LUP Figure 7 as shown in Exhibit 5.
 - b. Construction Areas.** The Plans 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 will take place shall be minimized to the maximum extent feasible to have the least impact on dunes, public access, and public views. Appropriate BMPs shall be employed 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.
 - c. Construction Methods and Timing.** The Plans 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), and all methods to be used to avoid public view impacts as much as possible. All work, other than interior work where any necessary lighting is minimized, shall take place during daylight hours (i.e., from one-hour before sunrise to one-hour after sunset) and lighting of the work area is prohibited.
 - d. Property Owner Consent.** The Plans 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.
 - e. Biological Monitor.** The Plans shall provide that a qualified biological monitor or monitors (Biological Monitor), selected by the Permittee and approved by the Executive Director, shall be present during all construction activities to ensure

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that dune areas and sensitive species are protected. The approved Biological Monitor shall have significant experience with the special status species at the project site, and shall possess a permit under Sections 10(a)(1)(A) or 10(a)(1)(B) of the Endangered Species Act. The approved Biological Monitor shall consult with experts on habitat and species conservation and biology on all matters related to habitat protection on the site, and is expected to be a representative from the already-established community of experts in the field of California coastal dune ecology and endangered species management. The approved Biological Monitor shall develop a Worker Environmental Awareness Training Program (WEAP) for all construction workers on the project site, providing basic information on sensitive natural resources that may occur, applicable federal and state laws, the procedures to follow should there be a potential encounter with any such resources, including whom to contact, and a training acknowledgment form to be signed and submitted by each worker indicating that they received the WEAP training and shall abide by the guidelines. The WEAP training materials shall be submitted to the Executive Director for review and written approval, and shall be administered to all onsite personnel prior to the start of construction. The approved 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.

- f. Biological Surveys and Monitoring Prior to Initial Construction.** The Plans shall provide for pre-construction surveys by the approved Biological Monitor for sensitive species with potential to occur at the site and as appropriate. Nesting birds shall be surveyed if work is scheduled to commence during the nesting season (between February 15th and August 31st, inclusive), including for ground-nesting species such as killdeer (*Charadrius vociferus*), and shall occur no more than 72 hours prior to the start of construction. For western snowy plovers, surveys shall be conducted bi-weekly over the nesting season (between March 1st and September 30th, inclusive), and for all nesting birds, including western snowy plovers, surveys shall extend out 500 feet from the project site. Surveys for Smith's blue butterfly shall occur during the adult flight season (between June 15th and September 15th, inclusive) and, unless determined to be definitively absent by a qualified entomological expert, shall be assumed present as larvae and/or pupae on or beneath any existing buckwheat plants, and precautions shall be taken to avoid disturbing host plants and the associated duff material beneath and surrounding them. If any sensitive species are identified in the project impact area and/or out to 100 feet surrounding it within 30 days or less of intended construction (or within the date ranges identified above for nesting birds, or within the preceding and present bloom seasons for plant species), the Permittee shall consult with the approved Biological Monitor, the California Department of Fish and Wildlife (CDFW) and the U.S. Fish and Wildlife Service (USFWS), as appropriate, and the Executive Director, and shall implement mitigation measures as directed by the Executive Director, including

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measures consistent with the approved Dune Restoration Plan and informed by state or federal agency requirements prior to commencing work. 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.

- g. Biological Monitoring During Construction.** Prior to commencement of construction each day, the approved Biological Monitor shall inspect the active project areas to ensure that the day's activities will not result in impacts to sensitive species. Construction activities may not occur until all sensitive wildlife species have left the active project area and its vicinity and/or any sensitive plant species have been sufficiently protected or salvaged in accordance with the approved Dune Restoration Plan. In the event that the approved Biological Monitor determines that any sensitive species exhibit reproductive or nesting behavior, the Permittee shall cease work and promptly notify the Executive Director as well as CDFW and/or USFWS, as appropriate; construction activities may resume upon written approval from the Executive Director. If impacts or injury occur to sensitive species, the Permittee shall promptly notify the Executive Director as well as CDFW and USFWS, as appropriate, and will be advised of the appropriate action or mitigation to be taken. The Biological Monitor shall document the results of each daily pre-construction survey, and these daily survey results shall be a part of the weekly reports described above.
- h. Best Management Practices.** The Construction Plan shall clearly identify all construction 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 any 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 dunes, the beach, and/or Pacific Ocean. 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 (provided consistent with the native plant requirements of Special Conditions 3 and 6), and restricting grading and earthmoving during rainy/inclement weather. The Construction Plan shall indicate that: (1) 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; (2) 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; (3) concrete rinsates shall be collected and appropriately disposed off-site, and they shall not be allowed to enter any natural drainage areas; (4) good construction housekeeping shall always be required (e.g., clean up all leaks, drips, and other

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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); dispose of all wastes properly, place trash receptacles on site for that purpose, and cover open trash receptacles during wet weather); and (5) 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 dunes, the beach, and/or the Pacific Ocean. Contractors shall ensure that work crews are carefully briefed on the importance of observing the appropriate construction BMP precautions and reporting any accidental spills and/or other forms of discharge.

- i. **Construction Site Documents.** The Construction Plan shall provide that a copy of the signed CDP and the approved Construction Plan be maintained in a conspicuous location at the construction job site at all times, and that such copies shall be available for public review on request. The signed CDP and approved Construction Plan shall also be retained in the project file at both the City's Planning Department and 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.
- j. **Construction Manager.** The Construction Plan shall provide that a construction manager be designated to be contacted during construction should questions arise regarding the construction (in case of both regular inquiries and emergencies), and that his/her contact information (i.e., address, phone numbers, email address, etc.) including, at a minimum, a telephone number (with message capabilities) and an email that will be made available 24 hours a day for the duration of construction, is conspicuously posted at 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 manager should be contacted in the case of questions regarding the construction (in case of both regular inquiries and emergencies). The construction manager shall record the contact information (name, phone number, email, etc.) 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. The Construction Manager shall coordinate with the Biological Monitor to resolve any complaints related to habitat resources. Any critical and/or significant complaints and related responses shall be reported to the Executive Director as soon as possible, and all complaints and all actions taken in response shall be summarized and provided to the Executive Director on a monthly basis along with the Biological Monitor's reports.
- k. **Construction Specifications.** All construction specifications and materials (including all construction contracts) shall include appropriate penalty provisions to address non-compliance with the terms and conditions of this CDP, including

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the approved Construction Plan, including provisions sufficient to offset the cost of retrieving or cleaning up improperly contained foreign materials, and provisions that require remediation (and potentially additional mitigation, as applicable) for any work done inconsistent with the terms and conditions of this CDP, including the approved Construction Plan.

- 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.

The Permittee shall undertake construction in accordance with this condition and the approved Construction Plans.

- 5. Public 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 maximize visual compatibility with the dune landscape and to protect public views as much as possible. All siting and design shall utilize low-slung forms, natural materials and colors, structural articulation, landscaping and dune form screening, and other similar measures to limit visual incompatibilities as much as possible. This condition shall take precedence over and shall govern all final plan requirements of Special Conditions 1, 2, 3, and 4.
- 6. Dune Restoration Plans.** WITHIN 12 MONTHS OF CDP APPROVAL (i.e., by August 12, 2027), the Permittee shall submit two sets of Dune Restoration Plans to the Executive Director for review and written approval. Such Plans shall be prepared by a Restoration Ecologist with significant experience in dune restoration projects involving sensitive species, and shall be developed in coordination with (1) Cal-Am and MST where there is overlap with their McDonald property dune restoration project, and (2) the approved Biological Monitor (see Special Condition 4). The Plans shall provide for dune habitat restoration and monitoring within the Dune Restoration Area, which is defined as all areas of the site outside of the development envelope and public trail areas as described in Special Condition 2(c) and (e), and as generally depicted as the "Dune Restoration Area" on Exhibit 6. The Plans need not include initial habitat restoration activities for the McDonald property, unless debris removal on the property pursuant to the separate Cal-Am/MST McDonald property project has not commenced within 30 months of the date of CDP approval (i.e., by February 12, 2029), in which case within 33 months of CDP approval (i.e., by May 12, 2029) the Permittee shall submit two copies of an addendum to the Dune Restoration Plans to the Executive Director for review and written approval that includes such dune habitat restoration and debris removal on the McDonald property in the Plan. In all cases, the Plan shall cover all aspects of coastal resource monitoring, management, and maintenance following the completion or forfeit of the Cal-Am and MST restoration project on the McDonald property in coordination with Cal-Am and MST's long-term monitoring requirements, as applicable. The Dune Restoration Plans shall achieve compliance with this special condition, including providing for, at a minimum, the following components:

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- a. Restoration Ecologist.** The Plans shall be prepared by a qualified restoration ecologist or ecologist (Restoration Ecologist), selected by the Permittee and approved by the Executive Director. The Restoration Ecologist shall also guide initial implementation of the Dune Restoration Plan and monitor for its success, all as described in this special condition. The approved Restoration Ecologist shall be present during at least all initial restoration activities, and during subsequent monitoring and maintenance events per the approved Plans, and contribute to reporting requirements. These objectives include protection and enhancement of sensitive species and their habitat. The approved Restoration Ecologist shall have significant experience with the special status species at the project site and shall possess a permit under Sections 10(a)(1)(A) or 10(a)(1)(B) of the Endangered Species Act.
- b. Goals and Objectives.** The overarching goal of the Dune Restoration Plans shall be to restore and enhance dune habitat so that it is self-functioning, high quality habitat in perpetuity. Clear goals and objectives, including as relates to sensitive species associated with dune habitat, shall be specified and should be based on technically sound rationale, whether drawing from appropriate historical records, technical literature, and/or the use of reference sites.
- c. Description of Existing Conditions.** The Plans shall include a map and description of the existing habitats that will be impacted by development, including all plant and wildlife species present, and any special status species, including in conformance with required biological surveys in Special Condition 4.
- d. Proposed Restoration.** The Plans shall include a map and description of the proposed restoration. The dune restoration shall be designed and contoured based on mimicking what would be naturally occurring dune morphology at the site if it were to be undisturbed (including using historical records of the area and/or the most proximal reference sites to help establish appropriate contours).
- e. Non-Native and Invasive Species Plant Removal.** All non-native and invasive plant species shall be removed, and continued removal shall occur on an as-needed basis to ensure the absolute cover of species listed by the California Invasive Plant Council shall not exceed 5 percent at any point following the onset of restoration. The stand of cypress trees currently on the northern bluff area may remain until senescence but shall be replaced with more appropriate dune vegetation thereafter.
- f. Planting Plan and Native Dune Plants.** The Plans shall include a detailed planting plan emphasizing the use of seeds, plugs, or container plants to be planted prior to seasonal rains, unless another time period or planting method is fully described and justified within the Plans. All vegetation planted in the dune restoration areas shall consist of non-invasive dune vegetation native to the Sand City region of the Monterey Bay dune complex and consist only of local genetic stock, and the Plans shall be submitted with adequate evidence demonstrating that that is case. The plantings shall explicitly provide for a program to enhance federally endangered Monterey spineflower, and the coast and seacliff

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buckwheat populations supporting the federally endangered Smith's blue butterfly. The planting plan should be designed to avoid the use of any irrigation system (including via supplemental hand watering) following the initial period of plant establishment. If an irrigation system is considered necessary to initiate restoration, it shall be limited to temporary above-grade materials and provisions for its removal shall be included in the Plans.

- g. Sensitive Species.** Special provisions shall be applied to explicitly enhance sensitive species habitats to facilitate the survival and success of such species. These include, at a minimum, western snowy plover, black legless lizard, and Smith's blue butterfly habitats, as part of the dune restoration activities. Such provisions shall be consistent with applicable state and federal agency requirements for these species.
- h. Stabilization of Large Dune Feature.** The large dune feature inland of the Sand Dunes Drive extension and at the rear of the site adjacent to Highway 1 (shown in Exhibit 6) shall be stabilized as feasible and restored via revegetation with native dune plants as described in Special Condition 6(f). In addition to other common dune species, the plant palette shall include both coast buckwheat and seaciff buckwheat. Existing exposed metal fence posts shall be removed by hand and/or cut-off well below the sand line if hand removal is not possible. Any wind fencing or netting that is present and unrelated to restoration efforts shall be removed. No grading, other than that minimally necessary to facilitate the stabilization and restoration efforts, shall be allowed. Special provisions shall be put in place to preserve the existing seed bank on-site, salvage plants as feasible, and avoid disturbance to Smith's blue butterfly pupae that may be overwintering on and/or beneath existing buckwheat plants.
- i. Habitat Corridor and Buffer.** No development shall occur within the habitat corridor and buffer located between the primary hotel development and the campground development areas, except for measures necessary to accommodate emergency access and campground portage via golf carts (see Special Condition 4 and Exhibit 6). The habitat corridor and buffer shall be maintained as a Smith's blue butterfly migration corridor between the foredune and large dune feature at the rear of the site, and shall be restored as appropriate, consistent with subsection "h" above and provide for habitat continuity and transition to the foredunes.
- j. 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, and plans to achieve same shall be provided.
- k. Implementation.** A map shall be provided showing the type, size, and location of all plant materials to be used, the temporary irrigation system (if any), topography and finish contours, and all other dune features. If fencing is required to protect restored dune areas and/or specific habitats and/or species, then such fencing shall be limited to low rope and pole symbolic fencing or equivalent, and shall be sited and designed to limit visual impacts as much as possible. Detailed

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guidance on seed collection and preparation, plant propagation, planting methods, and irrigation shall be included, as shall a schedule for all restoration activities.

- l. 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. Whenever necessary, plantings shall be replaced with new plants to ensure continued compliance with the approved Plans.
- m. Best Management Practices.** The Plans shall include a discussion of the specific BMPs that will be implemented to facilitate the success of the restoration such as sand fencing, straw plugs, and jute rolls to keep sand in place as seeds and plants are established; project staging area precautions, limited fencing, etc.; provisions for periodic adjustments; and, ultimate removal of such materials once they are no longer necessary.
- n. Monitoring and Maintenance.** The Plans shall include provisions for a monitoring and maintenance program of the restored habitat areas designed to provide data to judge the success of the restoration and to guide any adaptive management actions for ensuring success. Monitoring and maintenance of the restoration area shall continue for the duration of the approved development and shall at a minimum include:
 - 1. Schedule.** A monitoring and maintenance schedule for five years from completion of initial dune restoration, with conditional inclusion of additional years of monitoring if final success criteria (described below) are not met in the initial five-year timeframe.
 - 2. Monitoring Methods.** The monitoring program shall describe the quantitative monitoring methods that will be used (e.g., transects, quadrats, aerial census, etc.), the number of samples, sampling density, and the timing of monitoring, along with a justification for the chosen timing with respect to seasonal cycles. A power analysis should be performed to inform design of the sampling scheme in order to ensure that there will be adequate statistical power to detect differences between target success criteria and on-the-ground conditions within the restoration area. Permanent photo plots shall also be used for qualitative assessment, where such sites shall be selected to provide full coverage of the dune restoration area and to allow comparisons to be made with the naked eye across different time steps.
 - 3. Reference Sites.** If reference sites are to be used, the criteria used for their identification shall be clearly described, (e.g., soil type, slope, aspect, proximity to restoration site, percent native cover, etc.), and they shall be monitored using the same methods as those employed for the restoration area.
 - 4. Success Criteria.** Interim and final success criteria for non-native species thresholds, species diversity (including richness and evenness), and

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vegetative cover for each vegetation type (as characterized by a specific plant palette and planting plan, and any modifications based on slope and aspect) including native species and key structure-forming species, shall be identified, and shall be sufficient to meet all Plans objectives. Specific criteria for all sensitive species, including wildlife and salvaged specimens, shall also be included. Success criteria may be based on reference sites, appropriate historical data, or relevant peer-reviewed literature, and may be relative or fixed as appropriate. Evaluation of final success criteria shall occur no sooner than five years following completion of restoration or after at least three years with no remediation or maintenance other than weeding, whichever is longer.

5. Data and Statistical Analysis. A description of the data analysis methods to be employed, and the maximum allowable difference between the vegetative cover and species richness characteristics found in the restoration area and each success criterion shall be provided. The statistical tests that will be used to detect differences between success criteria and on-the-ground conditions shall be specified.

6. Adaptive Management. Potential adaptive management procedures that may be considered shall be identified, including provisions to allow for modifications designed to better restore, enhance, manage, and protect dune restoration areas. An addendum may also be submitted after the initial plan is submitted should topography change due to initial debris removal.

o. Reporting and Contingency. Annually for at least the first five years, or as necessary until final success criteria have been achieved, beginning the first year after initiation of implementation of the Dune Restoration Plans, the Permittee shall submit, for the review and written approval of the Executive Director, a restoration monitoring report prepared by the approved Restoration Ecologist. The restoration monitoring reports shall include a presentation of monitoring results placed in the context of any prior years' results, assessment of progress towards meeting interim and final success criteria, and any adaptive management recommendations to be implemented within the following year. Photos from the permanent photo plots shall be included along with a copy of all quality-assured, quality-controlled monitoring data in a digital format suitable for analysis (i.e., CSV or XLS files).

Five years from occupancy and use of the hotel/resort component of the approved development, and every ten years thereafter, the Permittee shall submit, for the review and written approval of the Executive Director, a restoration inspection report prepared by the approved Restoration Ecologist that certifies the restoration is in conformance with the approved Dune Restoration Plans, along with photographic documentation (both color hard copy 8.5-inch by 11-inch and jpg formats) of plant species, plant coverage, and dune morphology.

If the final restoration monitoring report, periodic restoration inspection report, or the approved Restoration Ecologist's inspections indicate the restoration is not in conformance with and/or has failed to meet the success criteria specified in the

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approved Dune Restoration Plans, the Permittee shall submit a revised or supplemental dune restoration plan (pursuant to the same framework as the initial submittal) for the review and written approval of the Executive Director. The revised or supplemental restoration plan shall be prepared by the approved Restoration Ecologist, 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 revised or supplemental dune restoration plan, shall be carried out in coordination with the direction of the Executive Director until the approved restoration has been established to the Executive Director's satisfaction.

- p. Initial Dune Restoration Implemented Prior to Occupancy.** Initial dune restoration activities, including at a minimum non-native and invasive plant removal, any necessary re-contouring, and initial site planting, shall be implemented prior to occupancy and use of the hotel/resort component of the approved development or 48 months from the date of CDP approval (i.e., by August 12, 2030), whichever is sooner (see also Special Condition 9).
- q. Dune Restoration Maintained.** All dune restoration activities pursuant to the approved Plans shall be the Permittee's responsibility for as long as any portion of the approved development exists at this site.
- r. Dune Restoration Area Adaptation.** The dune restoration area extends seaward to the beginning of the sandy beach. Over time, and especially with sea level rise, the sandy beach area is expected to migrate inland, and the Dune Restoration Plan shall make clear that this is not only expected but an important adaptation feature. As the sandy beach migrates inland, restoration areas naturally converted to sandy beach shall not be required to be maintained as vegetated areas subject to the approved Dune Restoration Plans, as determined by the Restoration Ecologist, including during the monitoring and maintenance phase following completion of initial dune restoration.

The approved Dune Restoration Plans shall be attached as an exhibit to the Coastal Resource Conservation Area required by **Special Condition 8** prior to recordation. The Permittee shall undertake development in accordance with the approved Dune Restoration Plans which, together with the Coastal Resource Conservation Area required by **Special Condition 8**, shall govern all dune habitat restoration and conservation pursuant to this CDP.

- 7. Public Access Management Plans.** WITHIN 12 MONTHS OF CDP APPROVAL (i.e., by August 12, 2027), the Permittee shall submit two sets of Public Access Management Plans to the Executive Director for review and written approval. Such Plans 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. This includes the reconfigured public parking area along Tioga Avenue, the new segment of the MBSST/CCT between Sand Dunes Drive

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and Playa Avenue, the blufftop trail system, overlooks, and beach access points, the public restrooms, the outdoor shower, the water fountain/water bottle refill station, the public beach overlooks, etc., and all related areas and public access amenities (e.g., bench seating, bike parking, signs, etc.) as described in Special Condition 1 and this special condition. The Public Access Management Plans shall also describe all parameters associated with providing and managing the campground, including related to all aspects identified in Special Conditions 1 and 10. Such Plans shall be consistent with the approved Final Access/Tioga Plans, 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 in this condition and **Special Condition 1**, shall be clearly identified as such on the Public Access Management Plans (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 and the campground 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, stone, etc.) whenever possible; shall include curvilinear forms (e.g., curving pathway segments, round-edged overlook areas, etc.) whenever possible, and shall utilize the same design theme throughout. The Plans shall at a minimum account for the following public access improvements (all of which shall be shown on the approved Final Access/Tioga Plans (see Special Condition 1)):
 - 1. Public Parking Area.** The public parking lot in the reconfigured portion of Tioga Avenue as described in Special Condition 1.
 - 2. Coastal Trails, Overlooks and Beach Access.** The coastal trails, overlooks, and beach accessways as described in Special Condition 1.
 - 3. Campground.** The individual sites, restrooms, and other amenities as described in Special Conditions 1 and 10, as well as all provisions associated with their use (e.g., campground fees, amenities, check-in/check-out procedures, etc.).
 - 4. Public Restrooms and Showers.** The public restrooms and outside shower facilities as described in Special Condition 1.
 - 5. Public Access Amenities.** Sufficient public access amenities (such as picnic tables, benches, trash/recycling bins, bike racks, water fountains, doggie mitt stations, etc.) to match expected levels of use shall be provided in locations that maximize their public utility and minimize their impact on public views and dunes. If use levels end up being higher after initial such amenities are provided, then additional such amenities shall be provided as directed by the Executive Director.

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- 6. Beach/Ocean.** The beach and offshore area shall be available for general public access, and all activities typically associated with same (e.g., walking, swimming, surfing, sunbathing, picnicking, stargazing, etc.).
- c. Public Access Signs/Materials.** The Plans shall identify all signs and any other project elements that will be used to identify, facilitate, manage, and provide public access associated with the approved project. This shall include 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. 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, directing any allowed sign lighting downward, etc.); (3) to be of a unified design theme; and (4) to be subordinate to the dune setting and resources. 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 each 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. Examples of such impermissible activities include 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 low rope and pole symbolic fencing or similar measures may be used if approved by the Executive Director to protect restoration areas and/or sensitive species. Except with respect to low rope and pole symbolic fencing 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 is prohibited.
- e. Reconstruction/Relocation Required.** In the event that the approved public access improvements and amenities as described above and in Special Condition 1 are threatened to a degree that they are in danger of being damaged or destroyed, or are damaged or destroyed, or (with the exception of the beach accessway) become located within ten feet of the blufftop edge, such amenities shall be relocated/reconstructed with due diligence and speed, and with minimum disruption to continued public use (and reconstructed and relocated inland as necessary to provide long-term stability) (see also Special Condition 12). Prior to such relocation/reconstruction, the Permittee shall submit two copies of a Reconstruction/Relocation Plan to the Executive Director for review and written approval. If the Executive Director determines that an amendment to this CDP or

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a separate CDP is legally required to implement such relocation/reconstruction, then the Permittee shall immediately complete and submit the required application (although it is intended that this CDP authorizes such activities as a general rule unless there are extraordinary circumstances). The Reconstruction/Relocation 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 upon approval of a required new CDP or CDP amendment application, unless such CDP or CDP amendment identifies a different timeframe for implementation).

- f. Public Access Use.** All public access areas and amenities shall be available to the general public 24 hours a day, and all public access areas and amenities shall be provided free of charge. All dogs and any other pets shall be leashed/contained at all times.
- g. Public Access Timing.** All required public access areas and amenities shall be constructed and available for public use prior to occupancy of the resort component of the approved development or 48 months from the date of CDP approval (i.e., by August 12, 2030), whichever is sooner (see also Special Condition 9).
- h. Public Access Areas and Amenities Maintained.** All required public access areas and amenities, and all campground facilities, shall be maintained in good working condition and in their approved state in perpetuity, including if relocated pursuant to Special Condition 12.

The approved Public Access Plans shall be attached as an exhibit to the Coastal Resource Conservation Area required by Special Condition 8 prior to recordation. The Permittee shall undertake development in accordance with the approved Public Access Plans, which together with the Coastal Resource Conservation Area required by Special Condition 8, shall govern all general public access to the site pursuant to this CDP.

- 8. Coastal Resource Conservation Area.** PRIOR TO RESORT OCCUPANCY OR WITHIN 48 MONTHS OF CDP APPROVAL (i.e., by August 12, 2030), whichever comes first, the Permittee shall execute and record a document in a form and content acceptable to the Executive Director, restricting the use and enjoyment of the property, and providing both dune restoration and public recreational access thereto as described in Special Conditions 1, 3, 6, and 7 (deed restriction). The deed restriction shall apply to the Coastal Resource Conservation Area identified below, which Area shall be subject to the objectives, restrictions, and management provisions that follow.
 - a. Coastal Resource Conservation Area.** The Coastal Resource Conservation Area shall include all areas on the project site located: outside of the development envelope within the Sterling, McDonald, and Granite parcels identified in Special Condition 3; within the public access areas within the development envelope (as described in Special Conditions 1 and 7); in the area

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roughly seaward of the Tioga Avenue street end reconfiguration (as described in Special Condition 1); in the area described as the habitat corridor and buffer, and in the area roughly between the project site and the paved area of Highway 1 (see Coastal Resource Conservation Area in Exhibit 5). If development is removed and/or relocated in response to coastal hazards (see Special Condition 12), including to allow for related facilities and amenities to move inland (see Special Conditions 7 and 12), the affected area shall be restored in compliance with the dune restoration parameters of the approved Dune Restoration Plans (see Special Condition 6) and the underlying area shall be subject to all Conservation Area parameters.

- b. Conservation Area Objectives.** The objectives for the Coastal Resource Conservation Area are to ensure the conservation and protection of dune habitat (in conformance with the approved Dune Restoration Plans required by Special Condition 6), and to maximize public access and recreational opportunities (in conformance with the Public Access Management Plan required by Special Condition 7) within the Area in perpetuity.
- c. Conservation Area Restrictions.** No development, as defined in Public Resources Code Section 30106, shall occur within the Coastal Resource Conservation Area except for (1) dune restoration, monitoring, maintenance, and all such related activities in accordance with the approved Dune Restoration Plans (Special Condition 6); (2) public access development, monitoring, maintenance, and all such related activities in accordance with the approved Final Access/Tioga Plans (see Special Condition 1) and the approved Public Access Management Plans (Special Condition 7); and (3) within the portion of the Coastal Resource Conservation Area located on the Granite parcel owned by the City of Sand City (APN 011-501-016), low-intensity public access and recreation (e.g., pedestrian and bicycle access improvements, viewing areas and overlooks, benches, limited fencing and barriers necessary for public safety or resource protection, interpretive and wayfinding signage, limited special events, etc.), and habitat restoration and the planting of locally native vegetation are allowable. Limited and incidental construction of the condo-hotel, campground, public access amenities, and related development may encroach into such deed restricted area so long as doing so is the least environmentally damaging feasible alternative, is the minimum necessary, and is restored back to its pre-construction state as soon as possible, all subject to review and approval by the Executive Director.
- d. Conservation Area Management.** The Permittee shall be responsible for ensuring the Coastal Resource Conservation Area is appropriately managed in perpetuity to ensure compliance with the terms and conditions of this CDP, including related to ongoing obligations related to sand and natural resource management, dune restoration (see also Special Condition 6), and public access (see also Special Conditions 1 and 7). The Permittee may make arrangements for a third party to perform some or all of such activities, subject to Executive Director approval of any contracts, agreements, or similar such instruments with

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such third party (which may also include monitoring reports documenting the effectiveness of third party management and any necessary changes to better protect coastal resources and comply with this CDP's objectives). Even with a third party arrangement of this type, it continues to be the Permittee's responsibility to ensure compliance with the terms and conditions of this CDP.

The deed restriction: (1) shall include a legal description and corresponding graphic depiction of the legal parcels subject to this CDP and a metes and bounds legal description and a corresponding graphic depiction, drawn to scale, of the designated Coastal Resource Conservation Area prepared by a licensed surveyor based on an on-site inspection of such Area; (2) shall be recorded free of prior liens and any other encumbrances that the Executive Director determines may affect the interest being conveyed; and (3) shall run with the land in favor of the People of the State of California, binding all successors and assigns of the Permittee in perpetuity.

9. Phasing/Deadlines.

a. Phasing. The approved project may be constructed in phases. If the Permittee chooses to do so, then the Permittee shall provide a Project Phasing Plan for Executive Director review and written approval that identifies the elements to be included in such phasing, and that identifies how such phases will be consistent with all applicable CDP terms and conditions. However, at a minimum, any first phase shall include the cessation of all industrial/materials storage and related operations on the Sterling property, including removal of any industrial/materials storage elements; removal of all debris on the Sterling, McDonald, Granite, and Eolian Dunes Preserve properties, the Tioga Avenue street end, and the shoreline area between Tioga Avenue and the paved extent of Mar Vista Drive (see Exhibit 5, and see also Special Condition 2 for details); and removal of the Tioga Avenue street end.

b. Deadlines.

- 1. Sterling.** All industrial/materials storage and related operations on the Sterling property shall cease and all industrial/materials storage elements shall be removed no later than 6 months from CDP approval (i.e., by February 12, 2027). Any subsequent use of this area after February 12, 2027 shall be limited solely to approved project components, including dune restoration/protection and public access components.
- 2. Debris Removal.** All debris on the Sterling, Granite, and Eolian Dunes Preserve properties, the Tioga Avenue street end, and the shoreline area between Tioga Avenue and the paved extent of Mar Vista Drive (see Exhibit 5, and see also Special Condition 2 for details) shall be removed no later than 30 months from CDP approval (i.e., by February 12, 2029). All debris on the McDonald property shall be removed no later than 42 months from CDP approval (i.e., by February 12, 2030).

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- 3. Dune Restoration/Public Access.** All public access components (see Special Conditions 1 and 7) shall be constructed, operational, and available for public use, and all initial dune restoration activities shall be undertaken (see Special Condition 6), prior to occupancy of the resort or 48 months from the date of CDP approval (i.e., by August 12, 2030), whichever is sooner.
 - 4.** The Executive Director may extend these deadlines if they determine that the Permittee has been diligently pursuing such plans and requirements, and that the Permittee has demonstrated good cause for any identified delays.
 - 5.** If the resort has not commenced construction within 36 months, the Permittee shall restore the entirety of the Sterling site and the remaining portion of the McDonald site, including within the identified development envelope, and, with the exception of the campground, shall construct and maintain all public access components.
- 10. 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 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.
- 11. 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 (i.e., the Sterling, McDonald, Granite, and Eolian Dunes Preserve properties; the Tioga Avenue street end; and the shoreline area between Tioga Avenue and the paved extent of Mar Vista Drive (see Exhibit 5)) 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, sea level rise, 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 Coastal Commission, the City of Sand City, the Successor Agency of the Sand City Redevelopment Agency, and their officers, agents, and employees for injury or damage from such coastal hazards.
 - d. Indemnification.** To indemnify and hold harmless the Coastal Commission, the City of Sand City, the Successor Agency of the Sand City Redevelopment Agency, and their 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

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claims), expenses, and amounts paid in settlement arising from any injury or damage due to such coastal hazards.

- e. Property Owners Responsible.** That any adverse effects to property caused by the permitted development shall be fully the responsibility of the Permittee.

12. 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 (including the resort, restaurant, campground, spa, public access amenities, and the Tioga Avenue parking area) to be constructed and used consistent with the terms and conditions of this CDP for only as long as these approved development components remain 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 consistent with the Removal and Restoration Plan required in subsection (g) of this special condition.
- b. Shoreline Protective Structures Prohibited.** Shoreline protective devices (including but not limited to seawalls, revetments, groins, caissons/deep piers, etc.) shall be prohibited for the life of the development. Any rights to construct such shoreline protective devices, including rights that may exist under Public Resources Code Section 30235, LCP Sections 4.3.1 and 4.3.5, and any other applicable laws or provisions, are waived.
- c. Public Access Amenities.** In the event that the approved public access amenities (including but not limited to the trails, beach overlooks, beach accessways, and the reconfigured Tioga Avenue parking area) are threatened with damage or destruction from coastal hazards, become a hazard, are damaged or destroyed by coastal hazards, or (with the exception of the beach accessway) become located within ten feet of the blufftop edge, such amenities shall be relocated/reconstructed. Such relocation/reconstruction shall occur with due diligence and speed, and with minimum disruption to continued public use (and relocated inland as necessary to provide long term stability) in conformance with **Special Condition 7(e)**;
- d. Blufftop Edge Monitoring and Reporting.** A blufftop edge monitoring report shall be submitted to the Executive Director for review and approval every five years, starting on the first anniversary of occupancy of the resort. Additional reports shall be submitted within one month of any event that results in the blufftop edge eroding inland 10 feet or more. The report shall document the distance between the development, the blufftop edge, and mean high tide line. It shall include a site plan that identifies same extending from the downcoast to upcoast property lines. The report shall also include: (1) identification and

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documentation of coastal hazards in the area over the time since the last report, including any significant storm and erosion events; and (2) any additional information relevant to helping understand any changes in the distance between the blufftop edge and the approved development.

- e. 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. The submitted and approved RRP shall also be implemented subject to all of the following:
- 1. Government Agency.** If a government agency with jurisdiction (such as the California Coastal Commission, City of San Diego, FEMA, etc.) 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, then the RRP shall provide that all development meeting such criteria is immediately removed, as necessary, to allow for such government agency to allow occupancy and use to all of the remainder of the development, after implementation of the approved RRP. For purposes of this special condition, "ordinary repair and/or maintenance" shall include sealing and waterproofing and repair and/or maintenance that does not involve significant alteration to major structural components, including exterior walls, floor and roof structures, and foundation, and also including roads, accessways, and utilities.
 - 2. Setback.** If the blufftop edge erodes (including as identified through the blufftop edge monitoring reports required pursuant to subsection (e) above) to within 50 feet of any portion of the approved development (including but not limited to buildings, utility infrastructure, subsurface elements, etc.) other than 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 approved public access and dune restoration development) remains after implementation of the approved RRP.
 - 3. Daylighting.** If any portion of the approved foundation and/or subsurface elements become visible, then the RRP shall provide that all development supported by these foundation and/or subsurface elements (as well as the foundation/subsurface elements themselves) shall be immediately removed as necessary to ensure that no foundation/subsurface development is visible after implementation of the approved RRP.
 - 4. Major Structural Components.** If any portion of the project's major structural components (including exterior walls, floor and roof structures, and foundation) are subject to threat and/or damage due to coastal hazards requiring significant alteration (including renovation and/or replacement) to abate those coastal hazards, beyond ordinary repair and maintenance (as

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further described in subsection (e)(1) above), then the RRP shall provide that such structural components be removed. For purposes of this special condition, “exterior wall major structural components” shall include exterior cladding and/or framing, beams, shear walls, and studs; “floor and roof structure major structural components” shall include trusses, joists, and rafters; and “foundation major structural components” shall include any portion of the foundation.

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 project 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 Plan (see **Special Condition 6** above), and all such restored dune areas are incorporated into the Coastal Resource Conservation Area (see **Special Condition 8** above); and (c) 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 of that determination 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 conformance with this condition and any approved RRP.

13. 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. Condominium Hotel Overnight Units.** The approved development includes a condominium hotel with 100 visitor-serving overnight units (otherwise referred to in these conditions as the “resort”).
- b. Condominium Hotel Plans.** PRIOR TO RESORT CONSTRUCTION, 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

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individual units); an operator responsible for managing the condominium-hotel visitor-serving units (operator), including the booking of reservations for all units; any 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 the 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 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. Condominium Hotel Unit Owner Occupancy Limitations.** Each owner of a condominium-hotel 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 and/or exceeding 14 total days between the Saturday of Memorial Day weekend through the Monday of Labor Day weekend inclusive. 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. Condominium Hotel Unit Rentals.** The operator shall manage the booking and the reservation of all condominium-hotel units. The operator shall have the right and obligation to offer any unit for general public use during all time periods not reserved by unit owners for his/her/their 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 owners a reasonable fee.
- e. Booking of Unoccupied Units.** The operator shall have the right, working with the unit owners, to book any unoccupied room to fulfill general public demand. The owners may not withhold a unit from use unless it has been reserved for use by the owner, consistent with the length of occupancy limitations identified in subsection (c) of this special condition 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.
- f. Condominium Hotel Unit Marketing.** The operator shall market all condominium-hotel units to the general public in the same manner as traditional hotel rooms, with no outward appearance that the units are other than traditional hotel rooms. Unit owners shall not discourage rental of their units nor create disincentives meant to discourage rental of their units.

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- g. Condominium Hotel Unit Management.** The operator shall manage all aspects of the condominium-hotel component of the project, including all condominium-hotel 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 no more than a rate similar to that charged for traditional hotel rooms of a similar class and/or amenity level in the southern Monterey Bay area.
- h. Marketing and Sale of Condominium Hotel Interests.** All documents related to the marketing and sale of condominium or other like interests in condominium-hotel 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 Permittee, the property owner 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 owners and their guests is restricted to a maximum of 84 days per calendar year, a maximum of 29 consecutive days in a calendar year, and a maximum of 14 total days in the summer between the Saturday of Memorial Day and Monday of Labor Day inclusive). 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.
 3. **Operator.** The operator, or designee, shall manage the booking and the reservation of all condominium-hotel 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, subject to the limitations herein. 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.
 4. **Coastal Hazards.** The approved development, including all condominium-hotel components (including individual units), is only allowed to remain and operate for only as long as the approved development 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 such development from coastal hazards. Shoreline armoring is prohibited, and the approved development is required to be relocated/removed if endangered by coastal hazards by the terms and conditions of the underlying California Coastal Commission coastal development permit (CDP A-3-SNC-14-0001), available for review at the Commission's Central Coast District Office.

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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 the buyer understands, acknowledges, and accepts each of the above restrictions.

- i. **Conversion Prohibited.** The conversion of the approved condominium-hotel 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.
- j. **Occupancy and Use Monitoring and Recording.** The operator shall monitor and record occupancy and use by the general public and the owners of individual condominium-hotel units throughout each year. Such monitoring and record keeping shall include a 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 below. Within 30 days of commencing operations, the operator shall submit notice to the Executive Director of commencement of operations. Every third annual compliance report shall include an audit performed by an independent auditing company evaluating compliance with this condition.
- k. **Compliance Required.** The Permittee 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 said property owner(s) and the operator shall be jointly and severally responsible for ensuring compliance with the requirements described in this special condition and/or recorded against the property, as well as jointly and severally liable for violations of said requirements. Each owner of an individual condominium-hotel 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 and other enforcement actions pursuant to Chapter 9 of the Coastal Act (Public Resources Code Sections 30800 et seq.).
- l. **CC&R Declaration of Restrictions.** PRIOR TO OCCUPANCY OF THE CONDOMINIUM HOTEL COMPONENT 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 declaration of covenants, conditions, and restrictions (CC&R) form (CC&R Declaration of Restrictions for the condominium-hotel 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

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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 reproduced 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 CC&Rs. The approved CC&R Declaration of Restrictions for the Condominium-Hotel 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 CONDOMINIUM HOTEL COMPONENT OF 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 written approval. 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.

The Permittee shall undertake development in conformance with this condition and the approved Condominium Hotel Plans.

- 14. Campground.** By acceptance of the CDP, the Permittee acknowledges and agrees, on behalf of itself and all successors and assigns, that:

- a. Campground.** The approved development includes a visitor-serving overnight campground consisting of 25 tent cabin sites on wooden platforms with at least rudimentary amenities. All campground sites shall be available via reservation system with the exception that three sites shall remain on a first-come first-served basis for hike- or bike-in arrivals. Campground portage shall be provided via golf carts or similar equipment to be made available by the resort operator.
- b. Campground Fees.** The campground fees shall be in accordance with the proposed fees (i.e., a maximum of \$150 per night for tent cabins, where such fees shall be inclusive of all service and other fees (e.g., parking, resort, administrative) but exclusive of any government-mandated fees (e.g., sales tax, transient occupancy taxes)), with allowable yearly increases at no more than the Consumer Price Index.
- c. Campground Length of Stay Provisions.** All campground sites shall be open and available to the general public year-round. Sites shall be restricted to a maximum stay of 29 days by any one user/group in a calendar year, and a maximum stay of 14 days by any one user/group between the Saturday of Memorial Day and Monday of Labor Day inclusive. The amount of time between

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site check-out and check-in for different site occupants shall be no more than 5 hours, and shall roughly track the 11am to 4pm time period.

- d. Timing.** The campground shall be open and available for public use prior to occupancy of the Condominium-Hotel units.
- e. Conversion.** The conversion of any of the camping sites to any other accommodation type or use shall be prohibited.
- f. Reporting.** The Permittee shall provide an annual report (with the first report due by December 31st of the first year of project occupancy, and subsequent reports due by December 31st of subsequent years) to the Executive Director for review and written approval that provides clear evidence of the compliance with all requirements of this condition, including sufficient detail to demonstrate the occupancy of the campground, the rates charged, implementation challenges and successes, all feedback and public comments received (and any responses to same), and recommendations for additional and/or modified measures to enhance awareness, use, and public utility of the campground, including that the Permittee shall actively promote and publicize the availability of the lower cost campground, in English and Spanish, including specifically to underserved communities such as lower-income communities, communities of color, and other communities that have been historically marginalized and face greater barriers to coastal access in nearby and in-land counties. Every third such annual report shall also include an audit performed by an independent auditing company evaluating compliance with this condition.

15. Archaeological and/or Tribal Cultural Resources. The Permittee shall undertake the approved project in compliance with the following measures to protect archaeological and/or tribal cultural resources to the maximum extent feasible.

- a. Notification.** At least one month prior to commencement of any ground-disturbing construction activities, the Permittee shall (1) notify the representatives of Native American Tribes listed on an updated Native American Heritage Commission (NAHC) contact list, including but not necessarily limited to the Ohlone/Costanoan-Esselen Nation (OCEN); (2) invite all Tribal representatives on that list to be present and to monitor ground-disturbing activities, where more formal monitoring shall include Tribal compensation at an appropriate rate; and (3) arrange for any invited Tribal representative that requests to monitor and/or a qualified archaeological monitor, again with compensation, to be present to observe project activities with the potential to impact archaeological and/or tribal cultural resources.
- b. Monitoring.** A qualified, locally experienced archaeologist and a Tribal monitor, approved by relevant tribe(s), shall be on site to monitor all activities with the potential to impact archaeological and/or tribal cultural resources, including all ground disturbing activities, again with compensation. The monitor(s) shall have experience monitoring for archaeological resources of the local area during excavation projects, be competent to identify significant resource types, and be

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aware of recommended Tribal procedures for the inadvertent discovery of Tribal cultural and/or archaeological resources and/or human remains.

- c. **Discovery Protocol.** If any Tribal cultural deposits are discovered during the course of the project, all construction within 200 feet of such deposits shall cease and shall not re-commence until a qualified cultural resource specialist (which could be a person identified in subpart (a) and/or (b), above), in consultation with the relevant Tribe(s), analyzes the significance of the find and, if deemed significant, prepares a supplementary archaeological plan for the review and approval of the Executive Director that evaluates and provides suggested measures related to the discovery. The Executive Director shall review the plan and either: (1) approve it and determine that its recommended changes to the project or mitigation measures do not necessitate an amendment to this CDP, or (2) determine that the changes proposed therein necessitate a CDP amendment. The location of any and all identified archaeological and Tribal cultural resources shall be kept confidential, and only those with a “need to know” shall be informed of their locations.
- d. **Human Remains.** Should human remains be discovered on-site during the course of the project, immediately after such discovery, the on-site archaeologist and/or Tribal monitor shall notify the Monterey County Coroner within 24 hours of such discovery, and all construction activities shall be temporarily halted until the remains can be identified. If the County Coroner determines that the human remains are those of a Native American, the Coroner shall contact the NAHC within 24 hours, pursuant to Health and Safety Code Section 7050.5. The NAHC shall deem the Native American most likely descendant (MLD) to be invited to participate in the identification process pursuant to Public Resources Code Section 5097.98. The Permittee shall comply with the requirements of Section 5097.98 and work with the MLD person(s) to discuss and confer with the descendants all reasonable options regarding the descendants' preference for treatment. Within 5 calendar days of notification to NAHC, the Permittee shall notify the Coastal Commission's Executive Director of the discovery of human remains. The Executive Director shall maintain confidentiality regarding the presence of human remains on the project site.

16. Plastic Reduction Program. PRIOR TO RESORT OCCUPANCY, the Permittee shall submit two copies of a Plastics Reduction Program to the Executive Director for review and written approval. The Program shall minimize, to the maximum extent possible, the use of single-use plastics in all aspects of hotel operations, including as part of hotel room occupancy, conferences, restaurant/bar operations, etc. At a minimum, the Program shall identify/include the following provisions: educational signage for staff and guests promoting and encouraging reusable items instead of single-use plastics; maximizing use of reusable food ware for all dining purposes (for dinnerware, drinkware, silverware, and ramekins/containers), and prohibiting the following items: plastic straws (and allowing only reusable straws, paper straws, or straws made from naturally occurring materials, and only upon request), Styrofoam, plastic bags, plastic bottles, and plastic single-use shampoo/conditioner/lotion

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bottles in hotel rooms. The Program shall also provide water bottle refill stations (at a minimum in the lobby, conference area, pool area, and any other high-use areas). To the maximum extent possible, only biodegradable or compostable materials for single-use products shall be employed.

17. TAMC Requirements. PRIOR TO RESORT CONSTRUCTION, the Permittee shall submit to the Executive Director evidence that all fair share contributions to the Transportation Agency for Monterey County's (TAMC) Regional Development Impact Fee program have been met and/or achieved.

18. Transportation Demand Management Program. PRIOR TO RESORT OCCUPANCY, the Permittee shall submit to the Executive Director for review and written approval a Transportation Demand Management Program (TDMP). The TDMP shall include, but not be limited to, the following: (a) a commitment to work with the Monterey-Salinas Transit District to encourage increased bus usage by visitors, residents, and employees (e.g., enrollment in group passes or display of MST informational pamphlets, etc.); (b) participation in shuttle systems to the Monterey Airport and Monterey Transit Plaza, Monterey Fisherman's Wharf, Cannery Row, and other area attractions; (c) adequate bicycle storage for visitors, residents, and employees; (d) adequate on-site shower facilities and lockers available to all employees; (e) creation and implementation of a carpool and/or vanpool plan for employees, with notices of the carpool/vanpool program posted in employee work areas; and (f) information regarding the aforementioned components of the TDMP shall be provided to all employees (and visitors as applicable) and included in any employment paperwork for new employees. The Permittee shall undertake the development in accordance with this special condition and the approved TDMP.

19. Water and Sewer Service. PRIOR TO RESORT CONSTRUCTION, the Permittee shall provide evidence that the approved development can and will be served by adequate and sustainable water and sewer services from the applicable water and sewer service providers. The approved development shall receive water service from an individual line connection from an existing distribution pipeline inland of Highway 1, and sewer service from Monterey One Water and Seaside County Sanitation District. Such water and sewer lines and services shall only be used to serve the development approved by this CDP, and any other use and/or connections to such lines to it are prohibited.

20. Landowner Authorization. PRIOR TO ANY ACTIVITIES ON PROPERTIES OUTSIDE OF THE OWNERSHIP AND/OR CONTROL OF THE PERMITTEE, the Permittee shall submit to the Executive Director for review and written approval evidence of landowner authorization to undertake development on any properties not owned by the Permittee and subject to this CDP's terms and conditions, where landowner authorization shall only be deemed to have been granted if the landowner's consent applies to all such development on their property consistent with the terms and conditions of this CDP.

- 21. Other Authorizations.** PRIOR TO COMMENCEMENT OF ACTIVITIES THAT REQUIRE AUTHORIZATION FROM OTHER ENTITIES, the Permittee shall provide to the Executive Director evidence of other required authorizations for, or alternatively evidence that no such authorizations are needed, for the development authorized by this CDP from all relevant entities (e.g., U.S. Fish and Wildlife Service, Monterey Bay National Marine Sanctuary, California Department of Fish and Wildlife, City of Sand City, etc.). The Permittee shall inform the Executive Director of any changes to the project required by such entities, where such changes shall not be incorporated into the project until the Permittee obtains a Commission-approved amendment to this CDP, unless the Executive Director determines that an amendment is not legally required.
- 22. City of Sand City Conditions.** This CDP has no effect on conditions imposed by the City of Sand City pursuant to an authority other than the Coastal Act, except as provided in this condition. The Permittee is responsible for compliance with all terms and conditions of this CDP in addition to any other requirements imposed by the City pursuant to the City's non-Coastal Act authority. In the event of conflicts between terms and conditions imposed by the City and those of this CDP, the terms and conditions of this CDP shall prevail.
- 23. Minor Changes.** The Permittee shall undertake development in conformance with the terms and conditions of this CDP, including with respect to all Executive Director-approved plans and other materials, which shall also be enforceable components of this CDP. Any proposed project changes shall require a CDP amendment or, if the Executive Director determines that no amendment is legally required for such project changes, such changes may be allowed by the Executive Director if such adjustments: (1) are deemed reasonable and necessary; and (2) do not adversely impact coastal resources.
- 24. Liability for Costs and Attorneys' Fees.** The Permittee shall reimburse the Coastal Commission in full for all Coastal Commission costs and attorneys' fees (including but not limited to such costs/fees that are: (1) charged by the Office of the Attorney General; and/or (2) required by a court) 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, as amended, the interpretation and/or enforcement of CDP conditions, or any other matter related to this CDP, as amended. The Permittee shall reimburse the Coastal Commission within 60 days of being informed by the Executive Director of the amount of such costs/fees. The Coastal Commission retains complete authority to conduct and direct the defense of any such action against the Coastal Commission. By acceptance of this CDP, as amended, and its terms and conditions, the Permittee irrevocably agrees to this obligation, which shall be continuing in nature and remain in full force and effect regardless of whether this CDP approval, as amended, is invalidated as the result of the litigation contemplated by this condition or otherwise changed in any way.

25. Deed Restriction. PRIOR TO RESORT OCCUPANCY, the Permittee shall submit to the Executive Director for review and approval documentation demonstrating that the Permittee has executed and recorded against the properties governed by this CDP (APNs 011-012-001, 011-012-002, 011-012-005, and 011-501-016, and all other areas identified in these special conditions (e.g., Tioga Avenue street end, south of Tioga properties, etc.)) 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.

4. CDP DETERMINATION

A. Proposed Project

Project Location

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

The 26.5-acre project site consists of the seaward portion of Tioga Avenue and four parcels that extend along approximately 1,600 linear feet of the Sand City shoreline in the dunes between Highway 1 and the Monterey Bay, and between Monterey Peninsula Regional Park District's Eolian Dune Preserve (upcoast) and Tioga Avenue (downcoast). About 8 acres of the downcoast portion of the site is currently being used as a construction and materials storage yard/staging area.¹ This portion of the site is located immediately adjacent to Tioga Avenue, is owned by the Applicant, and is known as the Sterling site (APN 011-012-005). Tioga Avenue itself is a paved City road that dead-ends at the shoreline. The remainder of the overall project site, nearly 19 acres, is made up of undeveloped dunes and remnant concrete tailings that flank the back beach, which are known and referred to as the McDonald and Granite sites (APNs 011-012-001 and 011-012-002, and APN 011-501-016, respectively). These sites are 16.25 and 2.31 acres, respectively, and are owned by the City of Sand City, lands which were

¹ Subject to ongoing enforcement investigation as to whether it enjoys proper CDP status. See also Violation finding that follows.

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formerly owned by the City's Redevelopment Agency.² In addition, and as explained more subsequently, proposed habitat restoration activities also extend up and downcoast from this main project area, including into the Eolian Dunes Preserve property to the north and along the shoreline to the south of Tioga Avenue.

The project site is located seaward of Highway 1, roughly between the Fremont Boulevard interchange to the north and the Tioga Avenue overpass to the south. Tioga Avenue extends westward over the highway to the sand dune area and into the project site. The Tioga Avenue overpass connects the inland portion of the City to the largely undeveloped western dune area. Public parking exists along Tioga Avenue, and an informal blufftop trail provides access to the beach below. North of Tioga Avenue, Playa Avenue terminates on the inland side of Highway 1 where it becomes a public recreational trail that extends under Highway 1 to connect with the Monterey Bay Sanctuary Scenic Trail (MBSST, or Scenic Trail as used in this report). The Scenic Trail extends north through the dunes to Fort Ord Dunes State Park and beyond, and extends south through the Monterey peninsula (via an inland detour at the project site). The project site thus represents a 'gap' in that trail system.

Much of the project site had historically been used for sand mining, although such activities ceased some three decades ago, and there are still remnant materials (e.g., the shell of hardened slurry and some rubble) along the shore as evidence of these long ago activities. As indicated, the 7.9-acre Sterling portion of the site immediately north of Tioga Avenue continues to be used for materials recovery and related operations, and is highly degraded as a result. The 18.56-acre McDonald and Granite portions of the site have also been disturbed by previous sand mining activities, including with a large hardened slurry berm that lines the shoreline.³ But behind this berm, the area now shows evidence of dune regeneration and stabilization, including via wind-driven dune re-establishment and re-colonization of a variety of native and non-native plant species.

In sum, the site is a large, highly visible, dune and beachfront location, with portions of it largely disturbed with an active industrial operation and Tioga Avenue proper, and the remaining part of it dune habitat. See **Exhibit 1** for project location maps and **Exhibit 2** for site photos.

Project Description

The Applicant proposes a variety of development across the site, including the visitor-serving resort, a series of public access amenities, and dune/beach restoration spread across the site. First, the Applicant proposes a 100-unit condominium-hotel⁴ spread across multiple two to four story buildings with a lobby, restaurant, pool, spa, and meeting room. The resort complex would extend upcoast some 700 feet from Tioga Avenue and near Highway 1. Just upcoast of the resort, the Applicant proposes to

² The Applicant here is pursuing this CDP application with full knowledge and consent of the City. The City is not, however, a co-applicant for this proposed project.

³ Parts of which also do not appear to enjoy any CDP status, as explained in the Violation finding.

⁴ Condominium-hotels are privately-owned hotel units that are available for transient use by the visiting public almost all of the year. See more discussion on this topic subsequently in this report.

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construct a 25-unit tent cabin campground with restrooms, showers, and a communal gathering space with firepits. All proposed development (but for certain public coastal access facilities described below) would be located within a development envelope of roughly 4.77 acres, where 2.24 of those acres would be retained as dune habitat, meaning the total development footprint (inclusive of the hotel/campground facilities, paving/parking, and other structural development) would be about 2.53 acres, all set back from the mean high tide line by at least 400 feet, which corresponds to roughly 50 years of anticipated coastal erosion.

Outside of the development envelope and comprising roughly 22 acres, or 78% of the project site's total acreage, the Applicant proposes a dune and beach restoration program, including removal of the remnant concrete tailings and debris that flank the beach area and the removal of non-native plant species and the planting of appropriate dune plant species. The Applicant also proposes to remove remnant pavement in the dunes downcoast of Tioga Avenue along an abandoned section of Mar Vista Drive, as well as upcoast into the adjacent Eolian Dunes preserve. A series of public coastal access improvements would be located within the restored dune/beach area, including an extension of the Scenic Trail (which serves as the California Coastal Trail at this location) across the site connecting the gap between Playa Avenue and Tioga Avenue, a public pathway system with two formalized public beach access points (one at the end of Tioga Avenue, which will include a public overlook and beach access, and the other upcoast from the hotel/campground facility with a beach/ocean overlook and path to the beach). Other proposed public access amenities include public restrooms, a shower/rinse station, benches/picnic tables, and dedicated public parking along Tioga Avenue.

With respect to Tioga Avenue, the terminus of Tioga Avenue is proposed to be relocated inland away from the shoreline by about 200 feet,⁵ with the remainder reconfigured to essentially function as a 27-space public parking area, with the former terminus of Tioga Avenue restored to dune/beach, along with a public pathway down to the beach. Vehicular access into the resort would be from Tioga Avenue via an extension of Sand Dunes Drive north to a new terminus near the end of the resort development. Past that point, an emergency access road would extend to the proposed campground location, and then inland along Playa Avenue beneath the Highway 1 overpass. The project further includes ancillary improvements such as extending an eight-inch potable water line from Tioga Avenue, installation of an on-site wastewater pump station, grading, and related development.

See **Exhibit 2** for site area photos, and **Exhibit 3** for project plans and the Applicant's photo simulations of the proposed project.

Project History

Proposed development of this site has a long history with the Commission, beginning with the Commission's denial of a CDP for a 229-unit City-approved project on the site

⁵ This aspect of the proposed project on its own is one of the largest managed retreat projects that the Commission has seen to date, and has independent value of its own in that regard.

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in 1986, a decision that was upheld by the Monterey County Superior Court in 1987.⁶ The City subsequently approved a smaller 136-unit project in 1989, which was also appealed to the Commission. However, the City's approval was nullified before the Commission acted on the appeal, due to a lawsuit challenging the City approval's compliance with the California Environmental Quality Act (CEQA). After complying with the Court Order, the City approved a similar project in November 1990, which again was appealed to the Commission. After the Commission approved the project in April 1991, the Superior Court issued a ruling finding deficiencies with the environmental documents and noticing. The City responded to this ruling with an updated environmental document in July 1993, and then re-approved the project. Subsequently, in June of 1994, the Commission heard the appeal of what was known then as the Sterling Center hotel resort project approved by the City in 1993.⁷ The Commission approved the project with special conditions that required, among other things, an increase in setback distances; reductions in the height of the proposed structures and in the length of the proposed roadway extension; grading and dune stabilization and restoration plans; and a sand replenishment program.⁸ The Commission's conditions of approval also required the then applicant to eliminate a City-approved desalination plant from the final project plans, and to provide evidence that an alternative water source was available to serve the project. The CDP for the project was never issued, and the then applicant ultimately requested an extension of the CDP's expiration date. In September 1999, the Commission found that there were changed circumstances and voted to deny the extension of the CDP's expiration date. The changed circumstances were the federal listing of the Western snowy plover as a threatened species, reductions in the availability of water, and increased growth in the project vicinity with corresponding impacts on roadway capacity, among other reasons. The then applicant did not pursue a new hearing on the CDP, and ultimately CDP A-3-SNC-94-008 is null and void.

In 2013, the City of Sand City approved a CDP (for the current Applicant) for construction of a 340-unit resort and related facilities, with roughly one-third of the units vacation club units (105 units), and the remainder standard operating hotel units (235 units). The project also included a conference center, spa, restaurant, and on- and off-site road, parking, and public access improvements. The project would be developed in a series of three to five story building clusters atop an underground garage and a deep caisson foundation, and would result in some 572,127 square feet of facilities covering some 11.5 acres of the site, and covering over 60% of the undeveloped dune portion of the site (and essentially all dune areas inland of the 15-foot elevation).

The CDP approval for this project too was appealed to the Commission, with the Commission finding substantial issue and taking jurisdiction over the CDP application

⁶ See *Sand City vs. California Coastal Commission*, Case No. M 16952.

⁷ A-3-SNC-94-008 was essentially the same project reviewed by the Commission in 1991, and included a 136-unit resort with a 135-seat restaurant and bar; an on-site desalination and water treatment facility; 4,000 square feet of conference and retail space; a 234-space subterranean garage; an extension of Sand Dunes Drive; public access improvements; and dune restoration.

⁸ CDP A-3-SNC-94-008.

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for the project on December 12, 2014. In April 2015, on de novo review, staff had recommended denial of the proposed project based on numerous LCP conformance issues, including with respect to coastal hazards, public views, dune protection, and public coastal access. The de novo hearing was postponed, however, at the request of the Applicant in order to provide an opportunity to address Commission concerns regarding LCP conformance through a revised project. Although staff began work with the Applicant at that time on a project that would meet LCP criteria at this critical coastal site, those discussions ultimately tailed off, but were picked up in earnest earlier this year, resulting in the current proposal, which thus represents the culmination of nearly 50 years of planning and permitting activity at this site.

B. Standard of Review

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 (in this case, Highway 1) and the sea, the public access and recreation policies of the Coastal Act.

C. Coastal Hazards

Applicable LCP Provisions

Located on coastal dunes adjacent to the beach, the project is subject to the LCP's policies addressing the risk and hazards associated with developing along the ocean/land interface. The LCP requires that new development address coastal hazards, including that it be sited and designed to minimize risk from geologic and flood hazards and that it be set back sufficiently to be protected for at least 50 years without armoring. Applicable LCP 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

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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 runoff;*
- 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*

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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). ...*

Thus, in short, the LCP requires new development to be safe from coastal hazards, including by being sited and designed in a manner so as to not require shoreline armoring for at least 50 years without armoring. The LCP requires geologic reports and conditions of approval to ensure same, including over time.

Analysis

Due to its beachfront location, particularly along the southern Monterey Bay shoreline where high erosion rates are well documented,⁹ the project raises a series of issues with respect to LCP coastal hazards avoidance requirements, including over time as

⁹ Although there has been evidence of accretion in recent years in this area, which may be (and was expected to be) a result of the cessation of sand mining at the upcoast Cemex sand mining complex in the City of Marina. Sand mining ceased operation in 2020 as a result of a Commission Consent Cease and Desist and Restoration Order (CCC-17-CD-02) from 2017.

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erosion and wave action may increase due to sea level rise. In addition, such concerns affect not only the primary visitor-serving complex, but also ancillary proposed development such as public beach access trails and amenities, as well as access routes at Tioga Avenue, which currently extends nearly to the ocean and is protected by unpermitted rubble that is adversely affecting coastal resources at that location. In addition, these issues are further complicated by the fact that much of the project site is flanked by unpermitted concrete tailings, which essentially serve as shoreline armoring preventing erosion and other natural shoreline processes. In order to establish a baseline for the setback, the Commission notes that first, the tailings and rubble and related materials are unpermitted, and because they are unpermitted new development cannot rely on their protection. Second, the Applicant is also proposing to remove those materials as part of the project, so not only can they not legally rely on unpermitted armoring, the protection offered by those materials will not exist and thus they cannot be used to calculate the development setbacks.

As such, and pursuant to the LCP, the Applicant analyzed such coastal hazards issues and constraints over two periods: 50 and 75 years. As noted above, the LCP requires hazards avoidance for a *minimum* of 50 years. However, the Commission has in the past recognized that 50 years may not be the most appropriate analytic timeframe to address hazards avoidance for large hotel/visitor-serving resort complexes due to their generally longer economic lifespans, due to the dynamic and unpredictable shoreline and dune environment, due to the large economic investment such complexes represent, and due to the significant adverse coastal resource impacts that would result from their potential damage. In other words, given the risk and scale of development, the Commission has sought to ensure that a reasonable economic lifetime based on the associated level of investment is provided for any particular project, including so that return on investment can be amortized over that time frame, including up to the time that hazard constraints require relocation/removal.

As such, for recent similar large hotel/visitor-serving resort complexes in Sand City, including for the upcoast Monterey Bay Shores Resort, the Commission required a 75-year erosion setback line. For consistency purposes, the Applicant assessed hazards at both timeframes, including accounting for future sea level rise and assuming the removal of the concrete tailings and other materials. Based on site-specific estimates and criteria (including assessing a post-restored project site and an average annual erosion rate of 4.46 feet per year, which is the highest historic rate measured by USGS at an adjacent upcoast site and used as a proxy for future sea level rise impacts), the erosion analysis came to two main conclusions: the first was that 75 years would not provide a viable building site due to the fact that the setback line would be located nearly adjacent to Highway 1; and that 50 years would provide a viable envelope within which development could be accommodated in a manner safe from coastal hazards without armoring in that timeframe, including being set back from the mean high tide line

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by some roughly 400-500 feet.¹⁰

A few things are important to note here. The first is that while, as explained above, the Commission has in the past required 75 years of hazards protection, doing so here would essentially preclude this project and all of its ancillary benefits. In other words, requiring 75 years' worth of hazards avoidance in this case would not allow for any development, let alone the proposed resort, and the other proposed coastal resource benefits that would accrue to the public from it (including in terms of enhanced public beach access, dune/beach restoration, and from removal of the existing industrial operation and concrete tailings on the beach) would be lost. Thus, the context associated with this site is important. The second is that it is not LCP noncompliant to require a 50-year erosion setback. While a minimum, the LCP does identify 50 years as the appropriate floor for such avoidance. And third, the project has been significantly reduced in scale from its previous iteration, and is much smaller relative to the Monterey Bay Shores Resort.¹¹ Thus, the scale and magnitude of development proposed here is less, and thus the reasons described above justifying a longer economic lifetime are not as imminent in this case. Therefore, in this case, the Commission chooses to utilize the Applicant's identified 50-year erosion setback line, but only with the series of conditions described below to ensure that the development, particularly over time, internalizes potential coastal hazards risk and responds to coastal hazards in a manner that protects coastal resources.

As described above, while the analysis demonstrates that the project is set back the minimum distance required by the LCP, the site is not without coastal hazards risk, including beyond 50 years. The proposed project is located in an area that is subject to coastal hazards due to the inherently hazardous nature of its shoreline location. 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.

First, all development (except dune restoration and public access improvements, which the LCP specifically allows within such setback areas and nearer to the shoreline)^{12,13}

¹⁰ The estimates, criteria, and conclusions reflected in the Applicant's erosion analysis were recommended, reviewed, and approved by the Commission's former Staff Geologists, Dr. Mark Johnsson and Dr. Joe Street.

¹¹ The proposed development consists of 125 (100 hotel and 25 campground) units and occupies 2.53 acres of the project site's area, as opposed to 368 hotel and residential units and some 12 acres of development area for the Monterey Bay Shores Resort project.

¹² LUP Policies 4.3.6.b and 6.4.1 allow for public access and recreational facilities to be located within an "active recreation beach zone and public amenity zone" between the ocean and the building envelope, including to maximize public access and recreation in this area. See additional discussion of this issue in the Public Access, Recreation, and Visitor-Serving Uses section of this report.

¹³ Including the reconfigured Tioga Avenue street end, which is proposed to be relocated inland some 200 feet to be adjacent to the existing City desalination intake wellheads. The street end will also be converted into a free public parking area so as to maximize the public's ability to access and recreate in this area (again, see additional discussion in the Public Access, Recreation, and Visitor-Serving Uses section of this report).

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must be located landward of the identified 50-year erosion setback line (see **Special Condition 3(c)**) and see the setback line/development envelope identified in Exhibits 3 and 5). This identified setback line forms the seaward boundary of the development envelope, and no development (but for restoration/public access improvements) is allowed outside of this defined area, including for requisite LCP coastal hazards avoidance requirements (as well as for dune restoration/preservation and visual resource requirements as discussed subsequently in this report).

Second, and more broadly in terms of hazards risk at the site, and 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 tens and hundreds of 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 Applicants to assume all risks for developing at this location (see **Special Condition 11**).

Third, an important LCP (and Coastal Act) consideration is that development must minimize hazard risk without shoreline protective devices.¹⁴ When considering a structure on a level site, this is a fairly straightforward exercise, where typical/normal foundations can be used, and where future armoring can be prohibited. On a dune sand site, it can be more of a challenge, as the substrate often dictates more substantial and extraordinary foundation elements that tend to act as prohibited protective devices (e.g., deep caisson and beam foundations),¹⁵ particularly as erosion occurs, leading to living spaces elevated above landforms (and potentially ocean/public trust). Fortunately, and based on lessons learned on this point with the Monterey Bay Shores Resort project, mat foundations¹⁶ can be used to avoid this concern, and where they can be limited in size, areal extent, and depth to the maximum degree feasible for the buildings being supported, all of which avoids them being considered disallowed protective devices (see **Special Condition 1(j)**). In addition, Special Condition 1(j) also requires that foundation systems not be designed or engineered to address ocean and related forces (e.g., wave

¹⁴ For example, Coastal Act Section 30253 states in applicable part: "New development shall...neither create nor contribute significantly to...destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs." Mirroring this, LCP LUP Policy 4.3.1 states that shoreline protective devices are only allowed where "they are necessary to protect existing structures...", and Policy 4.3.5 requires new development to be set back a sufficient distance from hazards threat "...based on at least a 50-year economic life for the project."

¹⁵ 'Prohibited' because they tend to destroy sites and/or substantially alter natural landforms, neither of which is allowed.

¹⁶ A mat foundation is essentially a reinforced slab foundation.

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attack, ocean flooding, erosion, etc.), except to the extent that such design may facilitate their removal, as these forces are addressed development setbacks and removal over time (see also below). In addition, all foundations, retaining walls, and related project components are required to be sited and designed to be removable, including in terms of limiting the extent of excavation or disturbance beyond the immediate development footprint, in light of the CDP's requirements for removal in the future as opposed to relying on any shoreline protective devices in the face of any future coastal hazard threats. Again, see Special Condition 1(j).

Fourth, while the proposed project does not include armoring, including seawalls or rock revetments (and in fact includes the removal of the unpermitted rubble/riprap fronting Tioga Avenue as well as the existing concrete tailings (see **Special Conditions 1(a), 2, and 9**)), in order to ensure no such armoring is allowed in the future (including should the resort remain functioning beyond 50 years) and to prevent the adverse coastal resource impacts they cause,¹⁷ **Special Condition 12(b)** prohibits shoreline armoring, including but not limited to seawalls, revetments, groins, and caisson/grade beam systems in the event the development is threatened in the future, and waives any potential rights that may exist to construct such shoreline protective devices for the approved development. **Special Condition 12(a)** articulates that the intent of the CDP is to ensure that the approved development does not use armoring as a mechanism to cope with any potential coastal hazards, and that, in lieu of armoring, the response to abate such hazards is through removal and site restoration over time. To implement this requirement, **Special Condition 12(e)** lists a series of triggers for when removal and restoration are required. All of these triggers identify specific points when the development is subject to coastal hazards at a frequency and/or magnitude at which point armoring would ordinarily be needed to abate such threats. However, since the LCP does not allow armoring as an allowed abatement response, the condition requires development removal and site restoration instead. Specifically, the condition requires the Applicant to submit a plan for removal of the main resort facilities, as well as ancillary development such as roads, utility infrastructure, and subsurface elements if any of four triggers is met: (1) if a government agency with jurisdiction has ordered that any portion of the approved development is 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 bluff edge recedes to within fifty feet of any portion of the development; (3) if any portion of the approved foundation and/or subsurface elements become exposed due to bluff erosion; or (4) if any portions of the visitor-serving complex's major structural components, including exterior walls, floor and

¹⁷ See, for example, Commission findings in LCP amendments LCP-3-STC-25-0073-3-Part B (City of Santa Cruz Beaches and Bluffs Hazard Adaptation), LCP-3-SCO-20-0066-2 (Santa Cruz County Hazards Update), and LCP-3-MRB-21-0047-1 (Morro Bay Land Use Plan Update), and in CDPs A-3-SCO-07-095/3-07-019 3-07-019 (Pleasure Point Seawall), 3-09-025 (Pebble Beach Company Beach Club Seawall), 3-09-042 (O'Neill Seawall), 2-10-039 (Lands End Seawall), 3-14-0488 (Iceplant LLC Seawall), 3-16-0345 (Honjo Armoring), 3-16-0446 (Rockview Seawall), 2-17-0702 (Sharp Park Golf Course), 3-18-0720 (Candau Armoring), 3-20-0166 (Wavefarer Partners LLC Armoring), 2-21-0912 (San Francisco PUC Ocean Beach Armoring), 3-22-0440 (Casanova Armoring), and 3-22-1027 (Hofmann Seawall).

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roof structures, and foundation, must be significantly altered (including renovation and/or replacement) to abate coastal hazards.¹⁸

With respect to triggers (1) and (4), these define the severity of coastal hazards affecting the site by the extent of damage caused by such hazards and the resultant type of necessary repair work. These conditions specify that ordinary repair work,¹⁹ including waterproofing and alterations to non-structural components, would be allowed. Thus, if high seas and waves from a large storm caused some minor damage to the structure, but that damage was very minimal and could be addressed by simple repair work, then such a situation does not rise to the threshold for deeming the site hazardous and unsafe for continued use without requiring shoreline armoring (which is not allowed). However, when the hazard – or repeated hazard events, showing a pattern – causes enough damage that significant alteration, including replacement of major structural components, is necessary, then the site is subject to hazards at a level unsafe for continued use and occupancy which cannot be remediated by work other than that beyond ordinary repair and maintenance.

Essentially, the amount/level of repair work defines the point at which the site is deemed hazardous. When hazards are infrequent and/or weak enough to where simple repair work is sufficient, such work is allowed under the CDP. Conversely, if such hazards are strong and/or frequent enough in which major repair work to fix damaged structural elements is necessary, the trigger point for determining that the development is located in an impermissible hazardous site and/or subject to an impermissible hazardous situation has been reached, and therefore removal of the affected portion of the development must take place (since the approved development may not subsequently be protected under these circumstances by shoreline armoring, per the LCP and the special conditions). Allowing for repair work from coastal hazard events that are strong/frequent enough that the complex's major structural elements, including its foundation and/or walls, are damaged to an extent at which such elements would need to be replaced and/or bolstered by protective devices is a trigger point that defines when allowing such work would inappropriately perpetuate structural development and use within a hazardous location absent some type of (unallowable) shoreline protection.

With respect to the other two triggers, **Special Condition 12(e)(2)** specifies a 50-foot minimum setback from the bluff. This minimum setback is required to be maintained, and should bluff erosion result in the development encroaching within this setback in the

¹⁸ And these requirements are similar to those imposed by the Commission on the Monterey Bay Shores Resort as well.

¹⁹ With respect to what defines and differentiates ordinary repair and/or maintenance versus major structural alteration, Special Conditions 12(e)(1) and (4) are modelled after language approved in other recent CDPs (including the Monterey Bay Shores Report in Sand City facing similar issues), which helps refine Commission direction on these types of issues. This language differentiates between these two types of repair work, including by specifying the types of building components that would be considered structural. Therefore, the conditions define when the site is hazardous and would need structural protection, and thus, when the structure must be removed and the site restored, and reflect requirements that specifically emanate from the LCP's requirement that armoring is prohibited to serve new development like this.

future, including as evidenced via required bluff edge monitoring reports (see **Special Condition 12(d)**), development must be removed so as to maintain this minimum distance.²⁰ Doing so not only will ensure protection of life and property of the resort facility from hazards risk, but will also ensure a minimum width of beach and dune area for public access and recreation purposes. In other words, the condition ensures that the public will maintain a minimum width to accommodate both beach space as well as public access trails and access facilities into the future. Finally, **Special Condition 12(e)(3)** specifies the final trigger point for removal/restoration as being exposure of any of the foundation and/or subsurface elements. Again, this trigger identifies types of structural damage caused by coastal hazards, and thus the response to abate them.

Finally, while the aforementioned triggers for removal and site restoration apply to the resort facility and its appurtenant facilities, because of the critical public coastal access function that the pathway system, overlooks, and beach accessways provide, **Special Condition 12(c)** requires these facilities to be rebuilt/relocated (including being rebuilt/relocated inland and away from hazards if necessary) should they become damaged or destroyed in the future (see additional discussion on this point in the Public Access section of this report).

In sum, the proposed project raises fundamental questions about the appropriateness of developing large structures along an eroding shoreline, particularly in an age of sea level rise and the threats associated with and exacerbated by same. The Commission does not take these threats lightly. However, in this case, the project can be sited in a viable building envelope that is expected to be landward of anticipated erosion and coastal hazard threats, including when accounting for anticipated sea level rise, for at least 50 years.²¹ With conditions that ensure the project will not utilize shoreline armoring now or in future, and will instead abate potential future hazards through removal and site restoration when defined trigger points are reached (and thereby not burdening the public with the impacts associated with shoreline armoring and/or destroyed/dilapidated structures on a highly visible coastal site), the project can be found consistent with the LCP's coastal hazards provisions.

D. Public Views

Applicable LCP Provisions

The LCP protects visual resources and coastal views in the Sand City coastal zone,

²⁰ This 50-foot minimum rolling bluff setback is also the same as what the Commission required for the nearby Monterey Bay Shores Resort.

²¹ And to be clear, although the Commission here is applying a setback based on the Applicant's estimated erosion analysis, and while that setback is based on an estimate of 50 years of such erosion, this approval does not guarantee that the development will be safe from hazards (and consistent with the CDP terms and conditions) for at least 50 years. On the contrary, the terms and conditions of the CDP identify various thresholds for removal/relocation (and no armoring), and when these thresholds are met, even if before 50 years, then the subsequent relocation/removal requirements are triggered and accrue to the site. In other words, it is the coastal hazards that are actually experienced over time that will dictate the economic life of this development, and that may be before – or after – 50 years, depending on the actual physical circumstances and outcomes here.

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including those to and along the shoreline and from significant public viewing locations (e.g., from along Highway 1.). 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 policies and standards 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.^[22] 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: ...4. "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); ... 5. "views over development" shall be provided*

²² See LCP Figures in Exhibit 4.

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

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

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

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

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

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

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

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

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

LUP Policy 6.4.1. *Land Uses. Establish the following land use designations in the coastal zone, as defined below and shown on the Land Use Plan Map in Figure 11 and area south of Bay Avenue detailed in Figures 12 and 13. ...The described*

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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. ... a. Visitor-Serving Commercial: Allow hotels, motels, vacation clubs/timeshares, public recreation areas, accessory shops (including gift shops, travel agencies, beauty shops, health spas), food service establishments, service stations, recreation retail shops and services, campgrounds, recreational vehicle parks, and other recreational facilities operated as a business and open to the general public for a fee. Vacation clubs/timeshares are defined as accommodation facilities with guest or owner stays limited to not more than 29 consecutive days, and not more than a total of 84 days in each calendar year. The hotel/motel/vacation club/timeshare uses shall be consistent with hotel/motel density limits presented in Policy 6.4.4.

LUP Policy 6.4.4. *Densities ... (c) Visitor-Serving Hotels: 0-75 rooms per acre. The number of hotel units shall be limited as follows: [For Area B] the Maximum Rooms Allowed [is] 375 rooms ... (d) Visitor-Serving Motels: 0-37 rooms/acre. The number of motel rooms to be limited as follows: [For Area a] the Maximum Rooms Allowed [is] 229 rooms, [For Area b] the Maximum Rooms Allowed [is] 141 rooms*

LUP Policy 6.4.5. *In the Sand City Coastal Zone, permit a height limit of 36 feet as measured from existing grade with the following exceptions:... b) Hotel uses shall not exceed 45 feet. ... 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-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. All development within one hundred (100) feet of the freeway right-of-way (considered as the main thoroughfare right-of-way, excluding on/off ramps) shall be designed so as to minimize significant adverse visual impacts and shall be limited to 25 feet in height. 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.*

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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

Overall, the LCP provides a broad vision for public view protection, recognizing that the City's coastal zone provides sweeping views across dune landforms to the beach, the Bay, the Monterey peninsula, and the southern arc of the Bay. The LUP indicates that "view enhancement is an important aspect of Sand City's LCP,"²³ and LUP Section 5.2.2 identifies five guiding principles for the LCP's visual resource policies, including "view enhancement" and "protection and enhancement of visual access, views and scenic areas." These principles describe a broad and fundamentally protective visual resource policy context. The LCP's visual resource policies evince a clear intent to protect, enhance, and minimize the loss of the significant public views in and around Sand City. Perhaps most important in this respect are Highway 1 motorists' views of and across the site to the Monterey Bay and peninsula. Other important public views include those from a closer perspective from the Scenic Trail that runs along Highway 1 and from Fort Ord Dunes State Park and the Eolian Dunes Preserve. In addition, views of and from beaches are important visual resources that the LCP requires to be protection, including nearby Monterey State Beach. Finally, the Sand City coastal zone forms a backdrop against the more distant, but still important, public view back 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.

The LCP protects the visual resources of Sand City via three primary mechanisms: 1) in broad, general terms regarding public view and landform protection; 2) via specific, more detailed, protections for identified view corridors, vistas, and landforms; and 3) via site specific zoning controls regarding allowable height and density. With respect to the first mechanism, the broader visual resource policies, the LCP provides more general protection for 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 1 to be consistent with the protection of visual resources, and additional view corridors from Highway 1 to the ocean are to be encouraged as part of new development (see Policy 5.3.8). And in addition to blue water view protection, the LCP also seeks protection, restoration, and enhancement of views of natural landforms, particularly the area's extensive and character-defining dune features (LUP Policies 3.3.1, 5.2.2, 5.3.4.f, 5.3.6, and 5.3.11). As described in these policies, the LCP encourages the use of dunes to enhance the visual resources of the City. Existing dunes must be protected, and can be used to screen new development, while created

²³ LUP Section 5.2.2 ("Coastal Visual Resources, Future Design Considerations").

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dune landforms may also be used for a similar purpose, as long as the development of such dune landforms is otherwise compatible with LCP policies. The intent of the LCP is to protect existing dunes, and to seamlessly integrate approvable development within them. As the Commission found when certifying the LUP:

... 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.²⁴

Thus, dune protection serves both a habitat as well as visual enhancement purpose.

With respect to the second mechanism regarding specifically identified views and prescriptions for their protection, the background section of the LUP visual resources section states:²⁵

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

²⁴ California Coastal Commission LUP approval findings, September 7, 1982.

²⁵ LUP Section 5.2.1 ("Coastal Visual Resources, Existing Visual Resources").

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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 1. Certain view corridors are identified as major designated view corridors in LUP Policy 5.3.2 and Figure 9 of the LUP (again, see LCP Figures in **Exhibit 4**). These views are intended to be protected through the provision of view corridors, vista points, development height limits, and dune restoration areas. As described subsequently, some of these protected views corridors are located on the project site.

And finally, the LCP includes site specific zoning controls addressing structural design, including height limits. As indicated in LUP Policy 6.4.1, such zoning maximums are not entitlements, but rather upper thresholds that can be considered but that must be understood in relation to site constraints that affect development (including explicitly in terms of protecting natural landforms and views to the Bay) and that limit allowable densities and scale otherwise.

Putting this all together for development at this project site, the LCP includes very specific visual resource protection requirements. First, overall, allowable development must be sited, designed, and limited in a manner that protects the area's overall dune and beach aesthetic, including limiting dune and other natural landform alteration. In addition to this overarching requirement, a "dune preservation, stabilization and restoration area" is identified on the site in LUP Figure 9, located in a "bean" shape in the eastern portion of the property adjacent to Highway 1. Per the LCP, this area is specifically identified for protection and restoration, and is off-limits to development. In addition, the LCP designates three southbound views over the site as view corridors from Highway 1 that are explicitly required to be maintained "over development" (per LUP Policy 5.3.3). The LCP allows development to be visible within these locations so long as it not intrude upon, or block, an unobstructed view of more than one-third of the lineal distance across the Bay as seen by southbound motorists on Highway 1. In other words, two-thirds of existing blue water views are to be protected in these corridors 'over' development, and the development can block no more than one-third of the blue water view. LUP Figure 9 also identifies two vista points on the project site, one at the end of Tioga Avenue and the other on the beach about midway seaward of the site, while also designating a "Key Coastal Overview" along southbound Highway 1 that faces southwest along the northern part of the site. The views from these three points must be maintained. And finally, the site's land use and zoning designations dictate additional development standards for site planning purposes, including in terms of

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maximum densities²⁶ and height limits. Development heights for the site are limited to a maximum of 45 feet above existing grade for hotel uses,²⁷ and are limited to a maximum of 15 feet or one story in height from finished grade for all above-ground private and public recreational structures, and limited to a maximum of 25 feet within 100 feet of Highway 1.

In sum, the LCP's visual resource policies, as they apply to this site, require that approvable development be sited and designed to ensure that dune features and public views are protected, including views from Highway 1. These policies include specific maximum densities and intensities of use, and they prescribe specific maximum height limits with development required to be consistent with identified view corridors and other LCP visual resource protection policies.

Analysis

The project is located along a highly visible section of shoreline immediately adjacent to Highway 1 and viewed by thousands of motorists as they approach the Monterey peninsula.²⁸ The view of and across the site from the Highway changes depending on one's location, and ranges from a clear spectacular view of the Bay and the Monterey peninsula (i.e., the view identified as a "Key Coastal Overview" on LUP Figure 9) to a more broken view due to the dune topography (see Highway 1 view photos in **Exhibit 4**). The views from Highway 1 of the property itself are a mix of construction/industrial use on the downcoast end nearest Tioga Avenue, and bare sand, ice plant, and other dune plants on the remaining upcoast portion of the site. While these areas too have been the site of previous sand mining activities, unlike the still-active industrial use on the downcoast end, such activities have ceased for some time and thus exhibit signs of dune regeneration and stabilization, including via wind-driven dune re-establishment and re-colonization of a variety of native and non-native plant species. Thus, as motorists venture along Highway 1, the view of the site is a mix of blue water and the Monterey peninsula, open dune, and active industrial use.

The other primary viewpoint is from Tioga Avenue, which forms the site's southern boundary. As one ventures down Tioga, the viewer is immediately adjacent to the active industrial operation. In addition, the end of the street fronting the beach is comprised of failing asphalt and rubble, and the upcoast beaches are lined with the hardened slurry tailings, evidence of the site's industrial past and present. Thus, the views from Tioga, while affording panoramic views of the ocean, the Monterey peninsula, and upcoast

²⁶ The LUP designates the entire site Coastal Visitor Serving Commercial, and the IP zones the site Coastal Visitor Serving Commercial in three categories (CZ-VSC-a, CZ-VSC-B, and CZ-VSC-b), which allows a maximum of 37 units/acre to 75 units/acre, or a grand total up to 689 total units. Note, however, that this number is rote calculation of maximum allowed density times parcel acreage and does not include any reductions needed to accommodate site constraints and meet other LCP objectives and requirements.

²⁷ 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. Given their similarities, the LCP considers condo-hotels a visitor-serving overnight use akin to a hotel.

²⁸ Some 75,000 cars per day use this stretch of Highway 1.

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dunes/beaches, is partially degraded and highlights the disturbed, industrial nature of the site. See **Exhibit 2** for aerial photos of the project site.

The Monterey Bay Sanctuary Scenic Trail and bike path that runs north of Playa Avenue (which comes under Highway 1 and meets the site in its upcoast portion) between Highway 1 and the site provides similar vistas for pedestrians and cyclists as those seen by motorists on Highway 1. However, because the Scenic Trail is at a slightly lower elevation than Highway 1, the views of the dunes (including the project site) and the ocean from this location are especially expansive. While fewer people view the project site from the Scenic Trail compared with from Highway 1, the Scenic Trail is a major public recreational feature that is highly used, and views from the Scenic Trail in this location are significant and spectacular.

A different vista of and across the site is provided upcoast, from the Monterey Peninsula Regional Park District's Eolian Dune Preserve (Preserve). The Preserve opened for public use in 1997. The Preserve consists of sand dunes with limited access amenities, and although it is not heavily used, it is a public use area where users look over the subject site from a higher elevation. The Preserve also provides visual dune continuity and open space for users of the adjacent Scenic Trail segment, the beach, Highway 1 motorists, and from vantages seen from the Monterey peninsula across the Bay. The project site shares a common boundary with the Preserve, and the site is prominent in views from the Preserve and from the portion of the Scenic Trail that is adjacent to the Preserve. This is especially true for southbound users of this portion of the Scenic Trail. From this view, the project site is extremely prominent in the immediate foreground.

Finally, the project site is highly visible in views from the Monterey peninsula across the Bay, including vistas from the Scenic Trail as it winds through the cities of Monterey and Pacific Grove, from Cannery Row, and from the Monterey Bay Aquarium. While there are some existing developments (e.g., Embassy Suites Hotel, Best Western Beach Resort hotel, Ocean Harbor House condominiums) that are prominently visible from these vantage points, all of these developments are located well downcoast of the site. Upcoast of these developments, the site is seen as part of the existing unbroken and undeveloped strand of coastal dune bluffs that extend roughly from Tioga Avenue and north through the Fort Ord dunes.²⁹

The proposed project would result in a dramatic, material change to the site's visual appearance. First and foremost, the project includes extensive site remediation and restoration, including with respect to the existing industrial operation that would be replaced with the visitor-serving resort complex, as well as extensive beach and dune restoration that would remove the concrete tailings on the beach and the rubble fronting Tioga Avenue, and restore much of the broader dune ecosystem on the project site. Clearly, this restoration outside of the development envelope will result in a dramatically improved visual appearance for this highly prominent, but currently mostly degraded, beachfront location. Altogether, roughly 22 acres are proposed to be restored and

²⁹ The Commission has also authorized the development of a large resort complex just downcoast of Fort Ord and just upcoast of the project site – the Monterey Bay Shores Resort (CDP A-3-SNC-98-114) – but that development is not yet under construction.

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permanently protected as dune habitat outside the development envelope identified in **Special Condition 3(c)**, along with additional acreage up- and downcoast of the project site (see additional discussion in the Natural Resources section of this report). Thus, at this basic level, this restoration component of the project represents a substantial improvement to much of the site's visual resources. In addition, placing development within the development envelope also addresses coastal hazards issues as well, as described in the preceding analysis. The proposed development envelope meets not only hazards avoidance requirements, but also concentrates development along a relatively small portion of the project site (with the development envelope totaling 4.77 acres, with 2.24 of those acres dune/habitat space, for a total actual development footprint of 2.53 acres, or 9.5% of the 26.5 acre project site), all set back from the mean high tide line by at least 400 feet and thereby leaving the remaining 90% open as contiguous beach and dune habitat.³⁰ Therefore, in this case and in this context, the proposed project, including in terms of clustering development within the development envelope and restoring the rest of the site, can be found consistent with the LCP's overarching dune landscape³¹ and visual protection requirements.

Next, with respect to the LCP's specific building height and mapped view protections for this specific site, the project places hotel structural development within the development envelope south of Playa Avenue, thereby ensuring that all such development completely avoids the Key Coastal Overview as well as two of the three mapped view corridors of the Monterey Bay from southbound Highway 1 identified in LUP Figure 9, and overall avoids blocking two-thirds of the blue water view as the LCP requires.³² With respect to the two identified vista points, and as described in more detail in the Public Access, Recreation, and Visitor-Serving Uses section, the Applicant proposes a beach access point and public viewing area along the end of Tioga Avenue (itself relocated inland away from coastal hazards threat, and the rubble and tailings at its end cleaned up), as well as a public overlook along a proposed vertical public coastal access pathway from the hotel/campground facility from the new Scenic Trail. These

³⁰ Overall, the now proposed project represents a substantially smaller proposal than what the Commission reviewed when it determined a substantial issue, namely that the now proposed project constitutes 100 overnight units as opposed to 340, under 10% dune coverage as opposed to 60%, and roughly 24 acres of restored and protected dune as opposed to 11, all in a smaller development envelope confined nearest Tioga Avenue. The project thus is below applicable numeric zoning limits for density/intensity of use (i.e., 100 proposed condo-hotel and 25 campground units as opposed to a maximum of 689).

³¹ As discussed further in the Natural Resources section of this report, the Sand City LCP is unique inasmuch as the dune areas west of Highway 1 cannot be considered ESHA, and are to be considered developable, all of which has been confirmed – and required – by the courts. As a result, this is an atypical situation as it relates to dunes, but again, the end result is to focus development on the existing industrially-used areas (in a footprint that is less than 2.5 acres) and to restore and protect dunes otherwise (almost 25 acres).

³² As noted, the LCP includes three specific view corridors that allow no more than 1/3 of the existing blue water views of Monterey Bay be blocked from Highway 1 motorist views within such corridors. The Applicant proposes to meet such tests by clustering development on the downcoast/Sterling property, with development up to 45 feet tall blocking all existing blue water views from one of the view corridors, and leaving the other two view corridors upcoast unobstructed with full view protections. The end result is that 2/3 of the views are retained and 1/3 is blocked.

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vista points will offer the public broad views of the site and Monterey Bay as required of the LCP. And in terms of development heights, including as codified by **Special Condition 3(b)**, proposed heights are limited consistent with the site's zoning maximums (i.e., maximum of 45 feet, with most buildings proposed at 35 feet and all outside of 100 feet from the Highway 1 right-of-way) and blue water view protections, with final site plans to include documentation ensuring compliance with these LCP view protection requirements.

Thus, the project meets applicable numeric/quantitative site development standards, but without a doubt, it will still be a significant change to current public views of and over the site, and will block some of the current views available and replace with a multiple story building. And some views that are not blocked will be changed through the inclusion of a significant new overnight accommodation use on an otherwise mostly dune (albeit with large amounts of industrial infrastructure as well). There is simply no way to accommodate a development of this nature and size without these kinds of view impacts (again, see visual simulations and elevations in Exhibit 3). The project would have to be scaled way down to materially change the degree of such overall public view impact, and the Applicant has indicated that project would not be financially feasible at that point, including given the nature of the cleanup, restoration, and public access improvements also being required. And here, the LCP specifically articulates a premise that recognizes this outcome in certain policies, including with respect to the concept of views over development, view corridors, and blue water blockage allowances. Now that is not to say that those things are entitlements, especially in the face of the LCP's more general and broader provisions directed to protecting public views overall, but it is to say that this provides some LCP tension on this point that is also informative. In that context, and recognizing the various visitor-serving, public access, and natural resource enhancements that also accrue to the project, including removing derelict infrastructure and improving views in these areas, including views from along the beach, this general impact level is acceptable. However, it is only acceptable to the extent all development is sited and designed to limit view impacts as much as possible, and intervening areas and landscaping are sited and designed to help soften view impacts. As a general objective and development standard, the development is still required to be subordinate to the natural and visual setting as much as possible, and it is required to meet that objective in all siting and design aspects (see, for example, **Special Conditions 1, 3, and 5**).

As proposed and conditioned, the overall development envelope and building heights/densities can be found consistent with the LCP's policies related to visual resources, including in terms of view corridor and dune landscape protection. **Special Conditions 1 and 3** further ensure that the siting and design of the structures themselves, including the main condominium-hotel/resort buildings, campground, and public access facilities and roads, are 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 dune landscape and to protect public views.³³

In sum, there is no doubt that the project will result in a material change with respect to visual resources. The site is highly visible, and affords views for tens of thousands of daily motorists, and others, of Monterey Bay and surrounding peninsula. The unique context of this site, including its active industrial use and remnants of historic use, and including the LCP prescriptions that apply to it, dictate a specific type of project that affords a limited development scope that respects and protects existing views as much as possible with a project of this type, coupled with a large site restoration component that clears the scars of industrial use. With the above described conditions, the proposed project is that project, and the Commission finds that it can be found consistent with the applicable LCP visual resource provisions.

E. Natural Resources

Applicable LCP Provisions

The Sand City coastal zone, particularly west of Highway 1 and including the project site, is mostly comprised of broad sandy beaches and dunes. And while dune areas are typically considered environmentally sensitive habitat areas (ESHA) by the Commission and subject to strict and protective standards, including those that would otherwise prohibit visitor-serving resorts within them, the certified Sand City LCP affirmatively states that there is no ESHA west of Highway 1 – an area that includes the project site. This conclusion was affirmed as a matter of law by the published Court of Appeals decision of *Security National Guaranty Inc. v. California Coastal Commission* (2008) 159 Cal.App.4th 402, which litigation was associated with the Monterey Bay Shores Resort project that was ultimately approved by the Commission just upcoast of this site in April 2014. 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:

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. ...

That being said, although the LCP's ESHA policies do not apply to the proposed project, there are other LCP provisions that do apply that specifically address the protection of

³³ Including the Commission's typical conditions regarding landscaping, fences, signage, and other ancillary development to be minimized and blend in with the surrounding aesthetic.

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dune landforms and other natural resources more broadly. The subject policies include requirements to implement dune stabilization and restoration, as well as protection for a specific dune landform that is mapped on the project site.

Specifically, the LCP contains various development standards to ensure the permanent preservation and maintenance of certain identified sand dune areas, including a significant sand dune landform on the project site. LUP Policy 4.3.20 requires that the dune landform on the project site be kept in open space as an area suitable for dune habitat restoration, and that 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.

Figure 7 (see **Exhibit 4**), referenced in LUP Policy 4.3.20, shows the mapped dune landform on the project site. Figure 7 indicates that this area is designated for “dune stabilization/restoration” within future developments,³⁴ and LUP Policies 4.3.18(a) and 4.3.19 specify the policy standards governing restoration activities for this dune feature:

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.

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

³⁴ As discussed in the visual resource finding, this dune area is also identified on Visual Resources Figure 9 as a “dune preservation, stabilization and restoration area” (see Exhibit 4).

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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. ...

These LUP policies are implemented through various provisions of the certified Implementation Plan. For example, the IP includes the "Habitat Restoration Overlay District" that corresponds to the mapped large dune landform on the project site (see IP Figure 4 in **Exhibit 4**). The requirements of 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, as well as permanent protection through easements or dedications.

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:

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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, 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.

And finally, and as discussed in the Public Views section, the LCP also seeks protection, restoration, and enhancement of dunes and other natural landforms for their scenic visual and character-defining features (see, for example, LUP Policies 3.3.1, 5.2.2, 5.3.4.f, 5.3.6, and 5.3.11). As described in these policies, the LCP encourages the use of dunes to enhance the visual resources of the City, including via restoration and protection. Existing dunes must be protected, and can be used to screen new development, while created dune landforms may also be used for a similar purpose, as long as the development of such dune landforms is otherwise compatible with LCP policies. The intent of the LCP is to protect existing dunes, and to seamlessly integrate approvable development within them. Thus, the proposed development must adequately address any natural resource constraints on the site, including the protection of dune habitats and natural landforms. And finally, the LUP also contains policies to assure more general protection of the dune environments in Sand City:

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

LUP Policy 4.3.23 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.

In sum, while the LCP designates the site for visitor-serving uses and public access/recreation amenities, and while it does not preclude such uses in dune habitat based upon ESHA considerations (because it is explicitly *not* ESHA per the LCP), allowable development must still be sited and designed in a manner that protects and restores dune habitat as much as possible.

Analysis

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As discussed above, the project site is located within over 26 acres of a significant and sensitive ecological system (i.e., the Monterey Bay Dunes complex). While much of the southern/downcoast portion of the site is heavily disturbed/degraded from historical and ongoing unpermitted industrial operations, along with unpermitted rubble and concrete tailings on the beach, the rest of the site contains significant natural dune resources, such as Monterey spineflower and habitat for the Smith's Blue butterfly and historically the western snowy plover, all of which are sensitive species protected by state and federal Endangered Species Acts.³⁵ The site also lies immediately adjacent to the Monterey Peninsula Regional Park District's Eolian Dunes Preserve,³⁶ which contains significant dune habitat resources as well. As such, any allowable project must be sited and designed in a manner to avoid encroaching into the mapped dune feature, as well as to protect, restore, and enhance dune habitat as much as possible.

In this case, and in response to coastal hazards (as described previously in the Coastal Hazards section), the Applicant proposes to site all development (but for certain public coastal access pathways) landward of the 50-year erosion setback line, which varies between 400 and 500 feet from the shoreline. Doing so accomplishes not only hazards avoidance, but also has other LCP co-benefits, including in terms of visual and habitat resources protection (and public recreational access benefits as well) by clustering development within an overall envelope of about 4.77 acres, within which the actual footprint of development (which includes all hotel/campground facilities, paving/parking, and other structural development) is about 2.5 acres,³⁷ or less than 10% of the project site. For habitat purposes, the result is then a large nearly contiguous dune habitat that comprises some 90% of the project site. As proposed, the area outside of the development envelope, including the concrete tailings flanking the back beach, will be restored to high quality dune habitat.³⁸

In addition, and including to remove unpermitted development, to aid in public recreational access utility, and to address coastal hazards concerns, the Applicant has also worked in conjunction with the City and Commission staff to propose a series of other dune/beach restoration elements. As noted before, Tioga Avenue will be pulled back from the shoreline some roughly 200 feet, and that seaward area, which includes unpermitted concrete rubble and debris, will be removed and the site restored to dune and beach. Such restoration also is proposed on the adjacent bluff/beach area just

³⁵ Where western snowy plover and Monterey spineflower are designated as threatened, and Smith's Blue butterfly is designated endangered, by the federal Endangered Species Act.

³⁶ The 26-acre Preserve includes roughly 1,500 linear feet of shoreline frontage along Monterey Bay and is bordered by private property to the north, Highway 1 to the east and Monterey Bay to the west. The Preserve is also located in the Monterey Bay Dunes complex and is comprised entirely of coastal sand dunes of the same Flandrian variety.

³⁷ The LCP-protected dune feature (per LUP Figure 7, as described above) as well as a habitat corridor between the main hotel buildings and the campground facility (that provides a migration pathway for Smith's Blue butterfly) are also located within the overall envelope, but would not be developed. These areas total 2.24 acres, and thus the actual development footprint is about 2.5 acres.

³⁸ The Applicant is partnering with California American Water (Cal-Am) and Monterey-Salinas Transit (MST) to implement dune restoration at the McDonald site pursuant to mitigation requirements imposed by their respective CDPs. See additional discussion on this topic in the Violation section.

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downcoast of Tioga Avenue roughly to the upcoast terminus of Mar Visa Drive, where this area will be removed of concrete debris material. Such elements will result in numerous coastal resource benefits, not only for habitat purposes, but also for public access and recreation by making this stretch of beach more usable to the public (and removing the end of Tioga Avenue, which serves as a pinchpoint during high tides for lateral sandy beach access), for visual resources by removing derelict concrete debris, and for coastal hazards resilience by removing public infrastructure away from hazards risk. Finally, on the upcoast side of the project site, the project includes bluff debris removal on the Granite and adjacent Eolian Dunes preserve sites.³⁹

All told, the proposed project will include a significant dune and beach restoration program that will materially benefit the resources of this stretch of coast, and will provide lasting public benefits. That said, the project will also result in the permanent loss of some 2.5 acres of dune habitat.⁴⁰ This too is not inconsequential and should not be overlooked. However, in this case, including because of the unique regulatory context governing dune development via the LCP, including the significant dune restoration and other coastal resource benefits proposed, and including because development is predominantly located in the most damaged part of the overall site, the Commission finds such dune loss LCP consistent in this unique case. The Applicant has proposed a significant site remediation and dune restoration program, including for the LCP-mapped large dune feature, a habitat/migration corridor between the LCP-mapped dune feature and the foredunes, the entire site outside of the development footprint, and on adjacent up- and downcoast areas. Within these areas, the restoration and re-establishment of native dune forms and flora, including plants that support and enhance sensitive species habitats, will benefit overall dune habitat values in this area, and allow for a contiguous protected and restored dune community across multiple properties.

To codify such proposal and better shape the specific parameters of the proposed dune restoration, several special conditions are included. First, **Special Conditions 1, 2, and 6** specify the parameters for Tioga Avenue's reconfiguration and the removal of all concrete tailing/debris on the entirety of the site (inclusive of the area downcoast near Mar Vista through the Eolian Dunes Preserve upcoast). Among other conditions, including construction best management practices, the conditions specify the timing of all such activities. Final plans for both the Tioga Avenue improvements and all debris removal are to be submitted to the Executive Director within 12 months of CDP

³⁹ The Applicant notes that, while these elements are part of the proposed project, they are not actually owned or directly controlled by the Applicant, but rather other parties (e.g., the City of Sand City, State Parks, Monterey Peninsula Regional Park District, and private parties). To date, such other parties have indicated that they are supportive of these measures, but the CDP accounts for the potential that they ultimately decide otherwise through a provision that indicates that such restoration work is required to occur so long as there is evidence of property owner agreement (see **Special Condition 20**).

⁴⁰ This conclusion is based on an analytical framework that excludes the unpermitted industrial operation from the project baseline, because applicants may not rely on unpermitted development as the basis for project evaluation, and instead assumes that the affected area has been restored to dune habitat. Relative to existing site conditions, however, the proposed development would be located predominantly within the portion of the site already disturbed by industrial operations.

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approval. And **Special Condition 9** requires that all removal/cleanup activities be completed within 30 months of CDP approval.⁴¹ **Special Condition 6** requires a Dune Restoration Plan⁴² for Executive Director review and approval in the same 12 month timeframe, with such initial dune restoration activities, including at a minimum non-native and invasive plant removal, any necessary re-contouring, and initial site planting, implemented prior to occupancy and use of the hotel/resort component of the approved development or 48 months from the date of CDP approval. The intent of these conditions is to be specific as to the timing and phasing of all such debris removal, restoration, and eventual hotel/campground construction, including to ensure that outstanding violations on the site are addressed. The work being done here is complex, and so the conditions are intended to provide specific sideboards to ensure that things get done in logical sequential order and with enforceable deadlines to ensure same.⁴³ And finally, to ensure that all such dune areas are protected from development into the future, **Special Condition 8** places such areas into a deed restricted Coastal Resource Conservation Area, with the only allowed development in such area restoration and public access amenities.⁴⁴ The Applicant is responsible for ongoing maintenance and management of the Coastal Resource Conservation Area in perpetuity consistent with all terms and conditions of this CDP, but the CDP also allows for these resource areas to be managed by a qualified third party approved by the Executive Director, where such an arrangement would have the Applicant funding such third-party's activities.⁴⁵

⁴¹ **Special Condition 9** also requires that all industrial/materials storage and related operations on the Sterling property shall cease and all industrial/materials storage elements shall be removed no later than 6 months from CDP approval, including to provide for debris/tailing removal on and across the property.

⁴² Among other things, and as is typical of dune restoration plan requirements the Commission routinely imposes, the Plan is to identify the specific planting types that will be utilized, monitoring, success criteria, and adaptive management. The Plan is to apply to all areas outside of the development envelope on the Sterling property, as well as the area seaward of the reconfigured Tioga Avenue street end, the LCP-protected dune feature, the environmental/butterfly corridor between the resort and campground, and the dune area between Sand Dunes Drive and the inland property boundary, with the overarching premise being one of restoring these areas as self-functioning, high quality habitat in perpetuity. The required Dune Restoration Plan's parameters have been reviewed and approved by the Commission's Staff Ecologist, Dr. Rachel Pausch.

⁴³ Similarly, the conditions include contingencies should certain proposed restoration activities not come to fruition within required timelines. For example, Special Condition 2 implements the Applicant's proposal to remove the concrete tailings on the shoreline properties between the end of Mar Vista Drive and Tioga Avenue, along with surficial cleanup of the bluff face of the Granite and Eolian Dunes properties upcoast. However, should the Applicant be unable to perform such cleanup on Mar Vista (due to lack of property owner consent, etc.), then the Applicant is to perform a more complete dune restoration effort on the Granite site. Similarly, if the McDonald property's tailing removal and dune restoration is not undertaken by Cal Am and MST, then the Applicant is similarly responsible for its cleanup (see **Special Condition 6**).

⁴⁴ The deed restricted area applies to all areas on the Sterling, McDonald, and Granite parcels located outside of the development footprint; all public access areas within the development footprint; the area roughly seaward of the Tioga Avenue street end reconfiguration; and in the LCP-protected dune feature and butterfly corridor.

⁴⁵ And California State Parks has expressed some interest in performing such a management function here, including as the areas in question about properties that they currently manage in and around Sand City, and it may make spatial and other sense for them to manage these areas as well. That said, those

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As proposed and conditioned,⁴⁶ the project will protect the natural resources of the site, including the dune landforms, vegetation and habitats as much as possible with a project of this scale and scope, and offer an exciting opportunity to realize a large and contiguous swath of restored and protected dune habitat in perpetuity. Accordingly, as conditioned, the Commission can find that the proposed project is consistent with the applicable LCP natural resource provisions.

F. Public Access, Recreation, and Visitor-Serving Uses

Applicable Coastal Act and LCP Provisions

The LCP provides detailed direction with respect to protecting and providing for public coastal access and recreational opportunities, including with respect to providing public trails and beach accessways, public beach parking opportunities, and visitor-serving uses, particularly lower-cost uses such as campgrounds. In terms of requiring public coastal access and encouraging visitor-serving uses, applicable LCP provisions 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 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

are all future decisions and nothing has been explicitly arranged. It is all just to point out that it is being considered, and would be allowable under the CDP, subject to Executive Director review and approval.

⁴⁶ To address water quality, **Special Condition 3** includes water quality best management practices both during and after hotel construction, and **Special Condition 16** also includes requirements to reduce single-use plastics.

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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 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,*

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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.

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); ... 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 6.4.3.d. *(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-VSC Coastal Zone Visitor Serving Commercial. (a) Hotels, motels, vacation clubs/timeshares, public recreation areas, and accessory shops (such as gift shops, travel agencies, beauty shops, etc.) and any other visitor-serving use as determined by the City Council to serve the purpose of this district. Vacation clubs/timeshares are defined as accommodations facilities with guest or owner stays limited to not more than 29 consecutive days, and not more than a total of 84 days in each calendar year. For projects involving the development of vacation clubs/timeshares, the property owner shall be required to record a deed restriction, prior to the issuance of a coastal development permit, indicating the length of stay limitations and that the project is a visitor-*

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serving use available to the general public through a rental pool program when not in use by vacation club/timeshare owners or members.

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.*

The LCP further requires projects to ensure adequate circulation and parking, including by requiring new development to provide public beach parking in an amount equal to at least 10% of the total number of spaces required. Applicable LCP policies and IP standards include:

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 3.3.8. *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 6.4.10. *New development shall be approved only where ...adequate*

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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....

And finally, because the proposed project is located seaward of the first through public road (in this case, Highway 1) and the sea, the Coastal Act's public access and recreation policies also apply to this project, including:

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 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*

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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 30210 of the Coastal Act requires the Commission to provide the general public maximum access and recreational opportunities, while respecting the rights of private property owners. Section 30211 prohibits development from interfering with the public's right of access to the sea where acquired through use or by legislation. In approving new development, Section 30212 requires new development to provide access from the nearest public roadway to the shoreline and along the coast, save certain limited exceptions, such as existing adequate nearby access. Section 30212.5 requires appropriate distribution of facilities, including parking, and Section 30213 protects lower cost visitor and recreational facilities, including with respect to overnight accommodations. And Sections 30220 through 30223 protect coastal lands like the project site for their ability to accommodate public access and recreation, including through visitor-serving commercial recreational facilities. Finally, the Coastal Act Section 30210 direction to maximize access and recreational opportunities represents a different threshold than to simply provide or protect such access, and is fundamentally different from other like provisions in this respect. Namely, it is not enough to simply *provide* access to and along the coast, and not enough to simply *protect* access; rather such access must also be *maximized*. This terminology distinguishes the Coastal Act in certain respects, and provides fundamental direction with respect to projects along the California coast that raise public access issues, like this one. In addition, the mean high tide line will move landward over time depending on the beach profile, seasonal tidal activity, and continued sea level rise. Therefore, it is also critically important that the Commission ensure that the project protects public access and recreational opportunities over the time period when the project remains and that it includes measures to avoid (and where unavoidable appropriately mitigate) potential public recreational access impacts.

Taken together with similar LCP provisions, any proposed development at this site must maximize public access and recreational opportunities, including by being visitor-serving in nature, providing public beach access amenities including lateral and vertical accessways, beach easements, public beach parking and related access amenities, and including a significant lower cost accommodations component. Specifically, allowable development must provide vertical and lateral access easements along the sandy beach (IP Section 3.2), must include an "active recreation beach zone and public amenity zone" between the mean high tide line and the development envelope for public access and recreational uses (LUP Policies 4.3.6.b and 6.4.1), must provide public

parking in an amount of at least 10% of the development's parking requirements (LUP Policies 2.3.10 and 3.3.8), and must provide a bike/pedestrian pathway through the project site between Playa Avenue and Tioga Avenue (LUP Policy 6.4.3.d), which is the last undeveloped segment in an otherwise continuous Class I bike/pedestrian trail component of the Monterey Bay Sanctuary Scenic Trail stretching from Castroville to Pacific Grove, and that forms the backbone of California Coastal Trail in this area. Like the development itself, and pursuant to the LCP's coastal hazards and visual resource protection policies, 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, with such easements and amenities being rebuilt and relocated inland over time should they become damaged/destroyed, and to avoid public viewshed impacts otherwise, including being sited and designed to blend seamlessly into the public viewshed (LUP Policy 2.3.4). And finally, in addition to the project needing to be visitor-serving in nature, which, per IP Section 3.2(a), explicitly includes hotels, motels, campgrounds, and vacation clubs (with such clubs/condo-hotels subject to specific usage criteria, including limits on owner stays of 84 total days per year and 29 consecutive days, with the remaining days available for general visitor use), it must also include a significant lower cost accommodations component. On this point, the LCP encourages the provision of lower cost accommodations such as campgrounds (LUP Policy 3.3.2), while Coastal Act Section 30213 requires, where feasible, lower cost accommodations be provided as part of a project. The Commission has generally required the amount of lower cost rooms to be at least 25% of the total number of rooms (e.g., requiring 25 rooms out of an overall 100-room hotel to be lower cost), although it has also applied the 25% to the number of higher cost rooms (e.g., requiring 25 rooms out of an overall 125-room hotel to be lower cost), and has also approved projects with lesser numbers of lower cost rooms but with other sorts of lower cost mitigations (e.g., mitigation fees, on and off-site non-hotel facilities (e.g., hostels, campgrounds, etc.), other lower cost enhancements (e.g., set aside public areas and facilities both within and separate from hotels), etc.).⁴⁷

Analysis

The Applicant has worked in conjunction with Commission staff and the City to craft a significant public access and recreational improvements and amenities package. Perhaps first and foremost, as discussed previously, the project proposes a significant beach and dune restoration program, one that includes the removal of the concrete tailings and rock rubble/debris that flank this stretch of shoreline from near Mar Vista Drive downcoast through the Eolian Dunes Preserve property upcoast, a distance of

⁴⁷ See, for example, CDPs A-2-HMB-25-0003 (Hyatt Hotel), approved by the Commission in July 2026; A-3-PGR-22-0004 (American Tin Cannery Hotel Resort), approved by the Commission in April 2024; A-3-STC-24-0016 (Cruz Hotel), approved by the Commission in September 2024; 3-24-0149 (801 Embarcadero Restaurant/Hotel), approved by the Commission in June 2024; 2-20-0018 (Dillon Beach Resort), approved by the Commission in February 2021; CDP A-3-SNC-98-114 (Monterey Bay Shores Resort), approved by the Commission in April 2014; and CDP 3-16-0287 (Front Street Cottages), approved by the Commission in May 2017. See also LCP Amendment MCO-1-12 Part 1 (Del Monte Forest Update and Pebble Beach Company Concept Plan), approved by the Commission in May 2012; LCP-3-PGR-18-0093-1 (Pacific Grove LCP Certification), approved by the Commission in November 2019; and LCP-3-MRB-22-0059-2 (Morro Bay IP Update), approved by the Commission in March 2024.

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some roughly 2,500 linear feet. It also includes removal of all legacies of the former sand mining operations, after which the area will then be restored to functioning dune and beach environments open and available for public use and enjoyment. As discussed in the natural resource and coastal hazards analyses, all such area seaward of the identified development envelope will be placed in a deed-restricted Coastal Resource Conservation Area, with the only allowed development in this area being for public access amenities and natural resources management, in conformance with LUP Policies 4.3.6.b and 6.4.1 and IP Section 3.2 to provide for access easements and an “active recreation beach zone and public amenity zone” between the mean high tide line and the development envelope. All of the proposed restoration is a significant public access improvement, and will restore this largely blighted beach for enhanced public use and enjoyment, including removing an impediment to lateral beach access (i.e., the rubble, debris, and tailings, particularly at the end of Tioga Avenue) that, along with the Ocean Harbor House condominiums in Monterey downcoast at certain tides, represents the only significant blockage of dry sand for a distance of 15 beach miles extending from Moss Landing to Monterey (see **Special Conditions 1, 2, 6, 8, and 9** regarding the specific Tioga Avenue improvements, debris removal requirements, dune restoration parameters, development and deed restrictions, and timing, respectively, associated with each of these project elements).

Next, the project proposes a series of public access improvements (see **Special Conditions 1(a) through (d)**), including new lateral and vertical accessways (i.e., a new wooden overlook and boardwalk from the new seaward end of Tioga Avenue that connects down to the beach, along with a second vertical accessway from the hotel/campground area that terminates in an upcoast public overlook and a downcoast beach access pathway), along with an extension of the Scenic Trail/California Coastal Trail through the property to connect existing up- and downcoast sections (thereby fixing a missing link and resulting in a continuous roughly 11-mile public bike and pedestrian path along this stretch of coast from Marina to Pacific Grove). All of these trail and overlook elements will significantly improve public lateral and vertical access to and along the beach from this site, and all implement LUP Policy 2.3.4 and LUP Figure 4 requirements for same at this site for such trail and vista point enhancements. The project also includes a series of public beach use amenities and enhancements, including public restrooms, showers, benches, picnic tables, water fillers, trash cans, and bike racks, as well as public coastal access parking at a reconfigured Tioga Avenue and along Sand Dunes Drive extension. Specifically, with respect to Tioga Avenue, the road currently terminates almost onto the beach, and is flanked by unpermitted rock/rubble and debris. The Applicant proposes to relocate the end of the road inland some 200 feet (to where the City’s desalination intake wells are located), remove the unpermitted rock/rubble and restore the site to beach and dune, build a vertical beach accessway at the new road terminus, and line the road with 27 perpendicular public parking spaces (which is actually an increase in the current number of 22 public spaces on the street, see more discussion subsequently).

While the proposed improvements will enhance public access and recreational utility of this area, special conditions are needed to further refine details, including in terms of specific siting, design, and operations. First, to maximize their public utility, to ensure

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that such amenities protect public views and character, and to specify operational parameters, **Special Condition 1** requires these improvements be constructed in a manner designed to maximize their utility in conformance with such parameters, and **Special Condition 7** requires a Public Access Management Plan. The Plan, which is a typical requirement the Commission places on projects in order to best address public coastal access usage and amenities, will describe in detail all public access amenities associated with the proposed project, including in terms of needed signage and other wayfinding, specify that such amenities must be maintained in perpetuity, specify that beach and public access areas are required to be open and available for public use free of charge 24 hours a day, and requires all such public access amenities to be open and available for public use and enjoyment prior to occupancy of the resort or 48 months from the date of CDP approval, whichever is sooner.⁴⁸ Finally, **Special Conditions 7 and 12** specify how these public access amenities are to respond to coastal hazard threats, namely by ensuring that such facilities are relocated inland and reconstructed to maintain their public access utility over time should they become damaged or destroyed by coastal hazards. As conditioned, the project includes an extensive public access amenity package that will serve to benefit the broad populace at this critical beachfront location.⁴⁹

With respect to traffic circulation and congestion, the project site is located in an area that is already congested during both peak commute hours as well as during peak recreational times on weekdays and holidays, particularly on Highway 1. The proposed project would introduce additional people and vehicles in this area, exacerbating congestion and adversely affecting access to and along the project site. Per the LCP, the project meets applicable parking requirements for the project.⁵⁰ The project's multi-modal trail and pathway improvements also help serve to mitigate this additional vehicle traffic, including by incorporating the extension of the Scenic Trail/CCT pathway through the project site, as well as the provision of bike racks at the end of the Tioga Avenue beach access. All of which will allow for guests to make use of bicycles and walking to easily explore nearby areas and attractions without vehicles, and represent an exciting opportunity for walk-in/bike-in guests overall to come to the site without a car at all. However, special conditions are needed to further reduce traffic and minimize vehicle

⁴⁸ See also **Special Condition 9**, which also requires all such public access amenities to be constructed (with the exception of the campground) even if resort construction has not commenced, including to address site violations.

⁴⁹ **Special Condition 10** also includes the Commission's typical requirement that the Permittee acknowledge any existing public rights, including access rights, and not use this CDP as evidence against any such rights.

⁵⁰ IP Section 18.64.050.MM requires 1 parking space per hotel room or campground unit, along with sufficient parking to serve any extra uses in a mixed-use building (e.g., in this case restaurant and meeting space equal to 1 space per 50 square feet). In this case, the LCP would require 213 parking spaces, and the Applicant proposes 226 in both garage and surface parking on site. As noted above, the LCP also requires public parking equal to 10% of the project's total, yielding an extra 21 such spaces. **Special Condition 1** allows these spaces to be located either on the reconfigured Tioga Avenue (with any spaces in excess of 22 eligible to be counted since that is the number of spaces currently provided there), and the remaining clearly labelled and signed for public use within the resort itself, in a location that maximizes their public utility.

miles traveled, including for both hotel guests and workers.

Thus, **Special Condition 18** requires the preparation and implementation of a Transportation Demand Management Program (TDM). The program would be composed of the following components: 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. In addition, the project is required to pay into the fair share regional cumulative traffic mitigation fee program promulgated by the Transportation Agency for Monterey County. This program seeks to address the cumulative traffic impacts (as distinguished from other sorts of direct traffic impacts, which it is not designed to mitigate) of development within Monterey County by pooling resources together to comprehensively and holistically address regional transportation issues. **Special Condition 17** requires evidence of the project's payment into this transportation program. As conditioned, the project's traffic impacts can be mitigated adequately such that public access to the coast is maintained, enhanced, and maximized.

With respect to visitor-serving accommodations, the proposed project includes 100 visitor-serving condominium-hotel units. The Applicant indicates that the 100 units would be sold and individually owned, but also available to the public on a rental basis when not occupied by the owners. While not a traditional transient-use hotel, the LCP specifically allows this type of quasi-residential/quasi-transient overnight use construct, but with specific protections limiting owner usage to keep it overall geared to the visitor (i.e., the aforementioned limits of no more than 29 consecutive nights and no more than 84 nights total per year for unit owners, yielding each unit available to the public for three-quarters of the calendar year). The LCP also requires a deed restriction for each unit to ensure the owner recognizes these are visitor-serving, not private residential, uses.⁵¹ The resort would look and function as a standard hotel, including a lobby and common areas available to all users, whether owners or other users, and there would be nothing that would outwardly indicate that there is an ownership component.

In general, the proposed development will provide a mostly visitor-serving use, albeit some of which is also quasi-residential, that will also include amenities to support public access and recreation. Although the preference would be that this be a standard operating hotel, the Applicant has indicated that such a product would not be financially feasible at that point, including given the nature of the cleanup, restoration, and public access improvements also being required. And here, the LCP does explicitly allow for visitor-serving uses of this type. The Commission must ensure, however, that there are protections in place to guarantee that the visitor-serving components of the project

⁵¹ Specifically, IP Section 3.2 states: "For projects involving the development of vacation clubs/timeshares, the property owner shall be required to record a deed restriction, prior to the issuance of a coastal development permit, indicating the length of stay limitations and that the project is a visitor-serving use available to the general public through a rental pool program when not in use by vacation club/timeshare owners or members."

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remain as such, including to guard against conversion into residential use and in conformance with the LCP.

Towards that end, **Special Condition 13** prohibits the conversion of any of the 100 units to any other use arrangements, except that they can be changed to standard operating hotel units. Similarly, **Special Condition 13** includes limitations on the length of stay by any unit owners and their guests in order to maximize the public's ability to use the site and consistent with the LCP requirements for same. Specifically, the conditions limit stays for owners of the 100 units (or any partnership or group of owners overall, no matter how many owners there are) to no more than 84 days total in any calendar year, to no more than 29 consecutive days at any time, and to no more than 14 consecutive days between the Saturday of the Memorial Day weekend through the Monday of the Labor Day weekend. With these limitations, at most the units will be occupied by owners at most 23% of the time (if each is sold and if each owner uses the unit for 84 days), with the units otherwise operating as standard hotel rooms on a first-come, first-serve basis to the general public at least 77% of the time (and more if during the time that not all units are sold, and when unit owners don't max out their length of stay). Finally, **Special Condition 13** includes comprehensive management and liability provisions to assure adequate compliance and enforcement of the general visitor-serving requirements of the approval. With these provisions the proposed project be found consistent with the LCP and Coastal Act visitor-serving use requirements.

Finally, with respect to lower cost accommodations, the Applicant has worked with Commission staff to develop an on-site lower cost overnight accommodation facility. As noted previously, the Coastal Act and complementary Sand City LCP provisions require lower cost facilities to be protected, encouraged, and, if feasible, provided.⁵² Over the years, the lower cost facilities issue related to overnight accommodations has been especially important because permit applicants have typically requested that the Commission and LCP-certified local governments approve higher cost overnight accommodations on land zoned for visitor-serving uses (in some instances where lower cost accommodations were already situated on the land) rather than pursuing lower cost accommodations (e.g., economy hotels, hostels, campgrounds), resulting in the loss of either potential or actual lower cost accommodations in appropriately-zoned areas. Overall, the Commission's past history of permitting overnight accommodations in the coastal zone confirms the need to guard against the loss or preclusion of lower cost overnight accommodations along the coast, as recognized in Coastal Act Section 30213.

⁵² Coastal Act Section 30213 has its origins in the 1975 California Coastal Plan (the precursor to the 1976 Coastal Act). 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. 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. See also additional findings on this history and implementation of the Commission's lower-cost accommodation requirements in CDPs A-3-PGR-22-0004 and A-3-STC-24-0016, which is incorporated herein by reference.

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In this case, and to meet Coastal Act and LCP lower cost accommodation requirements, the Applicant has long envisioned a campground as a unique offering to serve bicyclists using the Scenic Trail corridor. The Applicant voiced interest in a facility separate from the main condo-hotel resort that would allow for 'bike-in' campsites, and therefore fulfill a needed niche/demand in this part of the Monterey peninsula where shorefront camping is extremely limited (with the only such camping facility currently under construction at Fort Ord Dunes State Park), and with easy access to Monterey, Pacific Grove and the Monterey Peninsula via the Scenic Trail literally at the campground's doorstep. To be clear, the intent is not a high-end 'glamping' experience, but rather a more basic ensemble of some 25 tent cabins akin to a slightly more upscale and modernized version of Curry Village in Yosemite,⁵³ where each cabin is located on a low-profile 10-foot by 10-foot platform with mattresses/bunk beds to sleep up to four, storage areas, and hangers for lights and other camp gear. Such setup, including being fully enclosed in canvas or similar all-weather material, will better respond to the winds and coastal environment and make it usable year-round. Also proposed is a communal fire pit and shower/restroom building, with the overarching design goal to be a campground facility that blends in with the surrounding dune aesthetic as much as possible.

The proposal represents an exciting opportunity to provide a new year-round overnight beach camping experience. As noted above, such new campground proposals are rare in the coastal zone, with existing ones either confined to State Parks or in higher priced private facilities that aim to provide a more luxurious accommodation experience. As such, the Applicant's proposal herein can help fulfill that demand with 25 tent cabins priced at lower cost rates,⁵⁴ and ones that provide easy access to the ocean and dune environment, as well as nearby attractions. **Special Conditions 3(d) and 14** include additional specificity for the campground's construction and operations, including that the campground must be operational prior to occupancy of the condo-hotel, that prohibit conversion of the campground to any other form of use, and that restrict price increases to no more than the Consumer Price Index. 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, beach and CCT and other accessway improvements, etc.), the proposed project protects and provides lower

⁵³ And less expensive than Curry Village, with tent cabins there generally priced for over \$200 per night. The Applicant proposes to cap prices here at \$150 per night (inclusive of any resort fees). Although the Commission has a more refined protocol for establishing lower and higher price points for standard operating hotels, it does not apply that same protocol for other accommodation types, including camping facilities. Instead, the Commission has generally interpreted lower cost tent sites and tent cabins as those matching State Parks' rates for its coastal properties, which is generally \$50 and \$150, respectively. In addition, using the Commission's typical methodology to define lower cost thresholds for hotel rooms, the statewide average daily rate (ADR) for standard, double occupancy rooms during the peak-season (July/August 2025 is the most recent datapoint) was about \$200. 75% of this amount (i.e., the lower cost threshold) would be approximately \$150, and thus the cabins price matches that price point as well.

As such, the proposed price cap here of \$150 generally matches the rates charged for similar cabins by California State Parks and is the benchmark the Commission typically uses to identify lower cost campground and tent cabin rates, and can be considered lower cost in this analysis.

⁵⁴ Where the 25 tent cabins represent 25% of the 100 higher cost units in the condo-hotel.

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cost visitor and recreational facilities and can be found consistent with LCP Policy 3.3.2 and Coastal Act Section 30213. In sum, as proposed and conditioned, the project can be found consistent with LCP and Coastal Act public access and recreation provisions.

G. Public Services

Applicable LCP Provisions

The LCP requires adequate and available public services for new development, including water and wastewater treatment capacity. Applicable LCP policies include:

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....

Water and other public services are finite commodities in great demand in Sand City and the surrounding area, and the LCP recognizes as much. The LCP only allows approval of new development where it has been clearly demonstrated that adequate water supply and wastewater treatment capacity is available to serve the development. The LCP includes these limitations to ensure that new development does not exacerbate water and wastewater problems.

Analysis

The project proposes to receive water supply from the Sand City desalination plant. In 2005, the Commission approved a CDP (CDP A-3-SNC-05-010) for a 300 acre-feet-per-year (AFY) reverse osmosis desalination plant to supply potable water to Sand City's residents and commercial/industrial establishments. The desalination plant and two 425,000 gallon storage tanks are located east of Highway 1 along Shasta Avenue. The plant is supplied with brackish water from extraction wells located west of Highway 1, about 60 feet below the existing grade of the dune, near the bluff edge, within the rights-of-way of Bay and Tioga Avenues. The Sand City desalination plant began operation in May 2010. The City contracts with Cal-Am to operate, maintain, and distribute water from the desalination plant.

As noted, the plant supplies the City with 300 AFY of potable water, although Sand City's water needs are currently only about 94 AFY. Thus it appears that there is adequate capacity to serve the proposed project at this time. To the next question as to whether that water is available to serve the proposed project, that requires a little more explanation. It is important to note that the desalination plant CDP contains restrictions on new water supply distribution pipelines west of Highway 1. Per that CDP, including the Commission's adopted findings, the intent of this limitation is not necessarily to affirmatively restrict such infrastructure in all cases, but rather to require an evaluation via a CDP amendment process to ensure that any large scale water supply distribution project/public capital outlay is otherwise consistent with the LCP, including in terms of habitat protection, housing/land use needs, etc. The CDP also makes clear that

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individual water lines to serve otherwise LCP compliant development west of the highway is allowable without such CDP amendment. Put another way, the intent is that larger scale infrastructure that has the potential to serve multiple properties (i.e., “extension of water supply distribution pipelines” as specified in the CDP), and with the potential to induce growth, undergoes a more thorough review, including in terms of compliance with the LCP and the CDP’s terms and conditions, while “individual connections from existing or approved lines” need not go through this extra review process (as long as such projects receiving water are otherwise LCP consistent, of course). As such, **Special Condition 19** allows for water service for the project, but only from an individual line connection from an existing distribution pipeline inland of Highway 1. The condition also prohibits other water connections to/from this individual line to serve water for other development not authorized by this CDP, as well as any extension of water supply distribution pipelines for the approved development and for any other development seaward of Highway 1.

Finally, wastewater from the site would be directed to the Monterey One Water (formerly Monterey Regional Water Pollution Control Agency) wastewater treatment plant in Marina via delivery lines maintained by the Seaside County Sanitation District (SCSD). Monterey One Water’s Marina plant currently processes slightly under 20 million gallons per day (MGD) and has a permitted capacity of 25 MGD.⁵⁵ Thus there is adequate and available sewage treatment capacity to serve the proposed project at this time. **Special Condition 19** requires evidence from Monterey One Water and SCSD that they will serve the project.

Accordingly, the Commission finds the project as conditioned can be found consistent with the LCP’s public services provisions.

H. Other

Archaeological/Cultural Resources

The LUP requires development to protect archaeological resources, including monitoring during construction by a qualified tribal representative:

LUP Policy 4.4.30. Require protection, evaluation, and/or removal under supervision by a qualified archaeologist and consultation with a qualified Native American representative, archaeological resources that may be found during the construction process.

The Monterey Bay region is represented by the Ohlone/Costanoan-Esselen Nation (OCEN), which is comprised of over 600 enrolled tribal members of Esselen, Carmeleno, Monterey Band, Rumsen, Chalon, Soledad Mission, San Carlos Mission (Carmel) and/or Costanoan Mission Indian descent. **Special Condition 15** includes the Commission’s typical archaeological protection protocols, including potential stop work orders during construction should artifacts/human remains be uncovered, and which,

⁵⁵ 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.

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similar to the identified habitat resource protections, must be identified on all required construction plans. As conditioned, the project can be found consistent with the LCP's archaeological/cultural provisions.

Other Approvals/Authorizations

This approval only authorizes development on the Applicant's property, and on off-site property with evidence of approval of the property owner (**Special Condition 20**). In addition to CDP authorization under the Coastal Act and LCP, the proposed project appears to affect resources and habitats under the jurisdiction of the United States Fish and Wildlife Service and the California Department of Fish and Wildlife, which may need to provide authorization. To ensure that the Applicant has a sufficient legal interest to carry out the project consistent with the terms and conditions of this CDP and to ensure that the proposed project is authorized by all applicable regulatory agencies, **Special Condition 21** requires the Applicant to submit written evidence either of these other agencies' approvals of the project (as conditioned and approved by this CDP) or evidence that such approvals are not required. **Special Condition 22** also specifies that the Permittee is to follow all other requirements and conditions imposed by the City of Sand City pursuant to their non-Coastal Act authorities. If there is any conflict, however, between those conditions and this CDP, this CDP shall govern.

Minor Changes

This CDP authorizes the project proposed except as modified by the special conditions. As is typical of large and complicated construction projects like this, there can be the need for minor changes as circumstances dictate. Thus, this approval allows for such changes through either (a) a CDP amendment, or (b) if the Executive Director determines that no amendment is legally required, then such changes may be allowed by the Executive Director if the Executive Director determines that such changes: (1) are deemed reasonable and necessary; and (2) do not adversely impact coastal resources (**Special Condition 23**).

Liability

Coastal Act Section 30620(c)(1) authorizes the Commission to require applicants to reimburse the Commission for expenses incurred in processing CDP applications.⁵⁶ Thus, the Commission is authorized to require reimbursement for expenses incurred in defending its action on the pending CDP application in the event that the Commission's action is challenged by a party other than the Applicant. Therefore, consistent with Section 30620(c), the Commission imposes requiring reimbursement for any costs and attorneys' fees that the Commission incurs in connection with the defense of any action brought by a party other than the Applicant challenging the approval or issuance of the CDP (**Special Condition 24**).

Deed Restriction

The terms and conditions of this approval are perpetual and run with the land, thus binding any future buyers and owners of the properties subject to this CDP. This approval is also conditioned for a deed restriction to be recorded against the property

⁵⁶ See also California Code of Regulations Title 14 Section 13055(g).

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involved in the application (see **Special Condition 25**). This deed restriction will record the conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the properties.

I. Violation

Violations of the Coastal Act exist on the subject properties. Specifically, concrete, rock, and debris has been placed without CDPs on the bluffs and the beach spanning the foot of Tioga Avenue and the downcoast end of the project site (on the Sterling parcel), a distance of some 400 feet of debris field. In addition, downcoast of Tioga Avenue, additional concrete and asphalt debris has been placed on the bluffs and beach without CDPs. In addition, on the McDonald parcel, which was formerly owned by Monterey Sand Company, a mix of what appears to be rock, debris and concrete slurry has been placed on the bluffs and beach extending over 800 linear feet along the site. While some of this concrete tailing berm appears to have been placed before CDP requirements,⁵⁷ at least half of it was added without CDPs after they would have been required.⁵⁸ Finally, the ongoing materials storage and industrial use nearest Tioga Avenue appears to have commenced sometime around 1990, when CDPs were required, but it has never been recognized by a CDP. All such development has been in place for many years, has been verified through field visits and research by Commission staff, and are being tracked by the Commission as violations of Coastal Act and LCP CDP requirements.

In 2019, Commission enforcement staff sent a Notice of Violation to John King and the City of Sand City⁵⁹ regarding the concrete berm, the debris fronting Tioga Avenue and the Sterling site, and the material storage and industrial use of that site. A site visit occurred following the notice in February of 2020, and the City sent a response in March of 2020 wherein they made the claims that the debris “seawall” fronting Tioga Avenue and downcoast of Tioga Avenue predated the Coastal Act (supported by newspaper clippings) and that a Commission-issued CDP, CDP No. P-78-552,

⁵⁷ Where CDPs were required at this site beginning on February 1, 1973 (pursuant to Proposition 20, “the Coastal Initiative”), and where such CDP requirements continued once the Coastal Act was approved in 1976, and which became effective on January 1, 1977.

⁵⁸ In addition, there is no evidence to suggest that the tailings materials that were added prior to 1973 (or even prior to 1977) were legally added consistent with any other authorizations that would have been required before CDPs were required (e.g., building permits, grading permits, Army Corp of Engineers authorizations, State Division of Mines and Geology authorizations, State Lands Commission authorizations, etc.). If not, then such development would not represent a vested right, and would also be considered unpermitted under the Coastal Act as well. No vested rights application has been submitted, let alone information provided in support of same.

⁵⁹ The McDonald site, also known as the former Monterey Sand Company site, was then and is currently owned by the Successor Agency to Sand City’s Redevelopment Agency. The Successor Agency is apparently a separate entity, but is closely associated with the City, including that the same staff and leadership appear to represent both. And John King is the primary for the current Applicant group and owners of the Sterling site.

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authorized the addition of liquid concrete to the berm on McDonald. However, further research has revealed that that is not the case.

Specifically, Commission enforcement staff have conducted a thorough review of the Commission's files relating to this area. In relation to the debris fronting Tioga Avenue and the area south of it, while it is true that some of this appears to have been placed before CDPs were required, there is ample evidence, including photographic evidence (see Exhibit 2), that additional material was added after CDPs were required, which was akin to modifying any pre-Coastal Act materials configuration, itself requiring that such development be analyzed through a CDP application as a replacement project.^{60,61} Newspaper clippings from 1971 and 1972 indicate that the Mayor of Sand City, Phil Calabrese, was using construction debris to create a seawall in this area for the development of Mar Vista Drive. It is unclear exactly when any such road construction was completed in relation to CDP requirements, but regardless, additional materials were added to this area after CDPs were required. At some point, maintenance of Mar Vista Drive ceased, and since then portions of it have fallen onto the beach below, representing another Coastal Act violation, and contributing to the debris on the bluffs and beach south of Tioga Avenue.

On the Sterling site, Commission staff issued a Stop Work order in 1979 when the then property owner, Muriel Calabrese, was adding liquid concrete to the unengineered armoring structure fronting that site, a practice that had apparently been routine for many years, including since 1973 without CDP authorization. The owner applied for a CDP to rectify the violation and a CDP was approved, but the owner chose not to accept the permit and it expired. Therefore, that violation was never addressed.

As for the unpermitted materials storage and processing use of the site, it is clear from the records that the pre-coastal use of the site was a concrete batch plant, a use that by 1989 had ceased "about ten years ago" according to a letter by owner Muriel Calabrese. Therefore, any new use of the site, including the current materials storage and processing operation, would have required a CDP, which was never sought or obtained.

Finally, in regards to the concrete berm and CDP P-78-552 which would have authorized its maintenance with liquid concrete, review of the files has revealed that that permit never issued. At the time, the applicant, Monterey Sand Company, was engaged in litigation with the Commission over whether its sand mining operation was exempt from Coastal Act permitting requirements. During the course of that litigation, Monterey Sand Company sought a CDP to authorize its sand mining operation, which was approved by the Commission subject to conditions, including a "prior-to-issuance" condition that required the Company to record an offer to dedicate a public access easement from the mean high water line to the toe of the bluff. After the permit was approved, but before the prior-to-issuance condition was satisfied, Monterey Sand Company succeeded in its litigation and obtained a vested right to mine sand without

⁶⁰ See 14 CCR Section 13252(b).

⁶¹ And the same observations about potential vested rights from above are applicable here as well.

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the need to obtain a CDP from the Commission.⁶² Understandably, they abandoned the permit, and it expired. Therefore the continued augmentation of the concrete berm after the effective date of the Coastal Act was not authorized by a CDP and is another violation.

Although some of the details about the violations only came to light more recently, Commission staff has worked with the Applicant over the years on a comprehensive package of coastal resource amenities that would both mitigate for the proposed hotel project and resolve the majority of these violations. For example, the debris removal (**Special Condition 1**), and the timing of that removal by a date certain (**Special Conditions 1 and 9**), as well as the cessation of the ongoing industrial use of the Sterling site within 6 months of CDP approval (**Special Condition 9**) will remove the majority of the extant portions of the violations from the project area. Importantly, all debris on the beach south and seaward of Tioga Avenue, and on the Sterling site, will be removed. In addition, the entire concrete tailings berm will be removed from the McDonald site (**Special Conditions 1 and 9**). The conditions are structured so that this crucial work occurs by dates certain in order to ensure that the ongoing impacts of these violations are addressed as quickly as possible.

In addition to removing violations on the ground, the overall package of coastal resource enhancements and public amenities proposed in this project provides sufficient mitigation for these violations and the proposed hotel. Importantly, with this proposal, the Commission anticipates that the violation remediation and coastal resource benefits will be achieved more quickly than if the Commission's enforcement unit were to pursue formal enforcement of these violations. This package includes a suite of coastal resource benefits including managed retreat of the end of Tioga Avenue; public access amenities such as trails, beach accessways, overlooks, bathrooms, showers, bike racks, trash collection and signage; a plastics reduction program; ongoing dune and public access management and maintenance, and deed restricting all such areas outside of the main hotel/resort development footprint, among others (see **Special Conditions 1, 2, 6, 7, 8, 9, and 16**).

Development associated with approval of this CDP will rectify the above-described violations. Thus, issuance of the CDP, the subsequent performance of the work authorized by the CDP in compliance with all of the terms and conditions of the CDP will result in resolution of the violations on the subject properties.

Although the above-described development has taken place on the properties without the benefit of a CDP, consideration of this application by the Commission has been based solely upon the Coastal Act's access and recreation provisions, and the City's certified LCP. Commission review and action on the application does not constitute a waiver of any legal action with regard to the alleged violations (or any other violations), nor does it constitute an implied statement of the Commission's position regarding the

⁶² The Court did not discuss the concrete berm in its decision, which was limited to the issue of sand mining. The concrete berm does not appear to be essential or necessary for sand mining operations, and no vested right application for the concrete berm was ever submitted to the Commission or determined by a Court.

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legality of any development undertaken on the subject site without a CDP, or of any other development, other than the development approved herein. In fact, approval of this CDP is possible only because of the terms and conditions included herein, and the Applicant's presumed subsequent compliance with said conditions, and failure to comply with these conditions in conjunction with the exercise of this CDP would also constitute a violation of this CDP and of the Coastal Act. Accordingly, the Applicant remains subject to enforcement action just as it was prior to this CDP approval for the unpermitted development described herein and for any violations of this permit, unless and until the terms and conditions of this CDP are satisfied.

J. California Environmental Quality Act (CEQA)

CEQA Section 21080.5(d)(2)(a) prohibits a proposed development from being approved if there are feasible alternatives and/or feasible mitigation measures available that would substantially lessen any significant adverse effect that the development may have on the environment. The City of Sand City, acting as lead agency, certified an Environmental Impact Report (State Clearinghouse #2006041070) in December 2013.

The Commission's review, analysis, and decision-making process for CDPs and CDP amendments has been certified by the Secretary of the Natural Resources Agency as being the functional equivalent of the environmental review required by CEQA (CCR Section 15251(c)). Accordingly, in fulfilling that review, this report has analyzed the relevant coastal resource issues with the proposal and has identified appropriate and necessary modifications to address adverse impacts to such coastal resources. All public comments received to date have been addressed in the findings above, and all above findings are incorporated herein in their entirety by reference. The Commission finds that only as modified and conditioned herein will the proposed project avoid significant adverse effects on the environment within the meaning of CEQA. Thus, the proposed project as modified 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).

5. APPENDICES

A. Substantive File Documents⁶³

- Substantial Issue Determination for CDP Appeal A-3-SNC-14-0001
- CDP A-3-SNC-98-114
- CDP A-3-SNC-94-008
- Consent Cease and Desist and Restoration Order CCC-17-CD-02

B. Staff Contacts with Agencies and Groups

- City of Sand City

⁶³ These documents are available for review from the Commission's Central Coast District office.

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- California State Parks
- Monterey Peninsula Regional Park District
- California-American Water Company
- Monterey-Salinas Transit
- LandWatch Monterey County
- Sierra Club
- Surfrider Foundation
- United States Fish and Wildlife Service
- Ohlone/Costanoan-Esselen Nation (OCEN)