

I. STANDARD CONDITIONS

This permit is granted subject to the following standard conditions:

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the Permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Expiration.** If development has not commenced, the permit will expire two 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.

II. SPECIAL CONDITIONS

This permit is granted subject to the following special conditions:

1. **Revised Plans.** PRIOR TO ISSUANCE OF THE CDP, the Permittee shall submit two full size sets of Revised Plans with graphic scale to the Executive Director for review and approval. The Revised Plans shall be prepared by a licensed professional or professionals (i.e., architect, surveyor, geotechnical engineer, etc.), and shall be based on current professionally surveyed and certified topographic elevations for the entire site. The Revised Plans shall be substantially in conformance with the VTM, site plans, and cross-sections sheets TM-1 – TM-6 submitted to the Coastal Commission (dated October 21, 2013 as revised on October 28, 2013, December 20, 2013, and January 17, 2014 and dated received in the Coastal Commission’s Central Coast District Office January 3, 2013 and January 30, 2014) as shown on Exhibit 4 – 6; the MBS Access, Signage and Lighting Plan (dated October 2013 and dated received in the Central Coast District Office October 28, 2013 – Exhibit 23); and the Habitat Protection Plan (dated October 2013 and dated received in the Central Coast District Office October 28, 2013 – Exhibit 20), but shall be modified to achieve compliance with this condition, including that the Revised Plans shall show the following required changes and clarifications to the project:
 - (a) **Dune Manipulation for Screening Purposes.** The project includes re-contouring of the protected dune feature, an extension of the protected dune feature to the north, and dune field manipulation north of the extended dune for screening purposes. Dune field

manipulation north and northwest of the extended dune view line (see Exhibit 8x [dune view line as shown in v4.3; see page 2 of Exhibit 4]) shall be limited to a finished elevation generally equal to existing grade except that undulations in height may go up to a maximum of 3 feet greater than existing grade to allow for replicated dune landscaping. All such dune manipulation shall be designed to replicate natural dune landforms and integrate into the surrounding dunes to the maximum extent feasible.

- (b) Highway One Dune Screening for Buildings and Related Development.** All building and related development shall be sited and designed so that views of it from either southbound or northbound Highway One (from a height of 5 feet above the roadway) are blocked by existing and/or modified dune features (including through extending dune areas over the top of such development, as applicable) in such a way that such views are of dunes and not of buildings and related development, except that buildings and related development are allowed to be visible in the southbound Highway One view if located inland of the dune view line (see Exhibit 8x [dune view line as shown in v4.3; see page 2 of Exhibit 4])). The Revised Plans shall be submitted with documentation demonstrating compliance with this requirement.
- (c) Highway One Dune Screening/View Mitigation for Other Development.** All other development located inland of buildings and related development (e.g., road access, tunnel access, parking areas, pathways, etc.) shall be sited, designed, and screened in such a way as to minimize its visibility in Highway One views to the maximum extent feasible, including through utilizing below grade development as appropriate to meet such standard. All development that is visible (including any retaining walls – see also below) shall be sited and designed to blend into the dune aesthetic to the maximum extent feasible (including through colorization, natural materials, non-linear and curvilinear contouring, surface roughness, etc.).
- (d) Road Development Minimized.** All road development (providing access to the project through the tunnels as well as ~~secondary~~ access to the project to the north) shall be minimized consistent with the VTM to the maximum extent feasible. Access to the resort shall be limited to the main tunnel access if feasible (thus eliminating the two additional accessways to the north), with the secondary emergency access being the fire road access, provided it is limited to the maximum extent feasible in scale and scope, and sited and designed to blend into the dune aesthetic (including through colorization, natural materials, non-linear and curvilinear contouring, surface roughness, etc.) to the maximum extent feasible. No other road development is authorized by this CDP, thus any proposed future road development shall require either an amendment to this CDP or approval of a separate CDP.
- ~~**(e) Parking Lot Shifted South.** The public parking lot (see also below) shall be shifted to the south (i.e., closer to the main tunnel access) so that its upcoast edge roughly aligns with the extension of the protected dune feature to the north.~~
- (f)(e) Height Limits.** Development height shall be limited as necessary to meet the requirements of this condition, and in no case shall development exceed 45 feet above existing grade for hotel and condominium-hotel components (hotel and condominium-

hotel components include facilities commonly included in hotels and condominium-hotels such as restaurants, meeting rooms, shops for hotel guests, and spa facilities), and 36 feet above existing grade for all other development. The Revised Plans shall be submitted with documentation demonstrating compliance with this requirement, including through site plans and architectural elevations prepared and certified by a licensed architect that identify all hotel and condominium-hotel components versus other components of the project, and evidence demonstrating why components fall into either category.

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

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

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

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

- 1. Parking Lot.** A public parking lot providing 46 full-size parking spaces. The parking lot shall be surfaced (including curbs and gutters) with permeable pavement or permeable concrete colored to blend with the surrounding dune environment as much as possible. A minimum of ten bicycle parking stands; three recycling bins; three trash bins; one water fountain; three ADA parking spaces; and one doggie mitt station, shall be provided in the parking lot in locations that maximize their public

utility and minimize their impact on public views. The parking lot shall be ADA compatible.

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

of the pathway system (at the parking lot), at the base of the beach stairway/pathway, and at other locations where identification and direction is necessary and appropriate. The Permittee shall also make reasonable efforts to work with Caltrans to install a Coastal Commission Public Access (“Feet”) sign on both southbound and northbound Highway One, provided that the Permittee shall not be responsible for any decision made by Caltrans regarding such signage or for the installation or maintenance of such signs. The Permittee shall pay for such signage, including installation costs, upon Caltrans consent for such signs. At least one interpretive panel/installation that provides interpretation of the site, dunes, erosion and coastal hazards, the Monterey Bay, or other related and/or similar subjects shall be provided at the overlook. Signs shall include the California Coastal Trail and California Coastal Commission emblems and recognition of the Coastal Commission’s role in providing public access at this location. All signs shall be sited and designed to maximize their utility and minimize their impacts on public views.

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

~~(k)~~(j) **Setbacks.** All development, other than (1) public access pathways, overlooks, and stairways, (2) resort pathways, (3) foredune grading down to 32 feet above NGVD (subject to the requirements of this condition), and (4) dune restoration (subject to the approved dune restoration plan – see below), shall initially be located inland of the 75 year at 2.6 feet per year setback line as shown on Exhibit 9 (using the inland edge of the line). As circumstances dictate, development shall be removed and the affected area restored (subject to Special Condition 9 requirements), with the same allowable seaward located exceptions.

~~(k)~~(k) **Landscaping.** All non-native and/or invasive plants on the site, including iceplant, shall be removed and the site kept free of such plants for as long as any portion of the approved development exists at this site. All landscaping, other than decorative landscaping within interior courtyards and similar areas (such as the port cochere area), shall consist of only non-invasive dune species native to the Sand City and southern Monterey Bay dune systems (see also Special Condition 3 below). All landscaped areas on the project site shall be maintained in a litter-free, weed-free, and healthy growing condition. No plant species listed as problematic and/or invasive by the California Native Plant Society, the California Invasive Plant Council, or as may be so identified from time to time by the State of California, and no plant species listed as a ‘noxious weed’ by the State of California or the U.S. Federal Government shall be planted or allowed to naturalize or persist on the site. The Revised Plans shall include certification from a licensed landscape professional experienced with native dune species indicating that all

plant species to be used are non-invasive dune species native to the Sand City and southern Monterey Bay dune systems.

~~(m)~~**(l)** **Lighting Minimized.** Exterior lighting shall be wildlife-friendly, shall use lamps that minimize the blue end of the spectrum, and shall be limited to the minimum lighting necessary for pedestrian and vehicular safety purposes. All lighting (exterior and interior) shall be sited and designed so that it limits the amount of light or glare visible from public viewing areas (including but not limited to views from Highway One, Fort Ord Dunes State Park, the recreational trail, the public access amenities, the beach, and areas across Monterey Bay (e.g., Cannery Row) to the maximum extent feasible (including through uses of lowest luminosity possible, directing lighting downward, directing lighting away from windows, etc.). Lighting upcoast of the main tunnel entrance (i.e., along the pathways, parking lot, and fire road access), shall be prohibited other than the minimum lighting necessary for pedestrian and vehicular safety purposes. Otherwise allowable lighting from the public road to the main tunnel entrance shall be limited to pathway and roadway bollards 48 inches or less in height, and any such allowable lighting extending north and seaward from the main tunnel entrance shall be bollard or footing lighting that is as low to the ground as feasible. Overhead light standards and decorative pole lights shall be prohibited. The Revised Plans shall be submitted with documentation demonstrating compliance with these lighting requirements.

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

~~(o)~~**(n)** **Utilities.** The Revised Plans shall clearly identify all utilities (e.g., sewer, water, stormwater, gas, electrical, telephone, data, etc.), the way in which they are connected to inland distribution networks, and “will-serve” or equivalent documentation demonstrating that each applicable utility provider can and will serve the approved development. All utilities shall be located underground, including that the Revised Plans shall provide for removal or undergrounding of all existing overhead utilities on the site and in areas between the site and Highway One.

~~(p)~~**(o)** **Stormwater and Drainage.** The Revised Plans shall clearly identify all stormwater and drainage infrastructure and related water quality measures (e.g., pervious pavements, etc.), with preference given to natural BMPs (e.g., bioswales, vegetated filter strips, etc.). Such infrastructure and water quality measures shall provide that all project area stormwater and drainage is: filtered and treated to remove expected pollutants prior to discharge, and directed to inland stormwater and drainage facilities (and is not allowed to be directed to the beach or the Pacific Ocean) if needed to handle the volume of stormwater and drainage expected, including during extreme storm events (see also below). Infrastructure and water quality measures shall retain runoff from the project onsite to the maximum extent feasible, including through the use of pervious areas,

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

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

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

~~(s)~~**(r)** **Subsurface Elements.** The Revised Plans shall clearly identify all subsurface elements associated with the project (e.g., parking, back of house, etc.).

~~(t)~~(s) **Geotechnical Signoff.** The Revised Plans shall be submitted with evidence that they have been reviewed and approved by a licensed geotechnical and/or structural engineer (or engineers, as appropriate) as meeting applicable regulations for site stability (i.e., seismic and liquefaction) and the requirements of these conditions, including in terms of foundations and retaining walls (see above). The geotechnical signoff shall be supported and accompanied by a site specific geotechnical analysis of the site that evaluates and addresses applicable hazards, including the potential for liquefaction and/or dynamic settlement. The geotechnical analysis shall include, at a minimum: analysis of the subsurface soil characteristics, the structural loading of the building elements, and recommendations on spacing and depth of all foundation elements.

~~(u)~~(t) **Excess Sand.** The Revised Plans shall clearly identify the manner in which excavated sand not necessary for the project (e.g., not necessary for dune extension, restoration, screening, etc.) is to be disposed of and/or beneficially reused. PRIOR TO COMMENCEMENT OF CONSTRUCTION, the Permittee shall obtain a separate CDP or CDP amendment, or a determination from the Executive Director that no CDP or CDP amendment is required, authorizing all aspects of such sand movement and disposal/reuse within the coastal zone and/or affecting coastal zone resources.

~~(v)~~(u) **Fencing.** All existing site fencing shall be removed and replaced with the minimum amount of fencing necessary to meet project objectives, and where such replacement fencing is minimized, sited and designed to be compatible with the dune landscape (e.g., rough-hewn wooden split rail, low rope and pole barriers for restoration areas as needed, etc.) and to minimize public view impacts to the maximum extent feasible.

~~(w)~~(v) **Views.** All development shall be sited, designed, colored, screened, and camouflaged (including making maximum use of integrated dune screening and natural landscaping and screening elements to the maximum extent feasible) to minimize visual incompatibility with the existing dune landscape and public views.

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

2. **Construction Plan.** PRIOR TO ISSUANCE OF THE CDP, the Permittee shall submit two copies of a Construction Plan to the Executive Director for review and approval. The Construction Plan shall, at a minimum, include the following:

- (a) **Construction Areas.** The Construction Plan shall identify the specific location of all construction areas, all staging areas, and all construction access corridors in site plan view. All such areas within which construction activities and/or staging are to take place shall be minimized to the maximum extent feasible in order to have the least impact on dunes, public access, and public views, as well as to maintain best management practices (BMPs) to protect dune resources on-site and in the surrounding area, including by using inland areas for staging and storing construction equipment and materials, as feasible. Construction (including but not limited to construction activities, and materials and/or equipment storage) is prohibited outside of the defined construction, staging, and storage areas.

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

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

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

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

Construction Plan.

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

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

included, as shall a schedule for all restoration activities.

~~(h)~~(i) USFWS. The Plan shall address each of the eight concerns for western snowy plover, and each of the concerns for Smith's blue butterfly and Monterey spineflower, identified in the USFWS April 7, 2014 letter on the project addressed to Mike Watson of the Coastal Commission.

~~(j)~~(i) **Monitoring and Maintenance.** A plan for monitoring and maintenance of habitat areas for the duration of any development approved pursuant to this CDP shall be included, and shall at a minimum include:

1. **Schedule.** A schedule out to 5 years.
2. **Field Activities.** A description of field activities, including monitoring studies.
3. **Monitoring.** Monitoring study design, including: goals and objectives of the study; field sampling design; study sites, including experimental/revegetation sites and reference sites; field methods, including specific field sampling techniques to be employed (photo monitoring of experimental/re-vegetation sites and reference sites shall be included); data analysis methods; presentation of results; assessment of progress toward meeting success criteria; recommendations; monitoring study report content and schedule; and an analysis of high resolution aerial photographs at least every five years.
4. **Adaptation.** Adaptive management procedures, including provisions to allow for modifications designed to better restore, enhance, manage, and protect dune restoration areas.

~~(j)~~(k) **Reporting and Contingency.** Five years from occupancy of the approved development, and every ten years thereafter, the Permittee shall submit, for the review and approval of the Executive Director, a restoration monitoring report prepared by a qualified specialist that certifies the restoration is in conformance with the approved Dune Restoration Plans, along with photographic documentation of plant species and plant coverage beginning the first year after initiation of implementation of the plan, annually for the first five years, and then every ten years after that. If the restoration monitoring report or biologist's inspections indicate the restoration is not in conformance with or has failed to meet the performance standards specified in the approved Dune Restoration Plans approved pursuant to this CDP, the Permittee shall submit a revised or supplemental restoration plan for the review and approval of the Executive Director. The revised or supplemental restoration plan shall be prepared by a qualified specialist, and shall specify measures to remediate those portions of the original approved plans that have failed or are not in conformance with the original approved plans. These measures, and any subsequent measures necessary to carry out the approved plans, shall be carried out in coordination with the direction of the Executive Director until the approved plans are established to the Executive Director's satisfaction.

~~(k)~~(l) **Dune Restoration Implemented Prior to Occupancy.** Initial dune restoration activities, including at a minimum non-native and invasive removal and initial site

planting, shall be implemented prior to occupancy of the approved development.

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

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

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

special condition. The Public Access Plan shall be consistent with the approved Revised Plans (see Special Condition 1), and shall at a minimum include the following:

(a) Clear Depiction of Public Access Areas and Amenities. All public access areas and amenities, including all of the areas and amenities described above and in this condition, shall be clearly identified as such on the Public Access Plan (including with hatching and closed polygons so that it is clear what areas are available for public access use).

(b) Public Access Areas. All parameters for use of the public access areas of the site, including but not limited to the following areas, shall be clearly identified. All access areas and amenities shall be sited and designed to integrate with the surrounding dune environment to the maximum extent feasible; shall be made up of natural materials (e.g., wood) when feasible; shall be natural and curvilinear forms (e.g., curving pathway segments, rounded overlook areas, etc.) when feasible and shall utilize the same design theme throughout. In addition:

- 1. Parking Lot.** The parking lot shall be publicly available for general public vehicle parking, bicycle parking, pedestrian access, and bicycle access. At least: ten bicycle parking stands; three recycling bins; three trash bins; one water fountain; three ADA parking spaces; and one doggie mitt station, shall be provided in the public parking area in locations that maximize their public utility and minimize their impact on public views. The parking lot shall be ADA compatible. Use of the parking lot for other than general public access purposes shall be prohibited during public access use hours (see below). The Public Access Plan shall include a description of the manner in which the Permittee will ensure that other site users and/or employees will not park in the parking lot during these times.
- 2. Pathway System.** The pathway system shall be publicly available for general public pedestrian (and bicycle from the inland public recreational trail to the upcoast edge of the parking lot) access. The portion of the pathway system that extends from the public recreational trail to and along the public parking lot (to the upcoast edge of the parking lot) shall be a separate, dedicated pedestrian and bicycle path similar in width as the inland public recreational trail; shall include separation from the road and parking utilizing concrete curbs, bumpers, or other barriers to insure safety of pedestrians and bike riders~~shall include a minimum of five feet of horizontal separation from the road and parking lot edge, or as far as is feasible~~; and shall be surfaced with permeable pavement or permeable concrete colored to blend with the surrounding dune environment to the maximum extent feasible from at least the point where it enters onto the subject property. The portion of the pathway system that extends from the upcoast edge of the parking lot to the overlook shall be a wooden pedestrian boardwalk approximately 6 feet in width. All portions of the pathway system shall be ADA compatible, and shall be curvilinear (and not linear) in appearance to the maximum extent feasible.
- 3. Overlook.** The overlook shall be publicly available for general public pedestrian access. The overlook shall be approximately 300 square feet, shall be made up of a wooden boardwalk surface, and shall be sited and designed to eliminate the need for

railings to the maximum extent feasible (e.g., setback a sufficient distance from the blufftop edge so as to not necessitate such features). At least: three benches; one interpretive panel/installation; one recycling bin; one trash bin; and one doggie mitt station, shall be provided at the overlook in locations that maximize their public utility and minimize their impact on public views. The overlook shall be ADA compatible.

- 4. Beach Stairway/Pathway.** The beach stairway/pathway shall be publicly available for general public pedestrian access. The stairway/pathway shall be sited and designed to minimize landform alteration and to conform to the bluffs to the maximum extent feasible, to eliminate or minimize (if elimination is not possible) railings; to avoid to the maximum extent feasible construction and post-construction impacts to sensitive species, including seacliff buckwheat; and to maximize public utility and minimize impacts on public views. The public beach stairway/pathway may extend onto Fort Ord Dunes State Park if such extension is allowed by State Parks, and if such extension better meets the intent of this condition, including in terms maximizing public access utility and protecting dune landforms and public views.
- 5. Beach.** The beach and offshore area (i.e., extending from the seawardmost property line to the toe of the dune bluff, including as the toe of the dune bluff migrates inland) shall be publicly available for general public pedestrian and beach access, and all activities typically associated with same (e.g., walking, swimming, surfing, sunbathing, picnicking, stargazing, etc.). Resort development, other than minimal landings, if necessary, associated with approved resort pathways (see Special Condition 1), shall be prohibited in the beach area.

(c) Public Access Signs/Materials. The plan shall identify all signs and any other project elements that will be used to facilitate, manage, and provide public access to the approved project, including identification of all public education/interpretation features that will be provided on the site (i.e., educational displays, interpretive signage, etc.). Sign details showing the location, materials, design, and text of all public access signs shall be provided. The signs shall be sited and designed so as to provide clear information without impacting public views and site character. At a minimum, public access identification and direction signs shall be placed where the pathway system connects with the inland public recreational trail, at the base of each Fremont Street off ramp, at the entrance to the approved project (where it meets the public street), at or near the point where the tunnel entrance diverges from the parking lot entrance, at the entrance to the parking lot, at the beginning of the boardwalk section of the pathway system (at the parking lot), at the base of the beach stairway/path, and at other locations where identification and direction is necessary and appropriate. The Permittee shall also make reasonable efforts to work with Caltrans to install a Coastal Commission Public Access ("Feet") sign on both southbound and northbound Highway One provided that the Permittee shall not be responsible for any decision made by Caltrans regarding such signage or for the installation or maintenance of such signs. The Permittee shall pay for such signage, including installation costs, upon Caltrans consent for such signs. At least one interpretive panel/installation that provides interpretation of the site, dunes, erosion

and coastal hazards, the Monterey Bay, or other related and/or similar subjects shall be provided at the overlook. Signs shall include the California Coastal Trail and California Coastal Commission emblems and recognition of the Coastal Commission's role in providing public access at this location. All signs shall be sited and designed to maximize their utility and minimize their impacts on public views.

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

provide for payment to the City of Sand City's in-lieu parking fee fund at the current rate for the number of such spaces that are deemed by the Executive Director to be infeasible, and such payment shall be specifically earmarked and reserved and only allowed to be used for providing and maintaining public beach access parking. Any such funds shall only be used for said purpose subject to Executive Director review and approval. For any such parking spaces that are deemed feasible, the plan shall clearly document the manner in which the 35 (or fewer if fewer are deemed feasible) required parking spaces are to be constructed, developed, and maintained, including providing for other property owner consent, for as long as some portion of the approved development remains. The Permittee shall undertake such offsite parking space development in accordance with the approved plan, and such spaces shall be available prior to occupancy of the approved development.

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

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

6. **Public Access Easement.** PRIOR TO ISSUANCE OF THE CDP, the Permittee shall execute and record a document, in a form and content acceptable to the Executive Director, granting or irrevocably offering to dedicate to a political subdivision, public agency or private association approved by the Executive Director either fee title or an easement for public access (Public Access Dedication). The Public Access Dedication shall apply to all public access areas described in Special Condition 5 and generally depicted in Exhibit 11b and shall restrict these areas in the same ways identified in Special Condition 5. The Public Access Dedication area shall be ambulatory, including that (a) the beach portion of the easement area shall move inland if the toe of the dune bluff moves inland; and (b) the pathway system, overlook, and beach stairway/pathways portion of the easement area shall move inland if the toe of the dune bluff moves inland and/or if, as a result of coastal hazards, relocation and/or reconstruction of access amenities in these areas is necessary to retain their utility. The Public Access Dedication shall be recorded free of all prior liens and encumbrances that the Executive Director determines may affect the interest being conveyed. The Public Access Dedication shall include a legal description and graphic depiction of the legal parcels subject to the CDP and a metes and bounds legal description and graphic depiction of the Public Access Dedication area prepared by a licensed surveyor based on an on-site inspection, drawn to scale, and approved by the Executive Director.

7. **Public Rights.** By acceptance of this CDP, the Permittee acknowledges and agrees, on behalf of itself and all successors and assigns, that the Coastal Commission's approval of this CDP shall not constitute a waiver of any public rights, if any, that may exist on the property, and that the Permittee shall not use this CDP as evidence of a waiver of any public rights that may exist on the property.
8. **Coastal Hazards Risk.** By acceptance of this CDP, the Permittee acknowledges and agrees, on behalf of itself and all successors and assigns:
 - (a) **Coastal Hazards.** That the site is subject to coastal hazards including but not limited to episodic and long-term shoreline retreat and coastal erosion, high seas, ocean waves, storms, tsunamis, tidal scour, coastal flooding, liquefaction and the interaction of same;
 - (b) **Assume Risks.** To assume the risks to the Permittee and the property that is the subject of this CDP of injury and damage from such coastal hazards in connection with this permitted development;
 - (c) **Waive Liability.** To unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such coastal hazards;
 - (d) **Indemnification.** To indemnify and hold harmless the Coastal Commission, its officers, agents, and employees with respect to the Commission's approval of the development against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such coastal hazards; and
 - (e) **Property Owners Responsible.** That any adverse effects to property caused by the permitted development shall be fully the responsibility of the property owners.
9. **Coastal Hazards Response.** By acceptance of this CDP, the Permittee acknowledges and agrees, on behalf of itself and all successors and assigns, that:
 - (a) **CDP Intent.** The intent of this CDP is to allow for the approved development to be constructed and used consistent with the terms and conditions of this permit for only as long as it remains safe for occupancy and use without additional measures beyond ordinary repair and/or maintenance (including sealing and waterproofing repair and/or maintenance that does not involve extraordinary measures) to protect it from coastal hazards. The intent is also to ensure that development is removed and the affected area restored under certain circumstances (including as further described and required in this condition), including that development, except public access amenities and resort pathways, is required to be removed, consistent with the Removal and Restoration Plan required in subsection (g) of this special condition;
 - (b) **Shoreline Protective Structures Prohibited.** Future shoreline protective structures (including but not limited to seawalls, revetments, groins, etc.) shall be prohibited for the life of the development;

- (c) **Section 30235 Waiver.** Any rights to construct such shoreline protective structures, including rights that may exist under Public Resources Code Section 30235 and LCP Sections 4.3.1 and 4.3.5, are waived;
- (d) **Public Access Amenities.** In the event that the approved public access amenities (including but not limited to the pathway system, overlook, and stairway/pathway) are threatened with damage or destruction from coastal hazards, or are a hazard, or are damaged or destroyed by coastal hazards, or become located ten feet or more seaward of the toe of the bluff, such amenities shall be reconstructed with due diligence and speed, and with minimum disruption to continued public use (and relocated inland as necessary to provide long term stability). Prior to reconstruction, the Permittee shall submit two copies of a Reconstruction Plan to the Executive Director for review and approval. If the Executive Director determines that an amendment to this CDP or a separate CDP is legally required, the Permittee shall immediately submit and complete the required application. The Reconstruction Plan shall clearly describe the manner in which such amenities are to be reconstructed (and relocated as applicable), and shall be implemented immediately upon Executive Director approval or approval of the CDP or CDP amendment application, unless such CDP or CDP amendment identifies a different timeframe for implementation;
- (e) **Resort Pathways.** In the event that the two approved resort pathways providing resort access towards the ocean (see Special Condition 1) are threatened with damage or destruction from coastal hazards, or are damaged or destroyed by coastal hazards, or become located ten feet or more seaward of the toe of the bluff, such amenities shall be reconstructed (and relocated inland as necessary to provide long term stability) subject to the same parameters of their approved initial construction. Prior to reconstruction, the Permittee shall submit two copies of a Reconstruction Plan to the Executive Director for review and approval. If the Executive Director determines that an amendment to this CDP or a separate CDP is legally required, the Permittee shall immediately submit and complete the required application. The Reconstruction Plan shall clearly describe the manner in which such amenities are to be reconstructed (and relocated as applicable);
- (f) **Blufftop Edge Monitoring.** PRIOR TO ISSUANCE OF THE CDP, the Permittee shall submit two copies of a blufftop edge monitoring plan (Blufftop Plan) to the Executive Director for review and approval. The Blufftop Plan shall be prepared by a certified engineering geologist and/or geotechnical engineer familiar and experienced in shoreline processes, and it shall provide for a schedule and methodology for monitoring and reporting on the location of the blufftop edge in relation to the approved development (including but not limited to buildings, roads, utility infrastructure, subsurface elements, etc.). The Blufftop Plan shall include, at a minimum, the following:
1. **Reference Points.** Provisions for establishing, prior to construction, numbered monuments or surveyed points of measurement (reference points) to be located along the seaward edge of the approved development at a minimum of 25-foot increments, as well as at the most downcoast and most upcoast portions of the seaward edge of the approved development.

- 2. Measurement Episodes.** Provisions for a licensed surveyor, in coordination with a certified engineering geologist, civil engineer and/or geotechnical engineer familiar and experienced in shoreline processes, to conduct measurements, in feet, of the linear distance (measured perpendicular from the shoreline) between the established reference points and the blufftop edge: ~~(a) on April 1st or thereabouts every year; and (b)~~ immediately after any event that results in the blufftop edge eroding inland 10 feet or more, or any combination of events that total 10 feet since the last measurement episode, or at a minimum every five years. The Plan shall provide for a methodology consistent with standard surveying and blufftop delineation methods for determining the location of the blufftop edge and documenting distances on land. Each measurement episode shall also be documented through identification of: (a) the date of the measurement; (b) the person making the measurement and their qualifications; ~~(c)~~ tidal and weather details for the times and dates of the measurement episode, including each date/time associated with any photos (see below); and (d) photos (in color, and in both hard copy 8.5” by 11” and electronic jpg formats (or equivalent), and at a scale and resolution that allows for comparison by the naked eye between photos of the same location taken at different times) of: (i) the area between each reference point and the blufftop edge, providing full photographic coverage of the blufftop area between each reference point and the blufftop edge; (ii) each reference point and the surrounding area; and (iii) the point on the blufftop edge from which each measurement derives and the surrounding area, including photos both from a blufftop and a beach vantage so as to provide full photographic coverage of the bluff face itself and the blufftop edge. The photo documentation shall be accompanied by a site plan that identifies the location and orientation of each photo, each view of which shall be numbered. Measurement episodes shall include photos from the same vantage points each time to the extent possible, and shall include additional vantage points (and coverage of those additional vantage points as well in subsequent measurement episodes) as necessary to provide coverage of the required photographic area.
- 3. Other Removal and Restoration Criteria.** Provisions for assessing and documenting each of the other removal and restoration criteria described in subsection (g) of this special condition. Assessment shall, at a minimum, evaluate all removal and restoration criteria and make recommendations on how to meet those criteria. Documentation shall, at a minimum, include: (a) site plans; and (b) photographic documentation (in color, and in both hard copy 8.5” by 11” and electronic jpg formats (or equivalent), and at a scale and resolution that allows for comparison by the naked eye between photos of the same location taken at different times) sufficient to provide full photographic coverage of the areas in question.
- 4. Public Access Amenities and Resort Pathways.** Provisions for assessing and documenting the public access amenities and resort pathway areas, including at least the parameters associated with their reconstruction, as identified in subsections (d) and (e) of this special condition above. Assessment shall, at a minimum, evaluate all reconstruction criteria and make recommendations on how to meet those criteria. Documentation shall, at a minimum, include: (a) site plans; and (b) photographic documentation (in color, and in both hard copy 8.5” by 11” and electronic jpg formats

(or equivalent), and at a scale and resolution that allows for comparison by the naked eye between photos of the same location taken at different times) sufficient to provide full photographic coverage of the areas in question.

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

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

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

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

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

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

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

Condition 1; and (d) all modifications necessary to maintain compliance with the terms and conditions of this CDP, including the objectives and performance standards of these conditions (including to minimize visual incompatibility with the existing dune landscape and public views) are implemented as part of the RRP.

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

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

(a) **Hotel Length of Stay Provisions.** All hotel overnight units shall be open and available to the general public. Rooms shall not be rented to any individual, family, or group for more than 29 consecutive days ~~per year or for more than 14 days between the Saturday of Memorial Day weekend through the Monday of Labor Day weekend~~; and

(b) **Conversion Prohibited.** The conversion of any of the hotel overnight units to limited use overnight visitor accommodation units (e.g., timeshare, fractional ownership, etc.) or to full-time occupancy condominium units or to any other units with use arrangements that differ from the approved project shall be prohibited.

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

(a) **Hotel and Condominium Hotel Overnight Units.** The approved development includes a standard operating hotel with 184 overnight units and a condominium-hotel component with 92 visitor-serving overnight condominium-hotel units, or lesser numbers at a similar or more hotel to condominium-hotel ratio if: (1) required to meet the terms and conditions of this CDP, including pursuant to the approved Revised Plans required by Special Condition 1; and/or (2) portions of the project are modified through removal.

(b) **Condominium Hotel Component.** PRIOR TO ISSUANCE OF THE CDP, the Permittee shall submit two copies of plans and documentation materials (Condominium Hotel Plans) for Executive Director review and approval that clearly identify: all elements of the condominium-hotel visitor-serving component of the project; the manner in which ownership will be applied to each element of the condominium-hotel visitor-serving component (including common areas and individual units); an operator responsible for managing the condominium-hotel visitor-serving units (operator), including the booking of reservations for all units; the non-hotel lobby area configuration and operational parameters; the mechanism by which the individual units are to be booked, including at a

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

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

The operator shall have the right, working through the unit owners, to book any unoccupied room to fulfill public demand. The owner may not withhold units from use unless they have already been reserved for use by the owner, consistent with the length of occupancy limitations identified above. In all circumstances, the operator shall have full access to the unit’s reservation and booking schedule so that the operator can fulfill its booking and management obligations hereunder.
- (e) **CHVS Unit Marketing.** The operator shall market all CHVS units to the general public. Owners of individually owned CHVS units may also independently market their units. Unit owners shall not discourage rental of their units nor create disincentives meant to discourage rental of their units.
- (f) **CHVS Units Management.** The operator shall manage all aspects of the condominium-hotel component of the project, including all CHVS units, including but not limited to reservation booking, mandatory front desk check-in and check-out, maintenance, and cleaning services (including preparing units for use by guests/owners, a service for which the operator may charge unit owners a reasonable fee). All unit keys shall be electronic and shall be newly created by the operator upon each change in user occupancy for any unit. All units shall be rented at a rate similar to that charged for traditional hotel rooms of a similar class or amenity level in the California coastal zone.

(g) Marketing and Sale of Condominium Hotel Interests. All documents related to the marketing and sale of condominium interests in CHVS units (including marketing materials, sales contracts, deeds, CC&Rs and similar documents, etc.) shall notify potential buyers of the following:

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

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

(h) Conversion Prohibited. The conversion of the approved CHVS units to other types of limited use overnight visitor accommodation units (e.g., to timeshare, fractional ownership, etc.) or to full-time occupancy condominium units or to any other units with use arrangements that differ from the approved project, other than to standard operating hotel units, shall be prohibited.

(i) Occupancy and Use Monitoring and Recording. The operator shall monitor and record occupancy and use by the general public and the owners of individual CHVS units throughout each year. Such monitoring and record keeping shall include specific accounting of owner usage for each individual unit; rates paid for occupancy and for advertising and marketing efforts; and transient occupancy taxes (TOT) for all units, services for which the operator may charge unit owners a reasonable fee. The records shall be sufficient to demonstrate compliance with the restrictions set forth in this special condition. All such records shall be maintained for at least ten years and shall be made available to the Executive Director upon request and to any auditor required by the section below. Within 30 days of commencing operations, the operator shall submit notice to the Executive Director of commencement of operations.

- (j) Audit.** WITHIN 120 DAYS OF THE END OF THE FIRST CALENDAR YEAR OF OPERATIONS, the operator shall retain an independent auditing company, approved by the Executive Director, to perform an audit to evaluate compliance with this special condition regarding occupancy restrictions; marketing and sale restrictions; management requirements, recordkeeping, and monitoring by the hotel owner(s), the owners of individual CHVS units, and the operator. The operator shall instruct the auditor to prepare a report identifying the auditor's findings, conclusions and the evidence relied upon, and such report shall be submitted to the Executive Director, upon request, within six months after the conclusion of the first year of operations.

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

- (k) Compliance Required.** The property owner(s) and operator or any successors-in-interest shall maintain the legal ability to ensure compliance with the terms and conditions stated herein at all times in perpetuity, and shall be responsible in all respects for ensuring that all parties subject to these restrictions comply with the restrictions. The property owner(s) and the operator shall be jointly and severally responsible for ensuring compliance with the requirements described in this condition and/or recorded against the property, as well as jointly and severally liable for violations of said requirements. Each owner of an individual CHVS unit is also jointly and severally liable with the property owner(s) and operator for all violations of said requirements and for any and all violations of the terms and conditions of this CDP with respect to the use of that owner's unit. Violations of this CDP can result in penalties pursuant to Public Resources Code Section 30820.

- (l) CC&R Declaration of Restrictions.** PRIOR TO OCCUPANCY OF THE APPROVED DEVELOPMENT, the Permittee shall submit for the review and approval of the Executive Director two copies of a declaration of restrictions in a recordable covenants, conditions, and restrictions (CC&R) form (CC&R Declaration of Restrictions for the CHVS units) that shall include: (1) all the specific restrictions listed in Sections (a) through (k) above; (2) acknowledgement that these same restrictions are independently

imposed as condition requirements of this CDP; and (3) a statement that the provisions of the CC&R Declaration of Restrictions that reflect the requirements of Sections (a) through (k) above, cannot be changed without approval of a CDP amendment, unless it is determined by the Executive Director that such an amendment is not legally required (if there is a section of the CC&Rs related to amendments, and the statement provided pursuant to this paragraph is not in that section, then the section on amendments shall cross-reference this statement and clearly indicate that it controls over any contradictory statements in the section of the CC&Rs related to amendments). The approved CC&R Declaration of Restrictions for the CHVS units described above shall be recorded against all individual property titles simultaneously with the recordation of the subdivision map for the approved project.

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

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

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

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

14. Lower Cost Visitor Accommodations Mitigation Payment. PRIOR TO

CONSTRUCTION, the Permittee shall provide evidence in a form and content acceptable to the Executive Director, that a payment of \$25,700 per unit for 25% of the total number of high cost overnight visitor accommodation units (184 hotel units and 92 visitor-serving overnight condominium-hotel units, or 276 total such units) in the approved project has been paid in lieu of providing lower cost accommodations on site. Based on 276 such units, the payment would be \$1,773,300 (i.e., $0.25 \times 276 \times 25,700 = 1,773,300$). If there are fewer units to meet the terms and conditions of this CDP, including pursuant to the approved Revised Plans required by Special Condition 1, then the payment would be proportionally reduced.

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

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

- 15. Confirmation of Other Agency Approval. PRIOR TO CONSTRUCTION,** the Permittee shall submit to the Executive Director written evidence that all necessary permits, ~~permissions,~~ approvals, and/or authorizations for the approved project have been granted, if legally required, by the City of Sand City and, Monterey Peninsula Water Management District, ~~California Department of Parks and Recreation, California Department of Fish and Wildlife, and the U.S. Fish and Wildlife Service.~~ Permittee also shall submit written evidence, if legally required, that all permits and/or authorizations for the approved project have been granted by the California Department of Fish and Wildlife (if required by the California Endangered Species Act), and the U.S. Fish and Wildlife Service (if required by the Federal Endangered Species Act). If no permit, approval or authorization is required from a given agency, then the Permittee shall have no obligation to submit any documentation to

the Commission from that agency. Any mandatory changes to the approved project required by ~~these an agency listed in this condition agencies~~ shall be reported to the Executive Director. No changes to the approved project shall occur without a Commission amendment to this CDP unless the Executive Director determines that no amendment is legally necessary.

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

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

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

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

18. Future Development Restrictions By acceptance of this CDP, the Permittee acknowledges and agrees, on behalf of itself and all successors and assigns that this CDP is only for the development described in this CDP. Pursuant to Title 14 California Code of Regulations (CCR) Section 13253(b)(6), the exemptions otherwise provided in Public Resources Code Section 30610(b) shall not apply to the development governed by this CDP. Accordingly, any future improvements to the development authorized by this CDP, including but not limited to repair and maintenance identified as requiring a CDP in Public Resources Code Section 30610(d) and 14 CCR Section 13252(a)-(b), shall require an amendment to this CDP.

19. Indemnification by Permittee/Liability for Costs and Attorneys Fees. By acceptance of this CDP, the Permittee agrees to reimburse the Coastal Commission in full for all Coastal Commission costs and attorneys fees – including (1) those charged by the Office of the Attorney General, and (2) any court costs and attorneys fees that the Coastal Commission may be required by a court to pay – that the Coastal Commission incurs in connection with the defense of any action brought by a party other than the Permittee against the Coastal Commission, its officers, employees, agents, successors and assigns challenging the approval or issuance of this CDP. The Coastal Commission retains complete authority to conduct and direct the Commission’s defense of any such action against the Coastal Commission.

20. Deed Restriction. PRIOR TO ISSUANCE OF THE CDP, the Permittee shall submit to the Executive Director for review and approval documentation demonstrating that the Permittee has executed and recorded against the property governed by this CDP a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this CDP, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the special conditions of this CDP as covenants, conditions and restrictions on the use and enjoyment of the property. The deed restriction shall include a legal description of the legal parcels governed by this CDP. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this CDP shall continue to restrict the use and enjoyment of the property so long as either this CDP or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the property.

21. Expiration. Notwithstanding Standard Condition 2, above, if development has not commenced, this CDP shall expire five years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. An application for extension of this CDP must be made prior to the expiration date.

~~21.22.~~ **Indemnification for any Civil Liability.** The Permittee agrees to reimburse the Commission for any civil liability imposed by any court for the approval or issuance of this CDP.