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# **APPENDIX A**

NOP AND RESPONSES

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**Notice of Preparation**

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Notice of Preparation

To: Distribution List

(Address)

From: Todd Bodem, City Administrator

1 Sylvan Park

Sand City, CA 93955

**Subject: Notice of Preparation of a Draft Environmental Impact Report**

The City of Sand City

will be the Lead Agency and will prepare an environmental impact report for the project identified below. We need to know the views of your agency as to the scope and content of the environmental information which is germane to your agency's statutory responsibilities in connection with the proposed project. Your agency will need to use the EIR prepared by our agency when considering your permit or other approval for the project.

The project description, location, and the potential environmental effects are contained in the attached materials. A copy of the Initial Study (  is  is not ) attached.

Due to the time limits mandated by State law, your response must be sent at the earliest possible date but not later than 30 days after receipt of this notice.

Please send your response to Todd Bodem at the address shown above. We will need the name for a contact person in your agency.

**Project Title:** South of Tioga Project

**Project Applicant, if any:** DBO Development No. 30, LLC

Date June 21, 2017

Signature



Title

City Administrator

Telephone

831-394-3054x212

**Reference:** California Code of Regulations, Title 14. (CEQA Guidelines) Sections 15082(a), 15103, 15375.

# Notice of Preparation South of Tioga Project

## Project Description

### Project Location

The project site is located at on approximately 10.64 acres in the City of Sand City with boundaries of Tioga Avenue to the northeast, California Avenue to the southeast, East Avenue to southwest, and the Merle Street right-of-way to the northwest. The project site is generally referred to as the South of Tioga area of Sand City. The project site's Assessor's parcel numbers are: 011-122-010, 011, 032, 038, 039, 040, 041; 011-123-005, 006, 007, 009, 011, 022, 024, 025, 026; 011-135-001, 014, 015, 016, 023, 024; 011-136-007, 012, 024; and, 011-186-021, 038, 039. Figure 1, Project Location, displays the regional location of the project site.

### Existing Conditions

The project site is located in the central portion of the City, and encompasses the majority of the South of Tioga Planning District. This district serves as a transition zone between the "big box" commercial developments to the northeast, the partially built East Dunes residential area to the west, and the West End district to the southeast. The project site is currently comprised of light industrial/warehouse uses, commercial uses, undeveloped coastal dune areas, and several residential dwelling units. Commercial uses and sand dune areas are located to the north, commercial and light industrial uses are located to the east, commercial and residential areas are located to the south, and some existing single family residences and planned residential development in a coastal dune area are located to the west of the project site. The project site has dual General Plan land use designations of Regional Commercial and Mixed Use Development. The project site has existing zoning designations of MU-P (Planned Mixed Use) and CZ-C4 (Coastal Regional Commercial). Figure 2, Project Site, outlines the project site boundaries.

### Project Description

The proposed project, referred to as the "South of Tioga Project," consists of an application to approve a vesting tentative map for four parcels (H1, H2, R1, and R2), site plan review, architectural review, and conditional use permit approvals for hotel and multi-family development. The development, as proposed by the applicant, would consist of 420 multifamily residential units and 216 hotel rooms.

Parcel H1 would be 2.56 acres located in the northeastern section of the project site, and would be dedicated for development of a 135 room extended stay hotel with 143 surface parking spaces. Parcel H2 would be 1.48 acres located in the southeastern portion of the site, and would be dedicated for development of an 81 room hotel with 81 surface parking spaces. Parcel R1 would be 1.28 acres located in the northwestern portion of the site, and would be dedicated for development of a 100 unit multi-family residential building with 151 below ground parking spaces. Parcel R2 would be 4.11 acres located in the southwestern portion of the site, and would be dedicated to development of a 320 multi-family residential unit complex with 486 below ground parking spaces with the establishment of two sand dune habitat preservation areas. Various hotel and multi-family amenity areas, landscaping, and utility access improvements would also be included in development of the project site.

Construction of the project site is anticipated to occur in three phases, with phase 1 as roadway site improvements, phase 2 as development of the two hotels, and phase 3 being the multi-family residential development on the site. Hotel buildings will be up to four stories tall, and residential buildings will be up to five stories tall over two levels of partially underground parking structures, with maximum heights of 85 feet.

The proposed project would also include a new internal roadway providing internal access to all four proposed parcels as "A" Street, and improvements to East Avenue. The internal roadway would provide access to underground parking garages for the two residential parcels. Access to the project site would be provided from Tioga Avenue, California Avenue, and East Avenue. Parking garage access for the two residential parcels will also be provided on Tioga Avenue and East Avenue. The project will require road abandonment of Afton Avenue, Fir Avenue, Orlando Avenue, Beach Way, and a portion of East and Lincoln Avenues. East Avenue would be re-dedicated on a slightly more southerly right-of-way. The project will require the City's use of eminent domain to acquire two parcels located within the project to provide for the proposed public internal roadway within the site.

The proposed project would be a conditionally allowable use of the site per the City's General Plan land use and Zoning Map designations for the site.

An existing sanitary sewer lift station, located within proposed parcel R1, would require relocation before development could occur in this area of the project site. A small portion of the project site, located immediately adjacent to California Avenue, is located in the City's Coastal Zone and will be subject to coastal development regulations. Site improvements (i.e. landscaping, public street improvements, public walkways, and parking), but no structural improvements are proposed within the Coastal Zone.

Although development will be phased, for purposes of the Environmental Impact Report (EIR), full build-out of the project site is considered, including: subdivision of the property (including mergers and right-of-way dedications), construction of two hotels, two multi-



family unit complexes, roadway improvements, utility access improvements, and establishment of dune habitat preservation areas. Figure 3, Site Plan, displays the project site with anticipated building sites and site improvements.

## **Scope of Environmental Effects to be Analyzed**

An EIR will be prepared to evaluate the direct and indirect physical impacts resulting from the proposed project. The type of probable environmental effects and scope of analysis associated with construction and implementation of the proposed project are summarized below.

### **Aesthetics**

The City of Sand City General Plan Update Initial Study/Mitigated Negative Declaration (IS/MND) concluded that buildout of the General Plan would result in less than significant aesthetic impacts, with implementation of General Plan and Local Coastal Program (LCP) goals, policies, and actions. Development on the project site, including impacts to existing viewsheds in the area of the project site, and consistency with Sand City General Plan visual policies will be evaluated in the EIR.

### **Air Quality**

The Air Quality section of the EIR will evaluate potential air quality impacts in accordance with the guidance of the Monterey Bay Air Resources District's CEQA Air Quality Guidelines (2008). This section of the EIR will present background information describing the current air quality setting in the air basin, the effects of significant pollutants, air quality standards and attainment status, and plans and regulations pertaining to air quality.

The EIR will focus on the proposed project's cumulative air quality impact on regional ozone and its localized impact on carbon monoxide levels. Cumulative impacts will be analyzed by determining the proposed project's consistency with the Air Quality Management Plan, utilizing an updated version of the Air Resource District's consistency determination spreadsheet and/or consultation with the Air Resource District for non-residential land uses. The proposed project's localized operational impact will be assessed by identifying whether build-out would create or substantially contribute to carbon monoxide "hotspots" where federal or state ambient air quality standards are exceeded. CalEEMod air quality modeling results will be presented.

### **Biological Resources**

Based on existing dunes habitat areas within the project site, there is potential for impacts to biological resources with implementation of the proposed project. This section of the EIR will evaluate potential impacts and determine if additional measures, aside from site design considerations, would be necessary to avoid significant impacts to biological resources. This section of the EIR will be informed by biological surveys that have been, and will be,

conducted on the project site, and consultation with the United States Fish and Wildlife Service regarding potential take of Smith's blue butterfly habitat. The threatened Monterey spineflower is also known to exist on portions of the site.

## **Cultural Resources**

The City of Sand City General Plan Update IS/MND concluded that buildout of the General Plan would not result in significant impacts associated with cultural resources with implementation of General Plan goals, policies, and actions.

An archaeological records search and a reconnaissance level survey will be conducted to assess the potential for archeological resources to be located on the project site. Additionally, a historical assessment of existing buildings on the project site will be conducted. This analysis will inform this section of the EIR.

## **Geology and Soils**

Proposed development on the project site will be subject to geotechnical exploration report requirements per City of Sand City standards. The EIR will provide a general overview of the geologic and soils conditions of the project site, utilize available information from site-specific geological reports, and identify any potential associated geologic hazards.

## **Greenhouse Gas Emissions**

The proposed project would generate mobile source (transportation), area source (on-site use of natural gas and fuel), energy source (electricity use), and other sources of greenhouse gas emissions (GHGs). This section of the EIR will address potential impacts of greenhouse gas emissions from the proposed project utilizing CalEEMod modeling. The site is within an infill area designated by the Association of Monterey Bay Area Governments under SB-375.

## **Hazardous Materials and Safety**

The site may have been previously used for activities that are associated with hazardous materials. The EIR will provide a general overview of the hazards and hazardous materials conditions of the project site and identify any potential associated hazards. This section of the EIR will be informed by a Phase I environmental site assessment to be prepared for the proposed project.

## **Hydrology and Water Quality**

The EIR will address surface water issues, such as storm water runoff and quality, which could result in impacts from the proposed project. Groundwater will be addressed in the EIR's Water Service section.

## **Noise**

The Sand City General Plan Update IS/MND concluded that buildout of the General Plan would not result in significant impacts associated with noise. However, noise generation

associated with the project will be addressed in the EIR, including construction noise. This section of the EIR will be informed by a noise impact study to be prepared for the proposed project.

### **Public Services**

This section of the EIR will address potential impacts to police, fire protection, and school facilities. The project site is served by the Sand City Police Department, City of Monterey Fire Department, and the Monterey Peninsula Unified School District.

### **Transportation and Circulation**

Trip generation and travel patterns associated with the project will be discussed in the EIR. Potential impacts to the local and regional transportation network will be addressed in the EIR. This section of the EIR will be informed by a traffic impact assessment to be prepared for the proposed project. The traffic impact will study 19 intersections in Sand City and Seaside. State Route 1 and State Route 218 are located within one-half mile of the project site. Access to the State Route 1 is from Del Monte Boulevard to the north and from State Route 218 to the south. The project site is within a priority infill area as designated in the TAMC (Transportation Agency of Monterey County) regional impact fee program. The project site is adjacent to an interim street connection for the Monterey Bay Trail, and about one-quarter mile from the designated trail alignment.

### **Water Service**

This section of the EIR will estimate the proposed project's water use and include a determination if the water supplier can adequately serve the project. The EIR will briefly discuss the sources of water supplied to the proposed project and will also address the current water conservation efforts both locally and statewide. The project site is served by the California American Water Company, who co-operates a seawater desalination plant with the City of Sand City.

### **Wastewater Service**

This section of the EIR will address the volume of wastewater expected to be generated by the proposed project, the capacity of the existing and/or proposed lines, and the capacity of the wastewater treatment plant and its ability to adequately serve the project.

### **Storm Drainage**

This section of the EIR will address the environmental impacts associated with the proposed project's storm drainage infrastructure and storm water treatment to be incorporated into the development of the project site. The site generally drains towards California Avenue and Tioga Avenue.

## **Energy**

This section of the EIR will include a review of anticipated energy consumption associated with implementation of the proposed project, as well as proposed and or potential energy conservation measures to be included in development plans. Some of the information used in this section will be taken from the greenhouse gas emissions analysis presented earlier, and supplemented as necessary.

## **Other Issues**

Other issues not anticipated to potentially result in significant impacts will be briefly discussed in this section of the EIR.

## **Cumulative Impacts**

As allowed by CEQA Guidelines section 15130 (b)(1)(B), the EIR will include a summary of projections contained in the City of Sand City General Plan to form the cumulative projects scenario; i.e. buildout of the general plan. A summary of the impacts discussed in the General Plan's IS/MND will also be presented and supplemented by new data, as appropriate. Air quality and greenhouse gas emissions cumulative impacts will be assessed based on project-level analysis, in accordance with Air Resource District guidance. The EIR will include an evaluation and determination as to whether the proposed project's impacts are cumulatively considerable.

## **Growth-Inducement**

CEQA Guidelines require an EIR to include a discussion of the growth-inducing impacts of a project. The EIR will address the proposed project's potential for growth-inducing impacts.

## **Significant and Unavoidable Effects**

Any impacts determined to be significant and unavoidable, as discussed in other sections of the EIR, will be summarized in this section of the EIR.

## **Alternatives**

In accordance with CEQA Guidelines, the EIR will include analysis of a reasonable range of alternatives to the proposed project that could feasibly attain most of the basic objectives of the project, but would avoid or substantially lessen any of the significant effects of the project. An evaluation of the comparative merits of the alternatives will be presented.

## **Public Scoping**

During the 30-day comment period, the City will hold a public scoping meeting on Wednesday, July 12, 2017 at 10:00 a.m. in the Sand City Council Chambers, 1 Sylvan Park. The purpose of this meeting is to inform the public and interested public agencies about the proposed project and to solicit public comment on the scope of the environmental issues to

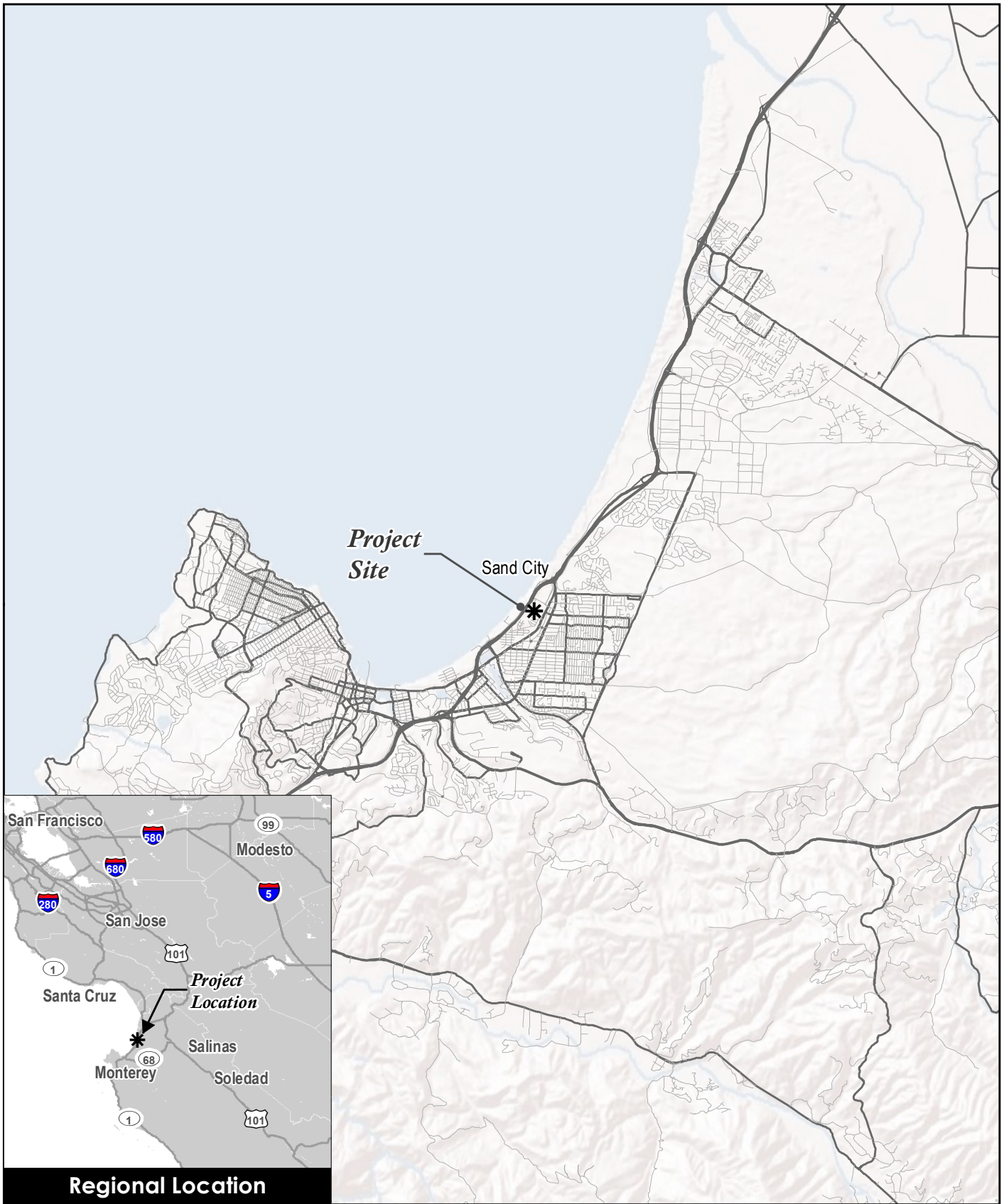
be addressed in the EIR. Comments on this Notice of Preparation should be submitted to the City Planning Department no later than July 24, 2017.

### **Environmental Review Process**

Following completion of the 30-day Notice of Preparation public review period, the City will incorporate relevant information into the Draft EIR, including results of technical studies. The Draft EIR will be circulated for public review and comment for a 45-day public review period. All individuals and organizations that have requested notification, in writing, will be placed on a Notice of Availability list for the Draft EIR. In addition, the Draft EIR and related materials will be available for review on the City of Sand City's website: <http://www.sandcity.org> and at the City of Sand City Planning Department, located at 1 Sylvan Park, Sand City, CA 93955. Following receipt of all written comments on the Draft EIR, the City of Sand City will prepare Responses to Comments as part of the Final EIR, which will be considered and acted upon by the City Council. The City will provide notification of future public meetings for this project to individuals that have requested to be included on the project interest list. Anyone interested on receiving such information should submit a written request to the City's Planning Department (see address above) to ensure they are on the interest list and that mailing addresses are current and correct.

Should you have any questions or comments regarding this Notice of Preparation, please contact Todd Bodem, City Administrator, City of Sand City, at (831) 394-3054x212.



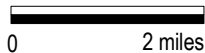


Source: Esri 2014

Figure 1

# Project Location

South of Tioga Project NOP









0 120 feet

 Project Boundary



Source: Google 2016

Figure 2

# Project Site

South of Tioga Project NOP







Source: TCA Architects 2017

E M C

Figure 3  
Site Plan





**CITY OF SEASIDE**  
440 Harcourt Avenue  
Seaside, CA 93955

Telephone (831) 899-6736  
FAX (831) 899-6211

July 24, 2017

City of Sand City  
Attn: Todd Bodem, City Administrator  
1 Sylvan Park  
Sand City, CA 93955

RE: NOP for the South of Tioga Project

Dear Mr. Bodem:

The City of Seaside is submitting the following comments for Sand City's consideration as the lead agency on the preparation of the Environmental Impact Report for the South of Tioga Project

#### Sewer Lift Station

1. The City of Sand City needs to consult and coordinate with Seaside County Sanitation District to determine if the existing trunk lines and lift stations must be replaced or modified the process the additional quantities and flows of wastewater associated with the development at buildout. The quantities and flows of wastewater should include the additional wastewater quantities and flows expected to be produced by the Eco Hotel and the Sterling Center Hotel which have been approved by Sand City for future development in Sand City.

#### Hydrology

1. Identify location of any storm water control basins and infiltration basins that are located in close proximity to the City of Seaside.

#### Transportation

1. As had occurred with the development of the Edgewater Shopping Center in Sand City, mitigation measures were included as part of previous EIR analysis and the EIR for the Edgewater Shopping Center to address street maintenance impacts in the City of Seaside. The City of Seaside finds that Del Monte Boulevard roadway segment between Fremont Boulevard to the north and Canyon Del Boulevard to the south and the intersection of Sand Dunes Drive and Canyon Del Rey Boulevard and Canyon Del Rey Boulevard and Highway 1 on- and off-ramps will receive added trips for renewed consideration of a fair share agreement to cover any roadway improvements and/or maintenance issues on Seaside as analyzed in the EIR. The EIR transportation analysis should specify what

July 24, 2017

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kind of improvements and/or long-term maintenance agreements would be needed to address these potential impacts. The transportation analysis should also look at what type of signal timing coordination is planned between the intersections/Roadway Segments that either border or are located within the City of Seaside.

2. The EIR should analyze non-signal traffic control methods (e.g. round-a-about), including all transportation models (e.g. Bicyclists, Pedestrians).
3. The transportation analysis should include the cumulative analysis of the proposed project at build-out in comparison with the Eco Hotel project and the Sterling Center Hotel Project at each of their respective build-outs.

If you have any questions to ask of the City Seaside on the comments listed above, do not hesitate to contact me at (831) 899-6726 or [rmedina@ci.seaside.ca](mailto:rmedina@ci.seaside.ca).

Sincerely,

A handwritten signature in cursive script that reads "Rick Medina".

Rick Medina,  
Senior Planner

Cc: Craig Malin, City Manager  
Kurt Overmeyer, Economic Development Manager  
Rick Riedl, City Engineer

## NATIVE AMERICAN HERITAGE COMMISSION

Environmental and Cultural Department  
1550 Harbor Blvd., Suite 100  
West Sacramento, CA 95691  
Phone (916) 373-3710



June 28, 2017

RECEIVED

JUL 07 2017

Todd Bodem  
Sand City  
1 Sylvan Park  
Sand City, CA 93955

CITY OF SAND CITY

RE: SCH# 2017061066; South of Tioga Hotel and Residential Development Project, City of Sand City;  
Monterey County, California

Dear Mr. Bodem:

The Native American Heritage Commission has received the Notice of Preparation (NOP) for Draft Environmental Impact Report for the project referenced above. The California Environmental Quality Act (CEQA) (Pub. Resources Code § 21000 et seq.), specifically Public Resources Code section 21084.1, states that a project that may cause a substantial adverse change in the significance of an historical resource is a project that may have a significant effect on the environment. (Pub. Resources Code § 21084.1; Cal. Code Regs., tit. 14, § 15064.5 (b) (CEQA Guidelines Section 15064.5 (b)). If there is substantial evidence, in light of the whole record before a lead agency, that a project may have a significant effect on the environment, an environmental impact report (EIR) shall be prepared. (Pub. Resources Code § 21080 (d); Cal. Code Regs., tit. 14, § 15064 subd. (a)(1) (CEQA Guidelines § 15064 (a)(1)). In order to determine whether a project will cause a substantial adverse change in the significance of a historical resource, a lead agency will need to determine whether there are historical resources with the area of project effect (APE).

**CEQA was amended significantly in 2014.** Assembly Bill 52 (Gatto, Chapter 532, Statutes of 2014) (AB 52) amended CEQA to create a **separate category of cultural resources**, "tribal cultural resources" (Pub. Resources Code § 21074) and provides that a project with an effect that may cause a substantial adverse change in the significance of a tribal cultural resource is a project that may have a significant effect on the environment (Pub. Resources Code § 21084.2). Please reference California Natural Resources Agency (2016) "Final Text for tribal cultural resources update to Appendix G: Environmental Checklist Form," <http://resources.ca.gov/ceqa/docs/ab52/Clean-final-AB-52-App-G-text-Submitted.pdf>. Public agencies shall, when feasible, avoid damaging effects to any tribal cultural resource. (Pub. Resources Code § 21084.3 (a)). **AB 52 applies to any project for which a notice of preparation or a notice of negative declaration or mitigated negative declaration is filed on or after July 1, 2015.** If your project involves the adoption of or amendment to a general plan or a specific plan, or the designation or proposed designation of open space, on or after March 1, 2005, it may also be subject to Senate Bill 18 (Burton, Chapter 905, Statutes of 2004) (SB 18). **Both SB 18 and AB 52 have tribal consultation requirements.** If your project is also subject to the federal National Environmental Policy Act (42 U.S.C. § 4321 et seq.) (NEPA), the tribal consultation requirements of Section 106 of the National Historic Preservation Act of 1966 (154 U.S.C. 300101, 36 C.F.R. § 800 et seq.) may also apply.

The NAHC recommends **lead agencies consult with all California Native American tribes** that are traditionally and culturally affiliated with the geographic area of your proposed project as early as possible in order to avoid inadvertent discoveries of Native American human remains and best protect tribal cultural resources. Below is a brief summary of portions of AB 52 and SB 18 as well as the NAHC's recommendations for conducting cultural resources assessments. **Consult your legal counsel about compliance with AB 52 and SB 18 as well as compliance with any other applicable laws.**

## AB 52

AB 52 has added to CEQA the additional requirements listed below, along with many other requirements:

1. Fourteen Day Period to Provide Notice of Completion of an Application/Decision to Undertake a Project: Within fourteen (14) days of determining that an application for a project is complete or of a decision by a public agency to undertake a project, a **lead agency** shall provide formal notification to a designated contact of, or tribal representative of, traditionally and culturally affiliated California Native American tribes that have requested notice, to be accomplished by at least one written notice that includes:
  - a. A brief description of the project.
  - b. The lead agency contact information.
  - c. Notification that the California Native American tribe has 30 days to request consultation. (Pub. Resources Code § 21080.3.1 (d)).
  - d. A "California Native American tribe" is defined as a Native American tribe located in California that is on the contact list maintained by the NAHC for the purposes of Chapter 905 of Statutes of 2004 (SB 18). (Pub. Resources Code § 21073).
2. Begin Consultation Within 30 Days of Receiving a Tribe's Request for Consultation and Before Releasing a Negative Declaration, Mitigated Negative Declaration, or Environmental Impact Report: A **lead agency** shall begin the consultation process within 30 days of receiving a request for consultation from a California Native American tribe that is traditionally and culturally affiliated with the geographic area of the proposed project. (Pub. Resources Code § 21080.3.1, subds. (d) and (e)) and prior to the release of a negative declaration, mitigated negative declaration or environmental impact report. (Pub. Resources Code § 21080.3.1(b)).
  - a. For purposes of AB 52, "consultation shall have the same meaning as provided in Gov. Code § 65352.4 (SB 18). (Pub. Resources Code § 21080.3.1 (b)).
3. Mandatory Topics of Consultation If Requested by a Tribe: The following topics of consultation, if a tribe requests to discuss them, are mandatory topics of consultation:
  - a. Alternatives to the project.
  - b. Recommended mitigation measures.
  - c. Significant effects. (Pub. Resources Code § 21080.3.2 (a)).
4. Discretionary Topics of Consultation: The following topics are discretionary topics of consultation:
  - a. Type of environmental review necessary.
  - b. Significance of the tribal cultural resources.
  - c. Significance of the project's impacts on tribal cultural resources.
  - d. If necessary, project alternatives or appropriate measures for preservation or mitigation that the tribe may recommend to the lead agency. (Pub. Resources Code § 21080.3.2 (a)).
5. Confidentiality of Information Submitted by a Tribe During the Environmental Review Process: With some exceptions, any information, including but not limited to, the location, description, and use of tribal cultural resources submitted by a California Native American tribe during the environmental review process shall not be included in the environmental document or otherwise disclosed by the lead agency or any other public agency to the public, consistent with Government Code sections 6254 (r) and 6254.10. Any information submitted by a California Native American tribe during the consultation or environmental review process shall be published in a confidential appendix to the environmental document unless the tribe that provided the information consents, in writing, to the disclosure of some or all of the information to the public. (Pub. Resources Code § 21082.3 (c)(1)).
6. Discussion of Impacts to Tribal Cultural Resources in the Environmental Document: If a project may have a significant impact on a tribal cultural resource, the lead agency's environmental document shall discuss both of the following:
  - a. Whether the proposed project has a significant impact on an identified tribal cultural resource.
  - b. Whether feasible alternatives or mitigation measures, including those measures that may be agreed to pursuant to Public Resources Code section 21082.3, subdivision (a), avoid or substantially lessen the impact on the identified tribal cultural resource. (Pub. Resources Code § 21082.3 (b)).

7. Conclusion of Consultation: Consultation with a tribe shall be considered concluded when either of the following occurs:
  - a. The parties agree to measures to mitigate or avoid a significant effect, if a significant effect exists, on a tribal cultural resource; or
  - b. A party, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached. (Pub. Resources Code § 21080.3.2 (b)).
  
8. Recommending Mitigation Measures Agreed Upon in Consultation in the Environmental Document: Any mitigation measures agreed upon in the consultation conducted pursuant to Public Resources Code section 21080.3.2 shall be recommended for inclusion in the environmental document and in an adopted mitigation monitoring and reporting program, if determined to avoid or lessen the impact pursuant to Public Resources Code section 21082.3, subdivision (b), paragraph 2, and shall be fully enforceable. (Pub. Resources Code § 21082.3 (a)).
  
9. Required Consideration of Feasible Mitigation: If mitigation measures recommended by the staff of the lead agency as a result of the consultation process are not included in the environmental document or if there are no agreed upon mitigation measures at the conclusion of consultation, or if consultation does not occur, and if substantial evidence demonstrates that a project will cause a significant effect to a tribal cultural resource, the lead agency shall consider feasible mitigation pursuant to Public Resources Code section 21084.3 (b). (Pub. Resources Code § 21082.3 (e)).
  
10. Examples of Mitigation Measures That, If Feasible, May Be Considered to Avoid or Minimize Significant Adverse Impacts to Tribal Cultural Resources:
  - a. Avoidance and preservation of the resources in place, including, but not limited to:
    - i. Planning and construction to avoid the resources and protect the cultural and natural context.
    - ii. Planning greenspace, parks, or other open space, to incorporate the resources with culturally appropriate protection and management criteria.
  - b. Treating the resource with culturally appropriate dignity, taking into account the tribal cultural values and meaning of the resource, including, but not limited to, the following:
    - i. Protecting the cultural character and integrity of the resource.
    - ii. Protecting the traditional use of the resource.
    - iii. Protecting the confidentiality of the resource.
  - c. Permanent conservation easements or other interests in real property, with culturally appropriate management criteria for the purposes of preserving or utilizing the resources or places.
  - d. Protecting the resource. (Pub. Resource Code § 21084.3 (b)).
  - e. Please note that a federally recognized California Native American tribe or a nonfederally recognized California Native American tribe that is on the contact list maintained by the NAHC to protect a California prehistoric, archaeological, cultural, spiritual, or ceremonial place may acquire and hold conservation easements if the conservation easement is voluntarily conveyed. (Civ. Code § 815.3 (c)).
  - f. Please note that it is the policy of the state that Native American remains and associated grave artifacts shall be repatriated. (Pub. Resources Code § 5097.991).
  
11. Prerequisites for Certifying an Environmental Impact Report or Adopting a Mitigated Negative Declaration or Negative Declaration with a Significant Impact on an Identified Tribal Cultural Resource: An environmental impact report may not be certified, nor may a mitigated negative declaration or a negative declaration be adopted unless one of the following occurs:
  - a. The consultation process between the tribes and the lead agency has occurred as provided in Public Resources Code sections 21080.3.1 and 21080.3.2 and concluded pursuant to Public Resources Code section 21080.3.2.
  - b. The tribe that requested consultation failed to provide comments to the lead agency or otherwise failed to engage in the consultation process.
  - c. The lead agency provided notice of the project to the tribe in compliance with Public Resources Code section 21080.3.1 (d) and the tribe failed to request consultation within 30 days. (Pub. Resources Code § 21082.3 (d)).

*This process should be documented in the Cultural Resources section of your environmental document.*

The NAHC's PowerPoint presentation titled, "Tribal Consultation Under AB 52: Requirements and Best Practices" may be found online at: [http://nahc.ca.gov/wp-content/uploads/2015/10/AB52TribalConsultation\\_CalEPAPDF.pdf](http://nahc.ca.gov/wp-content/uploads/2015/10/AB52TribalConsultation_CalEPAPDF.pdf)



## SB 18

SB 18 applies to local governments and requires **local governments** to contact, provide notice to, refer plans to, and consult with tribes prior to the adoption or amendment of a general plan or a specific plan, or the designation of open space. (Gov. Code § 65352.3). Local governments should consult the Governor's Office of Planning and Research's "Tribal Consultation Guidelines," which can be found online at: [https://www.opr.ca.gov/docs/09\\_14\\_05\\_Updated\\_Guidelines\\_922.pdf](https://www.opr.ca.gov/docs/09_14_05_Updated_Guidelines_922.pdf)

Some of SB 18's provisions include:

1. **Tribal Consultation**: If a local government considers a proposal to adopt or amend a general plan or a specific plan, or to designate open space it is required to contact the appropriate tribes identified by the NAHC by requesting a "Tribal Consultation List." If a tribe, once contacted, requests consultation the local government must consult with the tribe on the plan proposal. **A tribe has 90 days from the date of receipt of notification to request consultation unless a shorter timeframe has been agreed to by the tribe.** (Gov. Code § 65352.3 (a)(2)).
2. **No Statutory Time Limit on SB 18 Tribal Consultation**. There is no statutory time limit on SB 18 tribal consultation.
3. **Confidentiality**: Consistent with the guidelines developed and adopted by the Office of Planning and Research pursuant to Gov. Code section 65040.2, the city or county shall protect the confidentiality of the information concerning the specific identity, location, character, and use of places, features and objects described in Public Resources Code sections 5097.9 and 5097.993 that are within the city's or county's jurisdiction. (Gov. Code § 65352.3 (b)).
4. **Conclusion of SB 18 Tribal Consultation**: Consultation should be concluded at the point in which:
  - a. The parties to the consultation come to a mutual agreement concerning the appropriate measures for preservation or mitigation; or
  - b. Either the local government or the tribe, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached concerning the appropriate measures of preservation or mitigation. (Tribal Consultation Guidelines, Governor's Office of Planning and Research (2005) at p. 18).

Agencies should be aware that neither AB 52 nor SB 18 precludes agencies from initiating tribal consultation with tribes that are traditionally and culturally affiliated with their jurisdictions before the timeframes provided in AB 52 and SB 18. For that reason, we urge you to continue to request Native American Tribal Contact Lists and "Sacred Lands File" searches from the NAHC. The request forms can be found online at: <http://nahc.ca.gov/resources/forms/>

### NAHC Recommendations for Cultural Resources Assessments

To adequately assess the existence and significance of tribal cultural resources and plan for avoidance, preservation in place, or barring both, mitigation of project-related impacts to tribal cultural resources, the NAHC recommends the following actions:

1. Contact the appropriate regional California Historical Research Information System (CHRIS) Center ([http://ohp.parks.ca.gov/?page\\_id=1068](http://ohp.parks.ca.gov/?page_id=1068)) for an archaeological records search. The records search will determine:
  - a. If part or all of the APE has been previously surveyed for cultural resources.
  - b. If any known cultural resources have been already been recorded on or adjacent to the APE.
  - c. If the probability is low, moderate, or high that cultural resources are located in the APE.
  - d. If a survey is required to determine whether previously unrecorded cultural resources are present.
2. If an archaeological inventory survey is required, the final stage is the preparation of a professional report detailing the findings and recommendations of the records search and field survey.
  - a. The final report containing site forms, site significance, and mitigation measures should be submitted immediately to the planning department. All information regarding site locations, Native American human remains, and associated funerary objects should be in a separate confidential addendum and not be made available for public disclosure.



**DEPARTMENT OF TRANSPORTATION**

50 HIGUERA STREET  
SAN LUIS OBISPO, CA 93401-5415  
PHONE (805) 549-3329  
FAX (805) 549-3259  
TTY 711  
<http://www.dot.ca.gov/dist05/>



*Serious drought.  
Help save water!*

July 19, 2017

MON 1 PM 8.5

Todd Bodem  
Sand City  
1 Sylvan Park  
Sand City, CA 93955

**COMMENTS TO NOP FOR SOUTH OF TIOGA HOTEL AND RESIDENTIAL  
DEVELOPMENT DRAFT EIR**

Dear Mr. Bodem:

The California Department of Transportation (Caltrans), District 5, Development Review, thanks you for the opportunity to review and comment on the Notice of Preparation (NOP) for the South of Tioga Hotel and Residential Development draft Environmental Impact Report (EIR).

1. Caltrans conceptually supports local planning efforts that are consistent with State planning priorities intended to promote equity, strengthen the economy, protect the environment, and promote public health and safety. We accomplish this by working with local jurisdictions to achieve a shared vision of how the transportation system should and can accommodate interregional and local travel.
2. The environmental document should include an analysis of the multimodal travel demand expected from the proposed project. This analysis should also identify potentially significant adverse impacts from such demands and the subsequent mitigation measures to address them. Early collaboration, such as sharing the analysis and findings with Caltrans prior to official circulation, can lead to better outcomes for all stakeholders.
3. The traffic study should include information on existing volumes within the study area, including the State transportation system, and should be based on recent traffic volumes less than two years old. Counts older than two years cannot be used as a baseline. Feel free to contact us for assistance in acquiring the most recent data available.
4. The Transportation Agency for Monterey County (TAMC) has prepared a Nexus Study, updated in 2013, for a Regional Development Impact Fee Program which identifies proposed regional transportation improvements. Based on the TAMC program, this project should contribute a “fair share” contribution as mitigation for its’ cumulative impacts to the regional transportation system as a condition of approval.

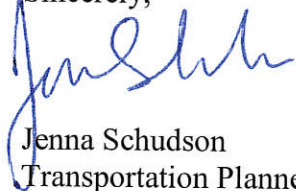
Mr. Todd Bodem

July 19, 2017

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If you have any questions, or need further clarification on items discussed above, please don't hesitate to contact me at [Jenna.Schudson@dot.ca.gov](mailto:Jenna.Schudson@dot.ca.gov) or (805) 549-3432.

Sincerely,



Jenna Schudson  
Transportation Planner  
Development Review Coordinator  
District 5, LD-IGR South Branch



State of California – Natural Resources Agency  
DEPARTMENT OF FISH AND WILDLIFE  
Central Region  
1234 East Shaw Avenue  
Fresno, California 93710  
www.wildlife.ca.gov

*EDMUND G. BROWN JR., Governor*  
*CHARLTON H. BONHAM, Director*



August 1, 2017

Todd Bodem  
City Administrator  
The City of Sand City  
One Sylvan Park  
Sand City, California 93955

**Subject: South of Tioga Project (Project)  
Notice of Preparation  
SCH# 2017061066**

Dear Mr. Bodem:

The California Department of Fish and Wildlife (CDFW) received a Notice of Preparation (NOP) from Sand City for the Project pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.<sup>1</sup>

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife. Likewise, we appreciate the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through the exercise of its own regulatory authority under the Fish and Game Code.

## **PROJECT DESCRIPTION SUMMARY**

**Proponent:** DBO Development No. 30, LLC

**Objective:** The objective of the Project is to approve a vesting tentative map for four parcels, site plan review, architectural review, and conditional use permit approvals for hotel and multi-family development. Primary Project activities include development of two multi-family residential unit complexes comprising a total of 420 units; two hotels with 216 hotel rooms combined, including parking; roadway improvements; utility access improvements; various amenity areas; and landscaping. Construction is anticipated to occur in three phases with Phase 1 as roadway improvements, Phase 2 as development of two hotels, and Phase 3 being the multi-family residential development.

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<sup>1</sup> CEQA is codified in the California Public Resources Code in section 21000 et seq. The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with section 15000.

**Location:** Sand City, Monterey County, southwest corner of Tioga Ave and California Ave.; 36.615674, -121.846192.

## **CDFW ROLE**

CDFW is California's **Trustee Agency** for fish and wildlife resources, and holds those resources in trust by statute for all the people of the State. (Fish & G. Code, §§ 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a).) CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species. (Id., § 1802.) Similarly, for purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

CDFW is also submitting comments as a **Responsible Agency** under CEQA. (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381.) CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code. For example, to the extent implementation of the Project as proposed may result in "take" as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.), related authorization as provided by the Fish and Game Code will be required.

CDFW has regulatory authority over projects that could result in the take of any species listed by the State as threatened or endangered, pursuant to Fish and Game Code Section 2081. If the Project could result in the take of any species listed as threatened or endangered under CESA, CDFW may need to issue an Incidental Take Permit (ITP) for the Project. This Project has the potential to result in take of Monterey gilia. CEQA requires a Mandatory Finding of Significance if a project is likely to substantially impact threatened or endangered species (Pub. Resources Code, §§ 21001(c), 21083; CEQA Guidelines §§15380, 15064, 15065).

Significant impacts must be avoided or mitigated to less than significant levels in order for take authorization to be issued by CDFW. While the CEQA Lead Agency may make a supported Statement of Overriding Considerations (SOC), CDFW cannot issue a take authorization unless all impacts have been "minimized and fully mitigated" (Fish & G. Code, § 2081). The CEQA Lead Agency's SOC does not eliminate the Project proponent's obligation to comply with CESA. In other words, compliance with CESA does not automatically occur based solely on local agency project approvals or CEQA compliance; and CEQA compliance by the Lead Agency which includes an SOC in regards to listed species cannot be utilized by CDFW to support issuance of take authorization. Consultation with CDFW, by both the Project proponent and the City

(acting as the Lead Agency) is warranted to ensure that Project implementation does not result in unauthorized take of a State-listed species.

Incidental take authority is required prior to engaging in take of any plant or animal species listed under CESA. Plants listed as threatened or endangered under CESA cannot be addressed by methods described in the Native Plant Protection Act. No direct or indirect disturbance, including translocation, may legally occur to State listed species prior to the applicant obtaining incidental take authority in the form of an ITP.

**Permit Streamlining:** Issuance of a Lake or Streambed Alteration Agreement (LSAA) and/or an ITP by CDFW is considered a "project" (CEQA Guidelines § 15378) and is subject to CEQA. CDFW typically relies on the Lead Agency's CEQA compliance to make our own findings. For the Lead Agency's CEQA document to suffice for permit/agreement issuance, it must commit to fully describing the potential Project-related impacts to stream/riparian resources and listed species, as well as measures to avoid, minimize, and mitigate impacts to these resources. If the CEQA document issued by the City for this Project does not contain this information, CDFW may need to act as a Lead CEQA Agency and complete a subsequent CEQA document. This could significantly delay permit issuance and, subsequently, Project implementation. In addition, CEQA grants Responsible Agencies authority to require changes in a Project to lessen or avoid effects of that part of the Project which the Responsible Agency will be called on to approve (CEQA Guidelines § 15041).

**Bird Protection:** CDFW has jurisdiction over actions that may result in the disturbance or destruction of active nest sites or the unauthorized take of birds. Sections of the Fish and Game Code that protect birds, their eggs, and nests include sections 3503 (regarding unlawful take, possession or needless destruction of the nest or eggs of any bird), 3503.5 (regarding the take, possession or destruction of any birds-of-prey or their nests or eggs), and 3513 (regarding unlawful take of any migratory nongame bird).

## COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist Sand City in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. Editorial comments or other suggestions may also be included to improve the document. Based on the potential for the Project to have a significant impact on biological resources, CDFW concludes that an Environmental Impact Report (EIR) is appropriate for the Project.

In review of the NOP for an EIR, CDFW provides the following comments as the project area has the potential to support special status species including the State threatened



and federally endangered Monterey gilia (*Gilia tenuiflora* ssp. *arenaria*), federally threatened Monterey spineflower (*Chorizanthe pungens* var. *pungens*), federally endangered Smith's blue butterfly (*Euphilotes enoptes smithi*), California Species of Special Concern (SSC) black legless lizard (*Anniella pulchra nigra*), along with other potential SSC species. CDFW has concerns about the potential impacts to Monterey gilia, Monterey spineflower, Smith's blue butterfly, and black legless lizard. Therefore, CDFW requests that the EIR fully identify potential impacts to biological resources and provide proper avoidance, minimization, and mitigation measures to address potential Project-related impacts to these species. CDFW recommends that biological surveys be conducted by a qualified wildlife biologist and that the results of these surveys be used to inform the analysis of impacts to resources and to provision suitable avoidance, minimization, and mitigation measures to reduce impacts to less than significant levels.

Due to the potential for Monterey gilia to occur on site and the potential for take of the species to occur as a result of Project implementation, acquisition of a State ITP from CDFW may be warranted. Project-related impacts to Monterey gilia should be evaluated and addressed prior to Project implementation in order to comply with State laws. With the known occurrences of Monterey gilia in the general location of the Project, as well as identified sensitive coastal dune habitat features on and adjacent to the Project site, CDFW recommends that appropriately timed floristic surveys be conducted to determine the presence or absence of sensitive species prior to Project approval and should follow the guidelines developed by CDFW (CDFG, 2009, available online at: <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=18959&inline=1>) and the United States Fish and Wildlife Service (USFWS) (USFWS, 2000, available online at: <http://www.fws.gov/ventura/docs/species/protocols/botanicalinventories.pdf>). The protocol requires repeated floristic surveys to be conducted by a qualified botanist multiple times during the appropriate floristic period(s) in order to adequately assess the potential Project-related impacts to rare plant species. In addition, the reference sites visited need to be documented, should be in the same vicinity of the proposed Project site, and contain known populations of all the special status species that have the potential to occur on the Project site.

The results of surveys can then be utilized to evaluate the potential for impacts to the species, which would be analyzed by the City in the EIR, as well as to determine the potential for take to occur. Should the Project potentially result in take of this species, take authorization from CDFW in the form of an ITP, pursuant to Fish and Game Code Section 2081(b), would be required prior to Project implementation. For information regarding ITPs, please see the following link: <https://www.wildlife.ca.gov/Conservation/CESA/Incidental-Take-Permits>. Included in the ITP would be measures required to avoid and/or minimize direct take of Monterey gilia on the Project site, as well as measures to fully mitigate the impact of the take. All



impacts related to the permitted taking of Monterey gilia must be minimized and fully mitigated.

**Biological Information:** CEQA requires a CEQA document and any subsequent environmental review to clearly identify resources in the Project area and their potential to be impacted by the proposed Project; analyze potential impacts as to their significance; and identify measures to reduce all potentially significant impacts to a level of less-than-significant. CDFW recommends surveys are conducted at the appropriate time of year to determine the presence/absence, location, and abundance of sensitive plant and animal species and natural communities, which may occur on the specific Project site to support a complete impact analysis. Generally, CDFW supports measures and alternatives that would avoid and minimize potential impacts to resources of concern, as well as on-site conservation measures be considered prior to measures and alternatives that would provide for compensatory resources on- or off-site.

**Sensitive Species:** Species of plants and animals need not be officially listed as Endangered, Rare, or Threatened (E, R, or T) on any State or Federal list to be considered E, R, or T under CEQA. If a species can be shown to meet the criteria for E, R, or T, as specified in the CEQA Guidelines (California Code of Regulations, Title 14, Chapter 3, Section 15380), it should be fully considered in the environmental analysis for the Project. This should include SSC that are known to the Project area vicinity and could occur in the Project area such as the SSC black legless lizard and coast horned lizard (*Phrynosoma blainvillii*).

**Avoidable Wildlife Impacts from Erosion Control Mesh Products:** Due to this Project site's extensive wildlife habitat interface, CDFW requests that erosion control and landscaping specifications allow only natural-fiber, biodegradable meshes and coir rolls. "Photodegradable" and other plastic mesh products have been found to persist in the environment, ensnaring and killing terrestrial wildlife. Reptile and amphibian deaths resulting from the use of plastic mesh products are well documented. Plastic mesh erosion control products would likely cause unanticipated, avoidable impacts including take of special status species. CDFW believes requiring the use of biodegradable products would be a feasible mitigation measure to reduce impacts to wildlife species.

**United States Fish and Wildlife Service Consultation:** Due to the potential for Monterey gilia (State- and federally listed species) among other federally listed species to occupy the Project site, CDFW recommends consultation with the United States Fish and Wildlife Service (USFWS) prior to any site development and ground disturbance related to this Project due to potential impacts to federally listed species. Take under the Federal Endangered Species Act (FESA) is more stringently defined than under CESA; take under FESA may also include significant habitat modification or degradation that could result in death or injury to a listed species, by interfering with essential

behavioral patterns such as breeding, foraging, or nesting. Consultation with the USFWS in order to comply with FESA is advised well in advance of Project implementation.

**Cumulative Biological Impacts:** CDFW recommends that cumulative impact analyses be species and habitat specific and should be quantified. This includes all the species and habitats discussed above, and any others which the Project's biological inventories may reveal. For example, large-scale habitat and population losses for sensitive dune resources may result from the combined impacts of several past and future projects in Sand City. CEQA requires that the cumulative impacts analysis identify past, present, and probable future projects which would affect the same resources (e.g., Edgewater and Sand Dollar Shopping Centers, Monterey Bay Shores, and East Dunes Residential Subdivision).

## ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database, which may be used to make subsequent or supplemental environmental determinations (Pub. Resources Code, § 21003, subd. (e)). Accordingly, please report any special status species and natural communities detected during Project surveys to the California Natural Diversity Database (CNDDDB). The CNDDDB field survey form can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The completed form can be mailed electronically to CNDDDB at the following email address: [CNDDDB@wildlife.ca.gov](mailto:CNDDDB@wildlife.ca.gov). The types of information reported to CNDDDB can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

## FILING FEES

**CEQA Fees:** The Project, as proposed, would have an impact on fish and/or wildlife and assessment of filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required in order for the underlying project approval to be operative, vested, and final (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089). For more information on the CEQA fee schedule see: <https://www.wildlife.ca.gov/Conservation/CEQA/Fees>.

**CESA Fees:** The Governor's approval and enactment of Senate Bill 839 on September 13, 2016, immediately requires CDFW to collect permit application fees for CESA ITPs, consistency determinations, and permit amendments based on project cost. The new fees defray the cost of CESA permitting review by CDFW. For a CESA permit application submitted to CDFW on or after September 13, 2016 (the effective date of

Todd Bodem  
Sand City  
August 1, 2017  
Page 7

this legislation), the project proponent shall include the appropriate permit application fee with the permit application. CDFW will not deem the permit application complete until it has collected the permit application fee. For more information on the CESA fee schedule see: <https://www.wildlife.ca.gov/Conservation/CESA>.

## CONCLUSION

CDFW appreciates the opportunity to comment on the NOP for the South of Tioga Project to assist Sand City in identifying and mitigating Project impacts on biological resources. CDFW is available to consult with the City regarding potential effects to fish and wildlife resources, as well as specific measures, which would mitigate potential effects of the Project. Depending upon the results of the described biological surveys, actual Project site configuration, and other details, which should be identified in Project biological reports, CDFW may have additional comments and recommendations regarding avoidance, minimization, and mitigation of Project impacts to habitat and special status species.

Questions regarding this letter or further coordination should be directed to Brandon Sanderson, Environmental Scientist, at 3196 Higuera Street, Suite A, San Luis Obispo, California 93401, by telephone at (805) 594 6141, or by email at [Brandon.Sanderson@wildlife.ca.gov](mailto:Brandon.Sanderson@wildlife.ca.gov). You may also contact Craig Bailey, Senior Environmental Scientist, by telephone at (559) 243-4014, or by email at [Craig.Bailey@wildlife.ca.gov](mailto:Craig.Bailey@wildlife.ca.gov).

Sincerely,



*for* Julie A. Vance  
Regional Manager

ec: See Page 8

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Sand City  
August 1, 2017  
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### **Literature Cited**

CDFG. 2009. Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities. California Department of Fish and Game, November 2009.

USFWS. 2000. Guidelines for Conducting and Reporting Botanical Inventories for Federally Listed, Proposed and Candidate Plants. United States Fish and Wildlife Service, January 2000.