United States Department of the Interior

FISH AND WILDLIFE SERVICE
Ventura Fish and Wildlife Office
2493 Portola Road, Suite B
Ventura, California 93003

IN REPLY REFER TO:
08EVEN00-2014-TA-0211

April 7, 2014

Mike Watson, Coastal Program Analyst
California Coastal Commission
Central Coast Office
725 Front Street, Suite 300
Santa Cruz, California 95060

Subject: Monterey Bay Shores Resort Development, Sand City, Monterey County, California

Dear Mr. Watson:

The U.S. Fish and Wildlife Service (Service) is providing this letter to the California Coastal Commission (Commission) with regard to an application for a coastal development permit for the proposed Monterey Bay Shores Resort Development in Sand City, Monterey County, California (Project). You contacted Jacob Martin of my staff via electronic mail on March 26, 2014, stating that a staff report for the project (Staff Report) was available to the public and that written comments on that report, if received by April 7, 2014, would be provided to the Commission for their review and consideration in advance of their permit decision. The proposed Project includes the construction of a 184-room hotel, 184 (92 residential and 92 visitor-serving) condominium units, conference facilities, a restaurant, a spa, pools, landscaping, public access, and parking. The proposed Project development would total 1.34 million square feet of resort and residential facilities within an approximately 12-acre footprint. These facilities would be constructed on a 39-acre ocean-front site in Sand City, California.

The Service's responsibilities include administering the Endangered Species Act of 1973, as amended (Act), including sections 7, 9, and 10. Section 9 of the Act prohibits the taking of any federally listed endangered or threatened species. Section 3(19) of the Act defines "take" to mean "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct." Harm is further defined by the Service to include significant habitat modification or degradation that results in death or injury to listed species by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering. Harass is defined by the Service as intentional or negligent actions that create the likelihood of injury to a listed species by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding, or sheltering. The Act provides for civil and criminal penalties for the unlawful taking of listed species. Exemptions to the prohibitions against take may be obtained through coordination with the Service in two ways. If

a project is to be funded, authorized, or carried out by a Federal agency, and may affect a listed species, the Federal agency must consult with the Service pursuant to section 7(a)(2) of the Act. If a proposed project does not involve a Federal agency but may result in the take of a listed animal species, the project proponent should apply to the Service for an incidental take permit pursuant to section 10(a)(1)(B) of the Act. To qualify for an incidental take permit, project proponents must submit an application to the Service together with a habitat conservation plan (HCP) that describes, among other things, how the impacts of the proposed taking of federally listed species would be minimized and mitigated to the maximum extent practicable and how the plan would be funded. A complete description of the requirements for a HCP can be found at section 10(a)(2)(B) of the Act and at 50 Code of Federal Regulations 17.32.

As it is not our primary responsibility to comment on documents prepared pursuant to the California Coastal Act, our comments on the Staff Report will not constitute a full review of Project impacts. Rather, they address potential impacts of the proposed Project on species listed under the Act, including the federally endangered Smith's blue butterfly (*Euphilotes enoptes smithi*) and the federally threatened western snowy plover (*Charadrius nivosus nivosus*) and Monterey spineflower (*Chorizanthe pungens* var. *pungens*). We offer the following information and recommendations to aid in the conservation of sensitive wildlife habitats and federally listed species that occur in the proposed Project area as a means to assist the Commission and the Project proponent, Security National Guarantee (Applicant), in complying with the Act.

As background, the subject Project was originally proposed in 1998, but was never constructed. Subsequently, we received a draft habitat conservation plan (HCP) for the subject Project from Tom Roth (attorney to the Applicant) in February of 2006 and provided comments on that draft in June of the same year. We did not receive substantial information from the applicant regarding the proposed Project between July of 2006 and July of 2008. On July 16, 2008, representatives of the Applicant, including Mr. Roth, visited our Ventura Fish and Wildlife Office to present a briefing on a redesigned version of the Project. On August 18, 2008, we received a copy of a draft addendum to the final environmental impact report for the Project. On October 16, 2008, and October 27, 2008, we received draft and "final" copies of a "habitat protection plan" (2008 HPP). We provided comments to the Coastal Commission on the 2008 HPP in a letter dated May 6, 2009. We have received no further information from the applicant regarding the subject Project since 2008. On March 26, 2014, we received an electronic mail message from you that included a link to the Staff Report. The Staff Report indicates that the proposed residential and visitor-serving capacity of the Project has been expanded from that considered in 2008 (184 hotel rooms versus 160, and 184 condominium units versus 180). However, the Staff Report (page 98) indicates, and we agree, that the current version of the HPP (2013 HPP) (EMC Planning Group 2013, attached as exhibit 20 at page 203 of the Staff Report) is fundamentally unchanged from the version we commented on in 2009, and that comments in our 2009 letter (attached as exhibit 25 at page 481 of the Staff Report) therefore remain relevant to the currently proposed Project. We make several specific references to the HPP in the following discussion as well as refer the Commission to our May 6, 2009, letter for additional comments on the HPP.

The project site includes known occupied habitat for the Smith's blue butterfly, western snowy plover, and Monterey spineflower. The Smith's blue butterfly is dependent upon its host plant species, seacliff buckwheat (*Eriogonum parvifolium*) and coast buckwheat (*Eriogonum latifolium*), during all life stages and seacliff buckwheat plants occupied by Smith's blue butterfly are found in the project area (2013 HPP, page 3-3). Approximately 3.4 acres of habitat occupied by Monterey spineflower was located in the Project area during the most recent (2008) survey (2013 HPP, page 3-8). While we are concerned about potential take of Smith's blue butterfly and impacts to Monterey spineflower, our primary concern centers on the likely effects of the Project on the western snowy plover and its designated critical habitat.

Western Snowy Plover

Western snowy plovers have nested throughout much of the Project area (Point Blue Conservation Science, in litt. 2014). This includes nesting within the Project footprint in habitat that would be permanently destroyed during construction, and in areas seaward of the Project footprint that would be disturbed during construction and by the increased human use of the Project area following construction. We acknowledge that no western snowy plover nests have been recorded within the immediate Project footprint in the past 10 years (Point Blue Conservation Science, in litt. 2014); however, recent survey efforts have been limited and inconsistent in that area (David Dixon, Point Blue Conservation Science, pers. comm. 2014) and we are not aware of any changes to the habitat that would preclude successful nesting there. Successful western snowy plover nesting has been recorded within the broader Project area, seaward of the Project footprint, as recently as 2013. On a more regional scale, there have been 12 nests observed within Sand City (primarily in the Project area but also in areas within City limits and to the south) and 162 nests observed within Fort Ord Dunes State Park (adjacent to and north of the Project area) over the past 10 years (Point Blue Conservation Science, in litt. 2014). It should also be noted that western snowy plover chicks are precocial (active and able to move freely from hatching) and chicks hatched in nearby areas may currently feed and shelter within the Project area.

We have four primary concerns regarding the effects of the proposed Project on the western snowy plover: (1) the direct removal of habitat by construction activities, (2) the large increase in disturbance to the species and habitat by users of the proposed facilities, (3) the expected increase in predators associated with increased human presence; and (4) the interaction between habitat removal and the expected rise in sea level.

The Project area encompasses 39.0 acres, of which 28.0 would be disturbed by grading and 12.2 would be permanently converted to developed areas (Staff Report pages 39-40); it should also be noted that 7.1 of the 39.0 acres are below the high tide line. This calculates to approximately 88 percent of the habitat above the high tide line being disturbed during construction and 38 percent being permanently destroyed.

Pedestrians and their pets can cause harassment, as well as direct injury and mortality, of western snowy plovers (Service 2007). The City of Sand City (City) (2012, page 137) acknowledges that

increased human use of beaches within City limits has decreased the value of habitat for the western snowy plover. The proposed Project would contribute greatly to this ongoing loss, by bringing thousands of guests to the proposed resort annually and by facilitating increased public access. Proposed Project components include vertical public access at the north end of the Project area, a public viewpoint at the northwest corner of the Project area, horizontal public access across the Project area seaward of the proposed resort, connection to public roads and bike trails, and new public parking (Staff Report pages 118-119). This increase in human activity is likely to result in take in the forms of harm and/or harassment, as well as direct injury or mortality, of western snowy plovers both within the Project area and on habitat adjacent to the Project area.

The presence of humans facilitates increased populations of predators that prey on western snowy plovers. Human development and use of an area provides sources of food, water, and habitat features that benefit a variety of mammalian and avian predators (Service 2007). Therefore, the development of, and increased human presence associated with, the proposed Project would likely increase predation on western snowy plovers.

The Staff Report includes a discussion of sea level rise, shoreline erosion, and flooding (pages 46-66). The proposed Project would site resort facilities within areas that are projected (at a shoreline erosion rate of 2.6 feet per year) to be below the high tide line within 75 years due to sea level rise and shoreline erosion (Staff Report pages 62-63 and exhibit 9 at page 164). The Staff Report acknowledges that there is scientific uncertainty as to the rates of environmental change regionally and within the Project site (page 63) and that the shoreline could erode more quickly than the projected 2.6 feet per year. Our concern is that the setback between the high tide line and the developed area would be lost due to "coastal squeeze" (the process in which coastal habitat is lost because it is trapped between a rising sea and a hardened physical barrier (in this case the proposed resort)). Habitat for any listed species between the Pacific Ocean and the Project footprint would eventually be physically removed by sea level rise.

We expect that the proposed Project would result in take of the western snowy plover and would likely render the Project area unsuitable for the species. Habitat would be immediately lost upon construction and the amount of human disturbance and predation pressure would be increased both within the Project area and in adjacent areas. We expect take of the species would occur in the forms of harm, harassment, and/or direct injury or mortality. We respectfully disagree with the conclusion on page 100 of the Staff Report that "the project will protect the natural resources of the site." However, if the Commission chooses to permit the Project as proposed, then we strongly support the inclusion of Special Condition 15 of the Staff Report (Staff Report, page 33), which would require that the Applicant obtain all necessary permits from the Service and several other public agencies. Considering the following factors: (1) the Project area is relatively small, (2) much of it would be developed, (3) all of it would be subjected to increased human disturbance, and (4) all western snowy plover habitat therein would ultimately be lost to the combined effects of the development and sea level rise/shoreline erosion, we expect that off-site mitigation may be necessary to meet the Service's incidental take permit issuance criteria. Please also note that we have been providing input to the City of Sand City for approximately 15

years regarding the likely impacts to listed species of Ocean-front development within their City limits and the need for habitat conservation planning; copies of our letters to the City from 1999 and 2002 are enclosed for your information.

Much of the information provided in the 2013 HPP is inaccurate and outdated. In addition, we are concerned that its provisions are not adequate to avoid take of the western snowy plover. Specific comments regarding our concerns about the 2013 HPP are provided below:

(1) The discussion of nesting activity in section 4.2.1 (pages 4-2 and 4-5) does not discuss the 2012 or 2013 breeding seasons, in which successful nests hatched within the Project area.

(2) The biological objectives on pages 4-7 and 4-8 would not provide an undisturbed area where western snowy plovers would be free to establish nests. Instead, two areas would be surveyed for western snowy plovers (by a biologist retained by the Applicant) and if nests were found in the first of those areas (the "beach and strand"), the biologist would be "in coordination with the construction supervisor, resort manager or property owner…authorized to restrict access to nesting snowy plover areas through implementation of an adaptive management plan, and through the erection of exclosures and signage to protect nests during the breeding season." We expect that in the above-described circumstances, increased human disturbance within the nesting habitat would preclude nesting and no nests would be found. In addition, if nests were found, their protection would be left at the discretion of a biologist of unknown qualifications who would report only to the Applicant. Furthermore, the second area surveyed (the "foredune/secondary dune") would only be surveyed and no protection of any nests located is even described as "authorized."

(3) Western snowy plovers have nested in inland areas of the Project site, but preconstruction surveys are proposed only in beach and strand areas (page 4-13).

(4) Eggs and chicks are the least mobile and, therefore, the most vulnerable life stages of the western snowy plover. For this reason, we typically recommend seasonal avoidance of disturbance in or near western snowy plover nesting habitat during the breeding season (generally March 1 through September 30, annually). No seasonal restriction for construction during the western snowy plover nesting season is proposed in the HPP. Rather, the HPP (page 4-13) appears to assume that surveys, exclosure "during fledging" of any nests found, and "focused monitoring and care" will be sufficient to prevent nest loss. Exclosure "during fledging" is not biologically relevant to the western snowy plover; exclosures can help to protect eggs in some situations, but western snowy plover chicks are precocial and, as such, cannot be contained within an exclosure once they have hatched. Also, it is not clear to us what "focused monitoring and care" entails or how this would reduce the likelihood of nest abandonment.

(5) The HPP (page 4-13) presumes that take of western snowy plovers resulting from nest abandonment due to construction would not occur because successful nesting occurs at Oceano Dunes State Vehicular Recreation Area (ODSVRA). This argument is flawed in two primary ways. First, take of western snowy plovers occurs at ODSVRA almost every year, and the California Department of Parks and Recreation (CDPR) is working with us on an HCP to support issuance of an incidental take permit to address such take. Second, the ODSVRA encompasses more than 3,500 acres and includes more than 6 miles of shoreline, the southern third of which (approximately 300 acres) is seasonally closed to protect nesting western snowy plovers and California least terns (please see map available at: http://ohv.parks.ca.gov/?page_id=1208). The ODSVRA is several orders of magnitude larger than the proposed Project site; as such it is not comparable to a 39-acre site where 88 percent of the terrestrial habitat is proposed to be graded.

(6) The HPP (page 4-15) mentions a "Dynamic 1-2 acre Nesting Protection Zone." This zone is proposed to be established upon opening of the resort. It is not clear how this zone would be protected. Also, the location, orientation, and size of this zone are left to the discretion of a biologist of undetermined qualifications who would report only to the Applicant.

(7) The HPP (page 4-16) indicates that a predator management plan would be developed, but does not provide any detail on what the plan would entail or any certainty that it would succeed.

(8) The HPP (page 4-23) describes a success criterion for western snowy plover of one successful nesting pair within 10 years following construction and characterizes this threshold as "attracting nesting plovers back to the site." This goal is biologically inadequate to maintain the current level of nesting and does not recognize that western snowy plovers currently nest within the Project area. In addition, defining success as successful nesting (eggs surviving to hatch) would not guarantee successful fledging (chicks surviving until they are mature enough to fly).

Western Snowy Plover Critical Habitat

Unit CA 22 of designated critical habitat for the western snowy plover includes approximately a third of the Project area (77 FR 36728, http://criticalhabitat.fws.gov/crithab/). Unit CA 22 was designated because it was occupied at the time of listing, is currently occupied, and is an important area for breeding and wintering western snowy plovers (77 FR 36766). The primary constituent elements (PCEs) (77 FR 367474) of critical habitat for the western snowy plover include:

(1) Areas that are below heavily vegetated areas or developed areas and above the daily high tides;

(2) Shoreline habitat areas for feeding, with no or very sparse vegetation, that are between the annual low tide or lowwater flow and annual high tide or highwater flow, subject to

inundation but not constantly under water, that support small invertebrates, such as crabs, worms, flies, beetles, spiders, sand hoppers, clams, and ostracods, that are essential food sources;

(3) Surf- or water-deposited organic debris, such as seaweed (including kelp and eelgrass) or driftwood located on open substrates that supports and attracts small invertebrates described in PCE 2 for food, and provides cover or shelter from predators and weather, and assists in avoidance of detection (crypsis) for nests, chicks, and incubating adults; and

(4) Minimal disturbance from the presence of humans, pets, vehicles, or human-attracted predators, which provide relatively undisturbed areas for individual and population growth and or normal behavior.

The Project would reduce the amount of PCE 1 immediately upon construction by placing development closer to the high tide line. The Project would degrade PCE 4 by facilitating the presence of thousands of additional people within and surrounding the project area. We expect that PCEs 2 and 3 would also be degraded by the large increase in human use of the Project area and surrounding areas. All PCEs would eventually be completely lost from the Project area as sea level rises and any remaining habitat between the ocean and the development is inundated.

Cumulative Effects to Western Snowy Plover

We are aware of two additional proposed projects with likely adverse effects on the western snowy plover in the vicinity of Sand City. The "Collections" project is another proposed resort within Sand City and would be located south of the Monterey Bay Shores site. The CDPR has proposed a campground within Fort Ord Dunes State Park, which is immediately north of the proposed Monterey Bay Shores site. The Collections would directly remove western snowy plover habitat (similar to Monterey Bay Shores) and both projects would facilitate the presence of thousands of additional visitors in western snowy plover habitat. We have enclosed copies of our comment letters to the City of Sand City and CDPR on these projects for your information. We are currently working with CDPR on a HCP that would address their project. We are very concerned about the combined adverse effects of these three projects on the western snowy plover. If all three are constructed, there is potential that the species could no longer successfully breed in the southern Monterey Bay area.

Smith's Blue Butterfly

The 2013 HPP (Staff Report exhibit 20, page 3-3) indicates that Smith's blue butterflies and their habitat were present on site during a 2006 survey, which is the most recent survey cited in the HPP. The Staff Report (page 95) indicates that the distribution of Smith's blue butterfly habitat had not substantially changed as of a 2008 survey. The Staff Report (page 97) indicates that Smith's blue butterfly habitat would be avoided during grading. We are concerned that this expectation of avoidance is based on surveys that are more than 5 years old. Seacliff and coast

buckwheat are plants that colonize new areas, including disturbed areas, from seed and may have become established in new areas since the 2006 and 2008 surveys. We are also concerned that the 2013 HPP does not appear to reflect the latest available data (e.g., the Staff Report relies on a 2008 survey that is not discussed in the HPP). In addition, as discussed in our 2009 letter, the HPP (either version) is inconsistent regarding avoidance of Smith's blue butterfly habitat during construction. The 2013 HPP indicates (page 3-4) that the project would "completely avoid the area where buckwheat plants occur," but also indicates (page 4-13) that surveyors would "flag each plant of seacliff or coast buckwheat within areas proposed for development." Given these inconsistencies and the time elapsed since the most recent survey, we are not confident that removal of currently existing Smith's blue butterfly habitat can or would be avoided during project construction. We have additional concerns regarding potential take of all life stages of Smith's blue butterflies during weed removal, during seed collection, and as dispersing adults; please see the last page of our 2009 letter for a detailed discussion of these concerns.

Monterey Spineflower

The Monterey spineflower is an annual plant that germinates from its seed bank each growing season. The 2013 HPP (page 3-8) indicates that 3.39 acres of habitat occupied by Monterey spineflower were found in the Project area in a 2008 survey. The Staff Report (page 95) indicates that surveys in 1997, 2000, and 2008 revealed that Monterey spineflower has been found in additional, and different, portions of the Project area since 1997, with a 21 percent increase in known occupied habitat from 1997 to 2008. The Staff Report also indicates that when considering all survey results, up to 7 acres of occupied habitat may occur within the Project area (i.e., 3.39 acres were observed occupied by mature plants in 2008, but the area occupied by the Monterey spineflower seed bank is likely substantially larger). The 2013 HPP (page 3-8) proposes grading of all known occupied Monterey spineflower habitat and reestablishment of the species "at a minimum 1:1 ratio" within 3.7 acres following Project development. Considering the discussion at page 95 of the Staff Report, we question whether establishment of 3.7 acres of occupied Monterey spineflower would in fact constitute a 1:1 replacement ratio. It is not clear to us from the species-specific mitigation measures for Monterey spineflower (2013 HPP pages 4-30 and 4-31) exactly where the reestablishment of this species is proposed. If the re-establishment area(s) would be seaward of the Project footprint, we would have the same concerns regarding "coastal squeeze" as discussed previously for western snowy plover.

In summary, the Project is likely to cause adverse effects to listed species, including the likely take of western snowy plovers and Smith's blue butterflies. In addition, the provisions of the HPP are not sufficient to avoid this take, and it is unlikely that the take of western snowy plovers that would result from the Project, as proposed, could be adequately mitigated on-site within the Project area. If the Commission permits, and the Applicant wishes to continue to pursue, the proposed Project, then the Applicant should prepare a habitat conservation plan in support of an application for an incidental take permit to address take of the western snowy plover and Smith's blue butterfly, and adverse effects to Monterey spineflower.

This concludes our comments on the subject Project. We appreciate your consideration of our comments and we are available to discuss them further. If you have any questions, please contact Jacob Martin of my staff at (831) 768-6953.

Sincerely,

Stephen P. Henry
Acting Field Supervisor

Enclosures

Literature Cited

City of Sand City. 2012. Draft environmental impact report for the collection at Monterey Bay. November 2012. 213 pp.

U.S. Fish and Wildlife Service. 2007. Recovery plan for the pacific coast population of the western snowy plover. 271 pp. plus appendices.

In Litterae

Point Blue Conservation Science. 2014. Electronic mail messages with attached maps and data from Kriss Neuman, Point Blue Conservation Science, to Jacob Martin, U.S. Fish and Wildlife Service. March 17, 2014 and March 31, 2014.

Personal Communication

Dixon, David. Point Blue Conservation Science. Telephone conversation with Jacob Martin, Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service. March 31, 2014.