EXHIBIT 18-Q

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January 21, 2009

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MPWMD

Ms. Henrietta Stern
Monterey Peninsula Water Management District
P.O. Box 85
Monterey, CA 93942

Re: **Water Distribution System Permit (Cal Am and SNG)**

Dear Henrietta:

This letter is in response to issues which were recently raised by the League of Women Voters in a letter dated January 6, 2009 and by the Sierra Club in a letter dated January 15, 2009. Both commentators raised issues related to WRCB Order 95-10 and the impact of that order on this application and other issues related to compliance with the California Environmental Quality Act ("CEQA"). For the reasons outlined below, neither of these issues should affect the issuance of a water distribution system permit to the applicant Security National Guaranty.

With respect to CEQA, the Sierra Club contends that Sand City has not "considered" the Addendum to the Final Environmental Impact Report. In fact on Tuesday, January 20, 2009, considered and adopted the Addendum. We enclose a copy of the City's resolution that was approved at that hearing.

As a responsible agency and not the lead agency on this project, the Water Management District has responsibility for mitigation of only the direct or indirect environmental effects of those parts of the project which it approves and which fall within its area of responsibility. It should be noted that the lead agency determines the beneficial uses of the property, i.e. the underlying land uses, and not the responsible agency.

The Water Management District staff was consulted on the DEIR, FEIR and Addendum to EIR relative to the water and hydrology issues and they expressed no concerns and did not challenge those documents. Those environmental documents analyzed the project as currently revised and further analyzed the impact of the Monterey Court's Seaside Adjudication and concluded that there was no significant impact. Sand City has confirmed there are no substantially changed circumstances that would require a subsequent or supplemental EIR.

While the project that is presented to this board has been revised to incorporate cutting-edge sustainable design and water-saving technologies in response to comments received during the planning process, under *Mani Brothers v. City of Los Angeles* (2007) 153 Cal App 4th 1385, the relevant question under CEQA is not whether the project has been changed but rather whether the new design results in new or significantly greater environmental impacts. The Addendum concluded that the new design does not result in greater impacts - - in fact, in many cases the impacts have been reduced. This is a project that the region can be proud of in terms of preserving the environment.

It should be noted that this will be the third time that variations of this project have been before your board. Again, the applicant respectfully requests that the Water Management issue a water distribution system permit (or expand one) to make beneficial use of the water on this property which is specifically zoned to allow visitor serving commercial use. As revised, the project employs state of the art green technology and reclamation to substantially reduce its water demand and provide recharge benefits to the overall basin. This was one of the conclusions reached in the Addendum.

By way of history, this project and its attendant water distribution system permit was before your board in 1999, and 2000. In 2000 the WMD denied the water distribution system request, in substantial part because the District argued that the applicant couldn't demonstrate conclusively his rights to the water. In subsequent litigation over the denial, the court declared that inverse condemnation was inappropriate because the matter had only been before the Water Management District twice. Now in 2009, the Seaside Basin Adjudication decision issued February 9, 2007 conclusively determines that Security National's property is entitled to paramount rights to 149 acre-feet of water each year. The court also imposed what is known in water law as a "physical solution" or court-supervised groundwater management plan governing the use of water within the Seaside basin. That judgment by the court includes a process for reduction of pumping rights in the case of a future overdraft. Accordingly, any impact to "any other user" within the Seaside Basin has been conclusively determined by the Seaside Adjudication decision and any subsequent determination on that issue would need to be made by Judge Randall of the Monterey Court as that Court has retained jurisdiction over this matter. (Amended Decision Page 20: lines 23-28; 21:1-100) The following entities have paramount overlying rights in the Seaside Basin, including the City of Seaside, SNG, Sand City, Calabrese and Mission Memorial. Any action by the WMD which purported to impede or is otherwise contrary to the court-imposed physical solution and the overlying water rights would be contrary to state law and the adjudication decision. (Amended Decision Page 50, lines 24-26)

Applicant Security National's pending application presents two options for the Board to consider: (1) expand Cal Am's connections to allow Cal Am to serve the property with the owner's water; or (2) allow an onsite water distribution permit to serve the project. Staff has recommended Option 1, i.e., expansion of Cal Am's connections, as the preferable alternative. It should be noted that the underlying EIR analyzes both the creation of an onsite distribution system and the Cal Am expansion scenario and concludes that there would be no significant impact.

Staff's recommendation to proceed with Option 1 makes a great deal of sense because it will shift the pumping inland, which is consistent with the Seaside Basin Water Master's direction and the Court's Adjudication order. Of note, that option would also ensure that the Water Management District has more control over the Cal Am water distribution permit process because it has moratorium provisions and regulatory controls which are specifically directed at Cal Am, including the regulatory process arising out of Order 95-10 and any subsequent orders. While any regulatory moratorium would not preclude any overlying producer, such as Security National, from making beneficial use of his water, it would give the District some measure of control over Cal Am.

We do request, however, that the Board, if it disagrees or denies the staff recommended Option 1, that the Board either approve or deny Option 2 which outlines a Water Distribution system permit on the Security National property to be served by his own wells and his own entity or other contractual entity.

The Sierra Club appears to be assuming an unlikely scenario, such as an order from the State Water Resources Control Board ordering Cal Am to cease all diversions from the Carmel River, i.e., a pumping reduction of 11,285 acre feet per year. They argue that Conditions 2 and 4 of Order 95-10 would require Cal Am to make one-for-one reductions and to serve only existing connections. Their analysis is flawed for several reasons.

Condition 2 of Order 95-10 specifically requires that Cal-Am diligently obtain water from other sources of supply and make one-for-one reductions in unlawful diversions from the Carmel River, provided that water pumped from the Seaside aquifer shall be governed by condition 4 of this Order. There is no question that expansion of Cal Am's water system permit based upon pumping an additional 90 afy from the Seaside Aquifer so Condition 4 could conceivably apply. Condition 4 requires that Cal Am "maximize production from the Seaside aquifer for the purpose of serving existing connections... and to reduce diversions to the "greatest extent practicable". However, Condition 4 is inapplicable for a number of reasons. First, any development of water and purveying of water within the Seaside Basin is governed by the Seaside Adjudication Order, so Cal Am can't "maximize production from the Seaside Basin" in a way inconsistent with the order. Second, the adjudication order and Water Master allows overlying producers to supply water from anywhere within the Seaside Basin. Thus, it is error to believe that Cal Am is "producing" the 90 afy which is the basis of the water right for the expansion of the connections that will be required to serve the Security National property, instead Cal Am is simply purveying or supplying a portion of Security National's water right from an area inland of the Security National property.

Nor do we believe the Sierra Club's prediction of ceasing all diversions is a realistic or foreseeable scenario for a number of reasons: first, there are health and safety issues associated with such an order because there is no additional supply available to Cal Am to replace the diversions. Second, Cal Am has been actively seeking a replacement water supply to replace its diversions from the Carmel River. Third, such an extreme order would be vigorously contested through the legal system precluding the orders' application for many years. Fourth, and perhaps most significantly, the SWRCB does not have jurisdiction over the Seaside Basin and could not compel additional Seaside Basin pumping in a way that would affect Security National's rights under the adjudication.

If a reduction in Cal Am's diversion occurs, the Water Management District would apply the provisions of Ordinances 134, 135 and 137 which would have the effect of creating moratoriums and rationing throughout the District's boundaries. However, overlying water rights and uses are given priority as is required by state law and the adjudication decision. Thus, all overlying water rights within the Seaside Basin (743AFY) would entitled to deduction from a decision which required Cal Am to begin diverting 11,285 AFY from the Seaside Basin. Thus, a cease and desist order prohibiting all Cal Am diversions out of the Carmel River, even in the unlikely event that occurs, would have no impact on any water holder with overlying rights. Conversely, exercise of overlying rights cannot by definition affect any other users' rights to use water. The Addendum considers and discusses these rights and what would happen if there were reductions in pumping from Seaside Basin *for any reason*. Therefore, these issues have been addressed.

The League raises similar issues to the Sierra Club letter, but contends that Sand City should make available to Security Nation 90 afy out of its desalination facility amounts. The District has already in its December 2007 Board Decision on Sand City's desal plant voted to not allow Security National's property to be a beneficiary of the desal plant because Security National has its own water as decided in the Adjudication. Should the Water Management District revise its decision, Security National Guaranty would not object to such a solution because under the terms of the adjudication order, Security National Guaranty has the absolute right to transfer back to the City of Sand City 90 afy with no oversight or further approvals by the Water Management District. However, we still believe that Option 1, noted above is preferable and encourage the Board to approve that option.

Thank you for your consideration of our additional information and comments.

Sincerely,

Lombardo & Gilles, LLP

Sheri L. Damon

CITY OF SAND CITY

RESOLUTION SC 09-06, 2009

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAND CITY CONCERNING AN ADDENDUM TO THE FINAL ENVIRONMENTAL IMPACT REPORT FOR THE MONTEREY BAY SHORES ECO-RESORT

WHEREAS, Security National Guaranty, Inc., a California corporation ("**Applicant**") previously made application to Sand City (the "**City**") for a Coastal Development Permit to allow development of certain property in the City, designated as APN 011-501-014, located in the coastal zone west of Highway One in the City;

WHEREAS, Applicant's project was previously known as the Monterey Bay Shores Resort (the "**Original Project**");

WHEREAS, in 1998, the City certified the Final Environmental Impact Report (the "**EIR**") for the Original Project in accordance with the California Environmental Quality Act ("**CEQA**");

WHEREAS, following certification of the EIR and public hearings conducted in the manner required by law, the City acted to conditionally approve a Coastal Development Permit for the Original Project on December 1, 1998;

WHEREAS, the City's conditional approval of a Coastal Development Permit for the Original Project was appealed to the California Coastal Commission;

WHEREAS, the California Coastal Commission conducted a de novo review of the Original Project and acted to deny approval of a Coastal Development Permit for the Original Project;

WHEREAS, acting in accordance with the decision in *Security National Guaranty, Inc., v. California Coastal Commission* (2008) 159 Cal.App.4th 402, the Superior Court ordered a preemptory writ to issue on May 27, 2008 commanding the Coastal Commission to vacate its denial of the Applicant's application for a coastal development permit and reconsider the application for a coastal development permit;

WHEREAS, prior to such reconsideration, in order to address concerns previously expressed by the Commission and its staff, the Applicant has redesigned and reduced the size of the Original Project (hereinafter referred to as the "Revised Project");

WHEREAS, an Addendum and Errata of the Addendum to the EIR have been prepared (copies of which are attached hereto as Exhibits "A"and "B", respectively and by this reference incorporated herein), for the Revised Project which shows:

A. The changes to the Original Project will not cause new significant environmental effects or a substantial increase in the severity of significant effects identified in the EIR;

B. The circumstances under which the Revised Project is proposed to be undertaken will not result in new significant environmental effects or a substantial increase in the severity of previously identified significant environmental effects;

C. No new information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the EIR was certified as complete shows any of the following:

(i) that the Revised Project will have any significant effect which was not discussed in the EIR;

(ii) that significant effects examined in the EIR will be substantially more severe than shown in the EIR;

(iii) that mitigation measures or alternatives previously found not to be feasible would now in fact be feasible and would substantially reduce one or more significant effects of the Revised Project;

(iv) that there are no mitigation measures or alternatives which are considerably different from those analyzed in the EIR which would substantially reduce one or more significant effects of the Revised Project on the environment;

WHEREAS, although circulation of an Addendum is not required by CEQA, a draft Addendum was issued in August 1998 and thereafter distributed to certain agencies including the California Coastal Commission, U.S. Fish and Wildlife Service, the California Department of Fish and Game; and the Monterey Peninsula Water Management District;

WHEREAS, the Addendum in its present form was redistributed to the above listed agencies in November of 2008;

WHEREAS, if the Coastal Commission acts to approve a coastal development permit for the Revised Project, the Applicant must obtain additional permits (or revisions to prior approvals) from the City prior to developing the Revised Project;

WHEREAS, prior to seeking additional permissions from the City, the Applicant may need to obtain permissions from one or more responsible agencies.

NOW THEREFORE, IT IS HEREBY RESOLVED BY THE SAND CITY COUNCIL AS FOLLOWS:

1. No major revisions to the EIR are required for the Revised Project.

2. No subsequent EIR is required for the Revised Project.

3. Following approval of a coastal development permit for the Revised Project, the City will review the project as permitted by the Coastal Commission and consider revisions to local approvals which are then necessary prior to commencement of development of the project as approved by the Coastal Commission, including but not limited to revisions to the vesting tentative subdivision map for the project, planned unit development permit for the project and site plan for the project.

4. The City will make a final determination under CEQA with respect to the project as permitted by the Coastal Commission at the time the City takes action on the local approvals referred to in paragraph 3.

PASSED AND ADOPTED by the Sand City Council this 20th day of January 2009, by the following vote:

AYES:

NOES:

ABSTAINED:

ABSENT:

ATTEST:

APPROVED:

City Clerk

David K. Pendergrass, Mayor

EXHIBIT B

MONTEREY BAY SHORES RESORT EIR ADDENDUM
Errata Sheet dated January 20, 2009

The following revisions to the subject EIR addendum are hereby approved by the City of Sand City, and incorporated into the Addendum by this reference.

1. Under Introduction and Purpose, page 5, third paragraph, revise as follows: "The City of Sand City is the Lead Agency under CEQA. This Addendum has been prepared for the City to address the environmental impacts of the proposed revised project."

2. Under Air Quality Management Plan , page 36, second paragraph, revise as follows: "As noted , since the certification of the 1998 MBS FEIR, the MBUAPCD has developed new air quality management plans, most recently in June 2008. The revised, smaller proposed project includes 249 hotel and visitor-serving condominium units (rental pool)."

3. Under Biological Resources Setting, page 42, first paragraph, top of page, revise as follows: "Therefore, for the purposes of this analysis, the site is not considered ESHA under the LCP and the development constraints applied to ESHA do not apply to the site. Finally, the project site is not otherwise located within an adopted or planned habitat conservation plan or other approved or planned regional or state habitat conservation plan or natural community conservation planning (NCCP) effort."

4. Under Special-Status Plant and Animal Species, page 44, first paragraph, revise as follows: "The revised ecoresort project will modify approximately 28 acres above the mean high tide line through grading, excavation, and re-contouring, compared with approximately 31 acres for the previously approved project (a net reduction of approximately three acres). As noted in the 1998 MBS FEIR and above, much of the area is degraded and invasive ice plant has continued to expand. In addition, there is no longer a proposal to distribute additional sand excavated from the property in the coastal strand habitat for beach replenishment."

5. Under Conformance with Land Use Plans, page 75, third paragraph, add the following sentences: "There are no buildings or other structures planned within the CZ-PR (coastal zone public recreation) zoning district. However there is a limited area of bioswale (detention basis) designed to eliminate any storm water runoff from directly entering the bay waters. This land use is considered to be consistent with the CZ-PR zoning district regulations because it is a support facility intended to protect the beach, interpretative areas and public access areas from erosion."

6. Under Existing Noise Conditions, page 78, last paragraph, fourth sentence, change the word "site" to "sight".