

# RECORD PACKET COPY

STATE OF CALIFORNIA—THE RESOURCES AGENCY

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*9-18-96*  
PETE WILSON, Governor

## CALIFORNIA COASTAL COMMISSION

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10/8-11/96 Hearing



### STAFF REPORT: REGULAR CALENDAR

*Th 16a*

APPLICATION NO.: 3-96-34

APPLICANT: DANIEL ARCHER

PROJECT LOCATION: 23 Spray Avenue, Del Monte Beach Tract #2, City of Monterey, APN 011-461-032

PROJECT DESCRIPTION: Construct two-story single-family dwelling on a vacant 40 x 90 ft. lot, grading and street improvements including pavement, curbs, gutters and sidewalks on adjacent 40 x 120 ft. City-owned right-of-way.

Lot area:	3,600 sq. ft.	
Building coverage:	1,305 sq. ft.	
Pavement coverage (residential):		494 sq. ft.
Pavement coverage (street):	5,000 sq. ft.	
Landscape coverage:	1,800 sq. ft.	
Parking spaces:	2 spaces	
Zoning:	Residential-Low Density	
Project density:	12 units/acre	
Ht abv fin grade:	21 feet	

SUBSTANTIVE FILE DOCUMENTS: Coastal Development Permit files 3-89-210 Vargas; P-79-34, 3-89-250 and 3-93-62 Sewald; P-79-338 and 3-93-63 Boyden; Appeal Files A-134-79 Sewald and A-19-80 Boyden; 3-93-28 Bram; Del Monte Beach Land Use Plan Resubmittal 1992 and Commission's adopted LUP Findings for Approval 6/9/93; Negative Declaration granted 3/19/96; Botanical Survey by Zander Associates, 7/17/95; Letter from Foxx Nielsen & Associates, 9/21/95; and Geotechnical Investigation (APN 011-455-008) by M. Jacobs and Associates, 6/1/92.

SUMMARY OF STAFF RECOMMENDATION: The key issue in this application is the extension of a city street, Spray Avenue into a substantial area of sand dunes. This dune area, a portion of the old Del Monte Beach Tract #2, is subdivided but completely without roads, utilities or other existing development. Previously in this neighborhood, the Commission has approved only residential applications which have existing paved street frontage and utilities in place.

Staff is recommending approval of the proposed residence, along with a minimal-width (and length) paved auto access within the Spray Avenue "paper street" right-of-way. Such paved access would be enough to meet fire dept. requirements for a residential driveway, but would be substantially less than the full-dimension street with curbs, gutters and sidewalks requested in the

application. As conditioned, permittee or any future owner would still be obligated to finance the full-treatment street if called for in the future LCP. The other recommended conditions mirror those previously applied by the Commission in this neighborhood for the protection of environmentally sensitive dune habitat, scenic views, public access and recreation.

STAFF RECOMMENDATION:

The staff recommends that the Commission adopt the following resolution:

I. Approval with Conditions.

The Commission hereby grants, subject to the conditions below, a permit for the proposed development on the grounds that the development, as conditioned, will be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976, will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3 of the Coastal Act, is located between the sea and the first public road nearest the shoreline and is in conformance with the public access and public recreation policies of Chapter 3 of the Coastal Act, and will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.

II. Standard Conditions. (See Exhibit A.)

III. Special Conditions

1. Incorporation of City's Conditions and Mitigation Requirements. The Conditions of Approval adopted by the City of Monterey for this project on 3/19/96 are attached as Exhibit 6 to this permit; these Conditions are hereby incorporated as conditions of this permit. However, the street improvements specified in the City's Condition No. 8 will be limited to those which are approved in accordance with Special Condition No. 2 (Revised Plans), below. Any revision or amendment of these adopted mitigation measures or the project plans as approved pursuant to the City's architectural review procedures shall not be effective until reviewed by the Executive Director for determination of materiality, and if found material, approved by the Commission.

2. REVISED PLANS: PRIOR TO TRANSMITTAL OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit to the Executive Director for review and approval, revised street plan; and (if different from submitted plans) final residential grading plan, site plan and elevations. The revised street plan shall provide for minimal auto access to the approved residence, only. Such minimal access shall constitute a single paved lane, representing one half of the full pavement width of the street (13 ft.) and extending from Beach Way only as far as the westerly corner of permittee's lot at 23 Spray Avenue (approx. 85 ft.). However, additional "full width" improvements, up to and including two

paved lanes, curbs, gutters and sidewalks, are authorized by this permit in accordance with City condition No. 8, up to 40 ft. in width, provided that such additional improvements, or portions thereof, are documented to the satisfaction of the Executive Director as:

- a. Allowed by the (future) certified Local Coastal Program; or,
- b. Essential for public safety (documentation from the City Fire Department required, to demonstrate no feasible alternative for providing equivalent level of fire safety); or,
- c. Allowed by an amendment to this permit or a subsequent coastal development permit; or,
- d. Necessary, in the case of drainage features, for erosion control; or,
- e. Needed, in the case of sidewalks, for public pedestrian access.

The final residential site plan shall, if necessary, be revised in terms of site coverage, so that the residence, paving and private yard area together cover no more than one-half of the lot (as needed for protection of environmentally sensitive habitat). The remaining undeveloped area of the lot (minimum 1800 sq. ft.) shall be preserved as a natural habitat conservation area. These final plans shall be accompanied by evidence of approval by the City of any necessary resiting and redesign.

3. RESTORATION PLAN: PRIOR TO TRANSMITTAL OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and approval, a restoration and dune stabilization plan for the subject parcel. The plan shall provide for removal of exotic species, and shall incorporate all of the recommended impact assessment and mitigation measures listed in the Botanical Survey by Zander & Associates, dated July 17, 1995 (Exhibit B, attached). The restoration plan shall include a revised landscape plan and dunes restoration program, consistent with these recommended measures and with the City's biotic resources mitigation requirements for this site. If proposed by the applicant, fencing to protect landscape restoration areas shall be included in the plans for Executive Director review and approval. Any such fencing, if located within the conservation and open space easement area required below, shall be designed to avoid any substantial impairment of public views and to facilitate continued penetration of light, wind and rain. The approved restoration plan shall be implemented PRIOR TO COMMENCEMENT OF GRADING OR CONSTRUCTION, and carried out in subsequent during-construction and post-construction phases as specified by the City permit conditions.

4. CONSERVATION DEED RESTRICTION: PRIOR TO TRANSMITTAL OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall execute and record a deed restriction in a form and content acceptable to the Executive Director, for the purpose of environmentally sensitive habitat protection. The terms of the deed restriction shall specifically prohibit structures, uses and activities that would degrade natural habitat values, while allowing fencing, boardwalks and other structures needed to accommodate habitat conservation/restoration. (Such fencing, boardwalks or other structures may be needed to manage any low impact residential activities which may occur on the site.) Any such fencing shall be designed to avoid substantial impairment of public views and to

facilitate continued movement of sand and native wildlife, and to allow substantially unimpaired penetration of light, wind and rain. Landscaping which would block public views or introduce invasive non-indigenous plant species shall be prohibited. Such deed restriction shall encompass the undeveloped remainder of parcel APN 011-461-032 (minimum 1,800 sq. ft.). The document shall be recorded free of prior liens and any other encumbrances which the Executive Director determines may affect said interest. The restriction shall run with the land in favor of the People of the State of California, binding all successors and assignees.

5. DUNE RESTORATION FUND: PRIOR TO TRANSMITTAL OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall provide evidence, in a form and content acceptable to the Executive Director, that a fee has been deposited in the City of Monterey's Del Monte Beach Dune Restoration Fund (or equivalent interest-bearing account managed by the City of Monterey) in an amount equal to \$15,000 per acre multiplied by the area to be covered by the development to be presently affected, to mitigate for the impacts caused by the residential construction and street extension. In the event any additional future street improvements contemplated by Special Condition No. 2 are proposed, an additional fee shall be deposited in the City of Monterey's Del Monte Beach Dune Restoration Fund to mitigate for the impacts caused by such additional improvements prior to the commencement of construction of such additional improvements, which fee shall be \$15,000 per acre multiplied by the additional area to be improved. All interest earned shall be payable to the account for the purposes stated below.

The purpose of the account shall be to provide a dune restoration fund for the protection and restoration of the Monterey Bay dunes (Seaside dune system) within the City of Monterey. The funds shall be solely used to acquire restoration sites and to implement projects which restore dune native plant habitats (including installation of boardwalks to reduce public access impacts), not to fund operations, maintenance or planning studies. The funds in the account shall be released as provided for in a memorandum of agreement between the City of Monterey and the Commission, setting forth terms and conditions to assure that the in-lieu fee will be expended in the manner intended by the Commission.

6. PUBLIC RIGHTS: By acceptance of this permit, the applicant acknowledges, on behalf of him/herself and his/her successors in interest, that issuance of the permit shall not constitute a waiver of any public rights which may exist on the property. The applicant shall also acknowledge that issuance of the permit and construction of the permitted development shall not be used or construed to interfere with any public prescriptive or public trust rights that may exist on the property.

7. BIOLOGICAL MITIGATION: The "Recommend Mitigation Measures" for the protection of the black legless lizard habitat contained in the project's Botanical Survey prepared by Zander Associates, Environmental Consultants, dated July 17, 1995, shall be followed. Evidence of compliance with these mitigation measures shall be prepared by the project biologist and submitted for confirmation by the Executive Director PRIOR TO COMMENCEMENT OF CONSTRUCTION.

8. GEOLOGIC REPORT: PRIOR TO COMMENCEMENT OF GRADING, a geotechnical report specific to the project address shall be submitted for the Executive Director's review and approval. Such report shall include recommendations regarding foundations, retaining walls, or other features as necessary to insure the stability of the permitted development. The report should incorporate the findings regarding sand dune movement contained in the Foxx, Nielsen and Associates letter of 9/21/95. The report may be in the form of a letter report which refers to and incorporates a previous geotechnical report for another lot with the same geology. (Conditions of the City's approval refer to a geotechnical report dated 6/1/92 by Myron Jacobs on APN 100-455-008). If the letter report required refers to a different geotechnical report, City approval must accompany the submittal.

9. OBLIGATION TO PROVIDE FULL STREET IMPROVEMENTS: PRIOR TO TRANSMITTAL OF THE COASTAL DEVELOPMENT PERMIT, permittee shall provide, in a form and content acceptable to the Executive Director, a recordable instrument obligating the owner of subject parcel (and any successors in interest) to be financially responsible for his/her proportionate share of the reasonable costs to construct a full width street to City of Monterey standards. Such full width street may include curbs, gutters and sidewalks, as may be specified by the City. The obligation would extend from the nearest existing street (Beach Way), but would not extend further than permittee's property. Such obligation shall be in a form, such as a lien or covenant, which allows the City to implement construction on demand -- provided such full width street configuration is consistent with the future certified Local Coastal Program for this part of the City. If the certified LCP does not allow such street configuration, permittee/owner(s) may amend this permit to be relieved of their obligation.

#### IV. Findings and Declarations.

The Commission hereby finds and declares:

##### 1. PROJECT AND LOCAL AREA DESCRIPTION

In the Del Monte Dunes area of Monterey City the Coastal Zone boundary follows Del Monte Boulevard which is the first public road paralleling the sea, creating a narrow, approximately one-half mile wide linear strip of land under Coastal Act protection. See Exhibit 1 attached. Seaward of the boulevard are the high oceanfront Flandrian dunes. The applicant's parcel is located on the crest of a legally subdivided but largely unimproved (no streets or utilities) 7 1/2 acre sand dune area of approximately 85 parcels in the Del Monte Dunes area of Monterey City; the area is referred to as Del Monte Beach Tract #2. Of the 85 lots, 67 are undeveloped. Beach Way running perpendicular to the ocean and Dunecrest Avenue, a cross street at the top of the dune, are improved. Seafoam, Spray and Roberts Avenues are not improved (within Tract #2).

Eighteen lots on the periphery of the undeveloped area and having access and utilities from the existing streets contain residences which were constructed prior to the Coastal Act of 1976. One of the eighteen houses destroyed by

fire was reconstructed. In 1990 the Commission approved 3-89-210 Maria Vargas for a residence on an improved street with utilities, Dunecrest, the highest and most distant street from the ocean. In March, 1994 two additional houses were approved on the Beach Way frontage (3-93-62 Sewald and 3-93-63 Boyden). In June, 1994 a third house (3-93-28 Bram) was approved on one of the five remaining "perimeter" lots. Currently, the Vargas house is completed, the Sewald house is under construction, the Boyden lot has been purchased by the City for open space, and the Bram lot at #4 Dunecrest remains vacant. See Exhibit 2 which provides a graphic description of the subdivision development.

Upcoast (east) of the "paper" subdivision is the almost fully developed residential subdivision of approximately 25 acres known as the Del Monte Beach Tract #1. To the west of the subdivision is the Monterey Water Pollution Control District facilities on the Naval Postgraduate School property. The City's Del Monte Public Beach lies seaward of the subdivisions.

The applicant proposes to construct a two-story, single-family dwelling on a vacant 40 x 90 ft. lot, grading and street improvements including pavement, curbs, gutters and sidewalks on the adjacent unimproved 40 by 120 ft. Spray Avenue right-of-way. See Exhibits 3, 4 and 5. The site looks downslope towards Monterey Bay, across the dune field to the City Beach about 400 ft. to the north.

## 2. BACKGROUND INFORMATION

Coastal dunes are a limited resource of statewide significance. Oceanfront dunes provide unique scenic, recreational and habitat values. The Monterey Bay dunes are one of the largest (40 square miles) coastal dune fields in California. See Finding 3, attached. The dunes begin at the Salinas River and extend south along the shoreline for approximately 15 miles across several governmental jurisdictions to the Monterey City Harbor. The Coastal Zone through this region primarily follows Highway 1 which, north of Monterey, is the first public road paralleling the sea. The dunes seaward of Highway 1 are largely undeveloped.

Status of Development in the Monterey City dunes: See Exhibit 6 attached. In Monterey City the dunes begin at Laguna Grande at the City's boundary to the north and continue to the City's harbor. The City's land use policy direction in the past several years has been to retain in, or convert back to, open space the beach front areas between Del Monte Boulevard and the sea for recreational and dune restoration purposes. Specific efforts have been directed to removing most of the commercial/residential development between Del Monte Boulevard and the Monterey City/State Beach from Wharf #2 to the U.S. Naval Postgraduate School property for "Monterey Bay Park" (also known as "Window to the Bay"). Several commercial parcels have been purchased, buildings demolished and visual and physical access opened to the beach.

The City has also benefited from State Park acquisition efforts. The Phillips Petroleum property, a 37-acre sand dune area adjacent to the upcoast side of Del Monte Beach Tract #1, was purchased by the California Department of Parks and Recreation in August 1992, and is proposed for dune habitat restoration and public access improvements. It will become part of the contiguous Monterey State Beach.

The federal government in partnership with the City has contributed to the effort. The Naval Postgraduate School dunes downcoast from Del Monte Beach Tract #2 are currently undergoing dune restoration, with low impact public recreational access to be considered in the future.

Since the passage of Proposition 20 Coastal Act of 1972, development in the dune area of Monterey City has been limited to the construction of the regional recreational trail along the abandoned Southern Pacific right-of-way and other public access improvements, other public works facilities (e.g., regional wastewater pipeline), and infilling of houses in the Del Monte Beach Tract #1 subdivision and along already-developed street frontages in Tract #2.

With the public purchase of the Phillips Petroleum site, the undeveloped sand dunes of Del Monte Beach Tract #2 remain as the only substantial area potentially open to new development.

Coastal Commission Permit/Appeal Actions in Del Monte Beach Tract #2: In May 1976 the Commission in Appeal No. 110-76 (City of Monterey, Del Monte Beach) denied proposed road and utility improvements to the Del Monte Tract #2 on finding that there was a potential for management and stabilization of the dunes, and that the preservation and stabilization of remaining coastal dunes is a paramount concern of the Coastal Act.

In 1979 and 1980 the Commission denied two requests to construct single family dwellings on vacant sand dune lots within Del Monte Beach Tract #2 (Boyden A-19-80; Sewald A-134-79). The Commission found that among other reasons, potential prescriptive rights existed and must be protected, and open space and habitat resource values must be preserved. In 1989 the Commission denied a request for a perimeter fence on the Sewald lot (Sewald 3-89-250) and a similar request by Manfred Droh (3-89-251). An exception in 1989 was the Vargas residence (3-89-210) on Dunecrest Avenue, which was approved by the Commission because it could be distinguished by its location on an improved street, most distant from the beachfront, with no native plant habitat, and no evidence of public use.

Commission Local Coastal Program Actions in Del Monte Beach Tract #2: The Del Monte Beach Land Use Plan (LUP) was approved with modifications by the Commission in 1984. At that time the Commission found that the 7-acre undeveloped portion of the Tract #2 subdivision had the potential for prescriptive rights which were inadequately protected in the LUP which allowed residential buildout. The LUP policies would have eliminated the ability of the City to consider any alternatives for access and would not provide any protection for dune habitat values.

The Commission modified the LUP to designate the lots for open space/recreation/habitat restoration subject to a formal determination that public rights did not exist or if rights did exist that they be accommodated through various planning techniques. Monterey City did not adopt the Land Use plan as modified by the Commission and retained residential zoning for the area.

In 1992 a resubmittal of the Del Monte Beach Land Use Plan was approved by the Commission. With the exception of the undeveloped portion of Del Monte Beach Tract #2 the Land Use Plan designations did not raise Coastal Act issues.

Again the Commission required protection of potential public rights of access through an implied dedication study by the City or through each individual applicant's demonstration that their proposed development did not interfere with public use. The City did not adopt the Land Use Plan.

Actions Undertaken to Resolve Issue:

Although never certified, the City's Draft 1992 Land Use Plan stated their continuing position on the Del Monte Beach Tract #2 parcels (p. 100):

Many of those who have provided public input throughout the LCP review process have stated that open space use of the vacant lots west of Beach Way is the most suitable land use option for this portion of the LCP area. The habitat within the existing sand dunes found here is part of the rapidly diminishing sand dune ecosystem along the California coastline. Preventing additional development impacts in the existing subdivision east of Beach Way, with its small congested streets, also makes the open space option the most suitable. However, the City Council has taken the position that while open space is the most desirable land use for this area, realistic funding sources are limited.

The possible acquisition and preservation of the dunes habitat comprising 67 lots in the Del Monte Beach subdivision under multiple ownership has been an issue of concern to the City and State since the 1970s. Past efforts have been attempted to consolidate private ownership in this area or to acquire the land publicly, but they were unsuccessful. The land was once identified for acquisition by the State for expanding beach park land in the vicinity. Funds for the State acquisition were to be provided by proposition 2, passed in 1976, and administered by the Department of Parks and Recreation. The State did not purchase the undeveloped subdivision land because the land was found to lack suitability as a State recreation area and funding was limited. The State consequently withdrew plans to acquire the property. The City of Monterey later explored possible California Coastal Conservancy programs that might be used to acquire the property...

The programs to purchase the properties also required willing sellers. Investigations by the City at that time (early 1980's) found that the majority of the property owners would not be willing sellers. In 1985 the owners of Del Monte Beach Tract #2 contracted the EMC Planning Group Inc. to prepare a plan for the area that could meet the intent of Findings adopted by the Coastal Commission for a draft LUP submitted by the City in 1984 (but, as explained, never certified). One proposal included purchase of the seaward 11 lots through an assessment district. To date, some landowners have opposed formation of an assessment district.

In March of 1987 the Airport District's noise compatibility study identified the 68 lots west of Beach Way as a potential acquisition for FAA grant funding, as the lots are located directly below the Monterey Peninsula airport flight path. The City sponsored a grant application. However, insufficient funds were and are available from the FAA, so this funding source has not been



pursued by the City. In addition, in 1989, the City Council passed an ordinance authorizing expenditures of \$400,000 for purchase through third party arrangements of 16 lots in the undeveloped Del Monte Beach area. The Big Sur Land Trust was to acquire the lots subsequently to be purchased by the City. The effort was not successful and no lots were purchased.

Current Purchase Efforts: As of 1994, the City Neighborhood Improvement Program (NIP) Committee had set aside \$840,000 of this neighborhood's allocations toward purchase of vacant lots west of Beach Way. A total of \$932,000 had been allocated toward acquisitions. Expenditures had totaled \$312,439 for eight lots (includes negotiation costs). The remaining balance available was \$619,561, a substantial portion of which has now been used to purchase the Boyden lot.

The City Council directed City staff to pursue finding additional funding sources while retaining the existing residential land use designation and limiting purchases to willing sellers of the front 22 lots. A summary of funding sources for open space acquisition of the vacant lots includes the NIP funds, possible future City funds which could be allocated at the discretion of the City Council, and possible additional funds from the Monterey Peninsula Regional Park District (which has also purchased several of the lots).

The issue has been raised in City public meetings as to whether the City (or Regional Park District) could exert its eminent domain powers over the private lots in condemnation proceedings. Although both the City and Park District possess eminent domain powers, the City Council or Park District Board of Directors would need to resolve to use them to acquire the land. Use of eminent domain for this purpose has not been approved by the City Council, nor by the Park District board.

Section 30603.1(e) of the Coastal Act states:

No coastal development permit may be denied under this division on the grounds that a public agency is planning or contemplating to acquire the property on, or property adjacent to the property, on which the proposed development is to be located, unless the public agency has been specifically authorized to acquire such property and there are funds available, or funds which could reasonably be expected to be made available within one year, for such acquisition. If a permit has been denied for such reasons and the property has not been acquired by a public agency within a reasonable period of time, a permit may not be denied for such development on grounds that such property, or adjacent property, is to be acquired by a public agency when the application for such a development is resubmitted.

Both public agencies, the City of Monterey and the Monterey Peninsula Regional Park District (MPRPD) are currently buying lots from willing sellers in the Del Monte Beach Tract II on an opportunity basis. The City previously focused their acquisition efforts on the 22 lots closest to the sea (the block between Seafoam and Tide Avenues). To date, a total of 9 lots have been purchased by the City in this block. Currently, the City Council has now authorized acquisition over a broader area, specifically a block of 38 vacant lots between Dunecrest Ave. and the beach. Information submitted by the Park

District states that the City has ±\$310,000 available for additional purchases within the entire 38-lot area. The Park District has acquired seven lots in the two block area between Seafoam and Dunecrest. No additional funds for acquisition are currently available to the Park District, however, they anticipate new allocations within the year.

Given these facts, it could be argued that the Commission should defer action on a permit for the subject property in order to allow either the City or the Park District to acquire the site. It is, however, the practice, thus far, of both agencies to buy lots only from willing sellers in this area. Although both have authority to condemn property for public use, neither the City nor the Park District have initiated any eminent domain proceedings in order to acquire lots in this tract. The applicant, in this case, has unequivocally stated he would not be a willing seller. On September 9, 1996, the Park District Board will determine whether condemnation proceedings should be initiated to acquire the applicant's property. The results of that meeting will be reported to the Commission. If, however, the Park District decides to continue their practice of acquisitions only from willing sellers, then invocation of Section 30604(e) to deny or delay the project would be inappropriate.

Planned Unit Development (PUD) alternative: On November 4, 1993, a meeting between Commission staff, City staff and two property owners (Sy Bram and Joel Kass) who between them own or control the majority of the vacant lots in Tract #2, resulted in a request by these owners for the creation of a City Council subcommittee to work with the City, Coastal Commission and land owners for development of a Planned Unit Development that would address prescriptive rights, traffic, public views, dune habitat and restoration, public access, and density of development.

Summary of current permit actions: Efforts to develop a comprehensive plan for the area continue. Through its contractor, EMC Planning Group, the City is conducting a comprehensive opportunities and constraints analysis. This effort has already yielded detailed mapping of the present (Spring 1996) locations of each sensitive plant species and dune plant cover types. Ultimately, this project, the Del Monte Dunes Planning Study, will also identify various planning and implementation options, including further purchases, transfer of development credits, and Planned Unit Development.

In the meanwhile, all of the parcels in this tract are designated for residential use and the City approved three permits for houses in 1992: Sewald (2 Beach Way), Boyden (10 Beach Way), and Bram (4 Dunecrest Ave.). Each of these sites are on existing streets with utilities. None were approved during the period of 1993-1995. In 1996, so far, the City has approved 3 more houses in Tract #2: Bram (12 Dunecrest Ave.), Archer (23 Spray Ave., this project), and Archer (21 Spray Ave., not yet submitted). The two Archer houses are the first to be approved in the interior of the subdivision.

In 1994, the Coastal Commission approved three coastal development permits (3-93-62 Sewald, 3-93-63 Boyden and 3-93-28 Bram). Each lot is the same size and shape as applicant Archer's 3,600 sq. ft. parcel. Each was conditioned with a requirement to retain 50% of the lot as undeveloped open space.

### 3. ENVIRONMENTALLY SENSITIVE HABITAT

Section 30240 of the Coastal Act states:

(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on such resources shall be allowed within such areas.

(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade such areas, and shall be compatible with the continuance of such habitat areas.

Section 30250 of the Coastal Act states:

(a) New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accomodate it or, where such areas are not able to accomodate it, in other areas with adequate public services and where it will not have a significant adverse effect, either individually or cumulatively, on coastal resources...

a. Environmentally Sensitive Characteristics: The applicant's site is located in the Monterey Bay dunes (also known as the Seaside dune system). All substantial undeveloped areas within this strand of high dunes represent environmentally sensitive habitat, in various stages of disruption or recovery. Because the dune habitat ecosystem is a rapidly diminishing resource and is so easily disturbed, it is an acknowledged environmentally sensitive area. To properly recover and preserve viable dune habitat requires large contiguous tracts of dune for the establishment of a diverse native dune habitat.

The dunes beginning at the Salinas River and reaching to the Monterey Harbor cross several governmental jurisdictions: Monterey County, the City of Marina, California State Parks, U.S. Army (former Fort Ord), City of Sand City, City of Seaside, the City of Monterey and the U.S. Naval Postgraduate School. The Coastal Zone boundary through this region primarily follows Highway 1 which in part comprises the first public road paralleling the sea. The remnant high dunes inland of Highway 1 have suffered severe excavation impacts and are frequently already developed; those along the shoreline are largely undeveloped. The issue of coastal dune development throughout the region is a significant issue. Del Monte Beach lies near the southern end of the dune field, in the City of Monterey.

According to the Technical Review Draft for the Smith's Blue Butterfly Recovery Plan, U.S. Fish and Wildlife Service, "More than 50 percent of the Seaside [Monterey Bay] dune system has been destroyed or altered significantly by sand mining, urbanization, military activities, construction, and the introduction of two aggressive exotic plants, European marram grass (*Ammophila arenaria*), and iceplant (*Mesembryanthemum* spp.). Even considering this, these

dunes are the largest and best preserved of any of the central California dune systems except for the Oso Flaco Dunes near San Luis Obispo. The dune system at San Francisco has been almost totally destroyed (Powell, 1981)."

Another reason that these dunes meet the Coastal Act definition of environmentally sensitive habitat, is that they support a number of rare plant and animal species. Several native plants known to occur in or near the dunes in the Del Monte Beach area are either already listed, or are on the candidate list for the federal register of endangered and threatened species, including the Seaside bird's beak (Cordulanthus rigidus littoralis), sand gilia (Gilia tenuiflora arenaria), dune manzanita (Arctostaphylos pumila), Eastwood's ericameria (Ericameria fasciculata), coast wallflower (Erysimum ammodendrum), and Monterey ceanothus (Ceanothus rigidus). The Seaside bird's beak is protected under the California Plant Protection Act of 1977. All six species are recognized as rare by the California Native Plant Society. The sand gilia is both state-listed and federal-listed.

Another sand-stabilizing species, the Monterey spineflower (Chorizanthe pungens var. pungens), is also found in the Del Monte Beach area and has now been listed in the Federal Register as an endangered species (U.S. Fish & Wildlife Service notice of February 14, 1994). The spineflower, coast wallflower, and sand gilia have all been observed within 100-200 yards of applicant's parcel.

The U.S. Fish & Wildlife Service recently listed the Western Snowy Plover as a threatened species. These birds forage along the shoreline and nest in the foredunes. The plovers are known to nest upcoast in Marina, and the State Dept. of Parks and Recreation has erected exclosures around the nests to prevent trampling of the eggs. Preliminary field work by U.S. Fish & Wildlife Service staff has revealed that the birds both breed and winter in the Fort Ord and Seaside dunes areas. Therefore, as these threatened birds have been found in the Monterey Bay dune system, and the Del Monte Beach area contains the type of habitat favored by the Snowy Plover, it is expected that the Del Monte Beach Tract #2 area will provide additional breeding habitat as the species recovers.

Dunes within the Del Monte Beach area vary from degraded both in landform and vegetation to viable dune habitat that supports the Smith's blue butterfly (Euphilotes enoptes smithi), a federally protected animal species listed as endangered by the Department of the Interior in the Federal Register. Both Eriogonum parvifolium and E. latifolium, host plants to the Smith's blue butterfly, occur in clusters currently used by or viable to support the species.

The Naval Post Graduate School (NPGS) property to the west and contiguous to Del Monte Beach Tract #2 is one of 18 Smith's blue butterfly colony sites identified in the U. S. Fish and Wildlife's Smith's Blue Butterfly Recovery Plan (11/84). The former Phillips Petroleum site east of the developed subdivision (Del Monte Beach Tract #1) is another. Host buckwheat plants (Eriogonum parvifolium and latifolium) were identified by U.S.F.W.S. staff in 1979 extending into the undeveloped lots within Tract #2 inland of Dunecrest Ave. This was confirmed in spring 1993 by a State Park botanist.

Another animal species, the black legless lizard (Anniella pulchra nigra) has been sighted in the area and is a candidate for federal listing as endangered. The species is of concern to the California Department of Fish & Game because of its limited distribution.

b. Restoration Programs on Surrounding Dune Areas:

The significance of the natural resource potential of the Monterey Bay dunes is well recognized. Several major dune restoration programs are underway or in the planning process in the vicinity of Del Monte Beach. These include:

U.S. Naval Postgraduate School Dunes: The Naval Post Graduate School prepared a Natural Resource Management Plan (June 1988) for its properties that designated the dunes as an environmentally sensitive area, and recommended an inventory of resources, exotic vegetation removal, dune restoration, and controlled access. The Dune Restoration program for the 44 acre site which is downcoast of Del Monte Beach Tract #2 is currently being successfully implemented; the Commission concurred with the federal consistency certification in July 1992. Portions of the Navy property are leased to the Monterey Regional Water Pollution Control Agency. That site is being converted to a transfer station and significant areas have been returned to the Navy, facilities will be demolished, and several acres will be restored with native dune habitat (3-83-14-A5, approved November 1992).

Monterey State Beach: Previously Monterey State Beach comprised only 22 acres, including the area between the Monterey Beach Hotel and the 37 acre Phillips Petroleum property which is upcoast and adjacent to Del Monte Beach Tract #1. In 1992 the California State Parks Dept. purchased the Phillips Petroleum site to augment the State Beach. A dune stabilization and restoration program was undertaken several years ago on the original 22 acres. Additional restoration is planned for the future. The former Phillips site is planned for future dune restoration with public access and recreation along the ocean frontage.

Ocean/Harbor House: Located at the seaward edge of the dunefield, oceanward of Tide Avenue, in Del Monte Beach Tract #1, the Ocean Harbor House complex is creating its own peninsula as the shoreline erodes around it. As part of a project to convert the rental complex to condominiums, dune restoration on either side of the structures is being undertaken.

City Beach: The City has also restored portions of the dunes in front of Tide Avenue to control erosion and to provide habitat.

Del Monte Beach Tract #2: A vegetation map was done for the Del Monte Beach Land Use Plan in the early 1980's. The map identified several areas of "dune habitat" as opposed to open sand in the Tract #2 area. The current habitat values for all of the undeveloped parcels in the Tract #2 subdivision seaward of Dunecrest Ave. were recently surveyed by EMC Planning Group under contract with the City. EMC will also identify alternative scenarios for land use and open space preservation.

c. Habitat Values of The Project Site: According to a May 1992 report by Coastal Biologist and dune restoration expert Thomas Moss:

...the dunes of Del Monte Beach are home to four plant and two animal species of special concern, including sand gilia (Gilia tenuiflora ssp. arenaria), Monterey spineflower (Chorizanthe pungens var. pungens), coast wallflower (Erysimum ammodendrum), Monterey paintbrush (Castilleja latifolia), black legless lizard (Anniella pulchra nigra) and Smith's blue butterfly (Euphilotes enoptes smithii). ... the dune buckwheat (Eriogonum parvifolium) is also given special consideration because it provides critical habitat for Smith's blue butterfly.

A botanic survey and follow-up investigations specifically for this site at 23 Spray Avenue were conducted by Zander Associates (see Exhibit B). During the time period of the investigations (Spring, 1996), no rare or endangered plant species were found on the project site. The report noted, however, that one rare species, the black legless lizard (Anniella pulchra nigra) is known to occur in the vicinity of the project and could potentially occur on the site. The report indicates that the habitat for the species is marginal because of lack of suitable native shrubby vegetation. However, the botanic report does recommend mitigation measures for the protection of the potential black legless lizard habitat area.

Each of the above-listed plant and animal species is either migratory or intermittent in occurrence. Therefore, even though no rare species may be found on the lot in any one year, the fact that it is part of the dune complex means that periodically one or more of these species will occupy the site. This explains why species which are not there in one year may well be there the next. It also explains why the entire dune (not just the particular spot where a rare plant may be growing in a particular year) must be considered an environmentally sensitive habitat area (ESHA).

The Zander Associates report also indicates that the subject site is partly degraded by invasive, non-native weedy growth such as iceplant (Carpobrotus edulis); and, in the Spray Ave. right-of-way, public recreation uses have been sufficiently intense to impact the dune habitat as well. On nearby lots, where frost has killed the iceplant, native plants have effectively recovered. And along Tide Avenue, within the City's Del Monte Beach Park, public use impacts have been effectively mitigated through installation of a boardwalk, allowing restoration and recovery of native plants. Therefore, even where dunes have been degraded by exotic plant growth or by trampling, such impacts must be considered ephemeral and the underlying dunes are still ESHA's.

d. Potential Impacts and Mitigation: Approximately 1,800 sq. ft. of the 3,600 sq. ft. parcel is proposed to be covered with building and paving. This will destroy approx. 1,800 sq. ft. of environmentally sensitive habitat dune habitat. Without containment measures, the remaining 1,800 sq. ft. dune area would likely also be degraded by construction activities.

Impacts from construction activity, from shadows cast by the residence and trampling incident to residential use, and (potentially) from the introduction

of plant species not native to these dunes will adversely affect or eliminate all environmentally sensitive habitat over the entire 3,600 sq. ft. lot, as well as up to 5,000 sq. ft. within the street extension.

In approving the project the City incorporated the botanical mitigation measures previously required by the City of Monterey and the Coastal Commission when approving similar projects in the Del Monte Beach Tract #2, to achieve protection and restoration of the dunes on the project site outside of the building envelope. These measures are listed in the Botanical Survey (Exhibit B, attached). In combination, these measures will reduce impacts on the undeveloped 1,800 sq. ft. of the lot, and will partially mitigate development impacts resulting from 1,800 sq. ft. of site coverage. However, no particular mitigation measures are listed for the proposed street extension.

**ANALYSIS:** The applicant's site represents potential habitat for several rare species (upon restoration), including the endangered Smith's blue butterfly and the Black legless lizard. The applicant's biotic survey reports that the subject site has been degraded by grading to accommodate the adjacent residences and road and is dominated by non-native ruderal (weedy) vegetation. However, the parcel is part of the natural dune formation and it is clearly evident from the restoration success at the adjacent U.S. Naval Postgraduate School dunes that the Del Monte Beach Tract #2 dunes retain important natural habitat values. In the context of the natural resources of the area this parcel could be an important component of an area-wide dune restoration program (including a public access/recreation impact management plan). Therefore, applicant's parcel represents both existing and restorable environmentally sensitive habitat area as defined by Sec. 30107.5 of the Coastal Act.

Because the proposed development plan as currently submitted will permanently prevent revegetation of more than half of the lot, approval as submitted represents a significant disruption of habitat values and could set an adverse precedent for all 67 undeveloped lots in the subdivision. This could seriously impede future planning efforts to successfully restore, through a comprehensive planning approach, this area of the environmentally sensitive dune habitat of the Monterey Bay dune system. Additionally, as submitted the project will result in adverse cumulative impacts on this diminishing fragile resource and at the same time it will directly conflict with the natural resource restoration goals in Section 30001.5 of the Coastal Act.

Given these impacts, the project is inconsistent with Section 30240(a) of the Coastal Act because any development at the site will disrupt the existing habitat values of the natural dune formation. Additionally, the proposal to use the site for residential purposes is not consistent with this section, which requires that uses in such areas must be dependent on the resources on the site.

Section 30240 does not exist in isolation, however, and must be read along with other provisions of the Act, particularly Section 30010. This section provides that the policies of the Coastal Act "shall not be construed as authorizing the commission . . . to exercise [its] power to grant or deny a permit in a manner which will take or damage private property for public use,

without payment of just compensation." Thus, if application of the restrictions in Section 30240 would cause a taking of property, the section must not be so applied and instead must be implemented in a manner that will avoid this result.

Recent court decisions demonstrate that to answer the question whether implementation of a given regulation to a specific project will cause a taking requires an ad hoc factual inquiry into several factors. Specifically, the courts have consistently indicated that this inquiry must include consideration of the economic impact that application of a regulation would have on the property. A land use regulation or decision may cause a taking if it denies an owner all economically viable use of his or her land. (Lucas v. South Carolina Coastal Council (1992) 505 U.S. 112 S. Ct. 2886; also see Keystone Bituminous Coal Assn. v. DeBenedictis (1987) 480 U.S. 470, 495, citing Agins v. Tiburon (1980) 447 U.S. 255, 260.) Another factor that must be considered is the extent to which a regulation or regulatory decision "interferes with reasonable investment backed expectations." (Keystone Bituminous Coal Assn. v. DeBenedictis, *supra*, 480 U.S. 470, 495, citing Kaiser Aetna v. United States (1979) 444 U.S. 164, 175.)

In addition, in order to avoid allegations of a taking certain types of mitigation measures, such as exactions requiring the dedication of a fee interest in property, must be "roughly proportional" to the impact remediated. (Dolan v. City of Tigard (1994) 114 S. Ct. 2309.)

Other factors that may be reviewed in conducting a takings analysis include whether the land use regulation substantially advances a legitimate state interest. (Nollan v. California Coastal Commission (1987) 483 U.S. 825.) This is not a significant consideration in analyzing this permit application because the state's interest in protecting environmentally sensitive habitats is well recognized.

Finally, in still other individual cases it may be necessary to consider whether the property proposed for development by the applicant is subject to existing limitations on the owner's title, such as prescriptive rights, that might preclude the applied for use. (Lucas.) The question whether the applicant's parcel is subject to prescriptive rights will be dealt with below in a subsequent discussion of public access and recreation issues.

**ALTERNATIVES:** In this situation, the Del Monte Beach Tract was initially subdivided into very small lots for residential purposes. Alternatives to development of the site with a modest home do not appear feasible in the opinion of planning staff. More intensive use would not be viable on the parcel due to the need to accommodate parking and would also destroy more of the environmentally sensitive habitat. Staff also reviewed the potential of the site for resource dependent uses -- interpretive trail, etc., but determined that the economic return for this alternative would be nil. Therefore, in view of the location of the applicant's parcel, the limited 3600 sq. ft. lot size, and the other residential uses in the immediate vicinity of the lot, the Commission finds that no other use of the property would provide an economic use except residential use.



Additionally, in contrast to many of the other parcels in Del Monte Beach Tract #2, the applicant's parcel is adjacent to existing residential development, which is located on an improved street, Beach Way, where public utility service is currently available. Many of the other lots on Beach Way are developed, including the lot immediately south of the subject parcel. Moreover, a substantial number of the other parcels in Del Monte Beach Tract #'s 1 and 2 are also developed, and have been for a considerable amount of time. In addition to these observations, the applicant has submitted information which states that the purchase price of this parcel in 1995 was \$60,000. (A detailed description of all of the expenditures to date associated with the parcel is available in the Commission file for this project). According to the applicant, the size, price, presence of other dwellings nearby, lack of any hazardous conditions and the zoning of the parcel for residential use were factors which influenced his purchase of the site with the expectation that a dwelling could be constructed upon it. Furthermore, given the small size of the site ( $\pm 3,600$  sq. ft.), opportunities for other economic but non-residential uses are not feasible. These factors lead the Commission to conclude that the applicant could have reasonably expected that residential use of the subject property would be permitted when the property was purchased.

In summary, the applicant has shown that the property was purchased for \$60,000 which was the fair market value for residential property in this area at the time. This observation is supported by a review of purchases of similar sized lots in the tract by the City and the Monterey Peninsula Regional Park District during the last five years. During that period, the two public agencies acquired sixteen lots. With the exception of one lot all of the others cost between \$33,000 and \$53,000 each. (Please see Exhibit 7 for detailed acquisition costs and locations). Since the applicant's purchase of the property, it has generated no income, but has been taxed based on its zoning as residential land.

In view of the findings that (1) none of the resource dependent uses provided for in Section 30240 would provide an economic use, (2) residential use of the property would provide an economic use and (3) the applicant had a reasonable investment backed expectation that such use would be allowed on the property, the Commission further finds that denial of a residential use, based on the inconsistency of this use with Section 30240 could constitute a taking. Therefore, consistent with Coastal Act Section 30010 and the Constitutions of California and the United States, the Commission determines that full implementation of Section 30240 to prevent residential use of the subject property is not authorized in this case.

Having reached this conclusion, however, the Commission also finds that Section 30010 only instructs the Commission to construe the policies of the Coastal Act, including Section 30240, in a manner that will avoid a taking of property. It does not authorize the Commission to otherwise suspend the operation of or ignore these policies in acting on permit applications. Moreover, while the applicant in this instance may have reasonably anticipated that residential use of the subject property might be allowed, the Coastal Act and recent Coastal Commission actions on similarly situated lots in the Del Monte Beach Tract No. 2 (Boyden, Bram, Seawald) provided notice that such residential use would be contingent on the implementation measures necessary

to minimize the impacts of development on environmentally sensitive habitat. Thus, the Commission must still comply with the requirements of Section 30240 by protecting against the significant disruption of habitat values at the site, and avoiding impacts that would degrade these values, to the extent that this can be done consistent with the direction to avoid a taking of property. Mitigations must also be generally proportionate to the adverse impacts caused by development of the house and associated infrastructure.

MITIGATION: In the present situation, there are several conditions that the Commission can adopt that implement Section 30240 without taking the applicant's property. First, the applicant currently proposes to cover approximately 1800 sq. ft. of the 3600 sq. ft. parcel with building and paving. Further, as approved by the City, an additional 5,000 sq. ft. will be covered by the Spray Avenue street extension, for a total of 6,800 sq. ft. However, this degree of dune habitat disruption can be partially reduced. By reducing the street coverage to the bare minimum needed for paved auto access to the residence, dune alteration can be minimized and the area available for dune restoration can be increased. Specifically, by building only a half-width street (approx. 13 ft.), by shortening the paved area (so that it does not extend past 23 Spray Ave.), and by eliminating curbs, gutters and sidewalks, the surfaced area will be reduced from 5,000 sq. ft. to only 1,105 sq. ft.

Accordingly, the Commission finds that a reasonable development can be achieved consistent with the direction of Section 30240 by adoption of a condition (Special Condition No. 2) that limits site impacts by, among other means, requiring that if the project is redesigned to meet City conditions or otherwise, residential site coverage will be concentrated so that development covers no more than one-half (1800 sq. ft.) of the parcel; and, by limiting street extension impacts to the minimum required for paved auto access (about 1,105 sq. ft.). Even if the City later requires a full-width street with sidewalks (40 ft.), at its reduced length (85 ft.) the street extension will still only cover about 3,400 sq. ft.

Even as so conditioned, development on the parcel will permanently displace dune habitat and prevent revegetation of half the lot. There also will be indirect impacts on the undeveloped portions of the lot through construction activity, shadowing and other activities associated with adjacent residential use. Moreover, although the actual square footages at issue in this permit are relatively small (1800 sq. ft. developed and 1800 sq. ft. of adjacent open area, and up to 5,000 sq. ft. of street extension), these impacts are significant given the importance of the Monterey Bay Dune system as a whole and the potential for cumulative impacts if the remainder of the 67 lots in the area are similarly developed. In fact, on a cumulative basis, a development of the kind proposed by the applicant, even as conditioned, would result in the loss of approximately 7 acres of additional environmentally sensitive coastal dune habitat in the Del Monte Beach Tract #2 area alone. Therefore, several additional conditions are necessary to offset these direct, indirect, and cumulative project impacts.

The first of these, Special Condition No. 4, requires that the 1800 sq. ft. area of the parcel that will not be developed shall be preserved in open space, subject to a conservation deed restriction. The deed restriction shall

prohibit uses that are inconsistent with dune habitat restoration and preservation. The deed restriction will also act to reserve this portion of the lot for eventual consideration in an overall City plan for dune restoration and enhancement throughout the area. Thus, this condition will also maintain the City's ability to develop a comprehensive plan for the Del Monte Beach Tract #2 area consistent with Coastal Act Chapter 3 policies.

Additionally, the applicant has submitted a botanical survey of the site containing a number of impact assessment and mitigation measures designed to protect existing dune resources. (See Exhibit B, attached.) Special Condition No. 3 requires that prior to project construction the applicant must submit a revised restoration and dune stabilization plan incorporating the recommendations of this report, as well the City's biotic resources mitigation requirements for the site.

Last, because the developed half of the lot and street extension represent a permanent loss of environmentally sensitive habitat, the permit also has been conditioned in Special Condition No. 5 to require project mitigation through an in-lieu fee. The purpose of the in-lieu fee is to provide for off-site restoration of degraded environmentally sensitive habitat, to mitigate on-site loss of environmentally sensitive habitat (the lot is too small for substantive on-site restoration). More specifically, the in-lieu fee will provide funds to pay for the cost of restoring an area exactly proportionate to the area of environmentally sensitive habitat that will be destroyed due to construction of the house and street extension. The in-lieu fee will be used for future native plant habitat preservation and restoration in nearby dune areas through the acquisition of restoration sites, eradication of invasive exotic vegetation, installation of boardwalks, and other dune restoration measures identified in the planning or LCP process.

The amount of the in-lieu fee is based on an estimate made in December 1993 by dune restoration botanist Thomas Moss, a local expert in preparing and implementing dune restoration. His figures showed that for similarly situated projects the cost of restoration for an acre is \$13,500. If adjusted for inflation to estimated construction date, this cost can be projected to be \$15,000 per acre. For an area of 1,800 sq. ft., the area to be covered by the proposed residential development, the proportional cost is \$620. For the additional street area ultimately authorized by this permit (40 ft. x 85 ft. = 3,400 sq. ft.), the proportional cost at maximum coverage would be an additional \$1,171. As conditioned, the total will be dependent on the amount of street coverage actually authorized pursuant to the terms of this permit; and, may be remitted in stages if additional street improvements are authorized in the future. The City of Monterey, which has already established a fund for the protection of the Monterey Dunes, would be the recipient of these funds. As conditioned, the expenditure of such funds would be subject to review by the Executive Director to insure conformance with the intended habitat protection and restoration purposes of this condition.

Conclusion: The area of the Seaside (Monterey Bay) Dunes in which the applicant's parcel is located is an environmentally sensitive habitat area within the meaning of Section 30240 of the Coastal Act. This section of the Act requires that such habitat areas be protected against significant disruption or degradation. Strict application of this section is not

authorized in this situation, however, because to do so would cause a taking of property in violation of Section 30010 of the Coastal Act, as well as the State and United States Constitutions. Therefore, the applicant may be permitted to develop his parcel, subject to Special Conditions which will reduce or mitigate the project's impact on dune habitat to the maximum extent feasible. As so conditioned, the project will be consistent with the habitat preservation policies of the Coastal Act.

#### 4. STREET EXTENSION ISSUES

Several additional issues are raised by the fact that this application includes a request to extend Spray Ave. to serve this presently isolated lot. Applicable Coastal Act policies include:

##### Section 30250

(a) New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it ...

##### Section 30604

(a) Prior to certification of the local coastal program, a coastal development permit shall be issued if the issuing agency, or the commission on appeal, finds that the proposed development is in conformity with Chapter 3 (commencing with Section 30200) and that the permitted development will not prejudice the ability of the local government to prepare a local coastal program that is in conformity with Chapter 3 ...

KEY ISSUE: This project represents a departure from previous development patterns. All of the previous lots approved for residences in this partially-developed tract have been adjacent to an existing paved street with utilities in place. The most recent examples include the following: 3-89-210 Vargas; 3-93-62 Sewald; 3-93-63 Boyden; and 3-93-28 Bram (#4 Dunecrest).

Expansion of Existing Residential Development Pattern. In contrast to these preceding sites, applicant's lot is not located on an existing improved street. At present, this portion of Spray Ave. is sand dune. Accordingly, it is sometimes referred to as a "paper street", that is, it exists only on paper. Nonetheless, it is located just beyond the perimeter of the existing residential enclave. Therefore, while development of applicant's site can be viewed as an encroachment or reduction of the existing de facto open space area of the Del Monte Dunes, it also represents a logical expansion of the existing residential pattern (rather than "skip out" or "leapfrog" development). Accordingly, it would be "contiguous with" existing development as required by Coastal Act Section 30250.

Street Extension Issues and Alternatives. The application proposes a short extension of Spray Avenue in order to provide street access to the lot. However, a central concern raised by such street (and utility) extensions is that they will induce further such encroachments into open space areas, and would potentially prejudice the City's ability to complete its local coastal program in a manner consistent with Coastal Act policies.

Therefore, a number of alternatives to minimize the impacts of such a street extension were evaluated by Commission staff. These alternatives included: a) no street construction (assumes on-street parking on Beach Way and an approx. 80-ft. pedestrian boardwalk for access to the house); b) construction of an ordinary 12-ft. width residential driveway within the Spray Avenue right-of-way (i.e., no curbs, gutters or sidewalks); c) construction of the street at half width (and only as far as the westerly edge of the lot, about 80 ft. from Beach Way); d) construction of the street at full width but only as far as the lot's westerly property line; and, e) construction of the street at full width the entire length of the frontage of both of applicant's lots (per the City).

The above-listed alternatives are evaluated in more detail in the following paragraphs.

The "no street" alternative.

This alternative was considered feasible, even though conventional city fire trucks would not be able to directly approach the residence. An equivalent degree of fire safety could be achieved through on-site hydrant, full interior sprinkler system, stocking of landing mat for emergency "instant" road purposes, and similar measures. These measures would certainly be appropriate in a hard-to-reach rural setting. But this solution is cumbersome and inconvenient for the owner. An alternative resolution that achieves the desired planning result but provides for more typical access is available. Accordingly, some form of paved auto access can be approved on the Spray Avenue right-of-way.

The "driveway only" alternative. A standard 12-ft. width driveway would be extended from Beach, through the City's Spray Ave. right-of-way, and up to the proposed garage. This would provide paved auto access to the house, while retaining 28 ft. of the 40 ft. right-of-way in open space. However, the compaction standards, based material requirements, and other construction criteria for residential driveways are less than for city streets. Therefore, this option would not lend itself to completion as a normal one-way or two-lane city street in event the LCP determines this to be desirable.

The limited street expansion (half-width) alternative. This alternative would result in a single paved lane, approximately 13 ft. in width, ending at permittee's lot. This alternative combines the advantages of retaining the maximum amount of open space within the City-owned street right of way, and preserving options for alternative development/preservation patterns within Tract #2. These alternatives include, but are not limited to, PUD's, exchange of City and Park District-owned lots with private owners, resubdivision to better concentrate development, further acquisitions by the City and/or

Regional park District, and transfer of development credit (TDC) scenarios. Some of these would require no additional street expansion along the Spray Ave. right of way, while others would entail completion as either a one-way or conventional two-way street.

The full-width alternative. Construction of the Spray Ave. extension as a normal two-way city street, but halting at permittee's 23 Spray Ave. lot about 85 ft. from the existing edge of pavement at Beach Way. With curbs, gutters and sidewalks, it would occupy 37 ft. or more of the 40 ft. right-of-way. This alternative was rejected because it would cover more dune habitat than necessary to serve just one house, and because it would tend to induce residential development along Spray Ave. in a manner prejudicial to several of the LCP alternatives listed above.

The full-length alternative. As approved by the City, would extend the full width street to a point about 125 ft. from the Beach Way pavement. The last 40 ft. would not serve any existing or approved development. Rejected for the same reasons as the preceding alternative.

Only minimum-level auto access consistent with Coastal Act requirements. The City's policy has dictated that such "paper" streets be improved to their full dimensions at such time as development occurs within the area which heretofore was only a "paper subdivision." The applicants of the approved residential development have full financial responsibility for the street (and utility) extensions. The obligation involves a "full-dimension" street of two travel lanes, curbs, gutters and sidewalks. The other owners of vacant lots on the same paper street reap a windfall benefit, as the extended street will either directly serve their previously isolated lot or bring it much closer.

This circumstance will predictably induce an expansion of residential development along Spray Ave. Because this would tend to prejudice the City's ability to complete the planning work necessary to create its local coastal program (LCP), those street development alternatives designed to serve more than this project alone, were rejected.

#### CONCLUSION:

It was concluded that a combination of redesign and recordation of a lien or covenant for future full street improvements would best serve to balance several competing needs. These needs include improved access to the residence, maximum feasible open space retention, and preservation of options for alternative development patterns for the entire undeveloped area of this tract such as that which could be achieved through resubdivision or a planned unit development (PUD). Such a redesign would provide only for a half-width street with minimal drainage features, no sidewalk, not extending beyond subject lot.

To avoid a possible future financial burden to the City in event the LCP calls for full-dimension street development in this area, the financial responsibility component is retained through an added condition which requires recordation of a lien, covenant or comparable obligation running with the land. As conditioned accordingly, and as revised to provide a normal-width (13 ft.) single lane access as the minimum-level form of improvement for this

portion of Spray Avenue pending completion of the LCP, the necessary balance will be achieved. (To clarify, this permit allows completion of part or all of the full dimension street according to submitted plans, but only when and if certain circumstances apply -- such as certification of LCP policies which call for it, or a determination of necessity for public safety, access, or drainage.)

##### 5. PUBLIC ACCESS AND RECREATION

The applicant's sand dune site lies between the first public road and the sea. It is contiguous with and indistinguishable from the adjacent dune field, which extends seaward about 500 ft. to the City beach.

Section 30604(c) of the Coastal Act requires that the Commission make specific findings of consistency of such development with the public access and recreation policies of the Coastal Act. Section 30001.5 of the Coastal Act states in part, that one of the basic goals of the state for the coastal zone is to:

(c) Maximize public access to and along the coast and maximize public recreational opportunities in the coastal zone consistent with sound resource conservation principles and constitutionally protected rights of private property owners.

Section 30211 of the Coastal Act states:

Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

Section 30210 of the Coastal Act states:

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Section 30221 of the Coastal Act states:

Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.

Section 30222 of the Coastal Act gives priority to visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation over private residential, general industrial, or general commercial development; and Section 30223 reserves upland areas necessary to support coastal recreational uses where feasible.

The Commission has had a long history of grappling with the issue of public access in the Del Monte Beach Tract #2. An excerpt from the findings adopted by the Commission for a 1992 LUP submittal for this area describes the most recent position on this subject. (This LUP was not, however, certified.) The Commission found that the seven and one-half acre Del Monte Beach Tract #2, which includes the subject site, has been subject to public use for many years. In order to finally resolve the question of the extent of prescriptive rights existing in this area, the LUP modifications adopted by the Commission required the City to prepare such a study. Adopted Modification No. 14 reads:

14. Modify Policy IV.B.3.8. pertaining to development in the Del Monte Beach subdivision Tract #2 to add requirements to determine the public's right of access prior to approval of developments as follows:

8. All vacant lots in the Del Monte Beach subdivision, west of Beach Way and north of Del Monte Avenue shall be designated for residential land use under R-1-6-D-1 zone standards. Through opportunity buying, open space preservation of the front row of 21 lots shall be pursued, with the front row of 11 lots as first priority, and the second row of 10 lots as a second priority. Unless funds for open space acquisition are in escrow, all lots referenced in this policy shall remain developable under the R-1-6-D-1 zone designation or any other zone district that accommodates the results of the "prescriptive rights" studies referenced below.

The City shall undertake a "prescriptive rights" study for the Del Monte Beach Tract #2. The study shall be designed and carried out consistent with current standards for such studies, i.e., the "prescriptive rights handbook" prepared by the Office of the Attorney General. Upon completion, the study shall be presented to the Planning Commission and City Council for action which may include amendments to the certified LUP or LCP as appropriate.

Prior to completion of the study and certification of any appropriate amendments or as an alternative to the preparation of a study, the City shall require that applicants proposing development in Del Monte Beach Tract #2 demonstrate that the project is consistent with Chapter 3 policies including Section 30211 which provides that development shall not interfere with the public's right of access to the sea where acquired through use, and if potential rights do exist, they are preserved through adjustment of the site plan or other appropriate means. The methodology used for the individual studies undertaken by applicants shall be the same as outlined for the area-wide study.

If prescriptive rights are determined on all or a portion of the study area, alternative planning for the area may be accomplished by a cluster development, transfer of development program, or other acceptable means as determined in the implementation portion of the Local Coastal Program.



While the Commission approved the LUP in 1992 with this modification, the City did not accept these modifications within the six month time limit; therefore, certification of the resubmitted LUP did not occur. Thus, the Commission must review this application for conformance with the Coastal Act and without the benefit of a prescriptive rights study.

As detailed in previous Commission actions in this area (Sewald P-79-34, 3-89-250 and A-134-79; Boyden P-79-338 and A-19-80, Del Monte Beach LUP approvals in 1984 and 1992), the Commission has found that the undeveloped portion of the Del Monte Beach Tract #2 area has been historically used by the public and therefore may be subject to implied dedication. Based upon this evidence and the fact that the planning process (LCP) had yet to be completed, the Commission denied requests for residential construction in this area (Sewald A-134-79, and Boyden A-19-80; later approved as 3-93-62 and 3-93-63, respectively).

Since the LUP Resubmittal hearing in 1992, however, staff has not received any additional evidence regarding historic public use. Those LUP findings adopted the previous evidence collected regarding historic public use, including fifteen letters from the 1979 Sewald file stating that the authors had used and had seen many people using the Sewald lot for picnicking, sunbathing, hiking, dog-walking, kite flying, and nature study. The period of public use was as early as 1922 with most of the use occurring from 1958 to 1979 (1979 is the date that the letters were written). As evidence that the public use continued to be substantial, Mr. Sewald applied for a permit to fence his vacant property in 1990 (3-89-250). Among the reasons cited by the applicant as to why the fence was needed included that "people have driven on to his property", he "has found people letting their animals loose on the property", and, the "No Trespassing signs have been torn down by drunken beachgoers." The Commission denied the fence permit, substantially for the same reasons that the earlier residential development had been denied, most significantly the presence of historic public use.

By 1994, however, no new evidence on prescriptive rights had been forthcoming. In the absence of additional, more conclusive proof of such public rights, the Commission determined it was no longer in a position to further deny the Seawald and Boyden applications for residences. Indeed, as it affects the applicant's parcel, although aerial photo analysis shows extensive areas of bare sand and probable pedestrian trails on the site for the years sampled (1977, 1986, 1993), the fact that dune vegetation was documented over parts of the lot in the spring of 1996 is evidence that (at least currently) such public use is not intensive. Instead, it appears that pedestrian use has concentrated on the adjacent Spray Ave. "paper street."

Therefore, while the Commission notes that testimony related to past projects in the Del Monte Dunes Tract No. 2 indicates there has been general public recreational use in this area over the last 40 years, including possible use of the applicant's site, there is still not sufficient evidence to more conclusively support a finding that the area is subject to prescriptive rights. The Commission also observes that no entity or individual recently has raised this concern by submitting new evidence or stepping forward to litigate this matter. Thus, the Commission is not in a position to find that there is sufficient evidence in this case to justify a denial of the

applicant's proposal based on the conclusion that the parcel is subject to prescriptive rights. Moreover, there also is insufficient evidence of prescriptive rights to avoid a claim of a taking if the Commission determined that it should deny all use of the property.

### Conclusion

There is a long documented history of public use throughout the undeveloped portion of Del Monte Beach Tract #2, confirmed by previous Commission action. While the Commission has consistently deferred to the City's LCP process to complete the detailed analysis which would answer the questions about whether this area has been impliedly dedicated for public use, the City has declined to conduct such a study. The evidence for this parcel (Archer) is indeterminate. Lacking the necessary information, the Commission is unable to find unequivocally that this property has been dedicated entirely or partly for public use. Therefore, the Commission finds that it is not authorized to require the applicant to dedicate his property for public access.

Section 30211, however, requires that Commission actions on shorefront projects shall ensure that new development does not interfere with public rights of access acquired through use, but not necessarily formally determined by a court.

The conditions of this permit clarify that the Commission in granting this approval does not intend any waiver of any public access rights which may exist on this site. And, because public views or access rights could be impaired, any permanent fencing is limited to that which is necessary to protect landscape restoration areas. Therefore, to this extent, any historic rights of access which may exist will be protected in the undeveloped area of the lot. As so conditioned, public access impacts are mitigated to the extent feasible, and the project is consistent with the public access requirements of the Coastal Act.

### 6. SCENIC RESOURCES

Section 30251 of the Coastal Act states:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.

East of the parcel is Del Monte Beach Tract #1, almost fully developed with one and two story residences on small, 3600 sq. ft. parcels. South of the project site at the crest of the dune are several other comparable houses. See Exhibit 2 for development pattern.

The site is located on Spray Avenue separated from the City's Del Monte Beach by the vacant intervening dune field extending to the beach. The undeveloped portion of Del Monte Beach Tract #2 north of the site is an open dunes, beach and ocean environment. Views north from Dunecrest Avenue are unrestricted, allowing views to the Naval Postgraduate School dunes and beach and the City of Monterey shoreline. The proposed development is located on the Spray Ave. "paper street," seaward and downslope from Dunecrest Ave. In terms of views from other publicly-owned lots within the Tract #2 dunefield, the character of this highly scenic dune area will be significantly altered by direct loss of open dune and by the visual impediment of the proposed building.

The parcel is 3,600 sq. ft. in area. The structure proposed is a two-story, three bedroom, two bath residence. A two car garage is accessed from Spray Avenue. As approved by the City, the house will be a maximum height of 21 feet.

The building's proposed design, scale, and siting on the parcel are consistent with the residential development in the almost fully built out Del Monte Beach Tract #1 to the east. The building would also be consistent with the existing residence in Tract # 2, including the adjacent two-story house to the west. Therefore, the residence design is approved as submitted. However, because the City's conditions No. 6, 7 and 13 (Exhibit 6, attached) may result in architectural modifications to the structure, this permit is conditioned to require submittal of final residential plans. Such review is a prudent safeguard, in order to assure that the project in its final form will minimize the impact to views to and along the ocean, minimize alteration of the natural dune form and provide for compatibility with the character of the area.

For similar reasons, the conditions attached to this permit require that any permanent fencing not substantially impair public views. Therefore, as conditioned for review and final site and grading plans and architectural elevations, and to restrict fences which would block or damage public views of the scenic dunescape, the proposed development is consistent with the scenic resource policies of the Coastal Act.

## 7. GEOLOGIC HAZARDS

Section 30253 of the Coastal Act states:

New development shall:

(1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.

(2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.

The applicant's site lies just below (seaward of) the crest of the Flandrian (late Pleistocene era) dune field that rises from 30 to 80 feet in elevation in this area. Dunes that are stripped of their natural vegetation present a hazard of wind erosion, leading to dune migration. Applicable policies in the (non-certified) Del Monte Beach Land Use Plan required: site specific geology/erosion studies; a development setback sufficient to prevent damage from both the expected 100-year shoreline erosion rate and the 100 year storm or tsunami runoff; and preservation of sand dunes wherever feasible.

Because of its distance from the shoreline (400 ft.), no shoreline erosion rate study was done. However, the potential for wind erosion and sand dune movement was investigated (Foxx, Nielsen and Associates, 1995). This issue was also considered in a geological report (M. Jacobs, 1992), for a nearby, geologically-comparable site. (3-93-63 Boyden, at 10 Beach Way). One of the recommended stabilization measures calls for the finished ground surface to be planted and maintained with groundcover. This measure will be implemented incidental to the habitat restoration plan required by the conditions of this permit. The City conditions required that the applicant follow all recommendations of the Geotechnical Report by Jacobs.

Therefore, as conditioned, to require the submittal of a site restoration and dune stabilization plan, and to provide a letter report from a qualified geologist or engineering geologist regarding the applicability of the Jacobs report to this project site, the proposed development is consistent with Section 30253 of the Coastal Act.

#### 8. PUBLIC SERVICES

Section 30250 of the Coastal Act states in part:

(a) New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources...

Section 30254 provides in part:.

...Where existing or planned public works facilities can accommodate only a limited amount of new development, services to coastal dependent land use, essential public services and basic industries vital to the economic health of the region, state, or nation, public recreation, commercial recreation, and visitor-serving land uses shall not be precluded by other development.

The subject parcel is located on an unimproved portion of Spray Avenue, a vacant street right-of-way without utilities. This project, as conditioned, would allow about 85 ft. of this street to be developed. The Del Monte Beach vehicular access for both subdivisions and for public beach use is impeded by

a single entrance off Del Monte Avenue and a narrow loop road system. However, the development of this residence by itself will have an insignificant impact on traffic volume. As discussed in the preceding findings this development site can be distinguished from the other interior Tract #2 dune parcels because of the close proximity (approx. 45 ft.) of existing street access and utilities.

Water for the site will be provided by Cal Am Water District. A water moratorium was repealed on August 19, 1993. The Peralta well in Seaside was constructed in 1994. Accordingly, for the time being, water is available. And, the Regional Water Pollution Control Agency Treatment Plant has sufficient sewage treatment capacity for this development.

Therefore, adequate public services are available for the proposed development and it is consistent with the public service policies of the Coastal Act.

#### 9. LOCAL COASTAL PROGRAM

The Monterey City Local Coastal Program has been segmented. Of the five segments the Cannery Row and Skyline Land Use Plans have been certified by the Commission and adopted by the City. The Harbor and Roberts Lake/Laguna Grande segments were previously reviewed and approved with modifications by the Commission but were not adopted by the City.

The Del Monte Beach segment was first reviewed and approved with modifications by the Commission in June 1984. Only two issues were unresolved, the development of the Del Monte Beach Tract #2 (including the subject site of this application), and the development of the Phillips Petroleum site. With the public purchase of the Phillips Petroleum site for inclusion in Monterey State Beach, only the Del Monte Beach Tract #2 land use is at issue.

Development of Del Monte Beach Tract #2 raises issues of statewide significance regarding public view protection, rights of public access and recreation and the preservation and restoration of coastal dune environments, a rapidly diminishing resource. Residential development on any of 67 remaining vacant lots will tend to diminish the City's options to protect public access, public views, and restorable dune habitat. These options include various planned unit development, lot consolidation, redevelopment, development transfer, and public acquisition programs. While limited acquisition funds may be available, a willing seller is necessary to implement many of these options. And, this lot can be distinguished from the other interior lots in the tract by its proximity to street frontage and existing utilities (approx. 45 ft.).

Because the City's existing funds are not adequate to purchase all of the vacant lots, it is apparent that residential development on at least some of the 67 parcels can be anticipated in the future Del Monte Beach LUP resubmittal.

In this case, the Commission has found that it is not authorized to deny residential development of the applicant's parcel because this would lead to a taking of property in violation of Coastal Act Section 30010. The Commission also has conditioned the approval of this development, however, to preserve

one-half of the lot as scenic open space to mitigate impacts on scenic resources and dune habitat. Likewise, permit conditions require that only a minimal portion of the street extension be built at this time, pending resolution of alternative scenarios including completion of the LCP planning process. These conditions will minimize site and street coverage, providing a better opportunity for the City to plan for dune restoration and scenic view preservation in the area of Del Monte Beach Tract #2. The Commission therefore finds that approval of this project will not prejudice the ability of the City to prepare a Local Coastal Program in conformance with the policies of Chapter 3 of the Coastal Act. The project as conditioned is therefore consistent with the requirements of Coastal Act Section 30604(a).

#### 9. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Section 13096 of the California Code of Regulations requires that a specific finding be made in conjunction with coastal development permit applications showing the application to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(i) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment.

In response to the environmental review requirements of CEQA, the City granted a Negative Declaration for this development on March 19, 1996. Additional impacts and mitigation measures, especially with respect to the street extension, were discovered during the course of this permit review. The additional mitigation measures are incorporated as conditions. Accordingly, as so conditioned and modified, the Commission finds that the proposed project is consistent with CEQA, as all of its significant environmental impacts will be reduced to a level of insignificance.

#### EXHIBITS

- A. Standard Conditions.
- B. Botanical Survey by Zander Associates, July 17, 1995.
  - 1. Location Map.
  - 2. Del Monte Beach LUP Map.
  - 3. Site Plan.
  - 4. Elevations.
  - 5. Road Improvement Plans.
  - 6. City's Conditions of Approval.

# EXHIBIT-A

## RECOMMENDED CONDITIONS

### STANDARD CONDITIONS:

1. Notice of Receipt and Acknowledgement. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. Compliance. All development must occur in strict compliance with the proposal as set forth in the application for permit, subject to any special conditions set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.
4. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
5. Inspections. The Commission staff shall be allowed to inspect the site and the development during construction, subject to 24-hour advance notice.
6. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
7. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

EXHIBIT NO. A

APPLICATION NO.

3-96-34

ARCHER

Standard Conditions



California Coastal Commission

# ZANDER ASSOCIATES

Environmental Consultants

July 17, 1995

Mr. Daniel F. Archer  
124 Spray Avenue  
Monterey, California 93940

RECEIVED

JUL 21 1995

CITY OF MONTEREY  
PLANNING DEPARTMENT

23 Botanical Survey  
20 Spray Avenue, Monterey  
APN 011-461-32

Dear Dan:

At your request, Zander Associates representatives visited your project site in Del Monte Beach in the City of Monterey on three separate occasions this spring to conduct botanical surveys and determine the presence/absence of any sensitive plant species. In addition, we have evaluated the potential effects of constructing a new single family residence on the site and recommended appropriate mitigation measures. This letter report presents the results of that work.

## A. Project Location

The project site consists of a 40 x 90 foot vacant lot (APN 011-461-32) near the intersection of Spray Avenue and Beach Way located within Del Monte Beach Tract #2, an 85 parcel subdivision of approximately 7 acres. Figure 1 attached to this report identifies the project location on a regional site map. Residential development has occurred on approximately 25% of the lots in the subdivision. Del Monte Beach Tract #2 is adjacent to Del Monte Beach Tract #1, which lies immediately to the east, encompasses approximately 25 acres and is almost fully developed with several hundred houses and condominiums. To the west of the Del Monte Beach Tract #2 are the Monterey Water Pollution Control District wastewater treatment facilities. The project site is located approximately 500-ft south of the City Beach and is adjacent to existing residences to the east and south, and vacant parcels to the west and north.

## B. Site Conditions

The project site includes 20 Spray Avenue and the land required to extend Spray Avenue for access to the lot. The site is located in an area of coastal dunes that have been degraded as a result of human activity. Adjacent residential development and public recreation uses have affected both the landforms and vegetation patterns in the area. The extension area of Spray Avenue leading to the lot is most heavily disturbed at its intersection with Beach Way. The area has been graded and otherwise recontoured to accommodate the adjacent residences and road and is dominated by non-native ruderal (weedy) vegetation. South of the road alignment, the dune form rises to a ridge and large areas of bare sand are typical between this ridge and the lower

CALIFORNIA COASTAL COMMISSION



elevations of the dunes northerly of the project area. The lot itself is relatively flat except toward the southwestern corner where the elevation rises from about 36 feet to 42 feet above sea level.

### C. Plant Communities

Native vegetation in the coastal zone areas of the City of Monterey is representative of the Coastal Strand Plant Community. In its natural, undisturbed condition, this plant community forms a relatively open assemblage of low to prostrate plants on sandy beaches and dunes. Native species associated with this plant community in the City of Monterey include beach aster (*Lessingia filaginifolia*), pink sand verbena (*Abronia umbellata*), mock heather (*Ericameria ericoides*), silver bush lupine (*Lupinus chamissonis*), beach knotweed (*Polygonum paronychia*), and beach primrose (*Camissonia cheiranthifolia*).

Although the vegetation on the dunes in the vicinity of the Del Monte Beach Tract #2 contains some native plant species, it is not characterized as a coastal strand plant community due to the extent of non-native exotics, such as iceplant, that dominate the disturbed landscape. Large areas of barren dune are also characteristic in the vicinity.

The extension area of Spray Avenue leading to the project site is dominated by non-native plants such as ripgut brome (*Bromus diandrus*), hare barley (*Hordeum murinum* var. *leporinum*), wild radish (*Raphanus sativus*), crane's bill (*Erodium* sp.), and sow thistle (*Sonchus oleraceus*). Proceeding westerly along the alignment, the topography rises and more barren dune sand with intermittent vegetation prevails. The ridge south of the road alignment is dominated by non-native European beach grass (*Ammophila arenaria*) and a small grove of Monterey cypress (*Cupressus macrocarpa*).

The lot area of 20 Spray Avenue contains a mixture of non-native plants such as iceplant (*Carpobrotus edulis*), ripgut brome, and sow thistle interspersed with common native dune species including a single blue bush lupine (*Lupinus chamissonis*) at the southern property line, beach bur (*Ambrosia chamissonis*) growing amidst iceplant mats, and scattered beach evening primrose (*Camissonia cheiranthifolia*) and pink sand verbena (*Abronia umbellata*). Disturbance is most noticeable along the site's eastern perimeter fenceline where non-native plant species form almost 100% cover precluding the successful establishment of native dune vegetation.

### D. Sensitive Species

Several sensitive plant species are known to occur in the vicinity of the project site, including the federally listed endangered and state listed threatened sand gilia (*Gilia tenuiflora* ssp. *arenaria*); the federally-listed threatened Monterey spineflower (*Chorizanthe pungens* var. *pungens*), the coast wallflower (*Erysimum ammpilum*); a candidate for federal listing (Category 2), and the Monterey paintbrush (*Castilleja lanifolia*); a California Native Plant Society List 4 species.

CALIFORNIA COASTAL COMMISSION  
EXHIBIT B  
3-96-34  
2/9

Botanical surveys were conducted on the project site on May 4, May 26 and June 9, 1995 to look for the sensitive plant species mentioned previously and to look for dune buckwheat and coast buckwheat (*Eriogonum parvifolium* and *E. lanifolium*, respectively) which are not sensitive species themselves but are host plants for the federally-endangered Smith's blue butterfly (*Euphilotes enoptes smithi*). The May 26, 1995 survey was conducted concurrent with a visit to the nearby Navy Dunes which supports a known population of sand gilia to confirm that the species was still blooming and identifiable at the time of this survey.

The entire project site was visually inspected and all plants observed were recorded and identified to species. A complete plant list is provided as an attachment to this report. No sand gilia, Monterey spinerflower, coast wallflower, Monterey paintbrush or buckwheat were found on the project site.

One additional sensitive species, the black legless lizard (*Anniella pulchra nigra*) is known to occur in the vicinity of the project and could potentially occur on the site. The species is a candidate for federal listing (Category 2) and a listing package has been prepared and is currently under review. The black legless lizard is typically associated with loose sandy dune soils and scattered dune shrubs where it is known to occupy the leaf litter and underlying root zone. While Zander Associates did not conduct specific surveys for this species on the project site, we believe that habitat for the species is marginal based on our evaluation of site conditions, especially the depauperate flora and lack of suitable native shrubby vegetation. However, because no specific surveys for the species were conducted, its possible presence on the site cannot be completely dismissed.

#### E. Assessment of Potential Effects and Recommended Mitigation Measures

Based on the site plan you have prepared, dated June 15, 1995, the proposed development will result in a total lot coverage of less than 50%, including house, garage, driveway, and walkway. The proposed residence is to be situated primarily along the easterly side of the property, thereby maximizing the amount of open space on the western side.

Since there is a potential for black legless lizard to occur on the site, we recommend the following procedures be employed prior to and during construction of the site in order to capture any individual lizards and relocate them to the undisturbed portions of the site. Prior to construction, surveys for the black legless lizard should be conducted within the proposed building area by raking or other appropriate methods. Raking the leaf litter and sand under each shrub within the area to be disturbed should be done in the spring to a minimum depth of eight inches. The surveys should be conducted in the mornings and evenings when black legless lizards have been most frequently captured in the Monterey Bay Region. Captured lizards should be put immediately into containers with moist paper towels and released in the undisturbed portion of the site in similar habitat and at the same depth in the soil as captured.

To limit the unavoidable loss of habitat and mitigate losses incurred, the City of Monterey and the Coastal Commission when approving recent, similar projects in the Del Monte Beach Tract #2 (Boyden, Bram, Sewald and Vargas) have imposed the following conditions.

1. Compliance with design guidelines including (i) reducing site coverage so that the residence, paving and private yard area together cover no more than one-half of the lot, (ii) siting the proposed residence to maximize the habitat conservation corridor, to the extent feasible, and (iii) preserving the undeveloped area of the lot as a natural habitat conservation area.
2. Preparation of a vegetation restoration and dune stabilization plan by a qualified biologist/botanist.
3. Irrevocable offer to dedicate a conservation and open space easement for the purpose of protecting environmentally sensitive habitat.
4. Contributing a fee to provide for restoration of off-site dunes within the City of Monterey to compensate for the loss of potential habitat.
5. Installation of temporary fencing during construction to protect adjacent dunes.
6. Environmental monitoring of the site by a qualified biologist/botanist during construction and restoration of the landscape.

The guidelines that follow have been imposed by the City of Monterey and the Coastal Commission when approving similar projects in the Del Monte Beach Tract #2 to achieve protection and restoration of the dunes on the project site that are outside of the building envelope. The implementation of the following guidelines at the project site will reduce adverse effects the project may have on the coastal dune habitat in the vicinity. Indeed, the local (site-specific and environs) habitat quality could be improved by restoring the native landscape on the site and by following the other guidelines set forth below.

1. Pre-construction Period

- a. Prepare a Vegetation Restoration and Maintenance Plan that defines procedures and standards for restoration, maintenance and monitoring of the undeveloped portions of the property.
- b. A qualified biologist should be retained by the owner to serve as the Environmental Monitor during construction and restoration of the landscape.
- c. Temporary fencing should be installed to protect the Monterey Spineflower and the dunes outside the project site. The Environmental Monitor will confer with the

CALIFORNIA COASTAL COMMISSION  
**EXHIBIT B**

3-96-34

419

General Contractor and identify the nature and location of the fence. The fence will be maintained in good condition and remain in place until all construction on the site is completed. Removal or changing the location of the fence will require the approval of the Environmental Monitor. The area protected by the fence will be maintained in a trash-free condition and not used for material stockpiling, storage or disposal, or vehicle parking. All construction personnel shall be prohibited from entering the fenced area. It shall be the property owner's responsibility to uphold this requirement.

2. Construction Period

- a. All activities associated with construction, trenching, storage of materials, and disposal of construction wastes and excavated soil should not impact areas protected by fencing.
- b. No paint, cement, joint compound, cleaning solvents or residues from other chemicals or materials associated with construction will be disposed of on-site. The General Contractor will be responsible for complying with this requirement and will clean up any spills or contaminated ground to the full satisfaction of the Environmental Monitor.
- c. Excess soil remaining from excavation will be disposed of within the Seaside dune system, but not in a way that will negatively affect any existing native vegetation.
- d. The Environmental Monitor should inspect the site no less than one time each week to ensure compliance with all provisions for protecting the surrounding environment. Any activity or condition not in accord with the provisions of this report will be brought to the attention of the owner or his representative, the General Contractor, and the City of Monterey Planning Department.
- e. The Vegetation Restoration and Maintenance Plan, including an implementation schedule, will be completed prior to final inspection and granting of occupancy.

3. Post-construction Period

- a. Remove the temporary fence.
- b. Retain a qualified biologist to monitor the landscape restoration project on an annual basis for at least five years and provide an annual status report to the lead permitting agency.
- c. Any exotic plants that are used for ornamental purposes within the building envelope, should not include species which are capable of naturalizing or spreading into the adjacent dunes. In particular, the following invasive species will not be used: acacias

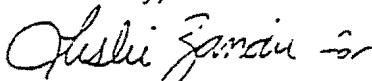
(*Acacia* ssp.), genista (*Cytisus* ssp.), pampas grass (*Cortaderia* ssp.) and ice plant (*Carpobrotus* ssp., *Mesembryanthemum* ssp., and *Drosanthemum* ssp.). Plants requiring frequent irrigation must be confined to special landscape features or planters near to the house.

- d. Maintain the native and restored landscape in the manner prescribed by the restoration plan.
- e. Perform or provide funding for restoration of dune areas off-site to compensate for the loss of sensitive species habitat.
- f. If the property should change ownership, future owners of the property should have the same obligation for preserving, maintaining and perpetuating the native landscape on the site as provided in the restoration plan. To ensure that this objective is achieved over the long term, the property owner will record an agreement as a deed restriction that all the provisions for restoring and maintaining the native landscape on the site will run with and burden title to the property in perpetuity and will bind the property owner and their successors.

In summary, the project site is located in a disturbed coastal dune area of the City of Monterey. Residential development and unmanaged access to the site has precluded the establishment of viable coastal dune habitat. Design of the project as proposed, and implementation of the measures provided herein, will reduce project effects to the maximum extent possible and could provide opportunities for restoration of coastal dune scrub on the undeveloped portion of the site.

Please let us know if you have any questions or if we can be of any further assistance.

Sincerely,

  
Michael J. Zander  
Principal

Attachments

CALIFORNIA COASTAL COMMISSION  
EXHIBIT B 396-34  
6/9





Plant List  
20 Spray Avenue

Plant species observed on lot 20 and the extension area of Spray Avenue during surveys conducted on 5/4/95, 5/26/95, and 6/9/95

<u>Scientific Name</u>	<u>Common Name</u>
<i>Abronia latifolia</i>	Yellow sand verbena
<i>Abronia umbellata</i>	Pink sand verbena
<i>Ambrosia chamissonis</i>	Beach bur
<i>Avena barbata</i>	Slender oat
<i>Bromus diandrus</i>	Ripgut brome
<i>Calce maritima</i>	Sea rocket
<i>Calystegia soldanella</i>	Beach morning glory
<i>Camissonia cheiranthifolia</i>	Beach evening primrose
<i>Carpobrotus edulis</i>	Hottentot fig
<i>Cupressus macrocarpa</i>	Monterey cypress
<i>Drosanthemum floribundum</i>	Magic carpet
<i>Ericameria ericoides</i>	Mock heather
<i>Erodium sp.</i>	Crane's bill
<i>Hordeum murinum leporinum</i>	Hare barley
<i>Lupinus chamissonis</i>	Blue bush lupine
<i>Medicago sp.</i>	Bur colver *
<i>Raphanus sativus</i>	Wild radish
<i>Sonchus oleraceus</i>	Sow thistle

COASTAL COMMISSION  
EXHIBIT B 3-96-34  
7/9



# MONTEREY BAY

Archer  
23 Spray

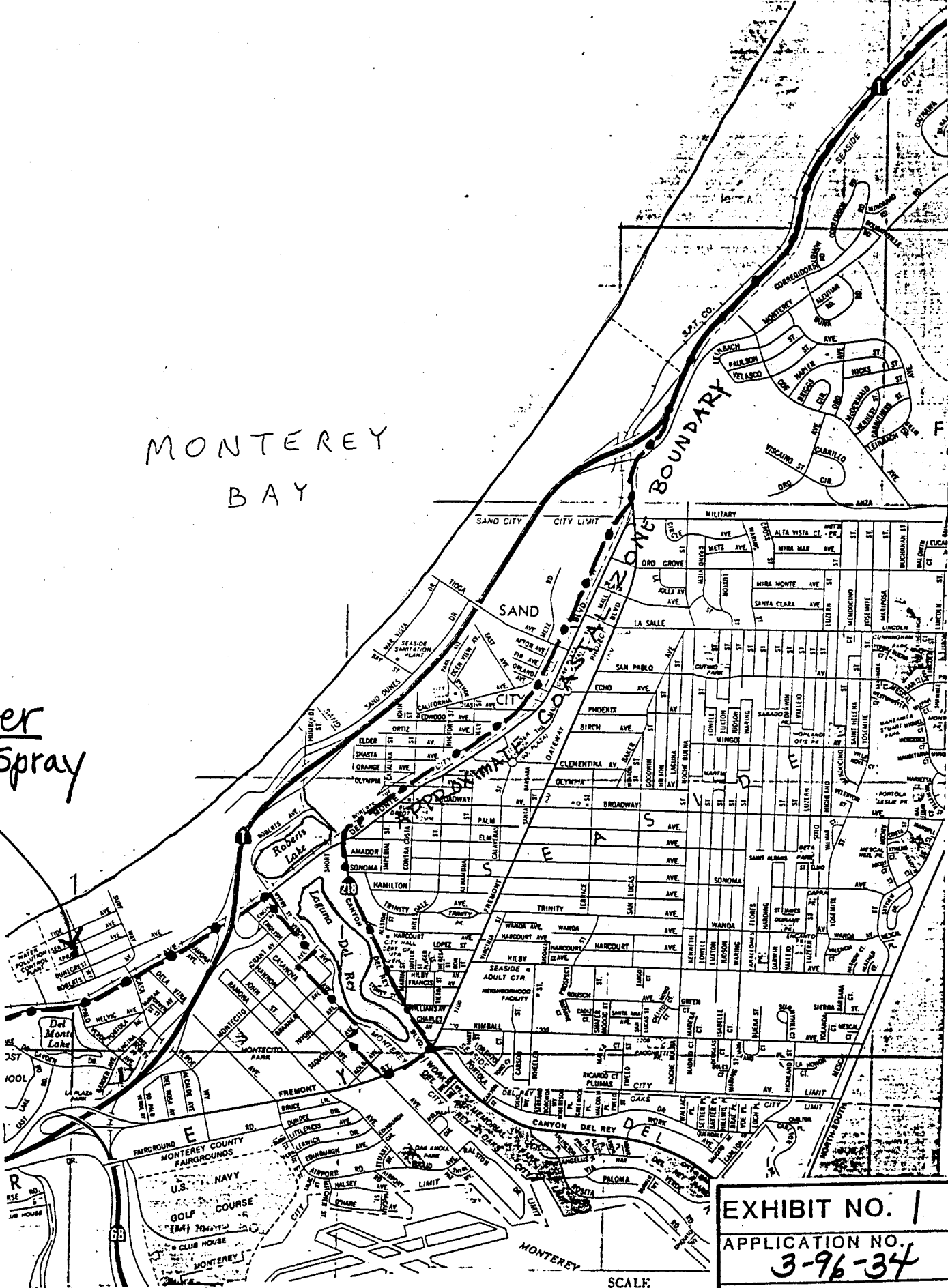
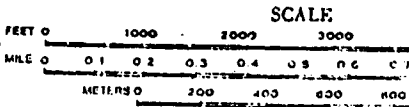


EXHIBIT NO. 1
APPLICATION NO. 3-96-34
Location Map
California Coastal Commission



SEASIDE - SAND CITY

Monterey

Bay

CITY BEACH

DEL MONTE BEACH TRACT #2

0 200

B (under construction)  
C (purchased for open space)

Archer  
23 Spray

PRIOR  
COASTAL  
PERMITS:  
A-VARGA  
B-SEWALD  
C-BÖYDEN  
D-BRAM

NAVAL POST GRADUATE SCHOOL

SEA FOAM AVE.

TIDE AVE.

DEL MONTE BEACH TRACT #1

SPRAY AVE.

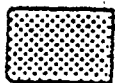
SPRAY AVE.

DUNECREST AVE.

ROBERTS AVE.

BEACH WAY

MONTEREY PENINSULA REGIONAL RECREATION TRAIL



Undeveloped Residential Lots

..... Undeveloped Streets

CALIFORNIA COASTAL COMMISSION

EXHIBIT 2 3-96-34

DMB LUP



T & R	
GROUND FLOOR	188.45.56
UPPER FLOOR	151.05
TOTAL	1439.50
LOT AREA	3600.00
	= 40%
GRABBLE	492.04

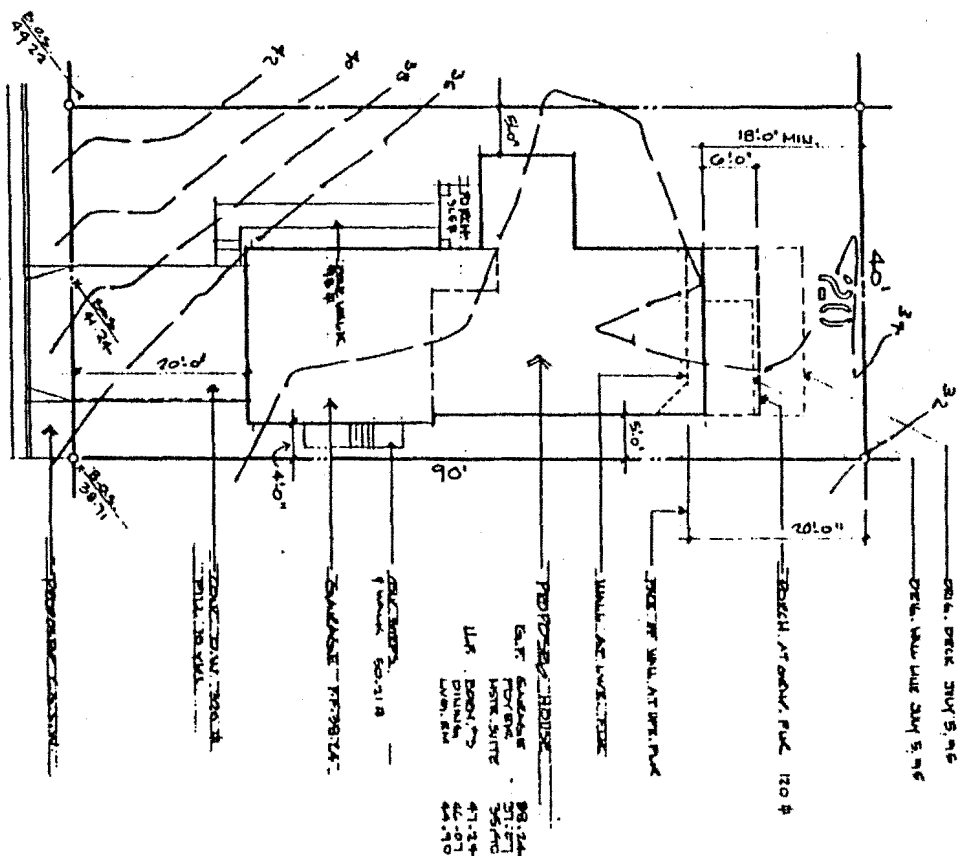
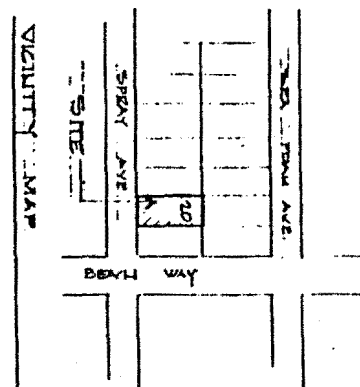


EXHIBIT NO. 3

APPL 3278N 924

## Site Plan

**BUILDING DESIGN  
& CONSULTING**

**draftact**

2150 GARDEN RD., SUITE B3 / MONTEREY, CA 93940  
(408) 646-5999 FAX 846-5988



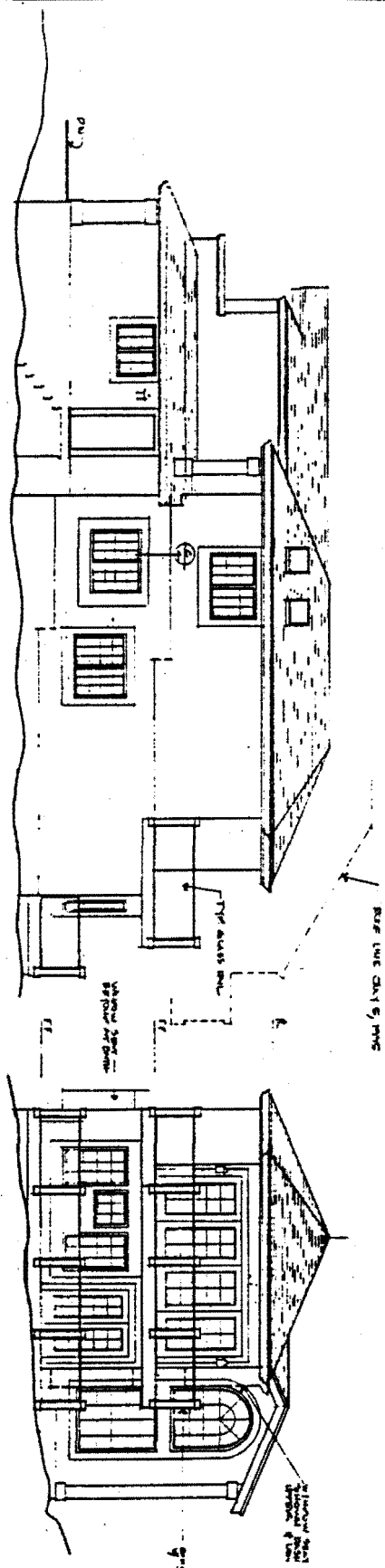
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[illegible]

DRAWN BY	DAVIS.
JOB NO.	06-32-95
SCALE	1"=10'
SHEET NUMBER	

03 00-000000

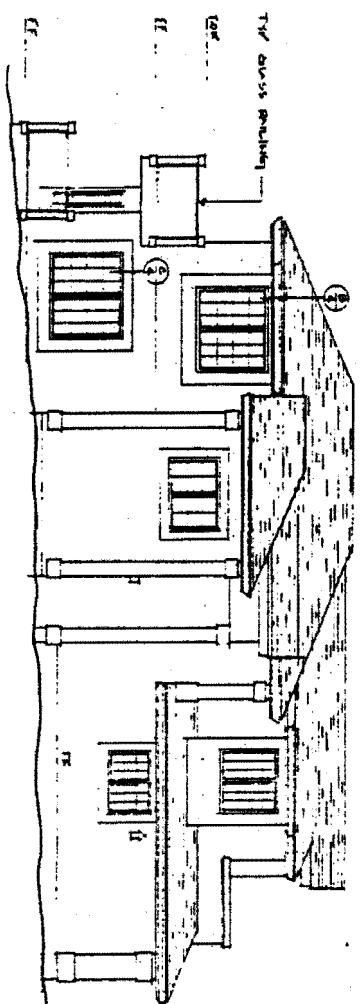


WEST ELEVATION

1/8" = 1'-0"

NORTH ELEVATION

1/8" = 1'-0"



WEST ELEVATION

1/8" = 1'-0"

SOUTH ELEVATION

1/8" = 1'-0"

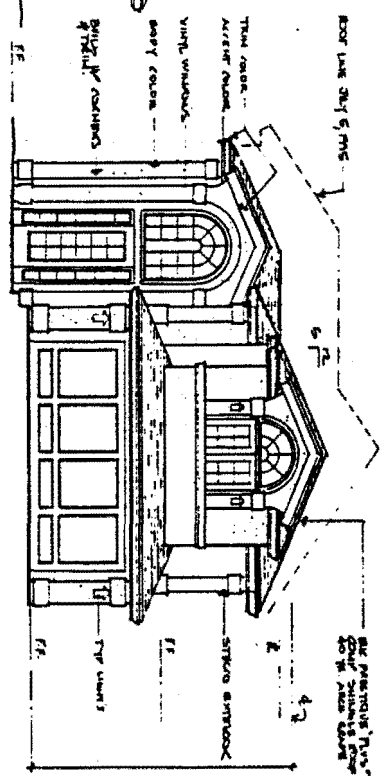


EXHIBIT NO.	4
APPLICATION NO.	9-78-34
Elevations	

DATE	06-22-88
BY	DR
CHECKED	DR
APPROVED	DR

PROPOSED RESIDENCE FOR  
 DAN ARCHER  
 23 SPRAY AVENUE, MONTEREY  
 LOT 20, BLOCK 2, MAP 2, DEL MONTE BEACH  
 APRIL 011-481-600

BUILDING DESIGN  
 & CONSULTING  
 draft-tek  
 2160 GARDEN RD., SUITE 20 / MONTEREY, CA 93940  
 (408) 846-8888 FAX 846-8888

1/8" = 1'-0"

 California Coastal Commission

Approved by  
City Council  
3/19/96

Concept Approval of 23 Spray Avenue

CONDITIONS  
OF APPROVAL:

1. The project shall be required to conform to the recommended grading specifications prepared by Myron Jacobs in a geotechnical report dated 6/1/92 in evaluating structural development on Assessor's Parcel Number 011-455-08 (10 Beach Way).
2. A sand stabilization program during construction and permanent landscaping and stabilization program approved by the ARC shall be required.
3. The applicant shall do the following as recommended in the Botanical Survey prepared by Zander and Associates on 7/17/95.
  - a. Pre-construction Period
    - 1) Prepare a Vegetation restoration and Maintenance Plan that defines procedures and standards for restoration, maintenance and monitoring of the undeveloped portions of the property.
    - 2) A qualified biologist shall be retained by the owner to serve as the Environmental Monitor during construction and restoration of the landscape.
    - 3) Temporary fencing shall be installed to protect the Monterey Spineflower and the dunes outside the project site. The Environmental Monitor will confer with the General Contractor and identify the nature and location of the fence. The fence will be maintained in good condition and remain in place until all construction on the site is completed. Removal or changing the location of the fence will require the approval of the Environmental Monitor. The area protected by the fence will be maintained in a trash-free condition and not used for material stockpiling, storage or disposal, or vehicle parking. All construction personnel shall be prohibited from entering the fenced area. It shall be the property owner's responsibility to uphold this requirement.

EXHIBIT NO. 6
APPLICATION NO. 3-96-34
ARCHER
CITY'S CONDITIONS

b. Construction Period

- 1) All activities associated with construction, trenching, storage of materials, and disposal of construction wastes and excavated soil shall not impact areas protected by fencing.
- 2) No paint, cement, joint compound cleaning solvents or residues from other chemicals or materials associated with construction will be disposed of on-site. The General Contractor will be responsible for complying with this requirement and will clean up any spills or contaminated ground to the full satisfaction of the Environmental Monitor.
- 3) Excess soil remaining from excavation will be disposed of within the Seaside dune system, but not in a way that will negatively affect any existing native vegetation.
- 4) The Environmental Monitor shall inspect the site no less than one time each week to ensure compliance with all provisions for protecting the surrounding environment. Any activity or condition not in accord with the provisions of this report will be brought to the attention of the owner or his representative, the General Contractor, and the City of Monterey Planning Department.
- 5) The Vegetation Restoration and Maintenance Plan, including an implementation schedule, will be completed prior to final inspection and granting occupancy.

c. Post-construction Period

- 1) Remove the temporary fence.
- 2) Retain a qualified biologist to monitor the landscape restoration project on an annual basis for at least five years and provide an annual status report to the lead permitting agency.
- 3) Any exotic plants that are used for ornamental purposes within the building envelope, shall not include species which are capable of naturalizing or spreading into the adjacent dunes. In particular, the following invasive species will not be used: acacias, (*Acacia* spp.), genista (*Cytisus* spp.), pampas grass (*Cortaderia* spp.) and ice plant (*Carpobrotus* spp., *Mesembryanthemum* spp., and *Drosanthemum* spp.). Plants requiring frequent irrigation must be confined to special landscape features or planters near to the house.

- 4) Maintain the native and restored landscape in the manner prescribed by the restoration plan.
  - 5) Perform or provide funding for restoration of dune areas off-site to compensate for the loss of sensitive species habitat.
  - 6) If the property should change ownership, future owners of the property shall have the same obligation for preserving, maintaining and perpetuating the native landscape on the site as provided in the restoration plan. To ensure that this objective is achieved over the long term, the property owner will record an agreement as a deed restriction that all the provisions for restoring and maintaining the native landscape on the site will run with and burden title to the property in perpetuity and will bind the property owner and their successors.
4. Detailed grading and/or retaining wall plans for development on all areas with a slope of 25% or greater shall be submitted to the ARC for review and approval prior to submittal of plans to the Building Department.
  5. The house shall be designed with interior noise insulation to 45 dBa.
  6. The entry projection on the west side of the house shall be lowered and setback an additional 2 feet to provide greater separation from the adjoining lot.
  7. The roof pitch shall be 5 in 12 to minimize visual impacts to adjoining residences.
  8. All street improvements shall comply with the requirements of the Public Works Department.
  9. The applicant shall be required to enter into a developer's agreement (which provides for financial security to build the same should the project be abandoned) for the road improvements or build the road improvements prior to construction of the house.
  10. Prior to submittal of plans for a building permit, an accurate survey of the lot and street right-of-way shall be prepared by a licensed surveyor or registered civil engineer.
  11. This project is subject to the categorical water allocation program approved by the City Council. The applicant will proceed at their own risk that water may not be available at the time they request building permits. No building permits will be issued if water is not available to this project.



12. A detailed design of the retaining walls on the south side of Spray Avenue shall be subject to review and approval by the Architectural Review Committee and the Public Works Department prior to the issuance of any permit for 23 Spray Avenue. Consideration should be given to a sloping retaining wall.
13. The upper deck shall be revised to further reduce the view impact on 80 Beach Way by replacing the 90 degree corner at the northeast corner of the deck with a diagonal corner six feet in from either side, resulting in a reduction of 18 square feet of deck area. The deck rail support posts shall be redesigned to reduce their bulk and width. Modifications in the design of the deck to conform with these requirements shall be prepared and submitted to the Architectural Review Committee for review and approval prior to issuance of a building permit.

The applicant should also consider shifting the house to the west by several feet in order to reduce the view impact on 80 Beach Way, the final plans subject to review and approval by the Architectural Review Committee.

14. This permit shall become null and void if not exercised or extended within twenty-four (24) months of the date of grating by the Planning Commission. It is the applicant's responsibility to track the 24 month expiration date and request permit approval extensions prior to the permit expiration date. No renewal notice will be sent to the applicant.

