

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST AREA OFFICE

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 Commission Action:



STAFF REPORT: REGULAR CALENDAR

DRA
10/23/96

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APPLICATION NO.: 3-96-73

APPLICANT: MR. & MRS. SY BRAM

AGENT: Pedro Rosado

CO-APPLICANTS: Orange Manor Inc. and Mr. Joel Kass (owners of parcels where off-site grading is proposed)

PROJECT LOCATION: 12 Dune Crest Avenue, Del Monte Beach Tract #2, City of Monterey, APN 011-464-017 and 011-464-025; off-site grading on unimproved section of Spray Avenue, APN 011-464-022 and 011-464-023

PROJECT DESCRIPTION: Construct two-story single-family dwelling with an attached two car garage and basement on a vacant 80 x 90 ft. lot, side and rear 2 foot high retaining walls, and concrete driveway; on-site and off-site grading.

Lot area:	7,200 sq. ft. (for residence)
Building coverage:	1,979 sq. ft.
Pavement coverage:	327 sq. ft.
Parking spaces:	2 covered, one uncovered
Grading:	1,123 cu. yds. on-site 425 cu. yds. off-site
Zoning:	Residential-Low Density
Ht abv fin grade:	23 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; 3-96-34 Archer; Del Monte Beach Land Use Plan Resubmittal 1992 and Commission's adopted LUP Findings for Approval 6/9/93; Negative Declaration granted 5/7/96; Botanical Survey by Thomas K. Moss, 8/26/94; Botanical Survey Supplemental Report by Thomas K. Moss, 8/22/95; Biological Evaluation by Thomas K. Moss, 3/17/96; Letter from Foxx Nielsen & Associates, 9/21/95; and Geotechnical Investigation for nearby property (APN 011-455-008) by M. Jacobs and Associates, 6/1/92.

SUMMARY OF STAFF RECOMMENDATION: The primary issue in this application is the development of one of 66 vacant residential lots west of Beach Way in the Del Monte dunes, an area that has been discussed in the past for use as open space conservation.

Staff is recommending approval of the proposed residence, along with conditions which mirror those previously applied by the Commission in this neighborhood for the protection of environmentally sensitive dune habitat, scenic views, and public access and recreation.

Summary of Issues and Conditions

Issues	Coastal Act Requirements	Analysis	Necessary Conditions
<i>Environmentally Sensitive Habitat Area</i>	<p>Protection of ESHA's (Coastal Act Section 30240(a)).</p> <p>Prior Commission approvals (Sewald, Boyden, Bram, Archer) allowed development on similar lots in ESHA's to avoid a taking, but required that the remainder of site be restored with native dune vegetation pursuant to a dune restoration plan, and that a fee be deposited for off-site dune restoration.</p>	<ul style="list-style-type: none"> * Entire parcel is environmentally sensitive habitat. * Proposed site coverage is 2,306 square feet on 7,200 square foot lot * Proposal includes 425 cubic yards of grading on two offsite parcels of 3,600 square feet each. 	<ul style="list-style-type: none"> * Special Condition 1 incorporates City's requirement for environmental monitoring during construction. * Special Condition 2 allows for an amount of grading not to exceed that required to ensure the structural integrity of the new residence. * Special Condition 4 requires an on-site native plant restoration plan. * Special Condition 5 requires a deed restriction over the undeveloped portions of the lot to protect & restore native dune habitat. * Special Condition 6 requires deposit of fee for off-site dune restoration.
<i>Visual Resources</i>	<p>Protection of views in scenic areas (Coastal Act Sections 30251 & 30240(b)).</p>	<ul style="list-style-type: none"> * Project site is in close proximity to existing residences. * Proposed 2-story SFD is consistent with neighboring structures. * Proposal includes off-site grading on two seaward lots. As conditioned by the city, this grading cannot exceed an amount needed to allow for views from the first floor of the new residence. 	<ul style="list-style-type: none"> * Special Condition 1 incorporates City conditions, which include the requirement that architectural plans be reviewed and approved by the Architectural Review Committee. * Special Condition 2 allows for an amount of grading not to exceed that required to ensure the structural integrity of the new residence.

Issues	Coastal Act Requirements	Analysis	Necessary Conditions
<i>Public Access</i>	Development shall not interfere with public access rights (Coastal Act Section 30211).	<ul style="list-style-type: none"> * Long history of public use in general area; however, prescriptive rights have not been established for this site. 	<ul style="list-style-type: none"> * Special Condition 7 specifies that this permit does not waive any public rights which may exist on the property.
<i>Geologic Hazards</i>	New development must assure geologic stability and minimize risk (Coastal Act Section 30253).	<ul style="list-style-type: none"> * Project located in active dune field, and is therefore subject to geologic hazards and erosion. 	<ul style="list-style-type: none"> * Special Condition 3 requires compliance with the recommendations contained in the geotechnical report prepared for this project.
<i>LCP</i>	Commission action cannot prejudice options available to City in preparing an LCP (Coastal Act Section 30604).	<ul style="list-style-type: none"> * No certified LCP in this area. * Group of about 67 vacant lots in Tract # 2 represents opportunity to protect ESHA, scenic, and recreation resources. * City has planning effort underway to identify appropriate development and protection strategies. 	<ul style="list-style-type: none"> * Special Conditions 1-7 ensure project is consistent with Chapter 3 of the Coastal Act & will not prejudice the ability of the City to complete their LCP consistent with Coastal Act policies.

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 1)

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 5/7/96 are attached as Exhibit 2 to this permit; these Conditions are hereby incorporated as conditions of this permit with the exception of the portion of Condition 12 stating "Off-site grading shall be limited to Lot 9 and Lot 11 and shall be the minimum necessary to provide views from the first floor of the new house", which is revised by Special Condition 2 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. FINAL GRADING PLANS. PRIOR TO THE COMMENCEMENT OF GRADING, the permittee shall submit, for Executive Director review and approval, detailed grading plans, accompanied by evidence of approval by the City of Monterey Architectural Review Committee. These grading plans shall allow for the minimum grading necessary to allow for the structural stability of the proposed residence only, and shall preserve, to the greatest extent feasible, the low area on the northeast corner of the project area, which has been identified as supporting 31 Monterey Spineflower plants. The basis for the extent of the submitted grading plans (i.e., to provide structural integrity for the new residence) must be confirmed by a certified Geotechnical consultant.

3. COMPLIANCE WITH GEOTECHNICAL RECOMMENDATIONS. PRIOR TO THE COMMENCEMENT OF GRADING, the permittee shall submit, for Executive Director review and approval, final project plans, including grading plans, foundation plans, floor plans, and elevations. These plans shall be accompanied by written evidence that the geotechnical consultant has reviewed these plans and found them to be consistent with the recommendations contained in the site specific geotechnical investigation completed by Reynolds and Associates, dated August 20, 1996 (attached as Exhibit 3), and that the proposed grading is the minimum necessary to ensure the structural stability of the new residence.

4. 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 Reports by Thomas K. Moss, dated August 26, 1994 and August 25, 1995 (Exhibit 4, attached). The restoration plan shall include a landscape plan and dunes restoration program for the entire project site, as well as the areas of the adjacent properties (APNs 011-464-022 and 011-464-023) disturbed by grading, consistent with these recommended measures and with the City's mitigation requirements for this project. 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 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 following the permitted grading, but prior to the commencement of construction, and continued in subsequent during-construction and post-construction phases as specified by the City permit conditions.

5. 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 parcels APN 011-464-017 & 011-464-025. 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.

6. 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 \$794.00. This amount is equal to \$15,000 per acre multiplied by the area to be covered by the development to be presently affected (2,306 square feet, or 5.3% of an acre), and will mitigate for the impacts caused by the residential construction. 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.

7. 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.

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 through public road paralleling the sea, creating a narrow, approximately one-half mile wide linear strip of land under Coastal Act protection (see Exhibit 5 attached). Seaward of the boulevard are the high oceanfront Flandrian dunes. This 7 1/2 acre sand dune area, bounded by the Monterey City Beach and Pacific Ocean to the North, Navy Property to the West, and Beach Way to the East is known as Del Monte Beach Tract #2. It has been legally subdivided into approximately 85 parcels, but remains largely unimproved with only two of six planned streets currently developed, and few utilities; of the 85 lots, 67 are undeveloped.

Eighteen lots on the periphery of the undeveloped area, having access and utilities from the existing streets (Beach way and Dune Crest Avenue), 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 (Dune Crest Avenue), 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 (the Coastal Development Permit for development of this lot expired as of June 8, 1996). See Exhibit 6 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 two adjoining vacant parcels of 40 x 90 ft. each. The proposed development includes grading on two additional lots seaward of the 80 x 90 ft. lot that the residence will be located on. One of the off-site parcels is owned by Orange Manor, Inc., of which Sy Bram is the president; the other is owned by Joel Kass, who is included as a co-applicant within the permit application. The purpose of this off-site grading is to lower a mound in order to accommodate the new structure and provide for views of the ocean from the first floor of the new structure.

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 7 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 the 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. (Please see Exhibit 6, which illustrates lots in public ownership).

During this period, 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. To date, 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 \pm \$310,000 available for additional purchases within the entire 38-lot area, within which the subject development is located. 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. According to staff of the Monterey Peninsula Regional Park District, the applicants, in this case, may be willing to sell the entirety of their holdings within Del Monte Beach Tract #2 (\pm 16 parcels), but not on a lot by lot basis. At this time, the Park District does not have adequate funds to purchase all of these lots. Therefore, 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 the subject 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.

Since that time, the City has initiated a planning study, and solicited input from the involved parties on these issues. This planning study is currently underway (as discussed below), and is anticipated to be completed at the end of this calendar year. Please refer to Exhibit 6 of this staff report for more information.

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., this project), Archer (23 Spray Ave., approved by the Commission at the October 1996 meeting), 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), on 3,600 sq. ft. parcels. Each was conditioned with a requirement to retain 50% of the lot as undeveloped open space and to pay an in-lieu fee to mitigate habitat destruction associated with the projects. This condition was also applied to the Commission's recent approval of the first single family residence permitted by the Commission within the interior area of Tract #2 (Archer, 3-96-34).

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, in many areas, 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 ammophilum), 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). 33 spineflower plants have been observed within the project area.

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 Tract #2 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 dune field, 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 investigations specifically for this site at 12 Dune Crest Avenue was conducted by Thomas Moss on July 22, 1994; this was updated on July 7, 1995, which included a survey and investigation of the two seaward lots proposed for off-site grading (see Exhibit 4). These reports state that the project site is centrally dominated by a dune ridge covered by European beach grass (Amophila arenaria) on the seaward side, and a dense grove of Monterey cypress (Cupressus macrocarpa) trees on the inland side; these occupy over half of the two parcels on which the proposed residence will be located. Other areas of this parcel contain a mixture of native (e.g., beach sagewort) and exotic (e.g., ice plant and European beach grass) plant species, and have been disturbed by human activity.

During the time period of the investigations one protected species, Monterey Spineflower (Chorizanthe pungens var. pungens), was found on the project site. Between the period of the first site investigation and the supplemental survey, the number of Monterey Spineflower plants increased from 3 to 17. An additional 16 Monterey Spineflower plants were identified on the adjacent lots proposed for grading.

The reports do not evaluate potential impacts to the black legless lizard (Anniella pulchra nigra), which is known to occur in the vicinity of the project and could potentially occur on the site. This species is currently proposed for listing by the U.S. Fish and Wildlife Service as endangered.

Each of the above-listed plant and animal species is either migratory or intermittent in occurrence. Therefore, even though only one 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).

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 2,306 sq. ft. of the 7,200 sq. ft. parcel is proposed to be covered with building and paving. This will destroy approx. 2,306 sq. ft. of environmentally sensitive habitat dune habitat. In addition, the proposed off-site grading will disturb most of the two 3,600 square foot lots seaward of the proposed residence. Without containment measures, additional 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 7,200 sq. ft. lot, as well as up to 7,200 sq. ft. within the off-site grading areas.

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 outside of the building envelope on the two parcels where the new house will be located. These measures are listed in the Botanical Survey (Exhibit 4, attached). In combination, these measures will reduce impacts on the undeveloped 4,894 sq. ft. of the lot, and will partially mitigate development impacts resulting from 2,306 sq. ft. of site coverage.

With respect to off-site grading on the two parcels seaward of the proposed residence, the City conditioned the project in a manner which requires off-site grading "to be the minimum necessary to provide views from the first floor of the new house". The precise extent of the grading allowed by the City, and its associated impact to environmentally sensitive habitat areas, have not, however, been determined. Grading activities within environmentally sensitive dune habitat areas have the potential to adversely impact environmentally sensitive dune habitat areas by:

- o decreasing their stability through the removal of existing plants whose roots hold sand in place;

- o altering their natural contours, which relates to the quality of habitat values (e.g., some native dune plants require shelter from the wind and only thrive in areas where natural dune contours provide such protection); and,
- o causing the direct mortality of native plants and animals currently existing within the vicinity of the grading operation by crushing with machinery or burying with sand.

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 surveys report that the subject site has been degraded by non-native species and human use, but supports a significant stand of Monterey Spine flowers, a Federally endangered plant species. Although the habitat values of the site have been degraded by the spread of non-native plant species, this impact is not considered permanent; re-establishment of the environmentally sensitive native dune habitat remains possible with or without human intervention. 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). Even without restoration efforts, the parcel provides a suitable habitat for rare native dune plants and animals that are both migratory and intermittent in occurrence. Therefore, the 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 one quarter of the two lots on which the new residence will be located, 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.) In this case, 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 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, Dune Crest Avenue, where public utility service is currently available. Many of the other lots on Dune Crest Avenue 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 the two parcels on which the new residence will be located was \$25,400 for the parcel at 10 Dune Crest (as purchased in 1987), and \$10,000 for the parcel at 12 Dune Crest (as purchased in 1978), totalling \$35,400. (A detailed description of all of the expenditures to date associated with the parcel is available in the Commission file for this project). The size, price, presence of other dwellings nearby, lack of hazardous conditions, and the zoning of the parcel for residential are factors which resulted in an expectation by the landowner that a dwelling could be constructed upon it. Furthermore, given the relatively small size of the site ($\pm 7,200$ 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 properties were purchased for fair market values for residential property in this area at the time. The information provided by the applicant lists the fair market value for the parcel at 10 Dune Crest in 1987 at \$25,000.00, and the fair market value at 12 Dune Crest in 1978 as \$10,000.00. 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, and Archer) 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. When fees or dedication of property are required as mitigations, these measures must also be generally proportionate to the

adverse impacts caused by development of the house and associated infrastructure.

MITIGATION: In the present situation, the applicant proposes to cover approximately 2306 sq. ft. of the 7200 sq. ft. parcel with building and paving. Further, as proposed by the applicant, \pm 75% of an additional two lots (3,600 square feet each) seaward of the proposed residence will be disturbed during grading. However, this degree of dune habitat disruption can be partially reduced; there are several conditions that the Commission can adopt that implement Section 30240 without taking the applicant's property.

First, by reducing the grading activities on the site to the minimum necessary to provide for the structural stability of the new residence, dune alteration can be minimized and the preservation of existing Monterey Spineflower plants can be increased. Specifically, by avoiding grading within the northeast portion of the project site, 31 Monterey Spineflower plants can be preserved. Reducing the amount of grading associated with this project would further benefit coastal resources by minimizing impacts to the stability of natural landforms, and by avoiding the mortality of native dune plants and animals which, because of their migratory and seasonal characteristics, may not have been identified during previous botanic surveys, but may be present at the time of grading.

Accordingly, the Commission finds that a reasonable development can be achieved consistent with the direction of Section 30240 by adoption of Special Conditions No. 2, 3, and 4 which limit site impacts by, among other means, requiring that the remainder of the parcel not covered by development will be restored to appropriate native habitat, that the extent of grading be minimized to an amount necessary to provide for the structural integrity of the new development, and that areas disturbed by grading activities be included within the required dune restoration program.

Even as so conditioned, development on the parcel will permanently displace dune habitat and prevent revegetation of one quarter of 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 (2,306 sq. ft. permanently developed), 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. Therefore, several additional conditions are necessary to offset these direct, indirect, and cumulative project impacts.

The first of these, Special Condition No. 5, requires that the 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. Furthermore, this deed restriction is necessary to maintain consistency with Coastal Act section

30240, in that it ensures that the new development will be compatible with the the continuance of the environmentally sensitive habitat area in which it is located.

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 4, attached.) Special Condition No. 4 requires that prior to project construction the applicant must submit a restoration and dune stabilization plan incorporating the recommendations of this report, as well the City's biotic resources mitigation requirements for the site. Such a restoration effort is necessary to minimize the project's impacts on sensitive coastal habitat resources. Specifically, the required restoration plan compensates for the potential incompatibilities between residential use of the area and the continuance of sensitive coastal habitats by establishing a specific program which will ensure the long-term survival of these unique resources.

Last, because the developed portions of the lots represent a permanent loss of environmentally sensitive habitat, the permit also has been conditioned in Special Condition No. 6 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 permanent on-site loss of environmentally sensitive habitat. 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 driveway. 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 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.

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 2,306 sq. ft., the area to be covered by the proposed residential development, the proportional cost is \$794. 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. 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. Visitor-serving development on the subject property is not considered a feasible alternative in this case, however, due to its limited size (7,200 square feet), residential designation, and surrounding residential development. Visitor-serving development in this area may also have more deleterious impacts on sensitive habitats because of the increased off-site use and demands associated with such development.

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).

Coastal Commission adoption of the LUP resubmitted in 1992 included findings acknowledging 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 on the Sewald and Boyden properties 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.

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. Although additional evidence of public use of the area, including petitions and photographs, was given at the Commission's October 1996 hearing relevant to a permit for the construction of a residence at 23 Spray Avenue, this information was insufficient to establish prescriptive rights. Further, no entity or individual has stepped 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 (Bram) 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.

5. 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. (Emphasis added).

The subject parcel is 7,200 sq. ft. in area. The structure proposed is a two-story, three bedroom, three bath residence with a basement and an attached two car garage accessed from Dune Crest Avenue. As approved by the City, the house will be a maximum height of 23 feet. East of the subject 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 are several other comparable houses. See Exhibits 2 and 7 for development pattern.

The site is separated from the City's Del Monte Beach (to the north) 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 north side of 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 altered by direct loss of open dune and by the visual impediment of the proposed building. However, as discussed earlier in this staff report, denying the property owners with an economic use of their land (in this case residential use being the only feasible option), would be inconsistent with previous judicial decisions and Section 30010 of the Coastal Act. Therefore, the objective of implementing the visual resource protection policies of the Coastal Act must be to minimize the impact of the development on the scenic resources available to the public.

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 other existing residences in Tract # 2. Therefore, the residence design, as approved by the City of Monterey, is consistent with the Coastal Act requirement that new development be visually compatible with the character of surrounding areas. No additional mitigation measures are needed to provide consistency of the residence design with Coastal Act Section 30251.

However, the proposed off-site grading on the adjacent northern parcels raises issues regarding project conformance with the portion of Coastal Act Section 30251 requiring that new development minimize the alteration of natural land forms. As proposed by the applicant, approximately 75% of these off-site parcels would be graded, with an approximate cut of 425 cubic yards. The City conditioned its approval of this project by requiring that grading on the adjacent parcels must be "the minimum necessary to provide views from the first floor of the new house". This condition allows for the alteration of natural landforms in order to accomodate private ocean views from the new residence, in direct conflict with the Coastal Act requirement that new development minimize the alteration of natural landforms. The intention of this Coastal Act policy is to protect, to the extent possible, the natural contours of landforms in order to preserve scenic qualities, as well as natural values, of coastal areas. Allowing new development to alter natural landforms in order to provide for private views from the new development is inconsistent with this policy.

Therefore, the above referenced condition of local approval has been specifically modified by the Special Conditions of this permit. Special Condition 2 requires that final grading plans include the minimum amount of grading necessary to provide for the structural integrity of the proposed residence; confirmation of this by a certified Geotechnical Engineer is required by Special Condition 3. Only with these conditions can the project be found to be consistent with the scenic resource protection policies of the Coastal Act, as well as Coastal Act requirements for the protection of environmentally sensitive habitat areas (addressed in Finding 3 of this staff report).

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 along the crest of the Flandrian (late Pleistocene era) dune field that rises from 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 require: 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 runup; and preservation of sand dunes wherever feasible.

Because of its distance from the shoreline (approximately 500 ft), no shoreline erosion rate study was 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.

In order to ensure that all of the relevant site specific hazard issues had been adequately addressed through the use of the geotechnical report completed for a nearby site, the applicant provided a site specific geotechnical investigation by Reynolds and Associates dated August 20, 1996. This report contains specific recommendations intended to assure the structural integrity of the development.

Special Condition 3 requires the submission of final project plans to be accompanied by evidence that the Geotechnical consultant has reviewed and approved these plans as being consistent with the recommendations contained in the August 20, 1996 report. This condition is necessary to ensure the structural integrity of the development, in compliance with Section 30253 of the Coastal Act.

8. 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.

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, in a manner which preserves most of the lot as scenic open space to mitigate impacts on scenic resources and environmentally sensitive dune habitat. Likewise, permit conditions allow only the minimum amount of grading necessary to provide for the structural integrity of the new residence. These conditions will minimize site coverage and disturbance, 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 May 7, 1996. Additional impacts and mitigation measures, especially with respect to off-site grading activities, 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

1. Standard Conditions.
2. City's Conditions of Approval.
3. Site Specific Geotechnical Investigation.
4. Botanic Reports
5. Location Map
6. Recent Del Monte Beach Planning Efforts/Maps
7. Site Plan.
8. Elevations.

COASTAL DEVELOPMENT PERMIT

STANDARD CONDITIONS:

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. 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 project during its development, 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. 1

APPLICATION NO.

3-96-73

Standard

Conditions

12 DUNECREST 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 No. 100-455-08 (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 be required to submit the proposed project to the Airport Land Use Commission for review.
4. The recommendations contained in the biological studies prepared by Tom Moss on 8/26/94 and 8/22/95 shall be imposed on the project as follows:

1. Pre-construction

- a. The project site shall be resurveyed for species of special concerns in May or June. If feasible, adjustments should be made in the siting of the building to avoid or minimize potential impacts.
- b. a Tree Removal Permit is required for removal of trees over two inches in diameter, measured at 4' 6" above ground. Replacement trees will be determined by the ARC in evaluation of the landscape plan.
- c. Prepare a Vegetation, Restoration and Maintenance Plan that defines procedures and standards for restoration, maintenance and monitoring of the undeveloped portions of the property.
- d. A qualified biologist shall be retained by the owner to serve as the Environmental Monitor during construction and restoration of the landscape.
- e. All new utilities shall be shown on the site plan. If feasible, all underground utilities should be installed in a single corridor under the driveway and walkways.
- f. All walkways, patios and decks must be shown on the site plan to minimize disturbance to adjacent sensitive areas from foot-traffic, install improved walkways from all exterior doorways.

EXHIBIT NO. 2
APPLICATION NO. 3-96-73
City's Conditions of approval

- g. Temporary fencing shall be installed to protect the dunes outside of the building and grading envelope and the root systems of the Monterey Cypress trees prior to the start of grading and construction work on the site. The Environmental Monitor will confer with the general contractor and identify the location of the fence. The fence will consist of four foot plastic mesh or snow fence. The fence will be securely fastened to metal T-posts, spaced no more than eight feet apart. 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 vehicle parking. All construction personnel should be prohibited from entering the fenced area. It shall be the property owner's responsibility to uphold this requirement.
- h. The Vegetation Restoration and Maintenance Plan shall apply to the entire project site, including 10 and 12 Dunecrest Avenue and any area on the adjacent properties that is disturbed by grading or other construction related activity.
- i. All grading spoils shall be removed from the project site and disposed of at a City-approved location. By not filling in the low area in the northeast corner of the project site, impacting sensitive habitat and taking of 31 Monterey spineflower plants can be avoided.
- j. Loss of the two Monterey spineflower plants from grade cutting on the dune ridge, shall be mitigated by requiring replacement on a 5 to 1 basis, resulting in the planting and survival of no less than 10 individual plants. Monitoring procedures for complying with this requirement should be defined in the Vegetation Restoration and Maintenance Plan.

2. Construction

- a. All activities associated with construction, trenching, storage of materials, and disposal of construction waste and excavated soil shall 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 off-site, preferably within the Del Monte Dunes, but not in a way that will negatively affect any

existing native vegetation.

- d. the Environmental Monitor shall inspect the site no less than one time each week to insure compliance with all provisions for protecting the surrounding environment. Any activity or condition not in accord with provisions of this report will be brought to the attention of the owner or their representative, the general contractor and the City of Monterey Planning Department.
- e. Installation of landscaping identified in the vegetation restoration and maintenance plan will be completed prior to final inspection.

3. Post-construction

- a. Remove the temporary fence.
- b. Retain a qualified biologist and 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 adjacent dunes. In particular, the following invasive species will not be used: acacias (Acacia spp.), genista (Cystisus spp.), pampas grass (Cortaderia spp.) and ice plant (Carpobrotus spp., Mesembryanthemum spp., Drosanthemum spp., Maleophora spp., etc.). Plants requiring frequent irrigation must be confined to special landscape features or planters near to the house.
- d. Maintain the native landscape, including removing exotic plants, planting and caring for additional plants where deficiencies and numbers or species are identified and maintaining any fencing.
- e. The property owner shall perform or provide funding for off-site mitigation to compensate for loss of rare species habitat.
- f. If the property should change ownership, future owners of the property shall have the same obligation for preserving, maintaining and perpetuating native landscape on the site. To insure 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 the burden title to the property in perpetuity and will bind the property owners and their successors.

5. The garage floor elevation shall be 65.5' as shown on the plan dated 4/9/96 to provide a

finish floor height that is no more than one foot (1' 0") above the 64.65' street elevation at the driveway. The entry elevation, second floor elevation and roof ridge elevations shall be as shown on the 4/9/96 plan. The entry floor elevation shall be located at the 68.5 foot elevation as shown on the 4/9/96 plan. Upper floor elevations and roof ridge elevations shall be as shown on the 4/9/96 plan.

6. The basement ceiling height shall be 7' 0" or less in clearance height.
7. A detailed landscape and dune restoration plan shall be prepared and submitted for ARC review and approval prior to completion of the project and issuance of final occupancy.
8. The height and finish elevations of the sand at the highest points in front of the house (between the house and Dunecrest Avenue) shall be as shown on the 4/9/96 plan.
9. The sand shall be removed from around the base of the cypress trees that are located in the front yard as indicated in the site and grading plan dated 4/9/96. These trees should be preserved and maintained in the landscape. Removal of the sand shall have the objective of preservation of the trees and achieving conformance with Condition Number 8.
10. Building architecture and modulation shall be consistent with the plans dated 4/9/96.
11. The roof pitch shall be 5 in 12 as shown on the 4/9/96 plan.
12. Preliminary architectural and detailed grading plans shall be prepared and submitted for Architectural Review Committee review and approval. Off-site grading shall be limited to Lot 9 and Lot 11 and shall be the minimum necessary to provide views from the first floor of the new house.

Approved by City Council
5/7/96

Reynold's Associates

Geotechnical &
Civil Engineers

962331M241-F4

20 August 1996

Mr. Sy Bram
522 Wilshire Blvd
Santa Monica, CA 90401

Subject: **ADDENDUM TO GEOTECHNICAL INVESTIGATION REPORT**
Bram Residence
12 Dunecrest
A.P.N. 11-464-17 and -25
Monterey, California

RECEIVED
AUG 22 1996

Reference: **M. JACOBS & ASSOCIATES, 1991**
Geotechnical Investigation #4 Dunecrest
Job No. 5945-MO241-F31, dated 11 September 1991

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

Dear Mr. Bram,

Pursuant to your request, we have completed our geotechnical review for the proposed residence at 12 Dunecrest in Monterey, California. The purpose of our review was to determine the applicability of the above referenced soil report to the subject property, and provide additional recommendations, if required, specific to the development of this property. Our report is based on a visit to the site, a review of the referenced soil report by M. Jacobs & Associates, and review of the site grading plan prepared by Leo H. Woods. We requested the opportunity to verify subsurface conditions through an exploratory boring and were denied our request.

PROJECT DESCRIPTION

The project site is located adjacent to the north side of Dunecrest Avenue, west of Beach Way in the City of Monterey, California. The site is comprised of sand dune topography vegetated with ice plant and several young to mature trees. Based on the preliminary site plan and discussions with the Project Architect, it is our understanding that the site is to be developed to include a two-story single family residence, with attached garage. The structure will be of wood frame and masonry construction, combined with some concrete slab-on-grade floors. Exact loads are not known but are expected to be typical of such construction.

CONCLUSIONS AND RECOMMENDATIONS

General

1. In accordance with Section 7014, Paragraph (h) of the latest edition of the Uniform Building Code, I.C.B.O, our firm will assume responsibility for the

EXHIBIT NO. 3

APPLICATION NO.

3-96-73

Geotechnical

20 August 1996

geotechnical engineering for this property as you have requested. Based on the results of our observations it is our opinion that the proposed development is feasible from a geotechnical standpoint, and that the referenced geotechnical report is generally applicable for this site, provided the recommendations of the referenced soil report and those outlined below are incorporated into the design and construction phase of the project.

2. The site should be considered to eventually experience a peak average ground acceleration (PAGA) of .40g, and a repeatable high ground acceleration (RHGA) of .26g.

Geotechnical Hazards

3. It is our opinion that the geotechnical hazards which are of concern for this site are seismic shaking, liquefaction/lateral spreading, and dynamic compaction.
4. Structures built on unconsolidated material generally experience movements of higher amplitude and lower acceleration. It is anticipated that peak horizontal and average repeatable ground accelerations of .40g and .26g, respectively, could occur at this property due to a seismic event. In the event of an earthquake, frame and semi-rigid structures with proper seismic parameters incorporated into their design and construction should display only minimal damage. Significant shear walls, seismic tie-downs, anchor bolts, gusset plates, etc. should be adequately provided.
5. Liquefaction and lateral spreading tends to occur in loose, unconsolidated soil. In the absence of available information pertaining to soil densities, gradation criteria, or the location of the groundwater table beneath this site it is our opinion that there is a significant potential for liquefaction to occur at this site during a seismic event. Therefore proper foundation preparation is essential for this project in order to reduce the potential for damage to structures on this property due to liquefaction of the underlying soil strata.
6. Another consideration is dynamic compaction. Due to the loose nature of the materials underlying at least a portion of this site, dynamic compaction could be of concern in a seismic event.

Earthwork Recommendations

General

7. All grading and earthwork should be accomplished in accordance with these recommendations and the grading requirements of the regulating agency. These specifications set forth the minimum standards necessary to satisfy the other requirements of this report and without compliance with these standards, the design criteria in this report will not be valid.
8. As the grading plans and foundation details have not been finalized, some of the recommendations must be general in nature. These items should be reviewed by Reynolds Associates, the Geotechnical Engineer, prior to the contract bidding to ensure that the provisions of this report have been included in the design. At that time, additional recommendations will be provided if necessary.
9. The Geotechnical Engineer should be notified at least four (4) working days prior to any site clearing and grading operations on the property in order to observe the stripping and disposal of contaminated materials, and to coordinate this work with the grading contractor. This time period will allow for any necessary laboratory testing (compaction curves) that should be completed prior to the grading operations. During this period, a pre-construction conference should be held on the site with at least the architect, the grading contractor and one of our engineers present. At this time, the project specifications and the testing and inspection responsibilities will be outlined and discussed.
10. Field observation and testing must be provided by a representative of Reynolds Associates, the Geotechnical Engineer, to enable them to form an opinion regarding the adequacy of the site preparation, the acceptability of fill materials, and the extent to which the earthwork construction and the degree of compaction comply with the specification requirements. If work related to grading is performed without the full knowledge of, and not under the direct observation of Reynolds Associates, the design criteria presented in this report will not be valid.
11. General geotechnical considerations applicable to site grading and recommendations for the design and construction of the project are discussed below.

Site Preparation

12. Prior to grading, the area to be developed for structures, pavements and other improvements should be stripped of any vegetation and cleared of surface and subsurface obstructions. Debris and rubble from clearing operations should be removed from the site.
13. The area should then be stripped of all organics and detrimental topsoil, i.e., about the top two to four inches (2" to 4"). This material may be deposited on-site as directed by the Geotechnical Engineer.
14. Any voids created by the removal of buried obstructions must be backfilled, as needed, with properly compacted native soil that is free of organics and other deleterious materials or with approved import fill.
15. Following the stripping, the area should be excavated to the design grades. Any loose soil in the building and paving areas should be scarified, moisture conditioned and compacted as engineered fill except for any deleterious material noted by the Geotechnical Engineer in the field.
16. Any surface or subsurface obstructions, or questionable material encountered during grading, should be brought immediately to the attention of the Geotechnical Engineer for proper exposure, removal and processing as directed.

Fill Placement and Compaction

17. All fill soil should be placed in uniform lifts not exceeding eight inches in loose thickness, and six inches (6") in compacted thickness, moisture conditioned and compacted to a minimum relative compactive effort. The minimum relative compactive effort of should be 95%. All native and import fill soil should be moisture conditioned such that the moisture content is within two percent (2%) of optimum moisture content at the time of compaction.
18. The relative compaction will be based on the maximum dry density obtained from a laboratory compaction curve run in accordance with ASTM Procedure #D1557-78. This test will also establish the optimum moisture content of the material.
19. Samples of any proposed fill, imported or native, for use on this project should be submitted to the Geotechnical Engineer for approval and appropriate testing not less than four working days prior to the anticipated job site delivery.

Utility Trenches

20. Utility trenches parallel to the sides of the structure should be placed in accordance with Paragraph 33, Page 11 of the referenced soil report.
21. Trenches should be backfilled with granular-type material and uniformly compacted by mechanical means to the relative compaction as required by the "City Specifications", but not less than 95%. The relative compaction will be based on the maximum dry density obtained from a laboratory compaction curve run in accordance with ASTM Procedure #D1557-78. This test will also establish the optimum moisture content of the material.
22. Native sand may be used, therefore place a three feet (3') long concrete plug in each trench where it passes under the exterior foundations. Care should be taken not to damage utility lines.
23. Trenches should be capped with one and one-half (1½') of relatively impermeable soil.
24. Trenches must be shored as required by the local agency, the State of California Division of Industrial Safety Construction Safety Orders, and Federal OSHA requirements.

Redensification Zone

25. Due to the looseness of the soil profile assumed to exist below the site, it is recommended that a zone of this soil within the zone of influence for load carrying elements be redensified to the level of quality as delineated in the Fill Placement and Compaction section of this report.
26. The redensification process should include overexcavation to within six inches (6") of the required redensified depth. The overexcavated material should be stockpiled on site. The next six inches (6") of subgrade should be scarified, moisture conditioned, and compacted as engineered fill to a minimum compactive effort as delineated above. The required grade should then be established by placing the excavated soil in compacted lifts, moisture conditioned, and compacted to a minimum compacted effort as delineated above.
27. The depth of the redensification zone under concrete slab-on-grade construction and pavement sections should be as follows:

20 August 1996

- a. Fifteen inches (15") under the pavement areas, extending a minimum of two feet beyond the edges of the pavement.
 - b. Twelve to eighteen inches (12" to 18") under concrete slab-on-grade area, depending upon the soil conditions observed in the field at the time of construction. This zone should also extend a minimum of two feet beyond the slab edge.
28. Where spread footing foundation systems are to be used a redensification zone should be provided under the footing elements. The depth of redensification should be equal to the embedment of the foundation plus twice the width of the footing, and extend a minimum of two footing widths beyond the outside edges of the footing. Please refer to Figure No. 1, "Subexcavation Detail" enclosed with this report.

Retaining Walls

29. Retaining walls should be designed as recommended in the M. Jacobs Report, however as an alternative to the specified backfill the wall backfill may also consist of crushed or rounded "pea" sized gravel 3/8" by No. 6. A layer of Mirafi 140N or equivalent filter fabric should be placed over the permeable material in lieu of wrapping it around the backfill. Compacted native soil should then be placed to the ground surface.

Conventional Foundation System

30. We recommend that all structures on this site be founded upon a shallow, conventional foundation system consisting of continuous exterior and interior footings founded into a zone of redensified fill as delineated above. We do not recommend the use of isolated spread footings for this project.
31. All footings should be reinforced in accordance with applicable UBC and/or ACI standards, however we recommend that the continuous footings contain a minimum steel reinforcement of four #4 bars; i.e., two near the top and two near the bottom.
32. All footing excavations must be observed by the Geotechnical Engineer. Any footings constructed without the full knowledge of and continuous observation of Reynolds Associates will render the recommendations of this report invalid.

20 August 1996

Concrete Slab-On-Grade

33. Paragraph 32, Page 11 of the referenced soil report should be amended to recommend a minimum reinforcing of No. 3 steel bars placed sixteen (16) inches on center in both directions. The reinforcing must be firmly held in the vertical center of the slabs during placement and finishing of the concrete with pre-cast concrete dobies.

Pavement Design

34. Please refer to the referenced soil report for recommendations concerning pavement design for this project.

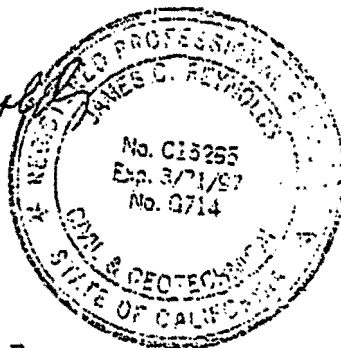
Plan Review

35. We respectfully request an opportunity to review the plans during preparation and before bidding to insure that the recommendations of this report have been included and to provide additional recommendations, if needed. If not afforded this opportunity, we cannot be responsible for misinterpretation of our recommendations.

The opportunity to be of service is appreciated. If you have any questions or if we may be of further service, please do not hesitate to call our office.

Reviewed by,

James C. Reynolds
James C. Reynolds



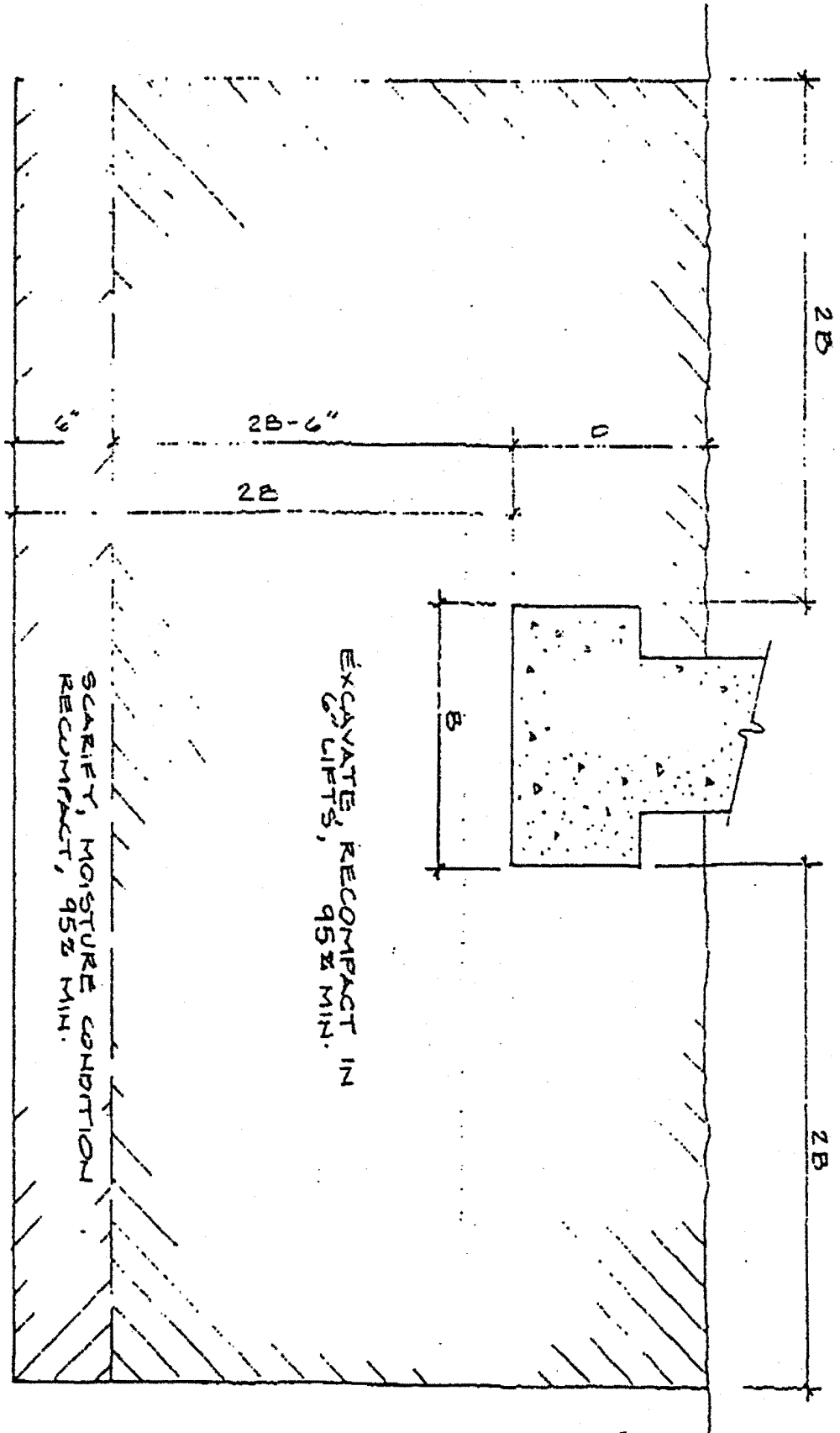
Very truly yours
REYNOLDS ASSOCIATES

Elizabeth Mitchell

Elizabeth M. Mitchell
Project Engineer

EMM:JCR:emm

Copies: 2 to Mr. Sy Bram
2 to Mr. Pedro Rosado, 8755 Coker Road, Prunedale, CA 93907



THOMAS K. MOSS
Coastal Biologist

BOTANICAL SURVEY REPORT
10 & 12 DUNECREST AVENUE, MONTEREY, CA
APN 011-464-16 & 25

Owner:

Sy Bram
522 Wilshire Blvd., Suite M
Santa Monica, CA 90401

Owner's Representative:

Pedro E. Rosado, Architect
8755 Coker Road
Salinas, CA 93907

RECEIVED

APR 5 1995

CITY OF MONTEREY
PLANNING DEPARTMENT

August 26, 1994

Summary Results: The applicant proposes to construct a new single-family residence on a double lot in the coastal dunes of the Del Monte Beach Tract #2. A list of measures are recommended for protecting environmentally sensitive habitat and for guiding restoration of the property's sand dunes.

248 Chestnut Street
Pacific Grove, CA 93950

EXHIBIT NO. 4
APPLICATION NO. 3-96-73
Botanic reports

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BOTANICAL SURVEY REPORT
10 & 12 DUNECREST AVENUE, MONTEREY, CA
APN 011-464-16 & 25

I. INTRODUCTION

This report presents the results of a botanical survey for 10 and 12 Dunecrest Avenue in the Del Monte Dunes of the City of Monterey. The project site consists of two adjacent 40 x 90 foot vacant parcels. This report has been prepared in conjunction with a proposal to construct a new single family residence and was requested by the project applicant, Pedro E. Rosado, Architect. A biological survey report is required by the City of Monterey Planning Department because the property has been designated as an area containing environmentally sensitive habitat and/or endangered species in the Del Monte Beach Land Use Plan.

The California Department of Fish and Game (CDFG) has established guidelines for conducting botanical surveys and preparing reports (Appendix 1). This botanical survey report is consistent with those guidelines and provides the following information: 1) an overview of environmental laws that are pertinent to developments in the Del Monte Dunes; 2) a description of existing vegetation on the property; 3) an assessment of potential impacts resulting from the proposed development; 4) recommendations for minimizing or avoiding identified impacts, and; 5) a list of development guidelines for protecting and restoring the property's natural resource values.

II. ENVIRONMENTAL PROTECTION POLICIES

A. California Coastal Act

The project site occurs in an area that is identified by the California Coastal Commission as "environmentally sensitive habitat area," which is defined in the California Coastal Act of 1972, section 30107.5, as:

"... any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments."

Furthermore, Section 30240 lists the following policies:

(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 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 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 a significant adverse effect, either individually or cumulatively, on coastal resources ...

To protect rare and endangered species and their habitat, as part of the coastal permit process, the Coastal Commission has consistently set limits and conditions for new development in the Del Monte Dunes, including the following requirements: a) site review and impact analysis by a qualified biologist; b) establishment of a buffer area between new developments and environmentally sensitive habitat areas; c) requirement for a conservation easement or deed restriction; d) limitation of site coverage; e) resiting or redesigning to minimize impacts to botanical resources, and; f) preparation and recordation of a vegetation restoration and maintenance plan.

B. California Endangered Species Act

The CDFG maintains an inventory of "Special Plants" and "Special Animals," which includes all listed state and federal wildlife species, candidates for federal listing, and plants that are listed by the California Native Plant Society. The CDFG's policy is that impacts to Special Plants and Special Animals should be avoided. If impacts are unavoidable, appropriate mitigation should be provided. A permit is required from the CDFG to take (remove), transplant, propagate, plant, or otherwise interfere with any of these species.

Protection of rare and endangered species on private property in California, is primarily achieved through the California Endangered Species Act (CESA) as amended in 1987 (California Fish and Game Code Sections 2050 - 2098), which includes provisions intended to improve protection afforded to endangered or threatened species affected by development projects that are subject to the California Environmental Quality Act (CEQA). CESA requires that state agencies should not approve projects as proposed which would jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of habitat essential to the continued

existence of those species, if there are reasonable and prudent alternatives available.

The California Coastal Commission, which as a state lead agency, approves projects in the coastal zone, is therefore required under CESA to consult with the CDFG when reviewing projects that could impact plants and animals of special concern.

C. Federal Endangered Species Act

Under the Federal Endangered Species Act of 1973, a permit (Section 10-a-1) is required from the U. S. Fish and Wildlife Service for the taking of any federally listed endangered or threatened animal. A federal permit for the taking of a federally listed plant is only required for projects that occur on federal lands, receive federal funds or include an action authorized by a federal agency.

III. ENVIRONMENTAL SETTING

A. Project Location

Figure 1 identifies the project location on a regional site map.

The project site is bordered by residences on the west and south sides, a vacant parcel on the east side, and open, undeveloped dunes to the north. The project site is located approximately 900-ft from the beach and is part of Del Monte Beach Tract #2, which is an 85 parcel "paper" subdivision that encompasses about 7.5 acres of sand dunes and is mostly undeveloped except for twenty houses that line Beach Way and Dunecrest Ave. Both of these streets originate in Del Monte Beach Tract #1, which lies immediately to the east, covering 25 acres and consisting of several hundred houses and condominiums. To the west of the Del Monte Beach Tract #2 are the Monterey Water Pollution Control District facilities on the Naval Postgraduate School property, an area which is locally referred to as the "Navy Dunes." Much of this dune area is presently undergoing restoration by the City of Monterey.

B. Site Conditions

The project site is centrally dominated by a dune ridge that is covered by European beach grass (Ammophila arenaria) on the seaward side and a dense grove of small Monterey cypress (Cupressus macrocarpa) trees on the inland side. Open sand with a sparse cover of exotic and native plants occur to either side of the central ridge. The majority of the site is not susceptible to wind erosion. For the most part, the project site is situated behind (inland) of a high dune that is covered by European beach grass. Only the northwest corner of the site is exposed to the wind, but this area, too, is covered by European beach grass.

FIGURE 1. PROJECT LOCATION

10 & 12 DUNECREST AVENUE
MONTEREY, CA
APN 011-461-16

MONTEREY BAY

MONTEREY

DUNECREST AVENUE

10 & 12 DUNECREST AVENUE

Exhibit 4,
p. 6
3-96-73

10 & 12 DUNECREST AVENUE
MONTEREY, CA
APN 011-461-16

В А. У

MONTEREY BAY

Exhibit 4,
p. 6
3-96-73

The natural resource values of the property have been severely degraded by past human activity and the introduction of various exotic species.

C. Major Plant Communities and Habitats

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

The dunes and the associated native plant community of the Del Monte Beach Tract #2 have been severely degraded as a result of years of unconstrained human activity. The dunes are predominantly barren and native vegetation is scarce. Exotic ice plant is the most common plant. In the absence of sufficient plant cover, the dunes are actively eroding and blowing inland. Although the dunes and the native habitat could be restored and preserved, this goal is not possible so long as human use of the area continues in its present manner.

The high dune in the middle of the Del Monte Beach Tract #2, just seaward of the project site, is covered by European beach grass, which is an aggressive exotic invader of coastal sand dunes. With its seemingly unlimited capacity to trap sand, European beach grass is used in many coastal countries throughout the world to stabilize barren sand dunes. Unfortunately, it has virtually no habitat value to wildlife and it displaces all other vegetation.

The most inland parcels of Del Monte Beach Tract #2 (Block 468) are still relatively pristine and contain a remnant example of the area's original native plant cover, including several endangered plant species.

D. Rare and Endangered Species

The Del Monte Dunes 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 ammodophilum), Monterey paintbrush (Castilleja latifolia), black legless lizard (Anniella pulchra nigra) and Smith's blue butterfly (Euphilotes enoptes smithii). Although not listed as a protected species, the dune buckwheat and coast buckwheat (Eriogonum parvifolium and E. latifolium, respectively) are also given special consideration because they provide critical habitat for Smith's blue butterfly.

The species listed above and their protection status are described below:

1. Sand gilia; Federal Endangered, California Threatened Species, and California Native Plant Society List 1B - Rare or Endangered.
2. Monterey spineflower; Federal Threatened Species and California Native Plant Society List 1B - Rare or Endangered.
3. Coast wallflower; Federal Category 2 Candidate Species and California Native Plant Society List 4 - Plants of Limited Distribution.
4. Monterey paintbrush; California Native Plant Society List 4 - Plants of Limited Distribution.
5. Smith's blue butterfly; Federal Endangered Species.
6. Black legless lizard; Federal Category 2 Candidate Species and California Protected Species.

IV. BOTANICAL SURVEY

A. Methodology

A botanical survey was conducted on the project site on July 22, 1994. The entire site was visually inspected and all plants were identified and listed according to their species and relative abundance (Table 1). The project site was not searched for black legless lizards.

B. Description of Vegetation

European beach grass and Monterey cypress, both of which are not native to the Del Monte Dunes, occupy over half of the project site. A narrow strip of native dune vegetation, mainly beach sagewort, extends the length of the western boundary where a native landscape restoration project on the adjacent property has spilled over onto the project site. Elsewhere on the project site, several open areas exist where vegetation has been denuded as a result of persistent human activity. What vegetation does occur in these areas is composed of two exotic plants - ripgut grass (Bromus diandrus) and Hottentot fig ice plant (Carpobrotus edulis) - and two native species - beach primrose and pink sand verbenas.

C. Survey Results - Protected Species and Sensitive Habitat

One protected plant species - Monterey spineflower - was found on the project site. Three individual Monterey spineflower plants were identified along

TABLE 1. LIST OF SPECIES ENCOUNTERED

Frequency Code

Very few	1
Few	2
Scattered	3
Common	4
Abundant	5

- * Exotic species
- ** Non-local native
- *** Protected species

<u>Botanical Name</u>	<u>Common Name</u>	<u>Frequency</u>
A. Trees		
Coast live oak	Quercus agrifolia	1
** Monterey cypress	Cupressus macrocarpa	5
* Sydney golden wattle	Acacia longifolia	1
B. Shrubs		
None		
C. Forbs		
Abronia umbellata	Pink sand verberna	2
* Cakile maritima	Sea rocket	2
Camissonia cheiranthifolia	Beach primrose	3
* Carpobrotus edulis	Hottentot fig ice plant	3
*** Chorizanthe pungens	Monterey spineflower	1
Marah fabaceus	California man-root	1
D. Grasses		
* Ammophila arenaria	European beach grass	5
* Bromus diandrus	Ripgut	3

the northern boundary of the project site. No other plants of special concern were observed on the project site.

The timing of the survey was too late in the year for identifying sand gilia. During the late spring, all of the species of special concern are conspicuous in the inland portion of Del Monte Beach Dunes Tract #2 and the adjacent "Navy Dunes." These areas were inspected on the same day that the project site was surveyed, to determine the status of the rare species. All of the species of special concern, except sand gilia, were still evident and identifiable. Sand gilia was observed in these areas earlier in the year and in previous years. If sand gilia occurs on the site, it would not be possible at this time year to find it.

However, given the present condition of the site, it is very unlikely that any sand gilia occur here. Nevertheless, prior to receiving final project approval, the project site should be reinspected next May or June, specifically for sand gilia.

The location of the Monterey spineflowers on the project site are indicated on a vegetation map of the site (Figure 2).

No animals of special concern were observed on the property. Smith's blue butterfly is dependent on the presence of either dune buckwheat or coast buckwheat, neither of which occur on or near the site. The project site does not contain suitable habitat for the black legless lizard.

Habitat quality could be improved by restoring the native landscape on the site, either in its entirety or partially in conjunction with development of a single-family dwelling.

V. IMPACT ASSESSMENT AND MITIGATION MEASURES

A. Site Coverage

No project was presented for review.

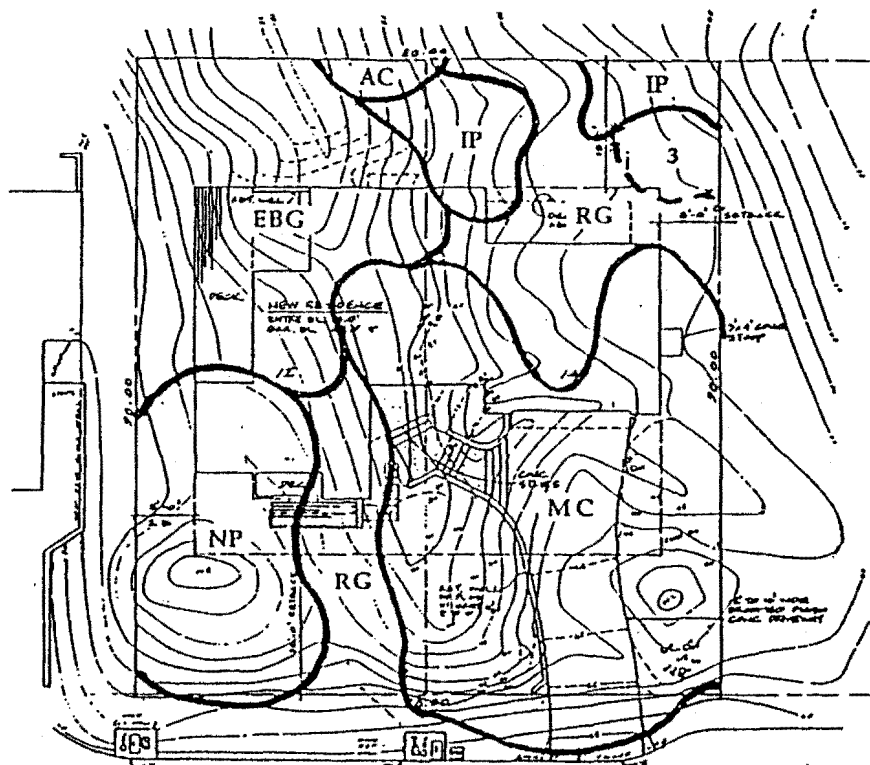
B. Identified Impacts and Mitigation

Based on the results of the current survey and provided that various precautionary measures are taken during the project planning and construction phases, no species of special concern will be directly impacted as a result of developing a residence on the site. The Coastal Commission has required a 5-ft minimum buffer area around known Monterey spineflower concentrations, to prevent trampling, for a previous, approved development permit on the same street (Sy Bram, 4 Dunecrest Ave). Given the location of the few Monterey spineflower plants, which are near the edge of the project site, and the set back requirements for new construction, the location of the Monterey spineflowers is

FIGURE 2. PROJECT SITE VEGETATION MAP

LEGEND

- DOMINANT PLANTS:**
- AC Sydney Golden Wattle (Acacia)
 - EBG European Beach Grass
 - IP Ice Plant
 - MC Monterey Cypress
 - NP Various Native Plants
 - RG Ripgut Grass and Open Sand
- MONTEREY SPINEFLOWER AREA AND NUMBER OF PLANTS**
- 3



DUNECREST AVE.
(SUPPORT)

PROJECT DATA

OWNER: Mr. & Mrs. Sy Bram
222 Wilshire Blvd., Suite 2
Santa Monica, CA 90401

APN (Assessor's Parcel Number): 11-04-16 & 11-04-25

PROPERTY LOCATION: 11 & 14 Dunecrest Avenue
Marine City, CA 94028

RESIDENTIAL DISTRICT: R-1-4-0

STANDARD LOT: (Contains 2 subdivisions but one is currently not)

Lot Area: 7200 sq. ft. (200' x 36' 0")

Max. Coverage: 40% (1 story) + 30% (2 stories)

30% (2 story) + 25% (3 stories)

Actual: 11.7% at 11.7%

Max. Floor Area Ratio: 40% + 30% (2 stories) Actual: 20.0% at 20.0%

Max. Garage Area: 300 sq. ft. (1 car) + 400 sq. ft. (2 cars)

Max. Height: 25 ft. (2nd floor) + 35 ft. (3rd floor)

Front: 20 ft. (1st floor)

Side: 5 ft. (10% of width)

Rear: 15 ft. (20% of width)

Setback: 10 ft. (1st floor) + 15 ft. (2nd floor)

Other: 10 ft. (1st floor) + 15 ft. (2nd floor)

Other: 10 ft. (1st floor) + 15 ft. (2nd floor)

Other: 10 ft. (1st floor) + 15 ft. (2nd floor)

**A New Residence For
Mr. & Mrs. Sy Bram**

DATE: 11-16-85

7200 S. DUNECREST AVE.

DATE: 11-16-85

11-16-85

TOPOGRAPHIC SURVEY

LOTS 12 & 14, BLOCK 11, 2ND MOUNTAIN

BEACH #2, MONTEREY, CALIFORNIA

FOR: SY BRAM

BY: LEO A. WOODS, A.S.

MONTEREY, CA 93940

11-16-85

JULY 30

11-16-85

9441

PLANT SURVEY BY: THOMAS K. MOSS

DATE: JULY 22, 1994

NOTES:
1. ALL PLANTS IDENTIFIED AND LOCATED
2. PLANT SURVEY BY THOMAS K. MOSS
3. PLANT SURVEY BY THOMAS K. MOSS
4. PLANT SURVEY BY THOMAS K. MOSS
5. PLANT SURVEY BY THOMAS K. MOSS
6. PLANT SURVEY BY THOMAS K. MOSS
7. PLANT SURVEY BY THOMAS K. MOSS
8. PLANT SURVEY BY THOMAS K. MOSS
9. PLANT SURVEY BY THOMAS K. MOSS
10. PLANT SURVEY BY THOMAS K. MOSS

Exhibit 4
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not a factor in siting and designing the proposed residence.

However, because Monterey spineflower is an annual, its distribution and density can fluctuate greatly from year to year, depending on weather conditions and the level of disturbance to the site. Therefore, the actual number of plants affected by the proposed project will not be possible to determine until the time of construction.

The project will result in the unavoidable elimination of endangered species habitat. Impacts from construction activity, shadows cast by the proposed residence, trampling incidental to residential use, and (potentially) the introduction of plant species not native to these dunes could affect or eliminate environmentally sensitive habitat over a significant portion of the project site. To limit and mitigate these impacts, 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 consistently imposed various conditions, as follows:

1. Reduction of site coverage so that the residence, paving and private yard area together cover no more than one-half of the lot.
2. Shifting the proposed house to one side of the lot as far as the City's minimum permissible setback distance will allow when necessary to preserve sensitive habitat, scenic views or public access.
3. Dedicating the undeveloped area of the lot as a permanent Conservation Easement for the purpose of native habitat restoration and protection.
4. Preparation of a vegetation restoration and dune stabilization plan by a qualified biologist/botanist.
5. Contributing a fee to provide for restoration of off-site dunes.
6. Installation of temporary fencing during construction to protect adjacent dunes.
7. Environmental monitoring of the site by a qualified biologist/botanist during construction and restoration of the landscape.

C. Tree Removal

The grove of Monterey cypress trees on the project site is presently overstocked and would benefit from thinning. Some trees will also need to be

removed to permit construction of the driveway and possibly for providing sufficient space for the proposed residence.

Trees proposed for removal may be subject to the requirements of the Monterey tree ordinance (Monterey City Code, Chapter 37, Preservation of Trees and Shrubs). The ordinance provides for the removal of trees "to enable reasonable and conforming use of the property which is otherwise prevented by the location of the tree" (section 37-10, B3). In order to mitigate any adverse effects of tree removal, conditions may be imposed, including the following:

1. Replace or place additional trees on the property;
2. Relocate a tree on-site or off-site, or plant a new tree off-site; and,
3. Initiate an observable maintenance program to insure the continued health and care of other trees on the property.

Applications for removal are submitted with concurrent development plans to the Community Development Department and reviewed by the City Forester.

According to the tree ordinance, the number of replacement trees is equal to the total number of trees to be removed that are six inches or greater in diameter when measured at a point four feet six inches above the trees' natural grade. Most of the Monterey cypress trees on the project site are smaller than six inches in diameter.

The tree ordinance requires off-site planting and payment of costs equivalent to two years of maintenance for situations when there is inadequate space for all the replacement trees on the property. The City Forester makes the determination of the number of trees to be planted off-site and their total cost for maintenance.

The tree ordinance requires that replacement trees be planted from five gallon containers.

Although not a protected species, the Monterey cypress grove on the project site contributes to the stability of the central dune ridge and provides a scenic quality to the site that is unique among the hundreds of properties in Del Monte Beach Tracts #1 and #2. If possible, the characteristics of the topography and vegetation on the project site should be incorporated into the project design.

D. Guidelines For Development

The following guidelines are specifically recommended for achieving protection and restoration of the dunes on the project site that are outside of the building envelope:

1. Pre-construction Period

- a. The project site should be re-surveyed for species of special concern next May or June. If feasible, adjustments should be made in the siting of the building to avoid or minimize potential impacts.
- b. A City of Monterey tree removal permit is required for removal of trees six inches or greater in diameter (dbh - diameter breast height). The City Forester will determine how many replacement trees are required.
- c. Prepare a Vegetation Restoration and Maintenance Plan that defines procedures and standards for restoration, maintenance and monitoring of the undeveloped portions of the property.
- d. A qualified biologist should be retained by the owner to serve as the Environmental Monitor during construction and restoration of the landscape.
- e. All new utilities should be shown on the site plan. If feasible, all underground utilities should be installed in a single corridor and situated under the proposed road, driveway and walkways.
- f. All walkways, patios, and decks must be shown on the site plan. To minimize disturbance to adjacent sensitive areas from foot-traffic, install improved walkways from all exterior doorways.
- g. Temporary fencing should be installed to protect the dunes outside of the building envelope and the root systems of the Monterey cypress trees. The Environmental Monitor will confer with the General Contractor and identify the location of the fence. The fence will consist of high-visibility, 4-ft plastic mesh or snow fence. The fence will be securely fastened to metal T-posts, spaced no more than 8-ft apart. 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 off-site, preferably within the Del Monte Dunes, 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 their representative, the General Contractor and the City of Monterey Planning Department.
- e. Installation of landscaping identified in the Vegetation Restoration and Maintenance Plan 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 spp.), genista (Cytisus spp.), pampas grass (Cortaderia spp.) and ice plant

(Carpobrotus spp., Mesembryanthemum spp., Drosanthemum spp., Maleophora spp., etc.). Plants requiring frequent irrigation must be confined to special landscape features or planters near to the house.

- d. Maintain the native landscape, including: removing exotic plants; planting and caring for additional plants where deficiencies in numbers or species are identified, and; maintaining any fencing.
- e. The property owner should perform or provide funding for off-site mitigation to compensate for the loss of rare 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. 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.

Prepared

By: Stacy L. Miller

Date: 8/26/97

THOMAS K. MOSS
Coastal Biologist

BOTANICAL SURVEY SUPPLEMENTAL REPORT
10 & 12 DUNECREST AVENUE, MONTEREY, CA
APN 011-464-16 & 25

Owner:

Sy Bram
522 Wilshire Blvd., Suite M
Santa Monica, CA 90401

Owner's Representative:

Pedro E. Rosado, Architect
8755 Coker Road
Prunedale, CA 93907

August 22, 1995

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-3-96-73

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BOTANICAL SURVEY SUPPLEMENTAL REPORT
10 & 12 DUNECREST AVENUE, MONTEREY, CA
APN 011-464-16 & 25

INTRODUCTION

A botanical survey report was prepared for the proposed project on August 26, 1994. In addition to describing the flora, the report provided a set of guidelines for mitigating impacts to the environment resulting from the proposed project. Since then, the scope of the project has been modified and, as a result, the City of Monterey is required under the California Environmental Quality Act to re-notice the original Negative Declaration that was filed on the project. To comply with this requirement, the City of Monterey has requested that the property owner update the original botanical survey. This report satisfies that request and provides the following information: 1) identification of any significant changes in plant composition and distribution; 2) an assessment of potential impacts from the new project, and; 3) recommended mitigation measures to reduce or avoid potential impacts.

PROJECT DESCRIPTION

The project proposes to construct one single-family residence on two adjacent 40 x 90 foot vacant parcels, described as 10 and 12 Dunecrest Ave. in the Del Monte Dunes of the City of Monterey. The original project has been modified to include additional grading, entailing 1) reducing the height of the dune ridge that extends toward the ocean from the northwest corner of the project site and 2) filling a low area off the northeastern corner of the project site. The new project proposes lowering the dune ridge by approximately 5-ft and disposing of the excavated sand on-site and off-site. The project site has been enlarged to encompass the proposed grading, and now incorporates approximately 30-ft of the two adjacent properties on the north side of 10 and 12 Dunecrest Ave. (Figure 1).

RARE PLANT SURVEY

The project site was surveyed again on July 7, 1995, which coincides with the flowering period of the Monterey spineflower (Corisanthe pungens var. pungens). Monterey spineflower is the only protected species that occurs on the project site. The current survey also inspected the adjacent areas that will be impacted by the proposed grading.

Since the original project site was surveyed in 1994, the number of Monterey spineflower plants has increased from 3 to 17. An additional 16 Monterey spineflower plants were identified in the adjacent area where grading

is proposed, increasing the total Monterey spineflower plants on the proposed project site to 33. Of the total, 2 plants occur on the dune ridge and 31 plants occur in the northeast corner of the project site.

The vegetation map from 1994 has been updated to reflect the change in numbers and distribution of Monterey spineflowers and to include the vegetation on the enlarged project site. This information is presented in Figure 2.

IMPACT ASSESSMENT AND MITIGATION MEASURES

Impacts to the botanical resources and appropriate mitigations were discussed in detail in the project's Botanical Survey Report of 1994. Only additional impacts resulting from the modified project are addressed here in this report.

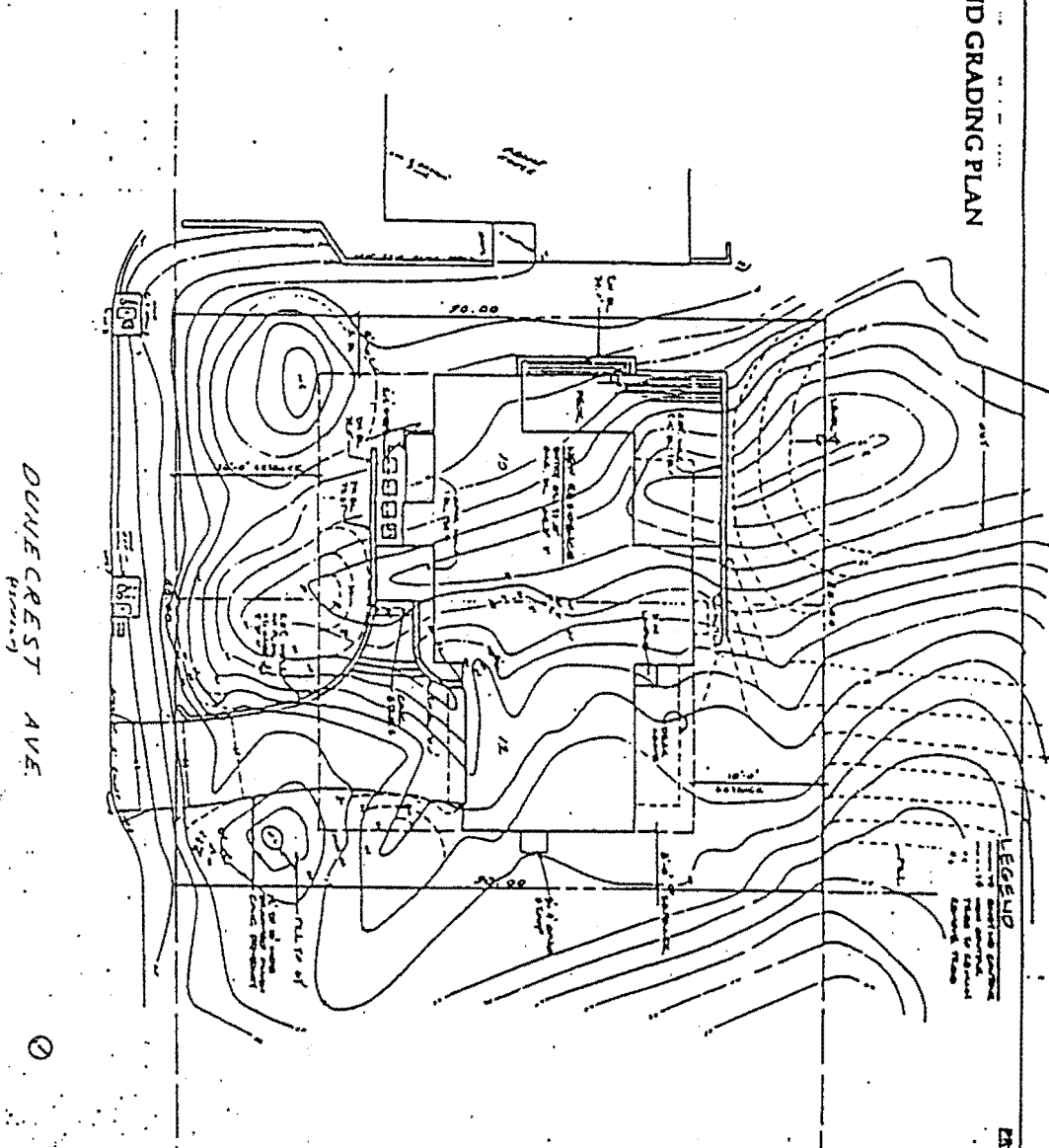
The proposed project will result in the taking of all of the existing 33 Monterey spineflower plants on the project site. Grading proposed in conjunction with reducing the height of the dune ridge, will result in the taking of two Monterey spineflower plants. Filling in the low area in the northeast corner of the project site will result in the taking of 31 Monterey spineflower plants.

In addition to the previous provisions for mitigating the loss of Monterey spineflower plants and sensitive habitat on the site, the following provisions are recommended:

1. The Vegetation Restoration and Maintenance Plan should apply to the entire project site, including 10 and 12 Dunecrest Ave. and any area on the adjacent properties that is disturbed by grading or other construction related activity.
2. All grading spoils should be removed from the project site and disposed of at a City-approved location. By not filling in the low area in the northeast corner of the project site, impacting sensitive habitat and taking of 31 Monterey spineflower plants can be avoided.
3. Loss of the two Monterey spineflower plants from grade cutting on the dune ridge, should be mitigated by requiring replacement on a 5 to 1 basis, resulting in the planting and survival of no less than 10 individual plants. Monitoring procedures for complying with this requirement should be defined in the Vegetation Restoration and Maintenance Plan.
4. Temporary fencing to protect sensitive habitat areas and the root systems of the retained Monterey cypress trees should be installed prior to the start of grading and construction work on the site. The project Environmental Monitor will identify the location of the fence.

FIGURE 1. SITE AND GRADING PLAN

NOT TO SCALE



ONE CREST AVE.
ARMING

LEGEN

Study and Conference
on the
History of the
United States
and the
World

PROJECT DATA

THE
LIBRARY
OF THE
MUSEUM OF
ART AND
ARCHITECTURE
NEW YORK

480 University Road, Suite 200
 University of California, San Diego
 La Jolla, CA 92037

FT-IR (KBr): 2950 (C-H), 1715 (C=O), 1600 (C=C), 1510 (C=C), 1450 (C=C), 1380 (C=C), 1270 (C=C), 1100 (C=C), 1050 (C=C), 1010 (C=C), 960 (C=C), 910 (C=C), 850 (C=C), 810 (C=C), 750 (C=C), 710 (C=C), 690 (C=C), 650 (C=C), 610 (C=C), 580 (C=C), 540 (C=C), 510 (C=C), 480 (C=C), 450 (C=C), 420 (C=C), 400 (C=C), 380 (C=C), 350 (C=C), 320 (C=C), 300 (C=C), 280 (C=C), 250 (C=C), 220 (C=C), 200 (C=C), 180 (C=C), 160 (C=C), 140 (C=C), 120 (C=C), 100 (C=C), 80 (C=C), 60 (C=C), 40 (C=C), 20 (C=C), 10 (C=C), 0 (C=C).

Net Asset	Price 10 Jan 62 2.00 10
Income	100%
Income Coverage	after 10 days 10 Jan 62 100%

[illegible]

1990-1991	1990-1991
1991-1992	1991-1992
1992-1993	1992-1993
1993-1994	1993-1994
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2017-2018	2017-2018
2018-2019	2018-2019
2019-2020	2019-2020
2020-2021	2020-2021
2021-2022	2021-2022
2022-2023	2022-2023
2023-2024	2023-2024
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2093-2094	2093-2094
2094-2095	2094-2095
2095-2096	2095-2096
2096-2097	2096-2097
2097-2098	2097-2098
2098-2099	2098-2099
2099-2100	2099-2100
2100-2101	

Period = 20 d
 Interest = 6% (10% in 1990)
 Annual = 14 d (10% in 1990)

[illegible]

4000

—

10

—

—

A New Festival

Mr. & Mrs. S.

SECRET

7220 E POPLAR AVE

1997

1113

TOPOGRAPHIC SUR

DEAN - E. MONTGOMERY

Dec 21 1900
Dr. 1500.00
A.C.

MASTERS, C. 73300

A New Fastidious Type

Mr. & Mrs. S. B. Berman

SECRET

1. The first step is to identify the problem or question that needs to be answered. This involves understanding the context and the specific requirements of the task.

2000

1

TOPOGRAPHIC SURVEY

DAKEN - E. MAURITZ CARLSON

25.11.2023

Exhibit 4,
p. 20
3-96-72

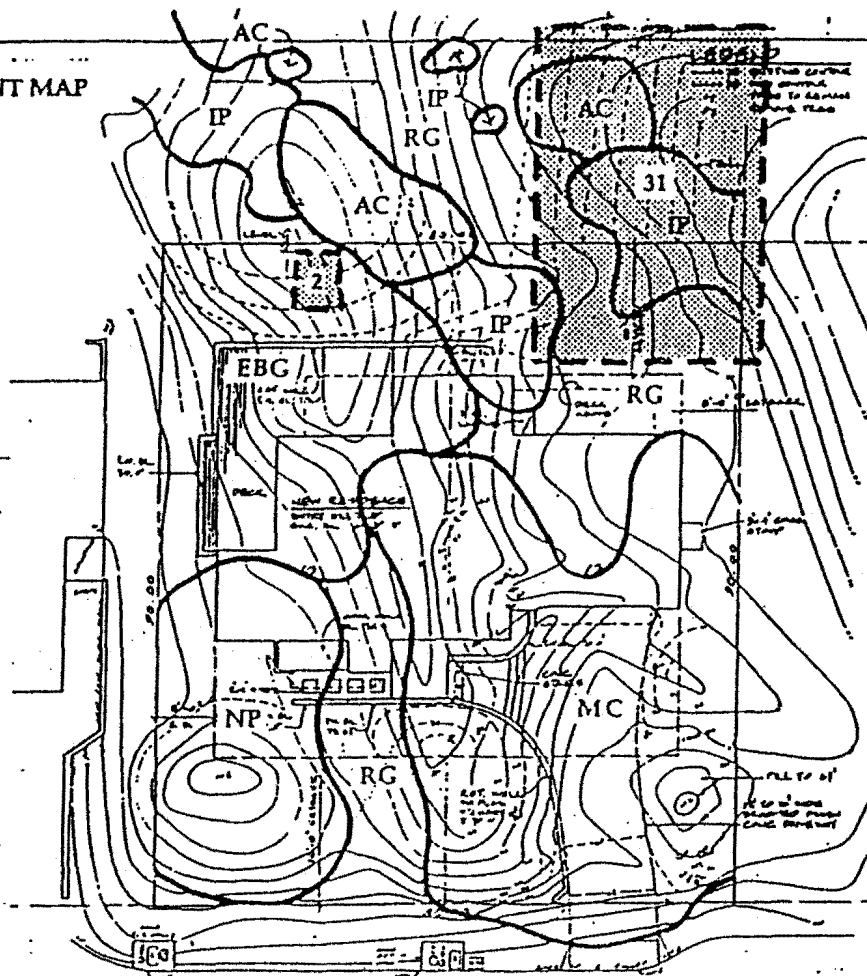
FIGURE 2. VEGETATION AND RARE PLANT MAP

LEGEND

DOMINANT PLANTS:

- AC Sydney Golden Wattle (Acacia)
- EBG European Beach Grass
- IP Ice Plant
- MC Monterey Cypress
- NP Various Native Plants
- RG Ripgut Grass and Open Sand

31 MONTEREY SPINEFLOWER AREA AND NUMBER OF PLANTS



DUNECREST AVE.
(SPPHART)

PLANT SURVEY BY: THOMAS K. MOSS
DATE: JULY 7, 1995

NOT TO SCALE

PROJECT DATA

OWNER: Mr. & Mrs. Sy Bra
345 Wilshire Blvd., Suite 2
Santa Monica, CA 90401
APR 1995: Final Revision
PROPERTY LOCATION: 10111 Ocean Avenue
Santa Monica, CA 90404
NEIGHBORHOOD DISTRICT: S.M.D.
STANDARD LOT: (Contains 1 standard lot per 1 standard lot)

Lot Area: 7200 sq. ft. (0.16 ac.)
Area Covered: 40% (2880 sq. ft.)
Area of Beach: 30% (2160 sq. ft.)
Area of Sand: 30% (2160 sq. ft.)
Area of Water: 0% (0 sq. ft.)
Area of Other: 0% (0 sq. ft.)
Total: 100% (7200 sq. ft.)
Fencing: 1 standard lot (0.16 ac.)
Other: 0% (0 sq. ft.)
Total: 100% (7200 sq. ft.)

A New Residence For
Mr. & Mrs. Sy Bra

YVES P. PONS, LANDSCAPE ARCHITECT

TOPOGRAPHIC SURVEY
LOTT 10 & 11, BLOCK 1, PCH MOUNT
BEACH #2, MONTEREY, CALIFORNIA

FOR SY BRA
P. J. LEO
301 LEO A. VIGOR, A.S.
MONTEREY, CA 93940

Exhibit 4, p. 2)
3-96-73

Bram
12 Dunecrest

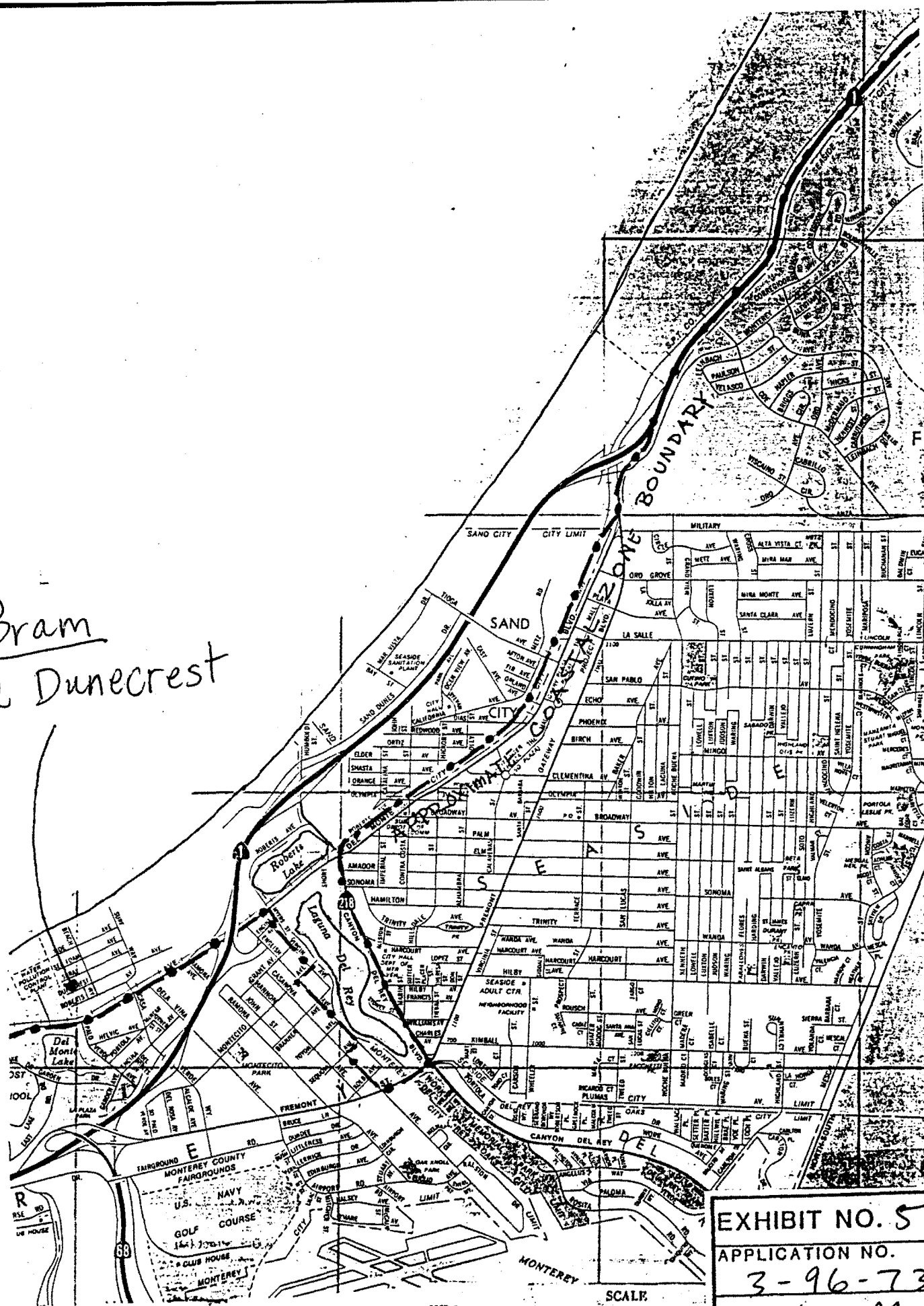


EXHIBIT NO. 5

APPLICATION NO.

3-96-73

Location Map

California Coastal Commission

SEASIDE - SAND CITY



October 7, 1996

Mr. Louis Calcagno
Chair, California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, Ca 94105

Subject: Coastal Development Permit Application Number 3-96-34, Archer, 23 Spray Avenue, Monterey

Dear Mr. Calcagno:

At its September 12 hearing on the Archer project at 23 Spray Avenue in Monterey, the California Coastal Commission expressed a number of concerns regarding the City's efforts to achieve a certified LCP Land Use Plan for the Del Monte Beach segment of the City's coastal zone. This is a response to those concerns addressed by a letter from your staff dated September 30, 1996.

Let me begin by saying the City of Monterey is firmly committed to meeting the objectives of the California Coastal Act, particularly with respect to open space and public access. During your next regular meeting in the Central Coast area or even at a special meeting, I would invite the entire Commission to visit Monterey and see the enhancements we've made to our waterfront. We are so proud of our accomplishments that we have put together a chronicle of them in a report titled "City of Monterey's Waterfront Enhancement Project", a copy of which is enclosed for your review. After seeing our efforts, I would hope you will agree they successfully achieve your objectives to protect and enhance California's coastline.

Those enhancements have been accomplished largely through City funding. The City has spent in the range of \$8 - 10 Million to acquire land, restore and improve our coastline. Some of these accomplishments include the Monterey Bay Park (known as the Window on the Bay); the Monterey Peninsula Recreation Trail; nine single-family lots in the first block of Del Monte Beach; and our most recent addition - the completion of the San Carlos Beach Park at the southerly end of Cannery Row, the site of the dedication of the Monterey Bay Sanctuary. These accomplishments have been very difficult to achieve in an urban environment in a City that is over 200 years old. The financial burden has largely fallen on the City of Monterey and the Monterey Peninsula Regional Park District, with some assistance from the State on the Window-to-the-Bay portion.

EXHIBIT NO. 6
APPLICATION NO. 3-96-73
Del Monte Beach Planning / Maps

In regards to review of proposed developments in Del Monte Beach, the City has spent more time and money on this area than any other area of the City in the last 10 years. A typical 3600 square foot, single-family lot with a proposed 1200 square foot house has required an Environmental Impact Report and taken an average of one and a half years to process through City commissions and the Coastal Commission. In addition, the City has allocated just under \$1 Million to acquire these vacant lots from willing sellers. A fundamental position of the City is not to condemn this private property for open space, recreation use and habitat protection. Currently the City has acquired nine of these vacant lots and the Monterey Peninsula Regional Park District has acquired seven lots. We continue to pursue acquisition from willing sellers. It should be noted that although we have applied for various grants or financial assistance funding from Federal and State agencies, the City of Monterey has received no funding from any State agency in this endeavor.

The City adopted the Del Monte Beach Land Use Plan (LUP) in 1983. It has been revised four times since 1983. The Coastal Commission has refused to certify the LUP insisting that the lots fronting on the City beach be shown for open space, low intensity recreational use and habitat protection. The Commission further insisted on an investigation into potential prescriptive rights in this area. The Attorney General's Office as early as 1983 refused to do the investigation. The City of Monterey's position since 1983 has been that, if the matter of prescriptive rights is to be pursued, it should be by the State and not the City. That is still the City's position today. That is the main reason why we do not have a certified LCP Land Use Plan for the Del Monte Beach segment.

The consequences of regulatory takings are well known to the Coastal Commission. As I'm sure you are aware, the City of Monterey in the past month has lost a judgement on appeal for a "temporary taking" on the Del Monte Dunes (known as Ponderosa) property nearby to this site. This judgement may ultimately cost the City over \$2 Million. The City of Monterey will not place itself in a position for a similar judgement on these vacant lots.

We are currently doing a planning study on the 38 vacant lots between Dunecrest Avenue and the City Beach, Beach Way and the U.S. Navy property. Our first step is to do a constraints and opportunities study. A habitat study was completed on special status species and habitat. A computer model of public and private views is being done. Development alternatives have been prepared including the current subdivision with new development standards, large lots and Planned Unit Development alternatives. Please see the attached handout distributed at Neighborhood Workshop Number 2 on October 3, 1996, which illustrates some of the results of this study to date. The study is also looking at transfer of development credits. The staff of the Central Coast District, have been aware of this study from its onset and have been participating in the study, particularly on the transfer of development credits aspects. It should be emphasized that this study is not being done to acquire the 38 vacant lots. Its purpose again is to evaluate alternative land use patterns based on the constraints and opportunities study. Please note that these 38 vacant lots are part of an existing legal subdivision and are not owned by a single entity. It is not the City's intent to require these private property owners to be part of a Planned Unit Development unless they desire to.

It is our hope that we will develop an alternative that would preserve more open space and provide better public access. However, these alternatives will not be able to preserve the

dunes and meet all the Coastal Act policies: that can only be accomplished through acquisition of all of the remaining lots. I would add that the question of a moratorium on development applications was seriously considered by the City Council before the Planning Study began. City Council action was not to impose a moratorium.

In response to your question, the remaining lots landward of Dunecrest Avenue are not included in this study. They can be developed as single-family lots or as a Planned Unit Development initiated by the owners.

The Planning Study is scheduled for completion by the end of this calendar year. We will then review the completed Study for its utility in revising the LUP for submittal to the Commission for certification. However, if the Coastal Commission continues to insist that the City do a prescriptive rights study, the completion of the LUP will be jeopardized. I would ask the Coastal Commission to eliminate that requirement or to take it upon themselves to do such a study and bear whatever financial consequences arise from the implementation of the conclusions of such a study. With the completion of the Planning Study and the elimination of this requirement, a revised LCP could be accomplished and satisfy both the City of Monterey and the Coastal Commission.

Monterey will continue to restore and enhance its coastline. We are proud of our past efforts and will match them with any coastal area in the State. Furthermore, it is noteworthy that they've been accomplished without a certified LCP. To the extent the Coastal Commission and your staff work with us, I am confident that we will achieve a certified LCP in the near future.

With respect to a City representative at your October 10 Commission meeting in Los Angeles, I'm afraid that we are unable to accommodate you on such a short notice. There is a Monterey Planning Commission meeting scheduled from 4 p.m. to 6 p.m. that same day. However, your Central Coast staff are well aware of the status of our LCP and the Del Monte Beach Planning Study. After receipt of this letter, our staff will be glad to meet with them or Mr. Peter Douglas to address any of your outstanding issues. Please contact Director of Community Development Bill Wojtkowski at (408) 646-3885 if such a meeting is necessary.

I would also like to reiterate my offer that the next time the Coastal Commission holds its meeting in Monterey that you dedicate sufficient time to personally see our open space commitment as well as to see the particular issues pertaining to development on Del Monte Beach. The alternatives to the existing single-family subdivision cannot be explained in the limited time given to the public at a regular Coastal Commission meeting.

Sincerely,



Dan Albert
Mayor

Attachment: • The City of Monterey's Waterfront Enhancement Project (one copy)
• Status Report on October 3, 1996 Del Monte Beach Workshop (includes handouts of development alternatives)

cc: City Council
City Manager Fred Meurer
Director of Community Development Bill Wojtkowski
City Attorney Bill Conners
Peter Douglass, Executive Director
Tami Grove & Lee Otter, Central Coast Staff
Dan Archer, applicant, 23 Spray Avenue
Del Monte Beach Neighborhood Association, c/o Rebecca Hicks
Velma Hollingsworth

Exhibit 6, p. 4
3-96-73

COMMISSION MTG 10/8/96AGENDA ITEM 1.1

CITY OF MONTEREY

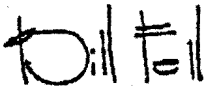
TO: Planning Commission
FROM: Planning Services Manager
DATE: October 4, 1996
SUBJECT: Status Report on Del Monte Beach Workshop

FOR INFORMATION ONLY

A workshop on the Del Monte Beach Planning Study was held Thursday, October 3, 1996. Seventeen residents and vacant lot property owners attended. City, Coastal Commission, and Monterey Peninsula Regional Park District staff also attended.

A previous workshop was held August 21, at which habitat and viewshed data was presented and discussed. The October 3 workshop agenda (Attachment 1) focused on development alternatives. The consulting team presented five (5) conceptual development alternatives (Attachment 2). Workshop participants discussed the pros and cons of each alternative. There was no consensus on a clearly superior alternative.

Consultants and Staff will now refine the alternatives. They will be tested using the computer model of views. A financial feasibility analysis will also be done. The Draft Study will be prepared. We are tentatively planning a joint meeting with the Planning Commission and Architectural Review Committee to review and discuss the Draft Study. The November 26 Planning Commission meeting is a tentative date for that discussion. We would like to have the meeting prior to the holidays. The workshop participants were encouraged to attend and participate in that meeting.



Bill Fell

BF/pk

Attachments: 1. October 3, 1996 Workshop Agenda
2. Del Monte Beach Parcel Ownership Map
3. Goals and Conceptual Development Alternatives

cc: October 3, 1996 Workshop Participants
Cheryl Jencks, 1280 6th Street, Monterey, CA 93940
Gerald McKenzie, 490 Dry Creek Road, Monterey, CA 93940

Exhibit 6, p.5
3-96-73

ATTACHMENT 1

Del Monte Beach Planning Study**Neighborhood Workshop #2 Agenda**

A. Introduction

- Introduce City Staff/Consultants
- Purpose of Meeting
- Review planning process to date
- Overview of tasks to be accomplished

B. Alternatives Design Process Overview

- Goals Considered in Designing Alternative Development Scenarios
- Balancing Competing Objectives

C. Status Quo - Basis for Comparison**D. Alternative 1 - Modified Development Standards****E. Alternative 2 - Large-Lot Development****F. Alternative 3 - PUD Project**

- Design A
- Design B

G. Alternative 4 - Transfer of Development Credits**H. Next Steps**

- Testing and Refinement of Development Alternatives (Biotic, Visual, Financial)
- Preparation of Draft Planning Study
- Planning Commission/Architectural Review Committee Meeting

I. Adjourn

Exhibit 6; p. 6
3-96-73 (2)

ATTACHMENT 2

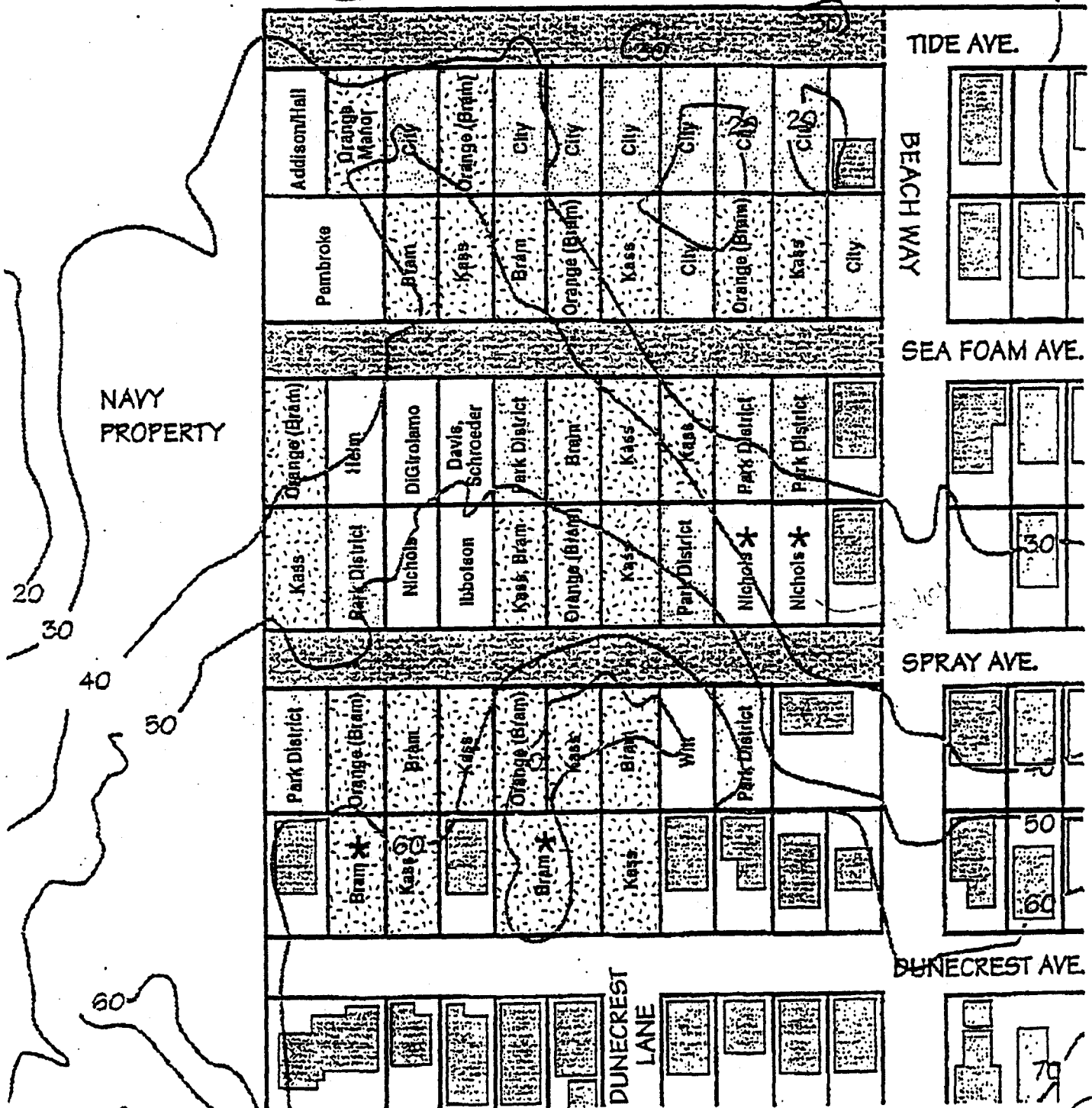
LEGEND

- Developed Lots
- Owned by Kaas/Bram
- Park District
- City Approved Development
- Proposed Streets
- 100 Year Erosion Line

Del Monte Beach Planning Study
City of Monterey

Parcel Ownership
Scale 1" = 200' - 0"

WATER LINE



3-96-73

Exhibit 6, p. 7 (2)

ATTACHMENT 3**Del Monte Beach Planning Study**

Major goals considered in designing alternative development scenarios:

Biotic Resources

- Maximize opportunities for restoration of dune habitat **contiguous** to existing habitat.
- Minimize potential for interference with habitat resources (access limitations)

Visual Resources

- Minimize obstruction of views from public viewpoints
- Minimize obstruction of existing views from on- and off-site private viewpoints.
- Minimize height of retaining walls.

Public Access

- Provide for open space and trails within planning area and connections to existing trails.
- Consolidate publicly-owned portions of planning area.

Circulation/Infrastructure/Public Facilities

- Minimize environmental and fiscal costs of street, water and sewer extensions.
- Meet City fire standards for street extensions.
- Provide opportunities for neighborhood serving park/tot lot/community facility.

Topography

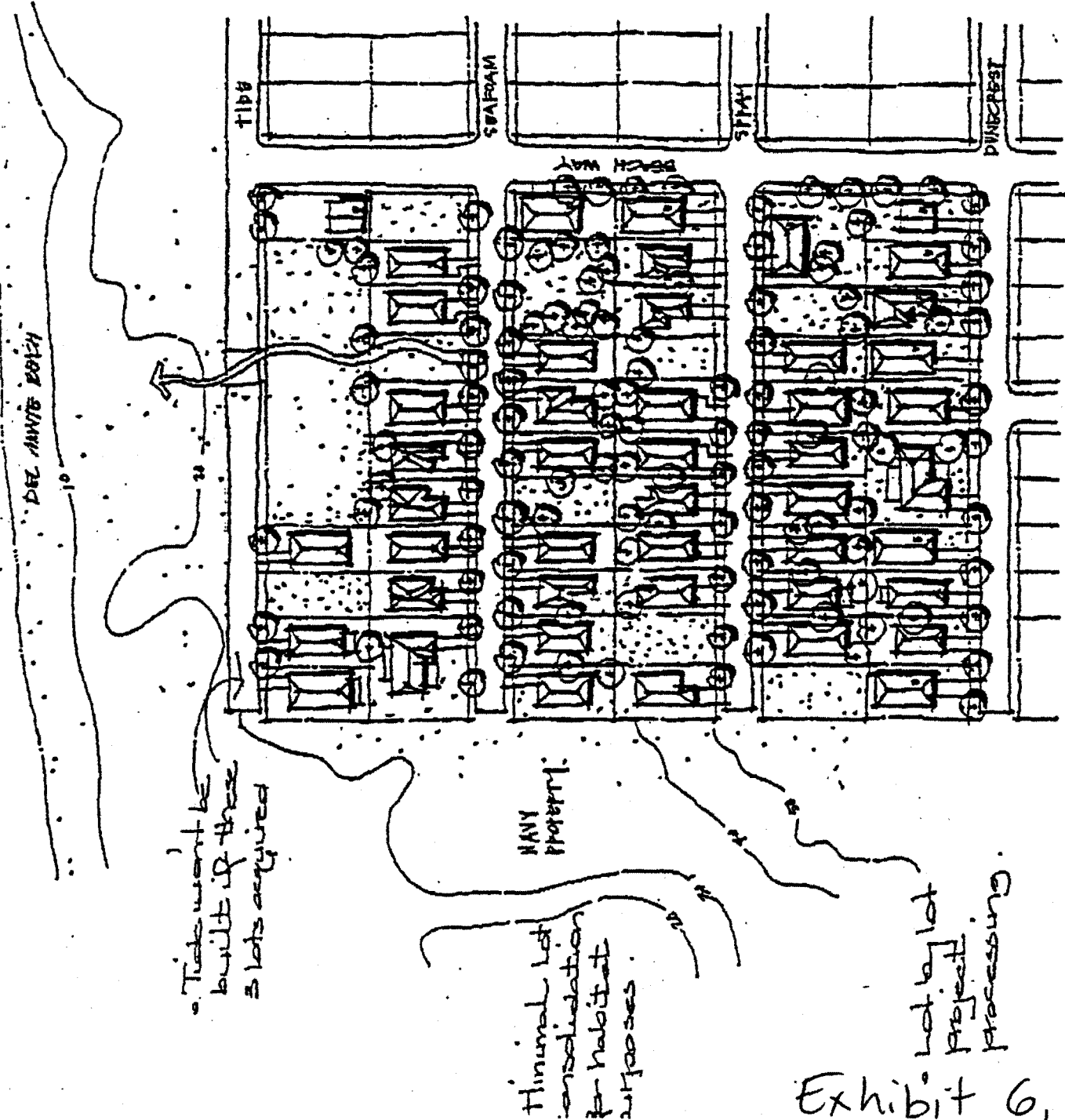
- Use grading to enhance views.
- Use grading and habitat restoration to minimize sand transport.

Financial Concerns

- Provide financially viable development alternatives for property owners.
- Provide fiscally viable development alternatives for City.

Exhibit 6, p-8
3-96-73

4



STATUS QUO - SUBDIVISION BUILDOUT SCENARIO

DEL MARTE BOCH PLANNING STUDY
12/10/01 11/1/02

Exhibit 6, p. 9

- Houses same size as status quo alternative
- All new houses one story.
- Lots terraced to provide views.

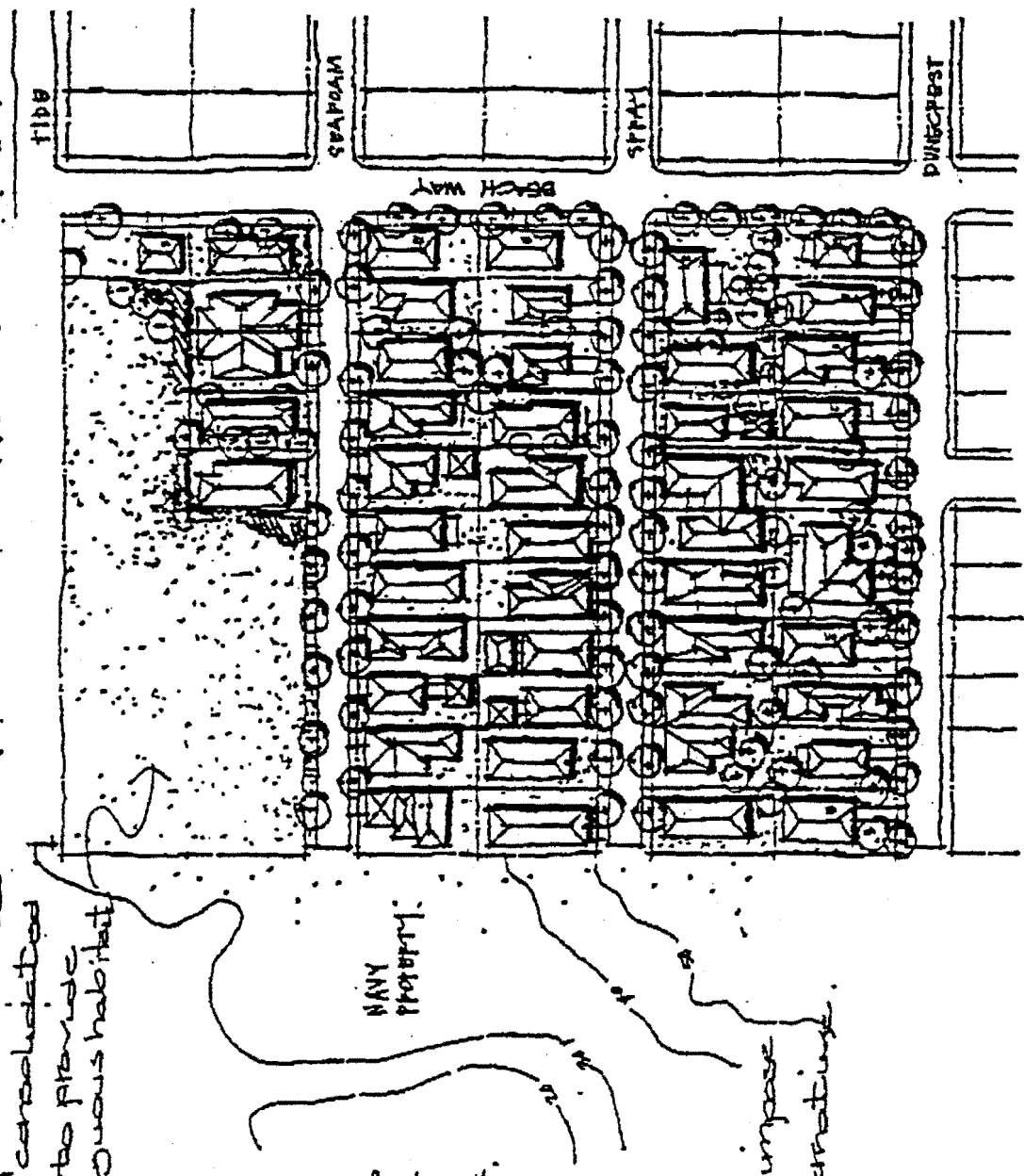


DEL ANTE EPOCH PLANNING STUDY

• City & Park District lots consolidated here to provide contiguous habitat

• Eliminates 80% on site open space requirement.

• City can impose this alternative.



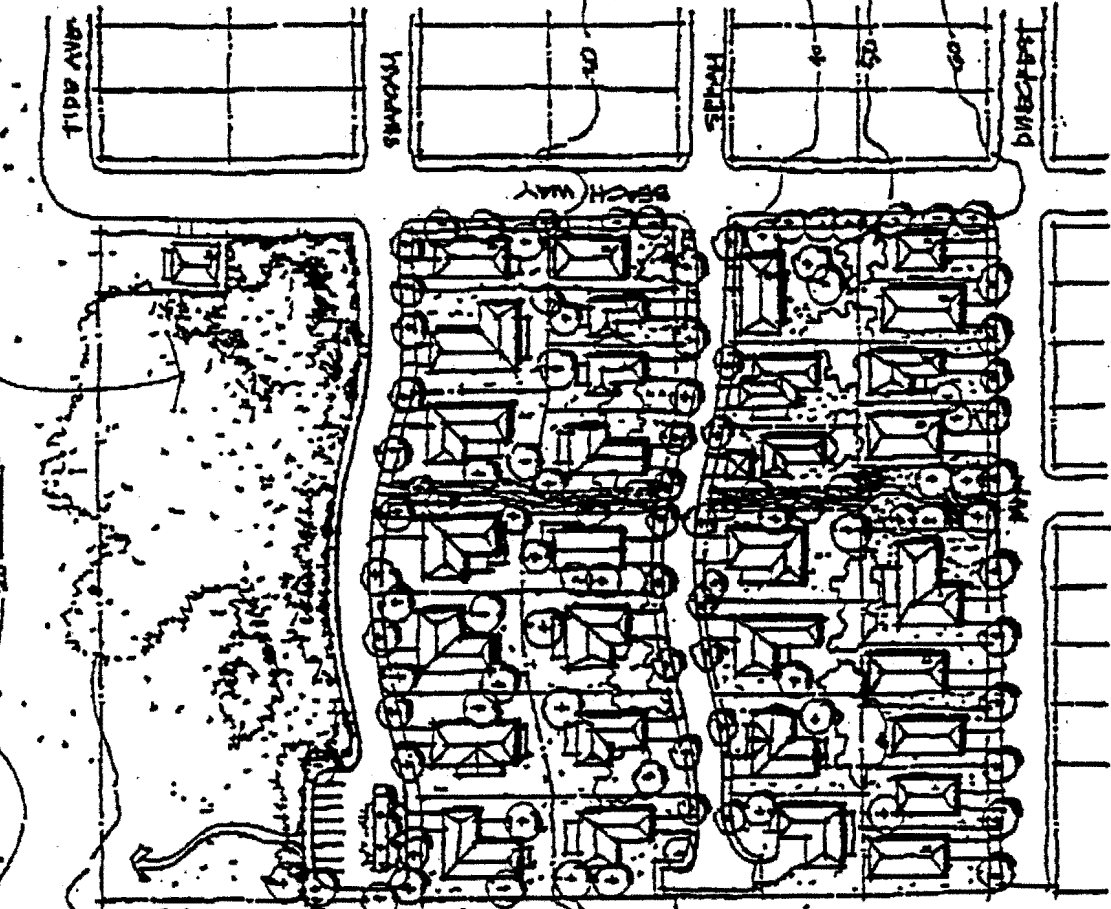
ALTERNATIVE 1 - MODIFIED DEVELOPMENT STANDARDS

Exhibit 6,
p. 10
3-96-73
(6)

DEL ANTE DASH

10

Potential neighbor
head park site.



• 6000 sq. ft. Lots
consistent with
zoning

• One & Two story
houses

• 50% FILL
could be an
unconture.

• Lots terraced
to provide views
could off-set
houses to open
up views.



• Curvilinear street,
public parking & fire
truck turnaround

• Could provide
circular road
if acquire these
two lots

• This Alternative
requires property
owner concurrence

DEL ANTE DASH PLANNING STUDY
11-20-01 11/1/02

ILLUSTRATIVE PLAN

ALTERNATIVE 2 - LARGE LOT SCENARIO

Exhibit 6
p. 11
3-96-73

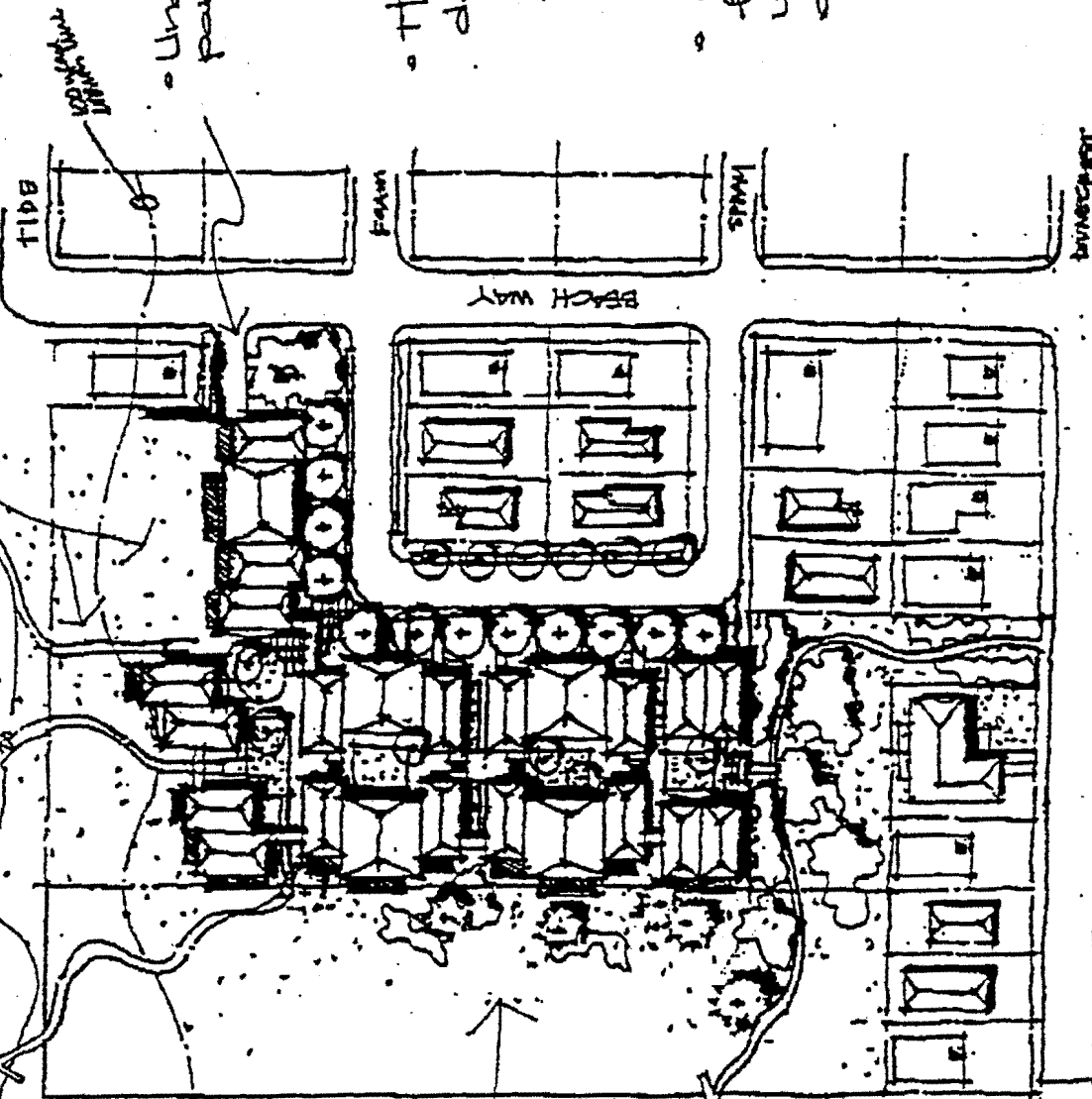
DEL. NAVY PROP.

One story units

Maximizes contiguous habitat with beach & Navy habitat.

High units fronting on open space

This Alternative requires property owner concurrence.



Underground parking entrance

Minimizes road development.

Could range from 30-750 units depending on unit sizes.

ALTERNATIVE 3A - PLANNED UNIT DEVELOPMENT

CONNY, INC.

ALTERNATIVE PLAN

DEL. NAVY PROP. NAVY HARBOR

12-01-01 21-10-01

Exhibit 6
P. 12
3-96-73
(8)

• Maximizes beach habitat.

• Neighborhood Park provided

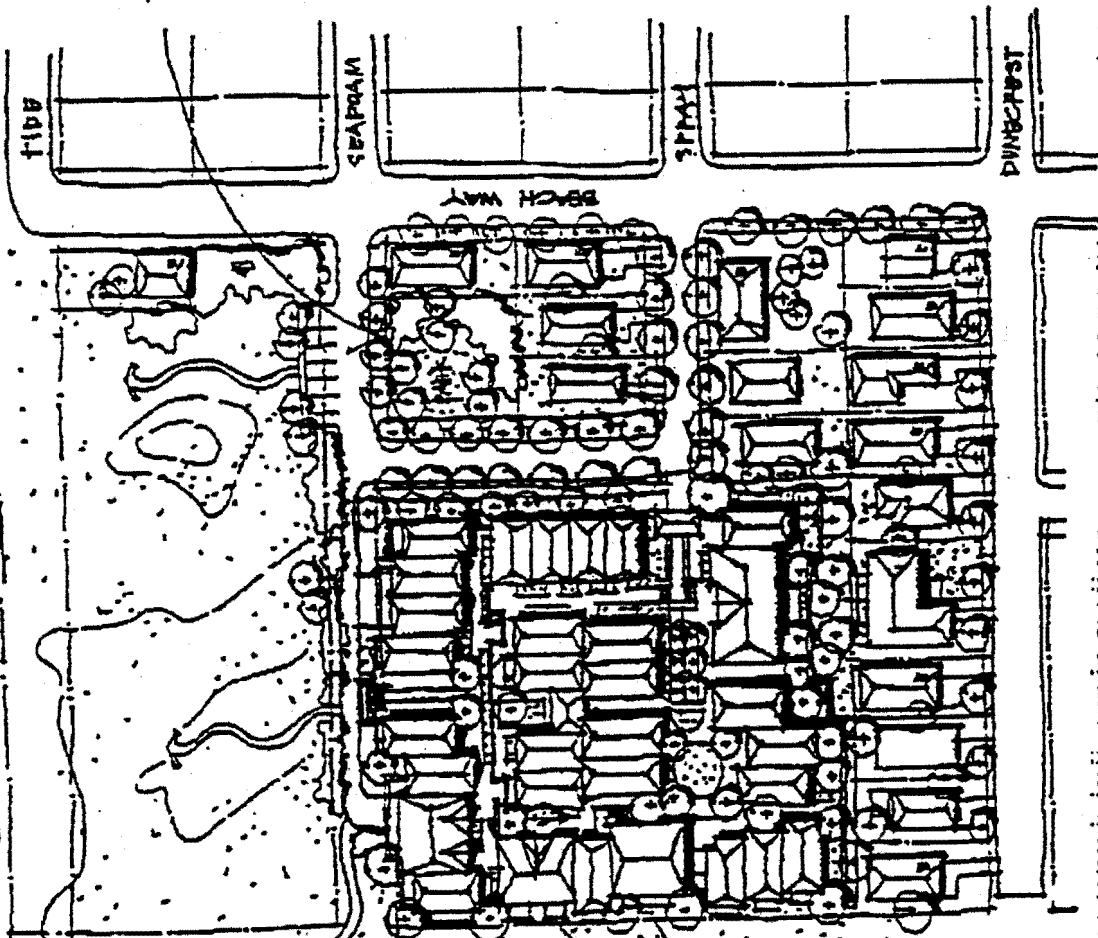
• Two entrances to underground parking.

• View protection hinges on topography and tree angles

• Could range from 30-50 units depending on unit sizes.



DEC 1996 NATCH PLANNING STUDY
1:5000' scale



• Could provide connection to new emergency access

NAVY PROPERTY

• This Alternative requires property owner concurrence

ALTERNATIVE 3B - PLANNED UNIT DEVELOPMENT

ILLUSTRATIVE PLAN

EDM, MD.

Exhibit 6,
P. 13
3-96-7301

EXHIBIT NO. 7
APPLICATION NO. 3-96-73
Site Plans

LEGEND
 --- TO EXISTING CONTOUR
 --- TO NEW CONTOUR
 --- TREE TO REMAIN
 --- REMOVING TREE

PROJECT DATA

OWNER: Mr. & Mrs. Sy Bram
 522 Wilshire Blvd., Suite E
 Santa Monica, CA 90401
 APN (Assessor's Parcel Number):
 PROPERTY LOCATION: 12
 RESIDENTIAL DISTRICT: R1-0-0
 STANDARD LOT: (Conform 2 Subdiv)
 Lot Size: 7300 ± 1.00
 Max. Coverage: 42% (1 story)
 35% (2 story)
 Actual =
 Max. Floor Area Ratio: 42%
 Max. Garage Area: 500 ± 1 ACTUAL = 495 ± 1
 Max. Height: 25 ft. 9 in. A.S. 2.2 NORTH HALL
 Yards: Front = 20 ft.
 Side = 8 ft. (10% of width)
 Rear = 18 ft. (20% of depth)
 Parking: 1 assigned, 2.1 unassigned on lot (per in setback)
 SPECIAL OFFERS:
 7200 ± 1.00 LPT
 = 2300 ± 1.00 HOURS, OTHER
 = 4900 ± 1.00 HOURS, OTHER
 = 1514 ± 1.00 LPT

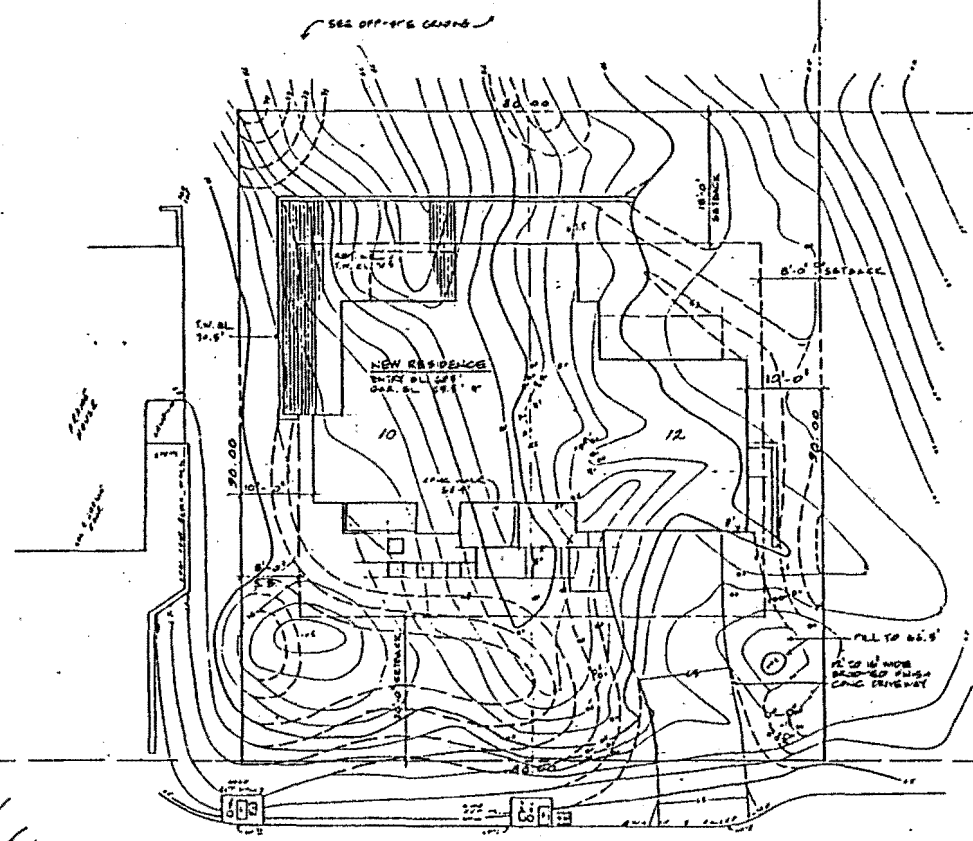
A New Residence For
Mr. & Mrs. Sy Bram
 522 Wilshire Blvd., Suite E
 Santa Monica, CA 90401
 Tel. No. (310) 393-0000
PEDRO E. ROSADO, Architect
 8153 Coler Road
 Torrance, CA 90507
 Tel. No. (408) 603-0966

DATE: 6-1-86
 6-18-86
 6-18-86

A.A. 11-242-17 & 15
TOPOGRAPHIC SURVEY
 LOTS 10 & 12, BLOCK M, DEL MONTE
 BEACH #2, MONTEREY, CALIFORNIA
 FOR: SY BRAM
 P. E. Rosado
 ST. LEO F. WOODS, L.S.
 MONTEREY, CA 93940



JULY '84 1" = 8' 9461



DUNE CREST AVE.
 (ASPHALT)

SITE & GRADING PLAN

SCALE: 1" = 8'

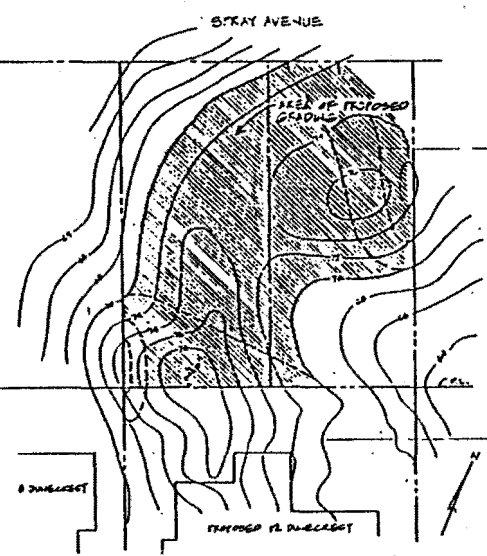
SITE PLAN NOTES

1. Proposed lot lines to be shown.
2. Top of trees to be removed for building footprint shall be removed.
3. Corners of lot shown to be 1/4 mile (1/4 mile) and at least five feet from any boundary.

PROPOSED GRADING

YARDS OF FILL: 5 ± 1.
 YARDS OF CUT:
 OFF-SITE: 125 ± 1
 ON-SITE: 619 ± 1 (HOUSE)
 355 ± 1 (HOUSE)
 149 ± 1 (DRIVE)

NOTES
 OF IMPROVEMENTS TO BE SHOWN (SEE PLAN)
 1" = 1' 1/2" (SEE PLAN)
 1" = 1' 1/2" (SEE PLAN)
 1" = 1' 1/2" (SEE PLAN)
 1" = 1' 1/2" (SEE PLAN)
 1" = 1' 1/2" (SEE PLAN)



PROPOSED OFF-SITE GRADING SCALE: 1" = 16'

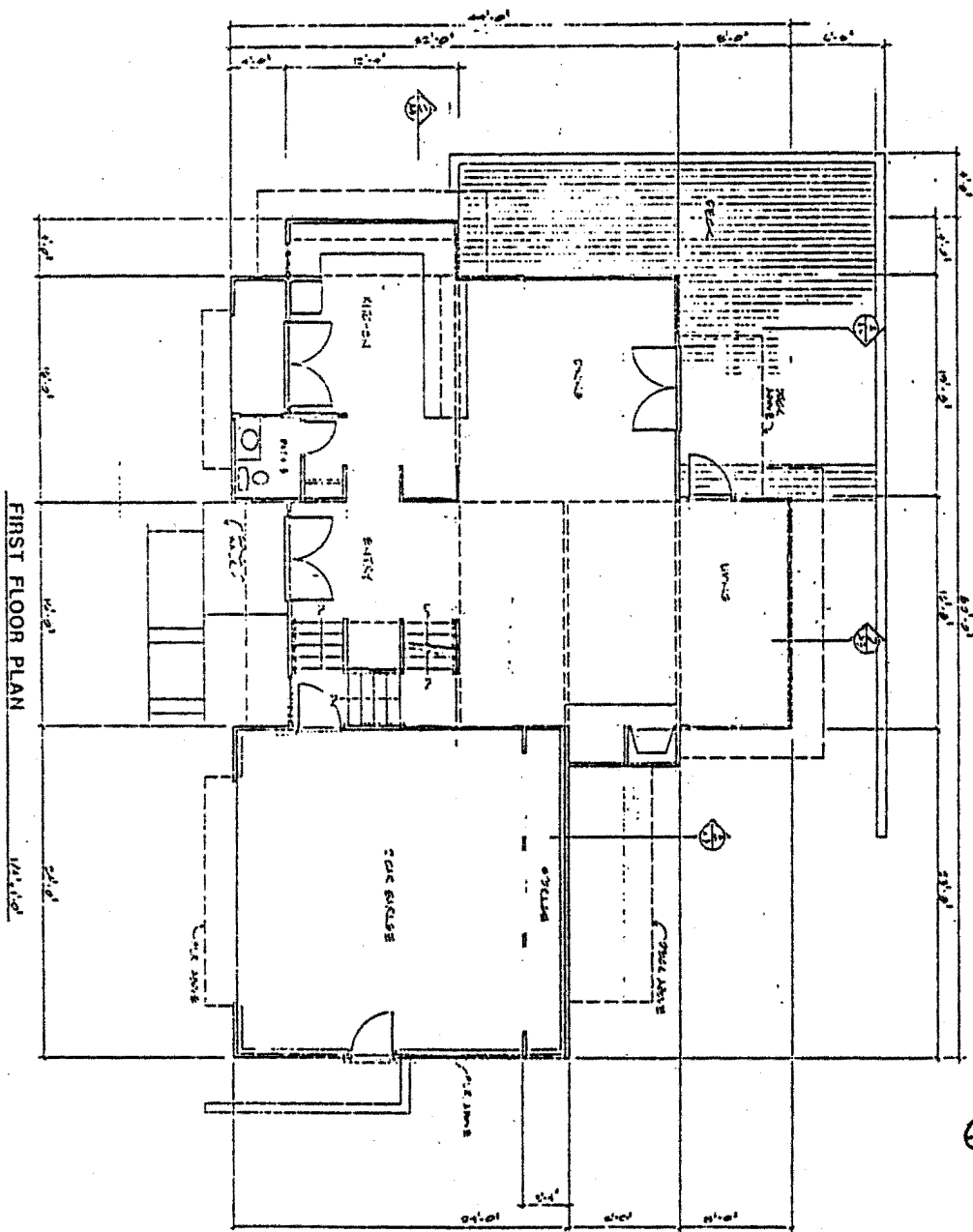
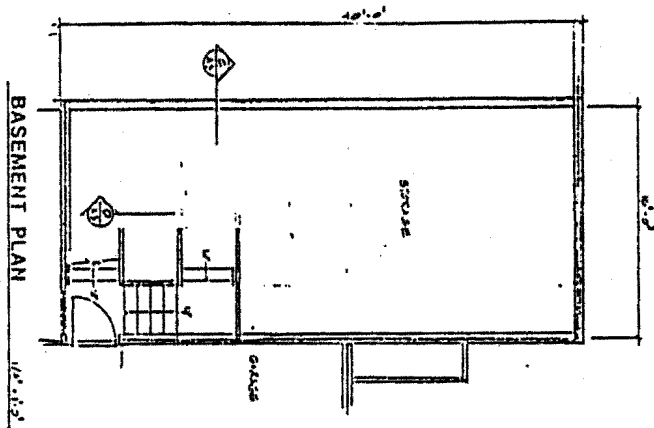
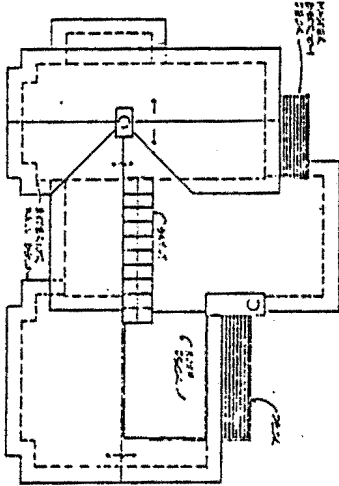


Exhibit 7, p. 2
3-96-73

ROOF PLAN



SECOND FLOOR PLAN

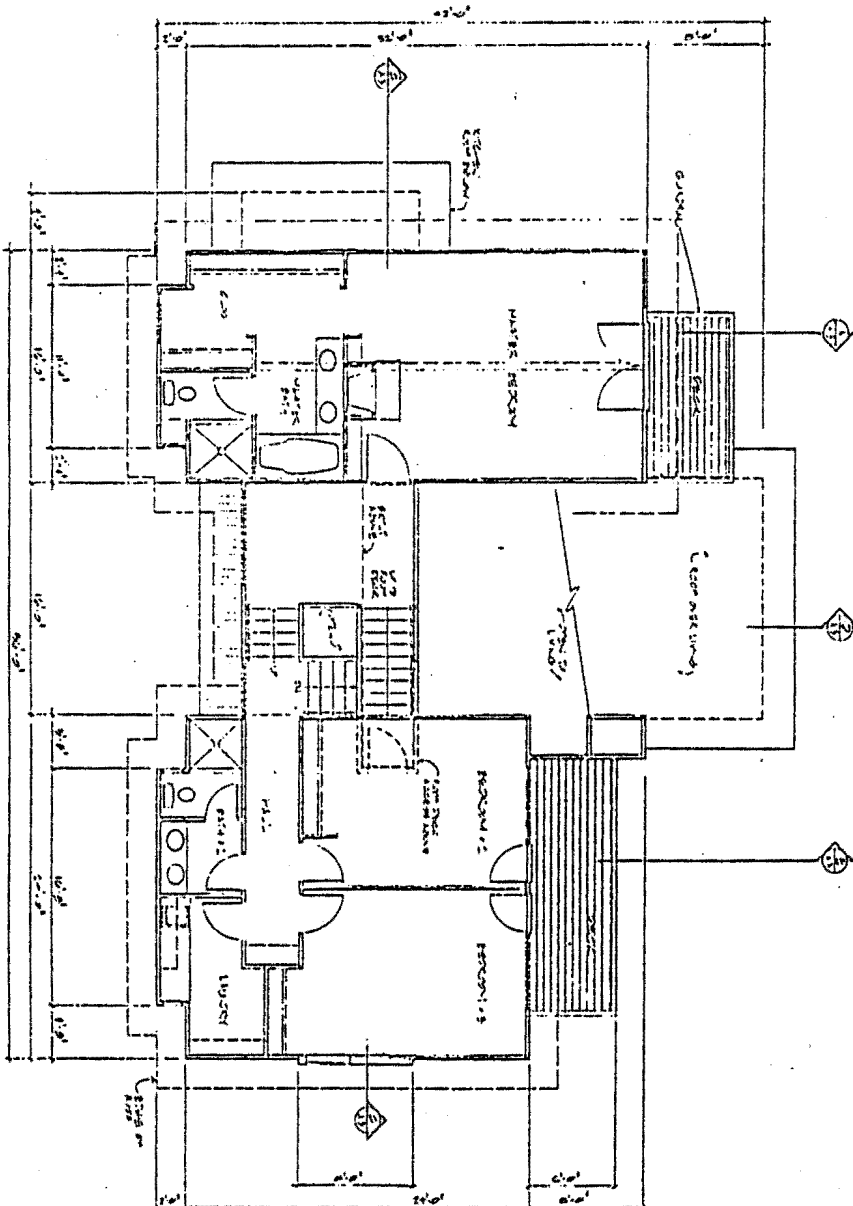


Exhibit 7, p. 3
3-96-73

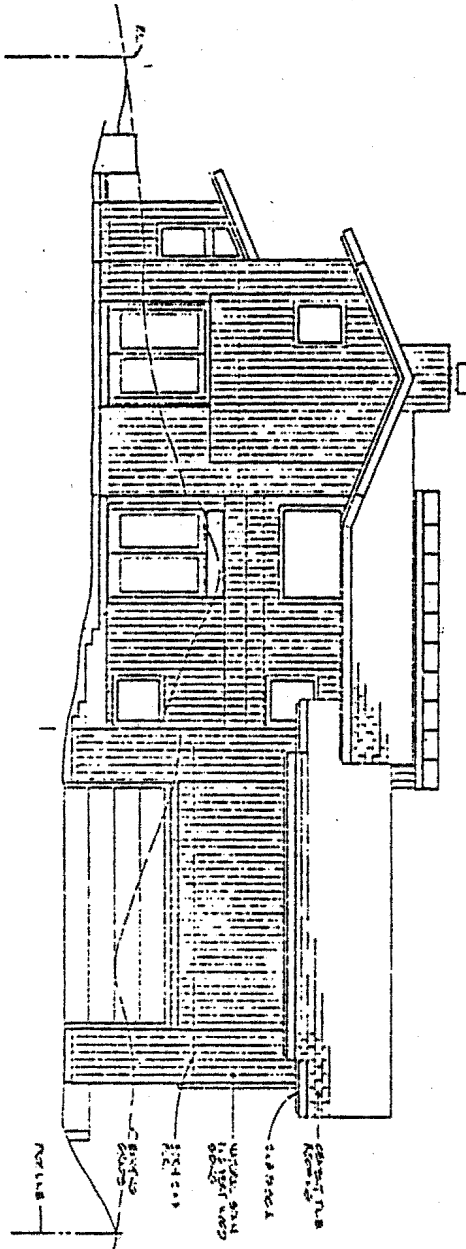
A1.2

A New Residence For
122 Highland Avenue
Hawthorne, C.A. 94041

Owner: Mr. & Mrs. E. Brown
122 Highland Ave., Hawthorne, C.A. 94041
Tel. Mr. (415) 414-1414

PEDRO E. ROSADO
ARCHITECT
2728 S. Union Street
Hawthorne, C.A. 94041
Tel. Mr. (415) 414-1414

SOUTH ELEVATION



EAST ELEVATION

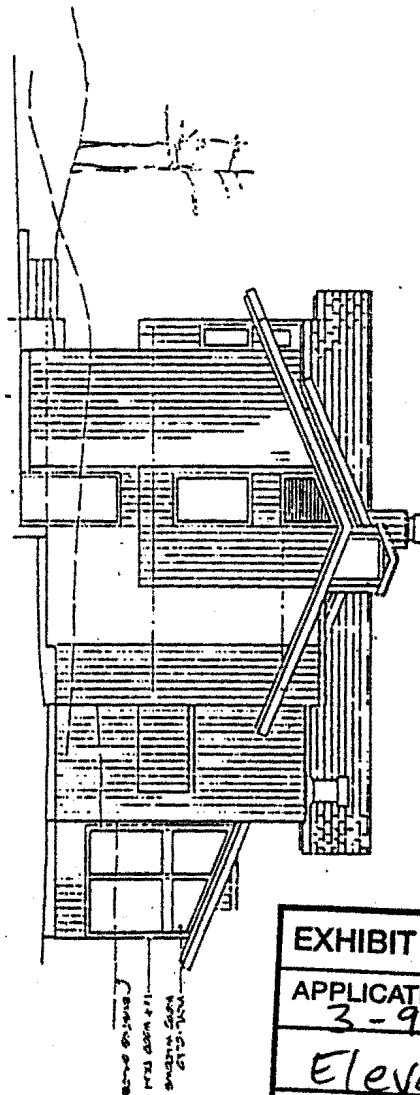


EXHIBIT NO. 8

APPLICATION NO. 3-96-73

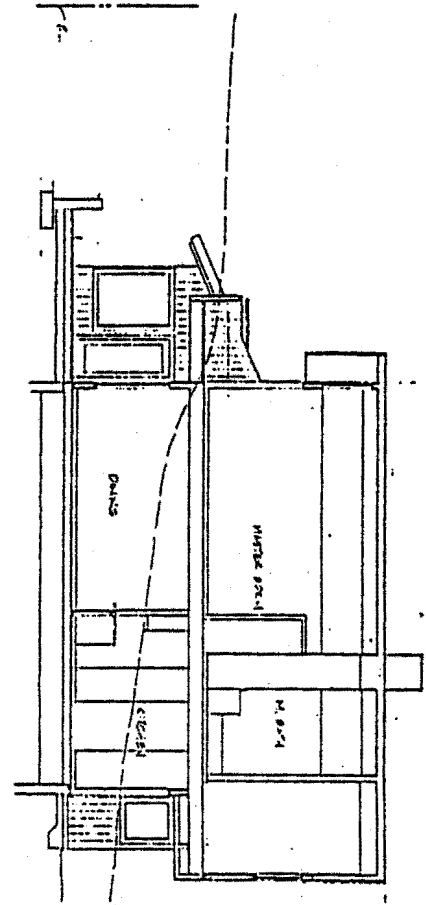
Elevations

A2.1

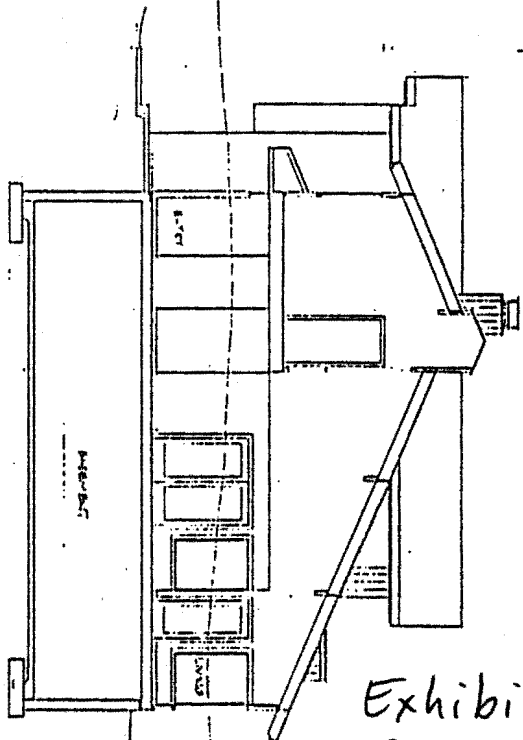
A New Residence For
12 Dunwoody Avenue
Mountain View, CA 94039

Owner: Mr. & Mrs. V. Dean
122 Wilshire Blvd., Suite 1
Santa Monica, CA 90401
Tel: (310) 391-1000

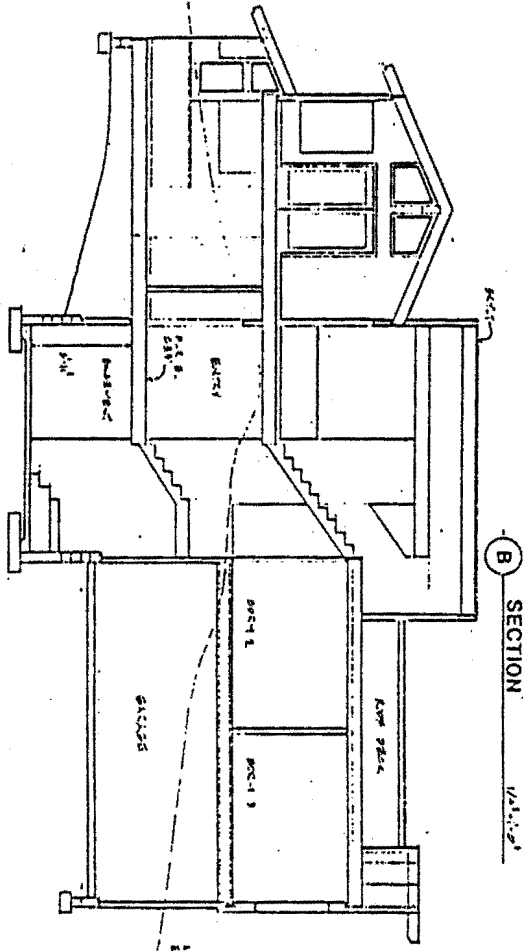
PEDRO E. ROSADO
ARCHITECT
8793 Cedar Road
Petaluma, CA 94952
Tel: (415) 442-1000



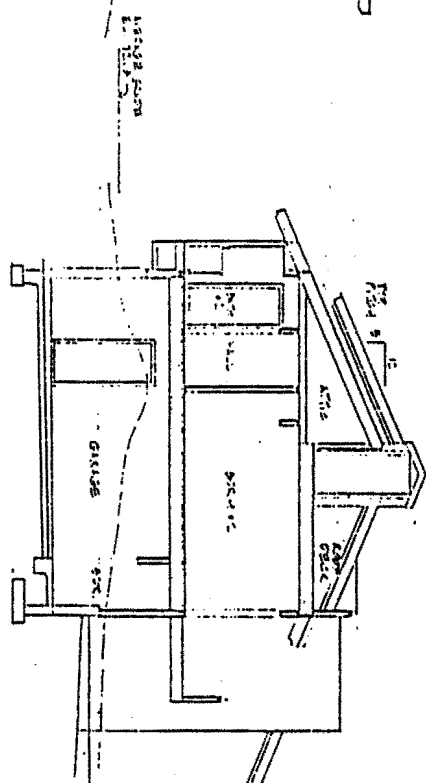
A SECTION
1/4" = 1'-0"



D SECTION
1/4" = 1'-0"



B SECTION
1/4" = 1'-0"



E SECTION
1/4" = 1'-0"

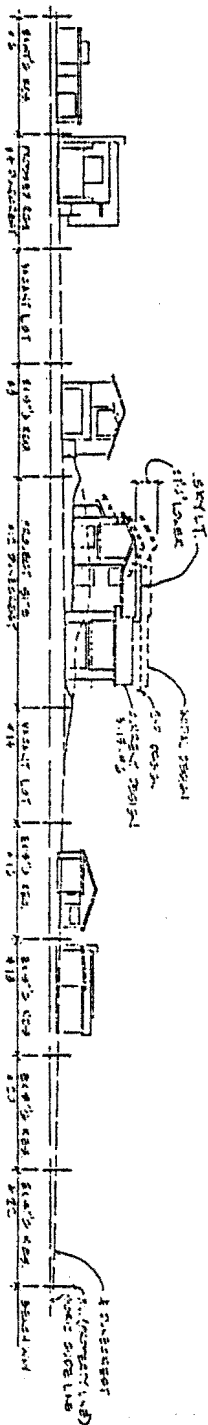
C SECTION
1/4" = 1'-0"

Exhibit 8, P. 3
3-96-73

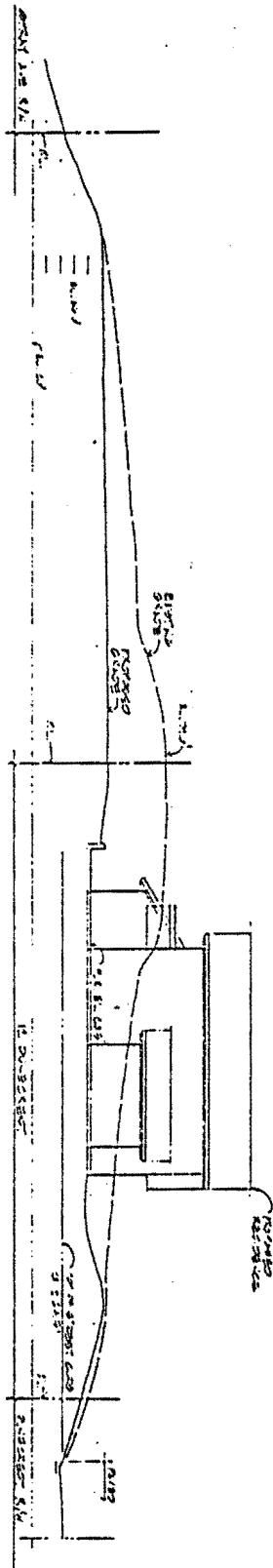
STREET ELEVATION

LOOKING NORTH

SCALE: 1"=20'



SITE SECTION



VICINITY MAP

OF 4-21-8

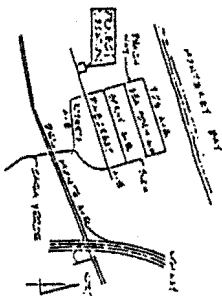


Exhibit 8, p. 4
3-96-73

<p>AO</p>	<p>A New Residence For 1211 Sunset Blvd. Suite 1 Beverly Hills, CA 90210</p>	<p>Owner: Mr. & Mrs. J. W. Brown 1211 Sunset Blvd. Suite 1 Beverly Hills, CA 90210 Tel: (213) 475-1234</p>	<p>PEDRO E. ROSADO ARCHITECT 8711 LAMAR BLVD. PO BOX 10000, LOS ANGELES, CA 90010 (213) 475-1234</p>
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