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STATE OF CALIFORNIA—THE RESOURCES AGENCY

PETE WILSON, Governor

CALIFORNIA COASTAL COMMISSION

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STAFF REPORT: REGULAR CALENDAR

TH 11d

APPLICATION NO.: 3-96-102

APPLICANT: STEPHEN PAGE Agent: John Matthams, Int. Design Group

PROJECT LOCATION: 1450 Sunset Drive, Asilomar Dunes area, City of Pacific Grove, Monterey County, APN 007-021-05

PROJECT DESCRIPTION: Construction of a single-family dwelling, driveway, storm drain system, paved terrace and courtyards, retaining walls; berming and grading of dunes.

Lot area: 47,045 sq. ft. (1.08 acres) total (includes Parcel 1 (30,232 sq. ft.) and parcel 2 (16,813 sq. ft.) together comprising APN 007-021-05 (See Staff Note below)*

Building coverage: 3,680 sq. ft.

Pavement coverage: 2,870 sq. ft. (driveway 2,300 sq. ft., patios 570 sq. ft.)

Grading: 1,391 cu. yds. (983 cu. yds. cut, 408 cu. yds. fill)

Parking spaces: 2 spaces

Zoning: Residential (R-1-8-4)

Plan designation: Low Density Residential, 1-2 units acre (Parcel I); Open Space Recreational (Parcel II)

Project density: 1 unit/acre

Ht abv fin grade: 18 feet max.

LOCAL APPROVALS RECEIVED: Architectural Approval; CEQA - Final Environmental Impact Report certified 1/6/93.

SUBSTANTIVE FILE DOCUMENTS:

- Pacific Grove Local Coastal Program Land Use Plan
- Draft Environmental Impact Report (DEIR), Page Residential Development, EIP Associates, Oct. 1991
- Botanical/Biological Report, by Bruce Cowan, Environmental Landscape Consultant, July 20, 1989 (DEIR Appendix)
- Geologic Report by Foxx, Nielsen and Associates, July 1990 (DEIR Appendix)
- Preliminary Cultural Resources Reconnaissance, by Gary S. Breschini, SOPA, July 24, 1989 (DEIR Appendix)
- Final EIR, Page Residential Development, EIP Associates, Feb. 1992
- Basic Landscape and Restoration Plan -- Landscaping/Revegetation
- Addendum to Botanical/Biological Report, by Bruce Cowan, April 6, 1994
- Addendum II to Botanical/Biological Report, by Bruce Cowan, May 19, 1994 (covers shared driveway area on Miller property)
- Coastal Development Permits 3-91-35 P. Miller and Wilde; 3-91-54 McAlister; 3-93-62 Sewald; 3-94-24 McCulloch; 3-94-33 P. Miller and Wilde; 3-96-81 J. Miller; and 3-94-32, Page.

*STAFF NOTE #1: Status of Parcel(s). The application and the City's approval both state that the project is for a single family residence on a 47,045 sq. ft. (1.08 acre) parcel. However, during the process of reviewing the submitted application, questions arose with respect to the size and seaward boundary of this property. Specifically, the area of the parcel as dimensioned in the deed and as shown on the Assessor's Parcel Map (Exhibit 1) was roughly 32,000 sq. ft. (0.7 acre) and would not appear to extend to the present mean high tide line of the sea. In light of the 15% maximum lot coverage criterion in the Asilomar Dunes area and potential public access implications along the cobble beach, staff rigorously pursued clarification of this issue.

Staff has now concluded that the deed description (Exhibit 2) encompasses both a Parcel I (0.694 acre) and a Parcel II. Although the deed description states a width of only "10 ft. more or less," Parcel II actually extends approximately 50 to 110 feet seaward to the Mean High Tide Line, comprising approximately 0.4 acre. Assessor's Parcel No. 007-021-13 is part of Asilomar State Beach, but does not include any part of Parcel II as described in applicant's deed. Although the applicant has not amended his application to include merger of Parcels I and II, a revised Assessor's Parcel Map for APN 007-021-05 (Exhibit 3), prepared by the County, has been produced and shows only a single parcel.

STAFF NOTE #2: Legal Background. This project is a re-submittal of a development proposal approved by the Coastal Commission on November 17, 1994. The 1994 project (#3-94-32) was approved with 14 conditions to mitigate adverse impacts of the development on environmentally sensitive habitat and visual resources, and to address geologic hazards associated with the shoreline site.

Since the 1994 approval, two lawsuits relevant to the project have been litigated. Additionally, an amendment to the permit to allow residential construction within the storm wave hazard area was proposed and denied by the Commission. Also, the site topography has been altered incidental to grading of a shared driveway, pursuant to Coastal Development Permit 3-94-33 issued to the neighboring property owners. These events are described in more detail in the following paragraphs.

The first lawsuit, Mapstead v. Coastal Commission was filed by a project opponent shortly after Commission approval of the development. The plaintiff contended that the Commission allowed inappropriate development in an environmentally sensitive habitat and did not sufficiently consider alternatives to the proposed residential use. The trial court found that the Commission had appropriately balanced the requirement to protect environmentally sensitive habitats with the need to avoid an unconstitutional taking of private property. The action of the Commission was thus upheld and the plaintiff did not appeal the trial court decision. The second lawsuit was filed in December 1995 by the applicant against numerous defendants, including the City of Pacific Grove, the Monterey Peninsula Regional Park District, and the Commission (Page v. City of Pacific Grove, et al). This suit, filed in Federal Court, alleged an unconstitutional taking of property.

In April 1996 the Court issued a judgement dismissing the case because the time period for challenging the Commission's action was long past. This ruling has been appealed by the plaintiff and is scheduled for hearing early next year.

In August 1995, the applicant submitted an amendment request to delete a requirement of the permit conditions which specified that the house would have to be sited landward of the predicted 50-year probability line for storm wave run-up, to be based on an updated geologic report. The condition was needed to ensure that the house would not be located within the area subject to storm wave hazards. Subsequent to Commission approval of the project, this condition became even more relevant because the site topography in the building envelope was altered from that analyzed in the original geologic report, by grading activity which disposed of an undisclosed number of cubic yards of sand from construction of a shared driveway approved under a separate coastal permit. The existing dune vegetation, which stabilized the bluff top site, was lost. The Commission considered the amendment at the September 13, 1995 meeting in Eureka and denied the proposal on a 1-10-1 vote.

The existing coastal permit for this project (CDP No. 3-94-32) is still valid and, unless superseded by the Commission's approval of the re-submittal, will not expire until November 17, 1996. If the Commission approves the current submittal, it will replace the 1994 permit. The re-submittal is permitted under Section 13109 of the California Code of Regulations and, with the exception of the altered topography, is for the same project considered by the Commission in 1994. Staff notes also that the City approvals for this project remain valid, under the terms of a settlement of litigation between Pacific Grove and the applicant, at least until November 17, 1996.

SUMMARY: The proposed residence is located on the 0.694-acre "Parcel I" as described in applicant's deed, which comprises the developable portion of applicant's 1.08 acre shoreline property (APN 007-021-05). It is the northernmost of seven residential lots in the Asilomar Dunes area of Pacific Grove on the seaward side of Sunset Drive, sometimes collectively known as "Rocky Shores." Five of these lots have been purchased for incorporation into Asilomar State Beach. Only applicant's lot remains vacant. It is comprised of low dunes adjacent to a cobble beach at Pt. Pinos, the highly scenic northwest extremity of the Monterey Peninsula. Applicant's prior application (No. 3-94-32) was the first (and only) to be considered by the Commission for a private residence seaward of the first public road in Pacific Grove. Issues raised include loss of environmentally sensitive dune habitat, obstruction of scenic views, construction in a hazardous storm wave run-up area, public access, prejudice to implementation of the City's certified LUP, and the precedent with respect to land use patterns.

Because the entire buildable area of the property is covered by environmentally sensitive coastal dunes which, overall, are habitat for rare and endangered plant and animal species, the policies of section 30240 of the Coastal Act apply to the entire parcel. Section 30240(a) requires that "Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas." Application of Section 30240, by itself, could require denial of the project, because the project would result in significant disruption of habitat values and is not a use dependent on those sensitive habitat resources. However, the Commission must also consider Section 30010, and the recent United States Supreme Court decision in Lucas v. South Carolina Coastal Council (1992) 505 U.S., 112 S. Ct. 2886.

Section 30010 provides that 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 private property for public use. Under the Lucas decision, where a permit applicant has demonstrated a sufficient real property interest in the property which would allow the proposed project and that project denial would deprive his or her property of all economically viable use, then denial of the project by a regulatory agency might result in a taking of the property for public use unless the proposed project would constitute a nuisance under State law.

Accordingly, the staff recommendation is for approval with conditions. Such approval would be for a residence dimensioned essentially as submitted, provided the applicant effectively merges Parcel I and Parcel II to provide a single 1.08 acre building site in order to limit habitat impacts, maintain consistency with City lot/development size ratio (15%) and past Coastal Commission actions on similar projects.

Although the entire buildable area of the parcel comprises environmentally sensitive habitat, approval is nonetheless recommended in order to preclude an unconstitutional taking of private property. The suggested conditions will mitigate habitat impacts through capture and relocation of black legless lizards (per EIR mitigations), facilitation of a shared driveway arrangement with the adjoining existing residence, recordation of deed restriction to protect open space, implementation of native plant restoration program, temporary fencing to protect endangered plant populations from construction impacts, and execution of a Mitigation Agreement with the California Department of Fish and Game.

Visual impacts will be mitigated through conformance with the neighborhood scale for lots of this size, adherence to the submitted stone masonry exterior design, together with a maximum height limit of 18 ft. above average natural grade (or the 25 ft. contour, whichever is greater), undergrounding of all utility lines, and a requirement for separate coastal permit approval for future additions.

Storm wave run-up and shoreline erosion hazards are addressed by conditions which require elevation of structure above the 25 ft. contour, revision of the site plan to place exterior walls landward of the predicted 50-year probability storm wave run-up mark, geologic report update, and a deed restriction for assumption of risk and no future reliance on shoreline protection works. These deed restrictions will help to avoid blockage of public access by rip-rap or other impairments of public access along the shoreline on the publicly-owned portion of the cobble beach. These measures taken together will provide for conformance with Coastal Act Chapter 3 policies and minimize prejudicial effects with respect to future implementation of the City's Local Coastal Program.

ISSUE SUMMARY: 3-96-102 (PAGE)

ISSUE/COASTAL ACT SECTION	ANALYSIS	CONDITIONS
Environmentally Sensitive Habitat Area (ESHA) (Sec. 30240) <ul style="list-style-type: none"> Protect ESHA Only allow resource dependent use in ESHA 	<ul style="list-style-type: none"> All of site is ESHA (Dune and Shoreline Habitat) Proposed single family dwelling is not a resource dependent use 	<ul style="list-style-type: none"> Limit site coverage Restoration plan for remaining habitat Continued maintenance and monitoring of restored area Preservation of restored area through deed restriction Shared driveway Avoid invasive non-native landscaping adjacent to house Temporary fencing to avoid impacting particularly sensitive areas
"Taking" Issue (Sec. 30010) <ul style="list-style-type: none"> Prohibits taking of private property 	<ul style="list-style-type: none"> Coastal Act Sec. 30240 would not allow site to be developed with an economic use Limited development must be allowed to avoid "taking" 	<ul style="list-style-type: none"> Project is conditioned to limit impacts on ESHA
Scenic and Visual Resources (Sec. 30251) <ul style="list-style-type: none"> Development should be subordinate to scenic areas Development should not block public views to shoreline 	<ul style="list-style-type: none"> House will be located in public viewshed on scenic, oceanfront site House will block some views 	<ul style="list-style-type: none"> House design is in scale and compatible with site Development on site limited to avoid significant view blockage
Shoreline Hazards (Sec. 30252) <ul style="list-style-type: none"> Minimize risks in hazard areas Do not cause or contribute to erosion or geologic instability 	<ul style="list-style-type: none"> House sited in a hazardous area (predicted 50-year storm wave run-up area) 	<ul style="list-style-type: none"> Submit updated geology report Build to recommendations in current geology report Build landward of the storm wave run-up line
Public Access (Sec. 30210 - 30212) <ul style="list-style-type: none"> Maximize public access to and along shoreline Provide public access in new development Preserve existing public access 	<ul style="list-style-type: none"> House is proposed on an oceanfront lot Public access available in front of site (cobble beach) Portion of development may impede future access 	<ul style="list-style-type: none"> Acknowledgment of existing public access rights Remove storm drain pipe length if impedes access No interference with public use of publicly owned areas No shoreline structures
Archaeology (Sec. 30244) <ul style="list-style-type: none"> Mitigate impacts on archaeological resources 	Archaeology report for site does not identify any resources	<ul style="list-style-type: none"> If resources found during construction, prepare mitigation plan
LCP Completion (Sec. 30604) <ul style="list-style-type: none"> Development should not prejudice local government's ability to complete LCP 	<ul style="list-style-type: none"> Certified LUP proposes open space designation for portion of site Contains guidelines for development in Asilomar Dunes 	<ul style="list-style-type: none"> Project conditioned to preserve site resources as much as feasible Merger of applicant's lots will avoid undermining LUP's site coverage standards

STAFF RECOMMENDATION: The staff recommends that the Commission adopt the following resolution:

I. Approval with Conditions.

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

II. Standard Conditions.

See Exhibit A (attached).

III. Special Conditions.

1. Incorporation of City's Mitigation Requirements. The Mitigation Measures adopted by the City of Pacific Grove in its Environmental Impact Report for this project (EIP Associates, Feb. 1992) are attached as Exhibit B to this permit; except for the specific instances where a different standard is prescribed by the conditions of this permit, these Mitigation Measures are hereby incorporated as conditions of this permit. 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. Updated Geology Report. Because the 3-year effective term of the submitted Geologic Report (Foxx, Nielsen and Associates, July 1990) has expired, and site topography has been altered since the 1990 report was prepared, a supplemental report or letter of review by a Registered Engineering Geologist shall be required PRIOR TO SUBMITTAL OF REVISED DEVELOPMENT PLANS per Special Condition No. 3 below. Such report or review shall address, at a minimum, the following:

- a. Any change in the risk of tsunami inundation, recommended coastal erosion setback line, recommended finished floor elevation, or the predicted 50-year and 100-year storm wave run-up line in relation to the altered topography of the site, including consideration of predicted sea level rise; and,
- b. Relationship of Mean Sea Level (MSL) datum in the Report to NGVD datum, any changes in elevations referenced to MSL and NGVD, and latitude/longitude data for geo-reference purposes.

III. Special Conditions (continued).

3. Revised Development Plans. PRIOR TO TRANSMITTAL OF THE COASTAL DEVELOPMENT PERMIT, permittee shall submit, for review and approval by the Executive Director, revised project plans which meet the following criteria:

- a. Total site coverage (building, patios, driveway and turn-around area) not to exceed 7,056 sq. ft. (i.e., 15% of 1.08 acres, representing deeded Parcel I and Parcel II combined); this limitation on coverage shall not apply to any portion of the shared driveway located on permittee's parcel pursuant to Coastal Development Permit No. 3-94-33 (Miller), nor shall any portion of the driveway located in the 75-ft. minimum front setback area adjacent to Sunset Drive be counted;
- b. Perimeter of all exterior walls of the residence to be located landward of the 50-year probability line for storm wave run-up and flooding (unless otherwise determined by the updated Geology Report, elevation 23 ft. above MSL based on existing surveyed ground contours);
- c. A finished floor elevation of at least 26 ft. above Mean Sea Level (MSL), unless otherwise recommended by the updated Geology Report;
- d. Foundation plans showing pier and beam or similar construction to provide unobstructed support for the permitted residence everywhere within the 100-year probability line for storm wave run-up and flooding (unless otherwise recommended by the updated Geology Report, elevation 25 ft. above MSL based on existing surveyed ground contours); all construction below finished grade elevation to conform with Federal Emergency Management Agency (FEMA) guidelines for flood hazard construction;
- e. Maximum height of structure not to exceed 18 ft. either above average natural grade or above the existing 25 ft. ground contour, whichever is greater;
- f. Grading plan revised to: show spoils storage site(s); identify disposal site for excess excavated spoils (disposal site for indigenous sand suitable for dune restoration shall be specified as the Asilomar Dunes area only, inclusive of the Lighthouse Reservation through Spanish Bay and Fan Shell Beach); show revised location of shared driveway, consistent with Coastal Development Permit 3-94-33; show location and design of temporary exclusionary fencing to be placed in accordance with Special Condition No. 10 below; deletion of all seed, fertilizer and mulches from the erosion control mix, except for species and materials specified by the submitted "Basic Landscape and Restoration Plan;"

III. Special Conditions (continued).

- g. Revised drainage system emphasizing percolation into existing dune sands rather than collection and discharge through storm drain onto beach, provided that suitable percolation facilities can be provided without significant disruption to the site's environmentally sensitive habitat areas;
- h. All utility lines installed underground, and to the maximum extent feasible, beneath the private and shared portions of the driveway (in order to minimize the disturbance of the protected habitat area); and,
- i. All exterior finishes of stone masonry with dark earthen-tone non-reflective tile roof (or other materials having the same appearance) as proposed in the submitted architectural elevations.

Such revised plans shall be accompanied by evidence of review by the project's registered engineering geologist(s), with specific attention to foundations and retaining walls; and, any necessary review and approval by the City pursuant to local ordinances.

4. Merger of Parcels. PRIOR TO TRANSMITTAL OF THE COASTAL DEVELOPMENT PERMIT, permittee shall submit, for review and approval by the Executive Director, evidence that Parcel I and Parcel II (as currently described in the deed for Assessor's Parcel No 007-021-05) have been legally merged into a single parcel.

5. Shared Driveway and Utility Access Rights. PRIOR TO TRANSMITTAL OF THE COASTAL DEVELOPMENT PERMIT, permittee shall submit for confirmation a copy of recorded easement giving permittee the right of residential access over that portion of the shared driveway lying on the adjacent property (APN 007-021-06, currently owned by Paul Miller and Kirstie Wilde). Such easement shall also allow subsurface utility line installation. Such easement shall run with the land in favor of permittee's parcel (APN 007-021-05), and shall remain in effect for the duration of the development allowed by this permit.

Concurrently, permittee shall also submit for confirmation a copy of recorded easement giving the owner(s) of the adjacent parcel to the south (APN 007-021-06, as identified above) the following rights: a. the right to construct a shared driveway, subject to approval of a coastal development permit; b. the right of residential access over any portion of such shared driveway lying on permittee's property; and, c. the right to install subsurface utility lines. Such easement shall run with the land in favor of the neighboring parcel (APN 007-021-06), and shall remain in effect for the duration of the permitted driveway development.

III. Special Conditions (continued).

6. 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, which shall provide:

- a. For measures to implement the approved final landscaping and restoration plans, including the "Basic Landscape and Restoration Plan," prepared for the subject property by Bruce Cowan, Environmental Landscape Consultant, Sept. 27, 1993, as detailed in Special Conditions No. 7 and 8 below.
- b. For fencing restrictions to protect public views, provide for natural movement of sand, and allow free passage of native wildlife, as provided by Local Coastal Program Land Use Plan Policy 2.3.5.1(e).
- c. For a monitoring program as set forth in the approved Dept. of Fish and Game Mitigation Agreement and the "Basic Landscape and Restoration Plan"; provided that, following construction, annual monitoring reports shall be submitted to the Executive Director, the Dept. of Fish and Game, and the City of Pacific Grove for review and approval for a period of at least five years (or longer as specified in the Mitigation Agreement).
- d. For upkeep of the storm drain outfall (if any), as recommended by the Geology Report. (Applies only if environmentally sensitive habitat considerations prevent installation of on-site percolation alternative in accordance with Special Condition No. 3 above.) If a storm drain system with beach outfall is installed, the exposed portion of the outlet pipe shall be progressively removed commensurate with the rate of shoreward coastal erosion. To the maximum extent feasible, the outlet shall be concealed with cobbles to match existing beach rock.
- e. For the protection of the scenic and natural habitat values on the site. Except for any portions of the shared driveway located on permittee's property, and a "building envelope" area not to exceed 15 percent and an "immediate outdoor living area" left in natural condition or landscaped so as to avoid impervious surfaces not to exceed 5 percent of the entire property, the restriction shall cover all of the combined Parcels I and II. Such restriction shall include provisions to prohibit development; to prevent disturbance of native groundcover and wildlife; to provide for maintenance and restoration needs in accordance with approved native plant maintenance and restoration plans; to accommodate the approved drainage improvements; and to specify conditions under which non-native species may be planted or removed, trespass prevented, entry for monitoring of restored areas secured, and homeowner access

III. Special Conditions (continued).

accommodated within the restored area (on pedestrian boardwalks or by similar means). Provisions for necessary utility corridors may be included. The prohibition on development shall specifically preclude any division of land requiring a coastal development permit.

- f. For restrictions on future additions. Unless waived by the Executive Director, an amendment to this permit or a separate coastal development permit shall be required for any fencing, exterior lighting, antennae, dune alteration, signs, flagpoles or any other additions to the permitted development.
- g. For protection of adjacent public access; permittee/owner shall take no action which would block or impair public use of the publicly-owned portion of the adjacent cobble beach.
- h. For an assumption of risk statement, which shall provide: (a) that the applicant understands that the approved development site is located on sand dunes and partially within the predicted storm wave run-up zone, and therefore may be subject to extraordinary hazard from coastal erosion and storm wave run-up; (b) applicant understands that there is no entitlement to future shoreline protective works to protect against such hazards, and that continued coastal erosion or future storm wave event will eventually lead to loss of the permitted residential structure; and (c) applicant hereby waives any future claims of liability against the Commission or its successors in interest for damage from shoreline erosion, storm wave run-up, tidal flooding, tsunamis, earthquakes, shifting sand dunes and other such hazards.

The document shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens and any other encumbrances which the Executive Director determines may affect the interest being conveyed.

7. Final Residential Landscaping Plan. PRIOR TO TRANSMITTAL OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit the following for the Executive Director's review and approval:

- a. A final landscaping plan covering the "building envelope" and "immediate outdoor living" areas. The plan shall include native plantings to the greatest extent feasible. All plant materials shall be installed prior to occupancy and shall be maintained in good condition. The landscape plan shall be prepared in accord with the "Basic Landscape and Restoration Plan"; and evidence of review and approval by the project environmental consultant shall accompany the submittal.

III. Special Conditions (continued).

- b. Within 30 days of completion of the landscape installation, the permittee shall submit a letter from the environmental consultant indicating plant installation has taken place in accord with the approved landscape plan and the "Basic Landscape and Restoration Plan."

8. Maintenance and Restoration Plan. The balance of the property outside the defined building envelope and immediate outdoor living area shall be restored and maintained as natural habitat. The "Basic Landscape and Restoration Plan" prepared by Bruce Cowan, Sept. 27, 1993, shall serve as the approved project landscape restoration plan. All recommended restoration goals, objectives, procedures, landscape protection, monitoring and maintenance measures shall be implemented. Monitoring shall occur weekly during the first month after landscape installation and thereafter annually for a period of five years.

Plant materials indicated on the approved plan shall be installed in accordance with a specific timetable and permanently maintained in good condition. Written report of compliance with this condition, as well as any necessary adjustments or modifications of the approved landscape restoration plan, shall be submitted by project environmental consultant for the Executive Director's review and approval.

9. Mitigation Agreement. PRIOR TO COMMENCEMENT OF GRADING OR CONSTRUCTION, permittee shall submit for confirmation a copy of a signed Mitigation Agreement with the California Dept. of Fish and Game. Such agreement shall provide for mitigation of impacts to Tidestrom's lupine and any other state-listed species, and shall identify specific goals for maintaining populations of each endangered species known from the site.

10. Temporary Fencing. PRIOR TO COMMENCEMENT OF GRADING OR CONSTRUCTION, temporary exclusionary fences to protect sensitive areas from disturbance during construction shall be in place. Sensitive areas include any archaeological features or endangered plant populations which may be found on site, as well as that area seaward of the top edge of the coastal bluff. Vehicle parking, storage or disposal of materials, shall not be allowed within the exclusionary fences. Fences shall be installed prior to the start of construction and shall remain in place and in good condition until construction is completed.

The exact placement of the fences shall be identified on site by the project's environmental consultant. Evidence of inspection of the installed fence by the environmental consultant, shall be submitted to the Executive Director prior to commencement of construction or grading. Fences shall be 4 feet high and secured by metal T-posts, spaced 8 to 10 feet apart. Either field fence or snow-drift fence, or comparable barrier, shall be used.

III. Special Conditions (continued).

11. Archaeologic Monitoring Program. PRIOR TO COMMENCEMENT OF GRADING OR CONSTRUCTION, permittee shall submit, for review and approval by the Executive Director, a monitoring program for the protection of archaeological resources during the grading and construction phase of the project. The monitoring program shall be prepared by the project archaeologist. If any archaeological resources are encountered, that portion of the work which could further disturb such archaeological materials shall be halted and a plan of mitigation shall be prepared and submitted to the Executive Director for review and approval. A post-monitoring letter/report shall be submitted by the project archaeologist for the Executive Director's review and approval within 30 days of monitoring completion.

12. Environmental Monitoring During Construction. During the construction phase, the project's environmental consultant or the City's Community Development Department shall monitor construction activities on a weekly basis until project completion to assure compliance with the mitigation measures adopted by the City (Exhibit B). Evidence of compliance with this condition by the project monitor shall be submitted to the Executive Director each month while construction is proceeding and upon completion of construction. In the event of non-compliance with the adopted mitigation measures, the Executive Director shall be notified immediately. The environmental consultant or the City shall make recommendations, if necessary, for compliance with the adopted mitigation measures. These recommendations shall be carried out immediately to protect the natural habitat areas of the site.

13. 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 also acknowledges 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 finds and declares as follows:

1. Project Description and Background

The proposed development consists of the construction of a single-family dwelling, driveway, storm drain system, retaining walls, paved terrace and courtyards; and berming and grading of dunes. The subject property is located at 1450 Sunset Drive in the Asilomar Dunes area of the City of Pacific Grove.

The project site comprises a 0.694-acre area described as "Parcel I" on applicant's deed. This is one of six vacant residential lots on the seaward side of Sunset Drive; see Exhibit F for illustration of existing pattern of residential parcels in the Asilomar Dunes area. Together with a seventh lot with an existing residence at 1500 Sunset Drive (Miller/Wilde, pre-1972), this oceanside group of parcels is known as "Rocky Shores." The southernmost five of these parcels have been purchased for management as part of Asilomar State Beach. Therefore, applicant's property is the only remaining vacant privately-owned land on the entire Pacific Grove shoreline.

Each of the seven deeds also describe an associated beach parcel "10 ft. more or less" in width, although the actual widths are up to 110 ft. The proposed Page residence will be located on deeded Parcel I, while his beach parcel comprises deeded Parcel II. Together, these parcels are designated as APN 007-021-05 by the County Assessor. Parcels I and II together total 1.08 acres (47,045 sq. ft.). Prior to applicant's 1994 application (resulting in Coastal Development Permit 3-94-32), none of the Rocky Shores parcels had previously come before the Commission for residential development, although a sewer line and a shared driveway were installed to serve the existing P. Miller/Wilde residence pursuant to Coastal Development Permit Nos. 3-91-35 and 3-94-33.

The project site is located on low dunes adjacent to a cobble beach at the highly scenic northwest projection of the Monterey Peninsula. Immediately to the north is an extensive undeveloped expanse of coastal dunes within the Pt. Pinos Lighthouse Reservation, which is managed by the City of Pacific Grove under lease from the U.S. Coast Guard. The tidepools and the sea to the west of the site are part of the Monterey Bay National Marine Sanctuary. To the south is the previously-described Miller/Wilde parcel, and beyond, Asilomar State Beach.

The project was the object of much debate at the City level, particularly as evidenced by Exhibits K (applicant) and M (Friends of Rocky Shores), attached. The City's earlier approval of a more compact version of the residence was challenged by applicant, resulting in a settlement agreement for the version submitted to this Commission. See Exhibit C, attached, for text of this agreement.

Following Commission approval of CDP No. 3-94-32 for this project, controversy continued. Lawsuits were filed by both a project opponent (Mapstead v. Coastal Commission) and by the permittee (Page v. City of Pacific Grove, et al.). In the first case, the trial court upheld the Commission's action, finding that the Commission had appropriately balanced the requirement to protect environmentally sensitive habitats with the need to avoid an unconstitutional taking of private property. The second case, filed in Federal Court, alleged an unconstitutional taking of property. In April 1996 the Court issued a judgement dismissing the case because of the time period for challenging the Commission's action was long past.

Although the Coastal Act policies are the standard of review for coastal development permits until the City completes its' LCP, the City in the meanwhile has adopted an ordinance which requires conformance with the LUP. This may provide guidance to the Commission as it considers proposals for development in the dunes. The LUP contains policies which require the following:

- Structures shall be sited to minimize alteration of natural dune topography. Restoration of disturbed dunes is mandatory as an element in the siting, design and construction of a proposed structure.
- All new development in the Asilomar dunes area shall be controlled as necessary to ensure protection of coastal scenic values and maximum possible preservation of sand dunes and the habitat of rare and endangered plants.
- Where a botanical survey identifies populations of endangered species, all new development shall be sited and designed to cause the least possible disturbance to the endangered plants and their habitat; other stabilizing native dune plants shall also be protected.
- Site coverage proposed for new development (including driveways, accessory buildings and other paved areas) shall be reduced from the maximum coverage allowed in Chapter 3 of this plan (i.e., 15%), and by relevant zoning, to the extent necessary to ensure protection of Menzies' wallflower or Tidestrom's lupine habitat determined to be present on the site. [However, LUP Sec. 3.4.5.2, cited below, exempts that portion of the driveway within the front setback.]
- Require dedication of conservation easement or deed restriction to protect the area of the lot outside the building envelope, with provisions to restore and maintain the natural habitat, restrict fencing that would interfere with public views or wildlife, and require long-term monitoring of the protected area;
- Sidewalks shall not be required as a condition of development permit approval in the Asilomar dunes unless the City makes a finding that sidewalks are necessary for public safety where heavy automobile traffic presents substantial hazards to pedestrians, no reasonable alternative exists and no significant loss of environmentally sensitive habitat would result.
- Require compliance inspections during the construction phase;
- Provide for preparation of a native plant landscaping plan, and limit exotic plant introductions to the area within the building envelope; and,
- Require installation of utilities in a single corridor if possible, avoiding disturbance of the protected habitat area.

2. Basis for Decision.

When the City of Pacific Grove completes the implementation portion of its Local Coastal Program (LCP), the LCP will become the standard of review for coastal development permits. In the meanwhile, the standard of review is conformance with the policies of the California Coastal Act. These policies include Section 30240, which prohibits any significant disruption of environmentally sensitive habitat areas, and bans those uses which are not dependent on such resources.

In this case, the entire buildable area of the approx. 0.7-acre Parcel I comprises environmentally sensitive coastal dune habitat (see Finding No. 3 below for details). Accordingly, because the proposed single family residence is not a resource-dependent use and would result in a significant habitat disruption, there is no place on this parcel where any reasonably-sized residential development could be found consistent with Section 30240. Parcel II lies entirely within the predicted storm wave run-up zone, and is further constrained by environmentally sensitive tidepool and bluff-edge dune habitats. Therefore, absent other considerations, this project would have to be recommended for denial.

Coastal Act Section 30010, on the other hand, provides:

The Legislature hereby finds and declares that this division is not intended, and shall not be construed as authorizing the commission, port governing body, or local government acting pursuant to this division to exercise their power to grant or deny a permit in a manner which will take or damage private property for public use, without the payment of just compensation therefor. This section is not intended to increase or decrease the rights of any owner of property under the Constitution of the State of California or the United States.

The Coastal Commission is not organized or authorized to compensate landowners denied reasonable economic use of their otherwise developable residential property. Various local and state-wide bond measures have been proposed and, if successful, would have provided the means to fund purchase of this property. While a majority of voters favored the local measure, it did not achieve the required 2/3 margin needed for approval.

Therefore, in order to preclude a claim of taking and to assure conformance with California and United States Constitutional requirements, as provided by Coastal Act Section 30010, this permit allows the development of a single family residence by way of providing for reasonable economic use of this property. This determination is based on the Commission's finding that the property was purchased with the expectation of residential use, that such expectation is reasonable, that the investment was substantial, and that the proposed development is commensurate with such investment-backed expectations for the site. The degree and nature of the investment has been appropriately documented by applicant (his letter of Aug. 16, 1994).

3. Environmentally Sensitive Habitat Area.

The Coastal Act, in Section 30240, 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.

The Coastal Act in Section 30107.5, defines an environmentally sensitive area 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."

A. Description of Sensitive Habitat.

All of applicant's property comprises environmentally sensitive habitat. Parcel I is dune habitat in its entirety, while Parcel II is coastal bluff edge and rocky shoreline, bordering outstanding tidepool habitats.

The proposed single-family dwelling, on Parcel I, is located in the Asilomar Dunes formation at the seaward extremity of the Monterey Peninsula. The unusually pure, white silica sand in this area was formerly stabilized by a unique indigenous dune flora. However, only a relatively few acres of the original approximately 480 acre habitat area remain in a completely natural state. The balance of the original habitat has been lost or severely damaged by sand mining, residential development, golf course development, trampling by pedestrians, and the encroachment of non-indigenous introduced vegetation. A number of preservation and restoration efforts have been undertaken, most notably at the Spanish Bay Resort, Asilomar State Beach, and in connection with previously approved residential developments on private lots.

As a result of past development activity and displacement by invasive exotic vegetation, certain plants characteristic of this environmentally sensitive habitat have become rare or endangered. The best known of these native dune plants are the Menzies wallflower and the Tidestrom's lupine, both of which have been reduced to very low population levels through habitat loss. Other recent additions to the federal endangered species list include Sand gilia and Monterey spineflower. In addition, the native dune vegetation also includes more common species which play a special role in the ecosystem; for example, the bush lupine provides shelter for the rare Black legless lizard, and in nearby areas the coast buckwheat hosts the endangered Smith's blue butterfly.

Applicant's parcel has been examined for indicators of environmentally sensitive habitat on several occasions, spanning both drought and non-drought years. All six vacant Rocky Shores parcels were covered by the report "Botanical/Biological Report," by Bruce Cowan, Environmental Landscape Consultant, July 20, 1989. This report was included as a technical appendix to the project EIR. The Calif. Dept. of Fish and Game's response letter of Jan. 7, 1992 is included in the Final EIR document.

Subsequently, Cowan prepared the more detailed "Basic Landscape and Restoration Plan -- Landscaping/Revegetation Recommendations" document (Sept. 27, 1993), which was submitted as part of the project application. In response to a request by Commission staff for updated observations, Cowan also prepared the "Addendum to Botanical/Biological Report," April 6, 1994; and "Addendum II to Botanical/Biological Report," May 19, 1994, covering the shared driveway area on the adjacent Miller-Wilde parcel (APN 007-021-006). The Calif. Dept. of Fish and Game, and U.S. Fish and Wildlife Service were asked to evaluate the reports; their responses are attached as Exhibits I and J. These reports and responses, taken together with staff observations, permit the following conclusions:

- a. As expected in the dune environment, the various native wildflowers do not always occur in the same area from year to year, but instead intermittently utilize suitable sites throughout the dunes depending on variables ranging from annual rainfall to seed distribution patterns, shifting sand dune landforms, competition from other plants, and so on. On this lot, for example, no endangered plants were noted in the 1989 report (a drought year), but in April 1994 the recently-listed Monterey spineflower was found on the portion of the property near Sunset Drive (not proposed for development); and, the endangered Menzies wallflower and Tidestrom's lupine were noted immediately beyond the property lines on the same dune surface.
- b. The dunes on this lot have been seriously impacted by invasive non-native iceplant, but the iceplant is also variable in occurrence (for example, die-offs have been observed following freezes, herbicide spraying and virus infections).
- c. Although the dune habitat on the lot is in a degraded condition due to iceplant invasion, it has been verified as the current locale of one endangered species (Monterey spineflower) and predictably supports three other endangered/candidate endangered species based on prior occurrence or occurrence on adjacent portions of the same dune (Menzies wallflower, Tidestrom's lupine, Black legless lizard); therefore, it would be reasonable to assume that basic dune restoration measures emphasizing eradication of exotic iceplants would likely improve habitat conditions for each of these species.

- d. The entire dune habitat area of the parcel, which extends to the edge of the coastal bluff, should be treated as environmentally sensitive habitat.

The Cowan report indicates that about a half-dozen other native dune plants are located on the site as well. These species each play an important role in the ecosystem; while not endangered, they each contribute to the maintenance of the natural habitat and serve to stabilize the dunes. Therefore, not only the locations of the Tidestrom's lupines and Monterey spineflowers, but also adjacent areas which currently or potentially support native dune flora must be considered environmentally sensitive habitat areas.

B. Cumulative Impacts. The applicant's project is located in the northern part of this dune formation, an area of about 60 acres where the dunes retain roughly their original contours. Although divided into about 95 lots and developed with about 75 existing dwellings, the area still contains some of the best remaining examples of original Asilomar Dunes flora.

The cumulative impacts of additional residential development would have a substantial adverse impact on the unique ecology of the Asilomar Dunes, as each loss of natural habitat area within the Asilomar Dunes formation contributes to the overall degradation of this extremely scarce coastal resource. This cumulative effect has progressed to the point that on existing lots of record in the nearby unincorporated portion of the Asilomar Dunes, all remnant coastal dune areas stabilized by natural vegetation must, under the County's certified Local Coastal Program (LCP), be preserved, and a very substantial effort to restore a natural dune habitat was required as a condition of resort development at Spanish Bay. The City's Land Use Plan contains comparably rigorous policies to protect the native dune plant habitat area.

C. Land Use Plan Criteria. As the applicants' site lies within the northerly portion of the overall Asilomar-Fan Shell Beach dune complex, it falls within the area covered by the City of Pacific Grove's Local Coastal Program (LCP) Land Use Plan (this portion of the dune formation was annexed by the City in October, 1980). However, because only the Land Use Plan (LUP) portion of the LCP has been completed, the standard of review for this project is the Coastal Act. The applicable Coastal Act policies are discussed elsewhere in these Findings. Nonetheless, the adopted LUP policies provide guidance and are illustrative of ways in which the Coastal Act policy goals can be achieved; and consideration of certified LUP policies will help to avoid prejudice to implementation of a complete LCP.

The City's LUP residential development criteria include the Coastal Act requirement of "no significant disruption", as provided by Section 30240. The City's LUP was approved with modifications by the Commission on December 15, 1988, and has subsequently been revised and adopted by the City.

Although the Coastal Act policies are the standard of review for coastal development permits until the City completes its LCP, the City in the meanwhile has adopted an ordinance which requires conformance with the LUP. Applicable examples of the LUP policies are listed in finding #1 above.

A key habitat protection policy, contained in LUP Section 3.4.5.2, states:

2. Maximum aggregate lot coverage for new development shall be 15% of the total lot area. For purposes of calculating lot coverage under this policy, residential buildings, driveways, patios, decks (except decks designed not to interfere with passage of water and light to dune surface below) and any other features which eliminate potential native plant habitat will be counted. However, a driveway area up to 12 feet in width the length of the front setback shall not be considered as coverage if surfaced by a material approved by the Site Plan Review Committee. An additional 5% may be used for immediate outdoor living space, if left in a natural condition, or landscaped so as to avoid impervious surfaces, and need not be included in the conservation easement required by Section 2.3.5.1(e). Buried features, such as septic systems and utility connections which are consistent with the restoration and maintenance of native plant habitats, need not be counted as coverage.

While the LUP calls for preservation of the protected 80% of each dune parcel through a conservation easement, recordation of deed restrictions which achieve the same effect represents an equivalent measure. Accordingly, these Findings and Special Condition #6 refer to deed restrictions which would protect environmentally sensitive habitat and public views in a comparable manner.

D. Comparative analysis. Sixteen other homes have previously been approved on lots larger than a half acre within the same environmentally sensitive habitat area by the State or Regional Commissions. As conditioned, six of these approvals limited site coverage to 10 percent and the remainder limited primary site coverage to 15 percent or less. Each of these approvals was further conditioned to permanently protect the sensitive dune habitat area by means of a botanical easement or equivalent deed restrictions preserving that portion of the site not covered by development.

To determine the prevailing dimensions of residential development, Commission staff in 1994 examined all approved coastal development permits for the past 10 years which resulted in new or increased residential site coverage in the Asilomar Dunes neighborhood. It was found that twelve such developments were approved during this time period. However, two of these were approvals for a different project on the same lot; therefore, only the most recent of each were included in the data set of ten permits examined. Only five of these were for developments on sites significantly in excess of a half acre, and are listed below in Table 1. Also listed, for sake of comparison, are the more recent approvals for Johnny Miller (3-96-81) and the original Page application, approved November 1994. The current project dimensions are the same as in the original Page application.

TABLE 1

<u>Site</u>	<u>Applica. #</u>	<u>Applicant</u>	<u>Location</u>	<u>Status</u>
A	3-94-32	Page	1450 Sunset	approved
B	3-93-64	Kenedy	450 Asilomar	approved
C	3-91-54	McAlister	1691 Sunset	approved
D	3-89-61	Lefler	10 Calle de los Amigos	approved
E	3-88-62	Corning	1501 Sunset	approved
F	3-87-222	Barker	1313 Pico	approved
G	3-96-81	Miller	1681 Sunset	approved

Analysis of the data contained in the staff reports for each of these applications reveals a substantial departure from the norms for this neighborhood, when the Page application is compared to previously approved permits. On a proportional basis, this holds true for the ten-permit data set as well as the more comparable large lots listed above. For example, the total site coverage for applicant's 0.694-acre lot (deeded Parcel I) is 21.7%. The mean for the 5 large lots previously approved for development is 13.6%. For the 5 half-acre lots, the mean is 15.2%. The applicable data for the larger lots is listed below in Table 2.

TABLE 2

	<u>SITE:</u>	<u>B</u>	<u>C</u>	<u>D</u>	<u>E</u>	<u>F</u>	<u>Mean</u> <u>B-F</u>	<u>A</u>	<u>G</u>
site size (in acres)		1.5	1.1	1.1	0.7	0.7	1.0 (1.1)*	0.7 (1.1)*	1.1
bldg. coverage (in sq. ft.)		3,383	3,794	3,150	3,186	2,415	3,186	3,680	5,247
bldg./site ratio (%)		5.2%	8.2%	6.6%	10.4%	7.4%	7.6% (7.8%)*	12.2% (7.8%)*	11.0%
total coverage (in sq. ft.)		7,358	6,104	6,840	4,376	4,859	5,907	6,550	6,677
coverage/site ratio (total %)		11.3%	13.1%	14.4%	14.4%	14.9%	13.6% (13.9%)*	21.7% (13.9%)*	14.4%
ht. abv. grade (in ft.)		(35)	18	(22)	19	(12.5)	18.5**	18	17.5

*Only if applicant's Parcels I and II are combined.

**Sunset Drive addresses only, on basis of LUP height standard.

E. Project analysis.

As illustrated by the comparative analysis above, applicant's proposed development on Parcel I greatly exceeds the norm for the Asilomar Dunes area, and on a cumulative basis such development would substantially disrupt the area's environmentally sensitive dune habitats. The project site coverage would have to be substantially reduced in order to avoid such impacts, and to avoid prejudice to implementation of the LUP's 15% maximum site coverage standard. A 7.8% (2,015 sq. ft.) reduction in site coverage would be necessary to conform to the 15% standard, and would yield 4,535 sq. ft. of allowable coverage on this 0.694-acre parcel.

On the other hand, if Parcels I and II were to be combined, no reduction in total site coverage would be needed to conform applicant's coverage to the LUP's 15% standard. And, at 13.9%, it would closely parallel the 13.6% neighborhood norm for larger lots. Accordingly, this permit is conditioned to require: a. merger of Parcels I and II; and, b. submittal of revised plans showing conformance with the necessary 15% maximum site coverage standard (Conditions #4 and #3.a, respectively). Such conditions are essential to insure that the project will provide for reasonable residential use of the parcel while minimizing disruption of environmentally sensitive dune habitat.

In accordance with Coastal Act Section 30240 and with past Commission actions, requiring the protection of environmentally sensitive habitat areas, it is appropriate to require deed restriction over 80 percent of the lot to protect the environmentally sensitive native dune plant habitat areas of the property as defined by the vegetation survey submitted with the application. Only by the recordation of a deed restriction, can future property owners be adequately noticed regarding the constraints and obligations associated with this site. The deed restrictions would allow those continued uses necessary for and consistent with its maintenance as a nature reserve under private stewardship. Accordingly, the restrictions will allow installation of measures to minimize trampling of native plants, including construction of boardwalks to accommodate homeowner access (such measures will let the homeowner more easily walk about and inspect his/her property without disrupting the restored environmentally sensitive habitat). (Condition #6.e)

A native plant restoration and management plan ("Basic Landscape and Restoration Plan -- Landscaping/Revegetation Recommendations," by Bruce Cowan, Environmental Landscape Consultant, Sept. 27, 1993) was submitted with the application which includes provisions for replanting of native dune plants. This plan covers all of the undeveloped area of the property. The plan includes criteria to carefully remove and prevent the invasion by ice plant and other non-native plant species within the native dune plant habitat areas. As conditioned by this permit and consistent with previous coastal permit approvals in this area, the restoration and management plan includes a monitoring requirement for five years. (Conditions #8 and 6.c)

To insure that the objectives of the Basic Landscape and Restoration Plan are achieved over the long term, the environmental consultant recommended that the applicant record a deed restriction to implement the restoration plan. Future owners of the property would have the same obligation for protecting, maintaining and perpetuating the native vegetation on the site. Therefore, a deed restriction is appropriate, in order to advise future owners of constraints on the property and to ensure that adequate restoration will occur, regardless of changes in ownership. This is consistent with previous Coastal Commission approvals, LUP policies and conditions of the City's approval. (Condition #6.a)

To insure coordination with Calif. Department of Fish and Game (CDFG) requirements, and to provide appropriate expert technical review of the proposed monitoring program, the conditions of this permit also require submittal, for confirmation, a signed copy of the Mitigation Agreement required by CDFG. (Conditions #9 and 6.c)

Temporary exclusionary fences to protect the native dune plant habitat areas during construction are a necessary mitigation measure and are proposed to assure protection of this environmentally sensitive habitat area. The site should be monitored on a weekly basis during construction, by the City or the environmental consultant, to assure compliance with the Basic Landscape and Restoration Plan. Experience has shown that exclusionary fencing helps to assure that workpeople and materials stay outside sensitive natural habitat areas. Weekly monitoring during construction is required as a condition of this permit, consistent with LUP Policy 2.3.5.1(c) regarding compliance inspections during the construction phase. (Conditions #1, 10 and 12)

One of the most important recommended mitigation measures is the use of a shared driveway arrangement to reduce the total amount of habitat loss. At least 140 lineal feet of driveway would be combined with the relocated Miller/Wilde driveway on the adjacent parcel (APN 007-021-06). The relocation was approved pursuant to a separate coastal development permit (Permit No. 3-94-33). Assuming a projection of applicant's planned 10 ft. width, this amounts to a savings of at least 1,400 sq. ft. of dune habitat area (equivalent to 4.6% of Parcel I). Without the shared driveway, project site coverage would exceed the LUP's 15% maximum, whether or not Parcels I and II are combined.

One problem is that the easements to provide the necessary legal rights for the proposed mutual-use driveway were not finalized. Another is that the originally-proposed realignment would have been extremely close to a known Tidestrom's lupine population on the Miller/Wilde parcel. The Calif. Dept. of Fish and Game (DFG) ordinarily recommends a minimum separation of 100 ft. from known endangered plant populations (see DFG letter, Exhibit I). While the narrow configuration of these parcels made this infeasible, a substantial increase in separation -- from 2 feet to about 15 feet -- was achieved by aligning the shared driveway to straddle the Page-Miller/Wilde property line.

Without the assurance that mutual use of the shared driveway will be guaranteed over the long run, there could in the future arise a demand for a separate driveway entirely on the Page property. This would have a severe impact on both public views and environmentally sensitive dune habitat. Accordingly, this permit is conditioned to require recordation of the appropriate easements for a shared driveway, and to allow such shared driveway on the Page parcel without prejudice to the allowable percentage of site coverage. (Conditions #5 and 3.a)

In order for the restoration of natural dune habitats to be meaningful, over the long run, it is important to prevent such areas from being re-colonized and over-run with invasive, non-native ("exotic") vegetation. Ornamental plantings around private residences are one source of such invasive plant species. Accordingly, the conditions of this permit provide for initial review of the residential landscape plan (Condition #7), as well as an obligation to permanently maintain the restored native plant habitat in good condition (Condition #8). These measures are needed to ensure continued maintenance beyond the initial five year monitoring period, so that ornamental plantings permitted in the "immediate outdoor living areas" will not be allowed to spread into the portion of the site which will be restored to native dune vegetation.

Other measures necessary for the protection of environmentally sensitive habitats, including the dunes, bluff face and adjacent rocky intertidal habitats, include: conformance with the mitigation measures contained in the City's EIR for the project (Condition #1); identification of storage and disposal sites for excavated spoils, and retention of sand suitable for dune restoration within the Asilomar dune complex (Condition #3.f); installation of utility connections beneath the driveway, to the maximum extent feasible, in order to minimize disruption of protected habitat (Condition #3.h); restrictions on fencing design, so that any future fences will be open enough to allow free passage of native wildlife and natural movement of sand (Condition #6.b); and permit review of future residential additions and accessory uses, including dune alteration, which could potentially degrade sensitive dune, bluff edge and adjacent marine habitats (Condition #6.f).

F. Implementing Sections 30010 and 30240 of the Coastal Act. The entire area of applicant's Parcel I, the proposed development site, is an environmentally sensitive dune habitat. Parcel II, which comprises the other portion of the site, as discussed in Findings #1 and 3.A above, is also an environmentally sensitive area. The proposed development as submitted includes a single-family dwelling, basement-level garage, driveway, paved terrace and courtyards. This project will require 1,391 cubic yards of grading and will result in a permanent loss (i.e., site coverage) of 6,550 sq. ft. of environmentally sensitive dune habitat. This does not include another approximately 1,400 sq. ft. of habitat displacement on site, resulting from shared driveway construction (already offset through off-site restoration within Asilomar State Beach).

Additional disruptions will result, but are amenable to native plant restoration and maintenance measures; these include construction of retaining walls, installation of storm drain system, berming, utility trenching, and, over the long run, ordinary residential activities on the premises. None of these development activities are of a type which is dependent on a location within the sensitive resource area. And, these development activities, individually and collectively, will result in a significant disruption of this environmentally sensitive dune habitat area. Therefore, absent other considerations, this project could not be found consistent with Coastal Act Section 30240.

However, as detailed in Finding No. 2 above, Coastal Act Section 30240 must be applied in the context of the other Coastal Act requirements, 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 strict construction 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 effect 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, including sensitive dune habitats, is well recognized.

The initial analysis on the "takings" issue therefore must focus on two factors, 1) alternatives to the proposed residential use which would be consistent with Section 30240 and 2) the legitimate, investment backed expectations of the applicant.

Alternatives: Coastal Act Section 30240 permits only resource dependent land uses to be developed in Environmentally Sensitive Habitats. Examples of resource dependent uses could include interpretive signing and trails, scientific research, and dune restoration projects. While these types of uses could be found to be consistent with the statute, it is clear that they would generate little or no financial return to the landowner. Other land uses, such as visitor serving commercial or recreational developments, which have a greater priority under the Coastal Act for shoreline sites (PRC 30222) are more intensive than a single family home and would destroy more of the habitat. A restaurant, inn or ocean sports sales and rental shop would all require greater site coverage to accommodate parking requirements, for example. Therefore, even though these types of land uses would be economically competitive with a residential project and do have priority under the Coastal Act, a greater proportion of the habitat would be sacrificed to permit their construction. The Coastal Act requires, that, on balance, development which is most protective of coastal resources shall be selected (PRC 30007.5). In this instance, development of an adequately mitigated home on this site will be more protective of resources than a commercial project.

Legitimate, Investment Backed Expectations

It has been determined that the applicant purchased the property in 1991. According to the applicant, at this point in time, he felt it was reasonable to expect that, based upon a number of factors, either residential use would be permitted on the property or the undeveloped site would be purchased by the city or park district for fair market value.

Factors which would support an assumption that the site could be developed for a residential use include its designation for that purpose in the City of Pacific Grove's Land Use Plan and in the City's zoning ordinance. Furthermore, the parcel is on an important street, utilities are available to the site and the adjoining property is developed with an older two-story home. As noted earlier in the staff report, the surrounding area has been subdivided for many years and is approximately 75% developed with single-family homes, many of which were approved by the Coastal Commission. Additionally, at the time the applicant purchased the property, there was no evidence of prescriptive rights or other potential clouds on the legal title to the property he proposes to develop. The applicant may also have reasonably assumed that if a home was not permitted on the site, it would be purchased.

At the time the applicant acquired the property, a ballot measure was proposed by the City to acquire this parcel. The terms of the measure provided for purchase at fair market value. The measure failed, however, and the City approved a residence on the site. After reviewing these factors, the Commission agrees that when the property was acquired, the applicant had a reasonable basis for expecting that residential use would be permitted or that he would be adequately compensated.

Finally, the applicant has submitted detailed information to demonstrate that his expectations were backed by substantial investments. The property was purchased for \$750,000 which was reasonable considering fair market value for residential property in the area at that time. Since the purchase of the property, it has generated no income but has been taxed on its' zoning as residential land. Accordingly, the Commission finds that the applicant had an investment backed expectation that this property could be used as a site for residential development.

In view of the findings that (1) residential use provides the only economic use of the property and (2) there was a reasonable expectation that such a use would be allowed on the applicant's parcel, the Commission further finds that denial of a residential use in this situation, based on the apparent 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 strict construction of Section 30240 is not authorized in the present case.

Mitigations: 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 property might be allowed, the City Land Use Plan, Coastal Act and recent Commission actions on similar projects also provided notice that such residential use would be contingent on the implementation of mitigation measure necessary to minimize the adverse 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.

In the present situation, there are several conditions that the Commission can adopt that implement Section 30240 without taking the applicant's property. First, the applicant currently proposes to cover 6,550 sq. ft. of the 0.694 acre Parcel I with building and paving. As a result, not only will this area of dune habitat be permanently lost, but according to the EIR a substantial additional area will be degraded by construction activities. However, the proportionate extent of this disruption and dune alteration can be minimized, and the area available for dune restoration and protection can be proportionately increased by considering applicant's Parcels I and II together (1.08 acres).

Evaluating the parcels in combination will substantially assist the applicant, by giving him more square feet of lot coverage (for a given standard of coverage expressed as a percentage of lot size). As proposed the building footprint is 3680 sq. ft., with another 2870 sq ft. to be covered by paving. By means of a shared driveway with the adjacent Miller property, a significant

amount of paving has been eliminated. By specifying that site coverage on the revised plans shall conform with the 15% LUP standard, disruption of the environmentally sensitive habitat will be significantly reduced (on a proportionate basis) as well. And, as illustrated by Table 2 above, with merged parcels the applicant would still be allowed to construct a residence of approximately the same net size as that previously approved by the Commission on similarly sized and located parcels in this neighborhood.

Accordingly, the Commission finds that a reasonable development can be achieved consistent with the direction of Section 30240 by adoption of conditions (Special Conditions No. 3 and No. 4) that: a. require the merger of Parcels I and II; and, b. limit site impacts by, among other means, requiring that the final plans for the project show site coverage no greater than 15% (7,056 sq. ft.) of the property.

Even if no project design adjustments are needed to relocate the project landward of the storm wave run-up line, development on the parcel will permanently displace dune habitat and prevent revegetation at least 13.9% 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. For example, residential use, and particularly landscaping in the immediate outdoor living areas, increases the likelihood that invasive non-native vegetation will be introduced and spread onto the protected habitat areas of the property. Moreover, these impacts are significant given the importance of the Asilomar Dune system as a whole and the potential for cumulative impacts if the remainder of the lots in the area are similarly developed. In fact, on a cumulative basis, a development of the kind proposed by the applicant, even as conditioned, will result in the loss of approximately 7 acres of additional environmentally sensitive coastal dune habitat in the Asilomar Dune complex (4 acres from an estimated 20 new projects, each covering 6,700 sq. ft. plus 1,400 sq. ft. of shared or mandatory-setback driveway; 3 acres estimated from re-builds expanding to a full 15% lot coverage).

Therefore, several additional conditions are necessary to offset these direct and indirect project impacts. These conditions are detailed under Finding #3.E above. Most importantly, Special Condition No. 6 requires that the area of the property that will not be developed shall be preserved in open space, subject to a deed restriction. This recorded restriction shall prohibit uses that are inconsistent with dune habitat restoration and preservation.

G. Conclusion: The area of the Asilomar 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 generally requires that such habitat areas be protected against significant disruption or degradation. Strict construction 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.

Previous Commission decisions in the Asilomar Dunes neighborhood have at least implicitly taken these larger considerations into account, by providing for reasonable economic use of existing vacant parcels while seeking maximum protection of each lot's environmentally sensitive dune habitat. For example, residential site coverage was strictly limited; and permanent legal protection, native plant restoration and maintenance of the remaining open space area were together considered to offset the partial loss of unrestored dune habitat.

As conditioned, to require merger of Parcels I and II; to require a reduction in site coverage; to require deed restrictions to protect the environmentally sensitive native dune habitat; to require implementation of the submitted Basic Landscape Restoration Plan; incorporation of the City's mitigation measures; recordation of deed restrictions to provide for restoration and maintenance of natural habitat equivalent to at least 80 percent of the lot area; identification of temporary exclusionary fencing and monitoring, to minimize disturbance of the existing native plant habitat areas; facilitation of a shared driveway with the adjacent property owner; and separate permit or amendment for additions, the proposed development will be consistent with the habitat preservation policies in Section 30240 of the Coastal Act. And, as so conditioned, the project will avoid prejudice to implementation of the LUP's sensitive habitat policies, as required by the Coastal Act.

4. Visual Resources.

Section 30251 of the Coastal Act requires that 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..." shall be subordinate to the character of its setting; the Asilomar area is one of those designated in the plan. The Coastal Act further provides that permitted development shall be sited and designed to protect views in such scenic coastal areas; and, in Section 30240(b), requires that development adjacent to parks and recreation areas shall be sited and designed to avoid degradation of those areas.

The City's certified Land Use Plan contains policies which require the following:

- New development on parcels fronting on Sunset Drive must conform to the open space character of the area.
- Design review of all new development is required.

- Minimum building setbacks of seventy-five feet from Sunset Drive shall be maintained. Larger setbacks are encouraged if consistent with habitat protection.
- Residential structures shall be single story in height and shall maintain a low profile complimenting natural dune topography with a maximum structure height of eighteen feet.
- Earthtone color schemes shall be utilized, and other design features incorporated that assist in subordinating the structure to the natural setting.
- Landscape approval shall be required for any project affecting landforms and landscaping. A landscaping plan, which indicates locations and types of proposed plantings, shall be approved by the Architectural Review Board. Planting which would block significant public views shall not be approved.
- Utilities serving new single-family construction in scenic areas shall be placed underground.

The applicant's property is located on the highly scenic seaward side of Sunset Drive, to the north of Asilomar State Beach. While the adjacent pre-1972 residential development has already impaired public views, the overall visual character of the dunes and shoreline still predominates. Therefore, views from these important public use areas along Sunset Drive, the State Beach and the Lighthouse Reservation towards the adjacent dunes and the sea are an issue of concern.

The proposed dwelling will be partially visible from Asilomar State Beach, as are other existing dwellings in the area. The most direct impacts will be on views from the Lighthouse Reservation, immediately to the north, and from the cobble beach below. The house will be articulated in profile, generally not over 15 ft. in height, but having a cupola observatory for an 18 ft. maximum height. As approved by the City, the dwelling will have a stone masonry finish and a roof of earthen-tone tile. In a further effort to protect views, the garage will be placed below the house in a subsurface excavation. The applicant proposes to underground utility connections (not shown on submitted plans).

Grading plans were submitted with the application. Approximately 1,391 cubic yards of grading is proposed. Excavations will total 983 cubic yards, and fill will amount to 408 cubic yards. Therefore, an excess of 575 cubic yards of sand will be available for dune restoration work elsewhere. In keeping with Commission practice and LUP policy, the permit conditions require the grading plan to specify disposal site for such removed sands strictly within the Asilomar Dunes formation. (Condition #3.f)

Table 2, in Finding #3.D above, shows that if applicant's Parcel I and Parcel II are merged, the building-to-site ratio will be 7.8%. This is close to the neighborhood norm for similar large lots, at 7.6%. Likewise assuming merged parcels, the total site coverage site ratio would be 13.9% as shown on the City-approved plans, only slightly higher than the 13.6% norm. However, to avoid the storm wave run-up hazard zone, it may be necessary to redesign the residence. In such event, a limitation on site coverage (15%) will be required by Special Condition No. 3, part a. Such limitation will assure that the proportions of the residence will not exceed the applicable standards and neighborhood norms for comparably-sized lots, as shown in the Table 2 comparative analysis. Conformance with these standards and norms is essential for the protection of public views to and along this highly scenic shoreline. The consolidation of driveway, berming, and undergrounding of utility connections will also help to reduce visual impacts of the development. (Conditions #3.h and 5)

Other measures to protect scenic resources are incorporated as conditions of this permit, as well. These include restrictions on exterior floodlighting (through incorporation of EIR mitigations), deed restrictions to protect open space, limitations on fencing that could block public views, and progressive removal of exposed end of storm drain pipe as the shoreline recedes. (in order, Conditions #1, 6.e, 6.b, and 6.d) In addition, as conditioned by this permit, future additions will require a separate permit waiver or amendment to ensure that they do not further encroach on public views of this highly scenic area. (Condition #6.f)

While the proposed residence is positioned on a very exposed shoreline location, the proposed design coupled with the conditions attached to this permit will serve to minimize impacts on public views. Accordingly, as conditioned the project can be found consistent with Section 30251 and 30240(b) of the Coastal Act and LUP visual resource policies.

5. Archaeologic Resources

Section 30244 of the Coastal Act states:

Where development would adversely impact archaeological or paleontological resources as identified by the State Historic Preservation Officer, reasonable mitigation measures shall be required.

Land Use Plan Section 2.4 also provides for protection of archaeological resources:

LUP Policy 2.4.5

1. Prior to the issuance of any permit for development or the commencement of any project within the areas designated on Figure 3, the Archaeological Sensitivity Map, the City in cooperation with the State Historic Preservation Office and the Archaeological Regional Research Center, shall:

- a) Inspect the surface of the site and evaluate site records to determine the extent of the known resources.
- b) Require that all sites with potential resources likely to be disturbed by the proposed project be analyzed by a qualified archaeologist with local expertise.
- c) Require that a mitigation plan, adequate to protect the resource and prepared by a qualified archaeologist be submitted for review and, if approved, implemented as part of the project.

The subject site is located in a "sensitive area" according to the LUP Archaeological Sensitivity Map. Several significant archaeological sites have been discovered on the adjacent U.S. Coast Guard property. A "Preliminary Cultural Resources Reconnaissance" was prepared for the site and surrounding parcels by Gary Breschini, Archaeological Consulting, July 24, 1989. The report concludes as follows:

No cultural remains were noted on [parcel] 007-021-5 ... and development on this parcel should not be delayed or restricted for archaeological reasons. ...

Because the possibility always exists that unidentified cultural resources will be found during construction, we recommend that the following standard language, or the equivalent, be included in any permits issued within the project area:

- o If archaeological resources or human remains are accidentally discovered during construction, work shall be halted within 50 meters (150 feet) of the find until it can be evaluated by a qualified professional archaeologist. If the find is determined to be significant, appropriate mitigation measures shall be formulated and implemented.

As conditioned, to require a monitoring program to protect archaeological resources during construction (and, in event of a subsurface discovery, submittal of a mitigation plan), the proposed development is consistent with Section 30244 of the Coastal Act and approved LUP archaeological resource policies. (Condition #11).

6. Shoreline 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. ...

A geotechnical analysis has been completed for this shoreline site, and is incorporated in the certified EIR as a technical appendix (Geology Report, by Foxx, Nielsen and Associates, July 1990). The report analyzes seismic hazards, coastal erosion rates, wave run-up hazards, and tsunami potential; and, presents recommendations regarding foundations, retaining walls, site drainage and erosion control. The report indicates that these conclusions would be valid for three years, after which review by an engineering geologist would be needed for update purposes.

The coastal erosion analysis indicated a bluff erosion rate of up to 0.35 feet per year. Using historical rates of shoreline erosion in the Pt. Pinos area since 1945, a recommended development setback line was established 5 feet landward of the projected bluff edge 50 years in the future. The submitted residence is located entirely landward of this coastal erosion setback line.

Another important design and location issue is storm wave run-up. Because of its exposed location, this extremity of the Monterey Peninsula is subject to episodes of large storm waves and consequent shoreline erosion. When high tides have combined with a strong swell and onshore winds, storm waves have overtoped the coastal bluff at Pt. Pinos and even flooded portions of nearby Ocean View Blvd. As a result, damaging erosion is a chronic problem along the Pacific Grove shoreline; construction on sand dunes adjacent to the shoreline, as proposed by this application, therefore presents a risk that future storm wave episodes will create a demand for shoreline protection works if residential development is allowed at too low an elevation (correspondence from J. Norton, 7/23/94).

The Commission has consistently required new development to be located outside of hazardous areas wherever feasible in order to avoid the need for shoreline protective structures. In this case, the applicant's site offers ample area outside identified hazard areas to construct a home.

The Geology Report analyzes predicted storm wave run-up for applicant's site, and expresses the result in terms of elevation above Mean Sea Level (MSL) for both 50-year and 100-year probability events. The resultant calculated wave run-up elevations are 23 ft. (50-year) and 25 ft. (100-year). All of applicant's deeded Parcel II, and the seaward margin of Parcel I, fall within the storm wave run-up area. Accordingly, the report recommends a finished floor elevation of 26 ft. for the 100-year event, pier-and-beam construction to anchor the building to bedrock, and geotechnical review of final project plans.

As submitted, project plans show a finished floor elevation of 25 ft., and the westerly corner of the residence located seaward of the 50-year predicted wave run-up elevation. Therefore, in consideration of the storm wave run-up hazard, this permit has been conditioned to require submittal of a Geology Report update, revised plans showing all of the residence landward of the 23 ft. contour, finished floor elevation of 26 ft., pier-and-beam foundation, geotechnical review of final plans, and acknowledgement of no entitlement to shoreline protective works. (Conditions #2 and 3). The beach storm drain outfall, in event such outfall is included in the project, would be progressively shortened in response to shoreline erosion to preclude the need for protective devices such as seawalls (Condition #6.d)

These requirements are consistent with past Commission decisions for such development. In particular, the Commission has consistently required new residential development on vacant lots to be located landward of the high water mark for flooding hazard during the project life, based on geotechnical analysis. This applies to all types of flooding hazards, including tsunami and storm wave run-up.

A particularly vulnerable portion of the site is the bluff face, the area between the top edge of the bluff and the cobble beach below. Experience has shown that activities associated with a construction site such as storage or disposal of materials, trampling, and movement of equipment can all lead to loss of ground cover vegetation, erosion, site destabilization and impacts on the adjacent marine environment. Placement of temporary fencing, as required by this permit, is an effective measure to preclude such impacts. (Condition #10)

Additionally, since the site is subject to potential hazards, this permit has been conditioned to require a deed restriction to provide notice to future owners of the hazards associated with this site, and to waive any future entitlement to shoreline protective works or any future claims of liability against the Commission. (Condition #6.h) Therefore, as conditioned, to require the recordation of such a deed restriction, to require that the proposed development conform to the recommendations of the geology report, and that the bluff face be protected by exclusionary fencing during construction, the proposed development is consistent with Section 30253 of the Coastal Act.

7. Public Access.

Applicant's blufftop development site, on deeded Parcel I, lies between the first public road -- Sunset Drive -- and the sea. Along the seaward margin of the site is applicant's deeded Parcel II, which is designated "Open Space Recreational" in the certified LUP. Along the shoreline is a cobble beach which historically provided a lateral access link between the City-managed Lighthouse Reservation and Asilomar State Beach to the south. The portion of the cobble beach above the Mean High Tide Line falls within applicant's deeded Parcel II.

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 30212 of the Coastal Act requires, in part:

- (a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where:
 - (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources,
 - (2) adequate access exists nearby ...

Applicant's project occupies most of the width of his narrow Parcel I, making any future public access route from Sunset Drive to the sea on this parcel infeasible. At present, there is no evidence of such public use (staff observation, air photo analysis). And, there is little need for such additional access route to the shoreline, as excellent public access is available immediately to the north on the Lighthouse Reservation and to the south at several points in Asilomar State Beach. Therefore, this permit has not been conditioned to provide for such "vertical" access to the shoreline.

On the other hand, the proposed project could potentially impair lateral access along the coast. Public use of the cobble beach, especially at the northern property line, is evident (staff observations, air photo analysis). The State Lands Commission has surveyed the landward boundary of the public trust (Ordinary High Water Mark Survey of November 1949). However, the high tide line of the sea has been advancing commensurate with the rate of shoreline erosion. At the historic rate of erosion (see Shoreline Hazards finding above), the tidelands area subject to State Lands jurisdiction may already be as much as 16 feet landward of its 1945 position. Eventually, after a course of 50 years at the maximum historic rate of 0.35 feet per year, the physical ability to pass and repass along the beach would be blocked by the presence of the permitted residence (which is proposed for construction at the recommended 50-year erosion setback line).

The certified Pacific Grove LCP Land Use Plan (LUP) policies parallel the above-cited Coastal Act policies. Further, the LUP calls for "a continuous pedestrian coastal trail, the length of the City's coastal zone, seaward of Ocean View Boulevard/Sunset Drive." (LUP Sec. 5.5.1) In the Asilomar Dunes area, the LUP specifies "dedication of blufftop lateral access easement to an appropriate public agency or private conservation foundation, where private residential use could otherwise impair such access" (LUP Sec. 5.5.4).

As with lateral access on the beach, continued shoreline erosion would eventually leave no room on the blufftop for a lateral access trail. While approval of the residence at the erosion setback line would within the established 50 year period prevent implementation of the LUP's vision of a continuous blufftop trail, the desirable alignment for such a trail would not be presently blocked by the proposed development. Furthermore, no existing blufftop public use is evident. Therefore there is no nexus to require dedication of public access easement.

Over the long run, it is recognized that the continuity of lateral coastal access at this location will depend on maintaining the public's unimpaired ability to utilize the portion of beach in public ownership.

Conditions of this permit which will help to protect public access include: a requirement to merge Parcels I and II (so that future development can be consolidated on Parcel I and therefore not intrude on the cobble beach); recordation of a statement acknowledging no entitlement to shoreline protective works; a requirement to maintain any storm drain outfall pipe flush with the beach profile; a requirement to secure coastal permit approval for future fencing, signs and other exterior residential additions; and a requirement to not interfere with public access on the publicly-owned (seaward) portion of the cobble beach. (Conditions #4 and #6). These conditions will help to prevent blockage of beach areas by rip-rap, protruding outfall pipe, or other impediments. The conditions of this permit also clarify that the Commission in granting this approval does not intend any waiver of any public access rights. (Condition #13).

In conclusion, the proposed residence will impose a long-range burden on public access. However, the above-identified conditions will serve to protect public lateral access along the shoreline, and will preserve the City's ability to implement its LUP Public Access policies. As designed, the project will leave deeded Parcel II, containing the bluff edge and the upper portion of the cobble beach, undeveloped (except for a storm drain outfall). Therefore, any historic rights of access which may exist will be protected in that area of the property closest to the shoreline. 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.

8. Local Coastal Programs. The Commission can take no action which would prejudice the options available to the City in preparing a Local Coastal Program which conforms with the provisions of Chapter 3 of the Coastal Act (Section 30604 of the Coastal Act). Because this neighborhood contains unique features of scientific, educational, recreational and scenic value, the City in its Local Coastal Program (LCP) will need to assure long-range protection of the undisturbed Asilomar Dunes.

While the northern Asilomar Dunes area was originally included in Monterey County's work program for the Del Monte Forest Area LUP (approved with suggested modifications, September 15, 1983), the area was annexed by the City of Pacific Grove in October, 1980, and therefore is subject to the City's LCP process. Exercising its option under Section 30500(a) of the Coastal Act, the City in 1979 requested the Coastal Commission to prepare its Local Coastal Program. However, the draft LCP was rejected by the City in 1981, and the City began its own coastal planning effort. The City has now submitted its own LCP Land Use Plan (LUP), which the Commission approved with modifications in December, 1988. The City has now revised and adopted the LUP, and is formulating implementing ordinances.

The LUP contains various policies which are relevant to the resource issues raised by this permit application, particularly with respect to protection of environmentally sensitive habitat, public access and scenic resources. Finding No. 3 above summarizes the applicable habitat protection policies; Finding No. 4 addresses the LUP's visual resource policies; and Finding No. 5 discusses archaeological resource policies. The City's action on the project has generally accounted for the applicable LUP policies. (Condition #1). Where procedural and other development standards are absent, the City's mitigations are augmented by the conditions of this permit, particularly with respect to public access, geologic hazards and native plant restoration and maintenance. (Conditions #2, 3, 5 through 10, 12 and 13).

Therefore, as conditioned, the proposed development is consistent with the policies contained in Chapter 3 of the Coastal Act and will not prejudice the ability of the City of Pacific Grove to prepare and implement a complete Local Coastal Program consistent with Coastal Act policies.

9. CEOA. On January 6, 1993, the City of Pacific Grove certified an Environmental Impact Report (EIR), with mitigations, for the proposed development. (Condition #1 incorporates). However, during the review of this project as first approved (Coastal Development Permit No. 3-94-32), it was discovered that additional feasible mitigation measures are available to insure that the project will be the least environmentally damaging feasible alternative. These additional measures are represented by a number of Special Conditions attached to this permit approval (especially Conditions #3, 6, 10 and 12).

Furthermore, the EIR was based on the assumption that the site contained 1.08 acres. The conditions of this permit provide for a merger of the 0.694 acre Parcel I with the Parcel II beach lot. When deeded Parcels I and II are merged to obtain a 1.08 acre development site, the project will be in alignment with the assumptions contained in the EIR and in the coastal permit application.

Accordingly, the Basic Landscape and Restoration Plan proposed by applicant's environmental consultant, along with the City's required mitigation measures and the additional conditions attached to this permit, will together offset the impacts of the proposed development, and will provide for conformance with the California Environmental Quality Act.

EXHIBIT-A

RECOMMENDED CONDITIONS

STANDARD CONDITIONS:

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

EXHIBIT NO. A

APPLICATION NO.

3-96-102 PAGE

Standard Conditions



California Coastal Commission

TABLE 2-1

SUMMARY OF ENVIRONMENTAL EFFECTS

Impacts	Significance Without Mitigation	Mitigation Measures	Significance With Mitigation
4.1 LAND USE AND PLANNING			
4.1-1 The proposed project would be consistent with City of Pacific Grove LCP Environmentally Sensitive Habitats Policy 2.3.2.	LS	4.1-1 The mitigation measures proposed in this EIR are intended to ensure development of a project design consistent with City policies. Development of the site is anticipated in City of Pacific Grove General Plan and LCP policies.	LS
4.1-2 The proposed project would be consistent with City of Pacific Grove LCP Environmentally Sensitive Habitats Policy 2.3.4-2.	LS	4.1-2(a) Construction activities and staging areas shall not take place on lands or sensitive habitat adjacent to the proposed project parcel. 4.1-2(b) No dirt or sand shall be moved onto or removed from sensitive habitats during construction or grading. 4.1-2(c) The area upon which all construction shall take place shall be fenced and all construction equipment and vehicle storage will be confined within the fenced area. No travel or other use of the surrounding area will be permitted.	LS
4.1-3 The proposed project would not be entirely consistent with City of Pacific Grove LCP Scenic Resources Policies 2.5.2, 2.5.5-1, 2.5.5-4(b) and (c), and 2.5.5-7.	S	4.1-3 Lower the overall size of the proposed building by reducing its height and footprint. Adopt measures to modify the roof profile and provide more open space within the site boundary. See Mitigation Measures 4.4-1 and 4.4-2.	LS

S = Significant; LS = Less than Significant; SU = Significant but Unavoidable; B = Beneficial.

EXHIBIT NO. B
APPLICATION NO. 3-96-102
EIR: MITIGATION MEASURES

Impacts	Significance Without Mitigation	Mitigation Measures	Significance With Mitigation
4.1-4 The proposed project would be consistent with City of Pacific Grove LCP Scenic Resource Policy 2.5.5-4(a) and (d).	LS	4.1-4 It is anticipated that the City's design review process and the mitigation measures contained in the Visual Quality section of this report will ensure that project impacts are less than significant.	LS
4.1-5 The proposed project may be potentially inconsistent with City of Pacific Grove LCP Scenic Resource Policies 2.5.5-5 and 2.5.5-6.	LS	4.1-5(a) A landscape plan shall be submitted to the Architectural Review Board at the final design stage for approval. 4.1-5(b) All utility lines shall be constructed underground.	LS
4.1-6 The proposed project would be consistent with City of Pacific Grove LCP Coastal Zone Land Use and Development Policy 3.1.1-1.	LS	4.1-6 Proposed development would be consistent with land use designation.	LS
4.1-7 The proposed project would be consistent with City of Pacific Grove LCP Priority Uses Policy 3.3.2.	LS	4.1-7 None required.	LS
4.1-8 The proposed project would not be entirely consistent with City of Pacific Grove LCP Environmentally Sensitive Habitats and Scenic Areas Policy 3.4.4-1.	S	4.1-8 See Mitigation Measure 4.1-3.	LS
4.1-9 The proposed project would not be entirely consistent with City of Pacific Grove LCP Environmentally Sensitive Habitats and Scenic Areas Policy 3.4.5-2.	S	4.1-9 See Mitigation Measure 4.1-3. The site of the proposed residence shall be reviewed by the Site Plan Review Committee.	LS
4.1-10 The proposed project would not be entirely consistent with City of Pacific Grove LCP Environmentally Sensitive Habitats and Scenic Areas Policy 3.4.5-3.	LS	4.1-10 See Mitigation Measure 4.1-3.	LS

Legend: S = Significant; LS = Less than Significant; SU = Significant but Unavoidable; B = Beneficial.

Table 2. (Continued)

Impacts	Significance Without Mitigation	Mitigation Measures	Significance With Mitigation
4.1-11 The proposed project may not be consistent with City of Pacific Grove LCP Public Shoreline Access Policy 5.5-4.	LS	4.1-11 The proposed project would allow for the establishment of a public access easement along the shoreline of the parcel. However, because the City of Pacific Grove does not yet have in place ordinances implementing the LCP, the decision to impose shoreline access easement rests with the Coastal Commission at such time as it considers the application.	LS
4.2 COASTAL PROCESSES AND GEOTECHNICAL ISSUES			
4.2-1 Portions of the project site disturbed by construction activities could be subject to erosion.	S	<p>4.2-1(a) To the maximum extent possible, the existing ground cover that protects the sand dunes shall not be disturbed. If such area is disturbed, it should be replanted immediately or as soon as feasible.¹</p> <p>4.2-1(b) The proposed residential structure shall be supported with deep-seated pier or pole foundation systems. Conventional spread foundations shall not be used because the near-surface sand dunes are too loose to support such foundations, and in order to redensify the soils to bear the weight of the structure, the dunes would have to be graded. This grading action could strip large portions of the existing vegetation from the dunes, which would then exacerbate wind erosion. The drilled pier foundations would disturb less of the ground cover compared to conventional spread foundation. The concrete pier or wood pole foundations should penetrate all sand dune and terrace deposits and be embedded four feet or more into the underlying bedrock. Piers along the seaward side of the coastline house would be expected to be 12 to 20 feet deep.²</p>	LS

Legend: S = Significant; LS = Less than Significant; SU = Significant but Unavoidable; B = Beneficial.

Table 1 (Continued)

Impacts	Significance Without Mitigation	Mitigation Measures	Significance With Mitigation
		4.2-1(c) Areas used to store construction materials and house the construction shed shall be restricted and construction vehicle access to driveways or designated pathways shall be limited as much as possible.	
4.2-2 Loose sands and groundwater pools may make the drilling holes for foundation piers unstable.	S	4.2-2 Drilled holed shall be bolstered and supported by shielding three drilled hole sides as required by site conditions. ³	LS
4.2-3 Runoff from roofs and driveways could erode sand dunes or marine deposits seaward of the homesite.	S	4.2-3 Full roof gutters and downspouts shall be placed on all eaves of all structures proposed for development on the site. All roof and driveway runoff as well as surface drainage shall be directed away from building site and into storm drain systems that carry the accumulated water in a closed conduit to the sewer system. Non-corrosive segmented drain pipe should be used where coastal erosion may take place. As the coastline erodes, the segments could be removed easily. ⁴	LS
4.2-4 Earthquake-induced groundshaking could cause structural damage and safety hazards to building occupants.	S	4.2-4(a) Foxx, Nielsen and Associates, geotechnical consultants, recommend the use of concrete pier and grade beam foundations. This construction strategy would prevent major damage to the structures should surficial materials fail. (See Mitigation Measures 4.2-1 and 4.2-2) ⁵ 4.2-4(b) All construction, including the infrastructure, shall comply with the most recent edition of the Uniform Building Code Seismic Zone 4 Standards, or local seismic requirements, whichever are most stringent.	LS

Legend: S = Significant; LS = Less than Significant; SU = Significant but Unavoidable; B = Beneficial.

Table 2 (Continued)

Impacts		Significance Without Mitigation	Mitigation Measures	Significance With Mitigation
4.2-5	Seismic shaking could trigger landsliding or liquefaction of soils on proposed site.	S	4.2-5 See Mitigation Measure 4.2-4.	LS
4.2-6	Proposed structures would be subject to damage from erosion of the coastal bluff and storm wave runup within 50 years.	S	4.2-6(a) The foundation of the home shall be set back landward of the recommended development setback line as indicated on latest architectural plans. ⁶	LS
			4.2-6(b) The finished floors of all living spaces must be elevated or protected from hazardous conditions to a height at least one foot above the 50-year wave-runup level. The proposed ocean-front residence should comply with recommended elevations for finished floors and the bottom of the horizontal structural elements of the foundations as listed in Table 4.2-1. ⁷	
4.3 VEGETATION AND WILDLIFE				
4.3-1	The project would result in the degradation of dune habitat which is potential habitat for the federally endangered Tidestrom's lupine and California black legless lizard.	S	4.3-1(a) Leave natural vegetation intact in all portions of the property, except as required for the normal construction of buildings, utility infrastructure, roadways, driveways, parking, and to comply with fire safety specifications and recommendations.	LS
			4.3-1(b) Do not introduce fill or soil from outside the property; these could contain seeds of weeds, genista or other undesirable species capable of overrunning the habitat and outcompeting native species.	
			4.3-1(c) One or more new dune restoration sites must be located on the property, preferably in one of the	

Legend: S = Significant; LS = Less than Significant; SU = Significant but Unavoidable; B = Beneficial.

Impacts	Significance Without Mitigation	Mitigation Measures	Significance With Mitigation
		<p>setback areas, and excess sand from grading used to form new dunes. A revegetation or landscaping plan should be adopted for the restoration sites using only native dune species. (A list of approved plants and possible sources is included in Appendix B). The following measures should be included in the restoration plan:</p> <ol style="list-style-type: none"> <li data-bbox="1304 540 1869 792">1. Use none of the following invasive non-native species in landscaping: Blue gum (<u>Eucalyptus globulus</u>); Acacias (<u>Acacia</u> spp.); Genista (<u>Cytisus</u> spp.); Pampas grass (<u>Cortaderia</u> spp.); Hottentot fig ice plant (<u>Carpobrotus edulis</u>); Cape weed (<u>Arctotheca calendula</u>); Dune grass (<u>Ammophila arenaria</u>). <li data-bbox="1304 824 1869 1141">2. Plant only drought tolerant vegetation in the general landscapes. Plants requiring frequent irrigation must be confined to special landscape features or planters near the homes. Topsoil may be imported only for these specific confined and high maintenance areas. In dune habitat or easements, only native dune species shall be used, and no imported soil may be spread. <li data-bbox="1304 1174 1869 1365">3. All plants used for dune or swale revegetation must be approved by the Pacific Grove Museum of Natural History or selected from Appendix B. Plants must come from local vegetation (i.e. grown by contract from seeds and/or 	

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Significance
Without
Mitigation

Mitigation Measures

Significance
With
Mitigation

Impacts

cuttings collected from the general Asilomar dunes area, rather than be obtained from the general commercial trade) to maintain genetic purity in the local native vegetation. Sources which may be able to provide native plants grown by contract are listed in Appendix B. It is suggested that the majority of the plants be grown in Supercells, as these generally adapt to the habitat more quickly than plants of 1-gallon size or larger, and can be produced in larger quantities more economically.

4. To monitor the success of the Restoration Plan, a botanist approved by the City of Pacific Grove or the Museum of Natural History would be hired by the applicant/owner to visit the site to oversee or supervise the planting, and thereafter at least once a year for five years to ensure that the restoration or revegetation is succeeding. A brief report or letter would be sent to the City following each visit, with a copy sent to the applicant/owner. If deficiencies occur (such as dead plants and shrubs, or presence of pampas grass, weeds or ice plant), the applicant/owner would replace the dead plants and remove the invasive species. Staff of the City of Pacific Grove, the Museum of Natural History, the California Department of Fish and Game, the U.S. Fish and Wildlife Service,

Legend: S = Significant; LS = Less than Significant; SU = Significant but Unavoidable; B = Beneficial.

Table 2-1 (Continued)

Significance
Without
Mitigation

Mitigation Measures

Significance
With
Mitigation

Impacts

Tidestrom's lupines, or where significant native vegetation occurs with the ice plant.

4.3-1(e) All dune restoration to be accomplished per a landscaping plan prepared by a qualified coastal biologist and implemented under the direction of the coastal biologist as required per LCP provisions 2.3.5.1.e and f. Eradication of ice plant shall be by herbicide only and the dead vegetation shall remain and decay in place. This method will provide erosion protection until the native species become established and a source of nourishment for the new plantings. Dune restoration measures shall be implemented in a manner that avoids increasing erosion by being accomplished in phases or some other method deemed appropriate by the coastal biologist.

4.3-1(f) Dune restoration of areas beyond the approved building site and outdoor living space and protecting the restored areas shall conform with a written agreement, deed restrictions or conservation easement granted to an appropriate public agency or conservation foundation as contained in LUP section 2.3.5.1.e. Where large areas are involved, such is the case in this proposal, the conservation easement is the instrument required by the City.

The presence of California black legless lizard shall be determined by trapping, combing, or other means deemed appropriate by the coastal biologist within all areas to be disturbed by construction activity prior to grading operations. The determination of the presence of black legless lizard shall be made by

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Table 2-1 (Continued)

Impacts	Significance Without Mitigation	Mitigation Measures	Significance With Mitigation
		A qualified coastal biologist or all individuals of the reptile found during the reconnaissance shall be relocated to suitable habitat.	
		A detailed grading plan indicating grading proposals in all areas to be disturbed is required to be submitted to the City prior to approval of the Coastal Permit per LCP section 2.3.5.1.d.	

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Table 2 (Continued)

Impacts	Significance Without Mitigation	Mitigation Measures	Significance With Mitigation
4.4 VISUAL QUALITY AND AESTHETICS			
4.4-1 Development of the proposed project would result in a change to the aesthetic environment and visual quality of an area with widely recognized sensitive scenic resources.	S	<p>4.4-1(a) Lower the height of the proposed project by approximately 3 feet while retaining the proposed modulated roof profile (Photomontage Scenario A).</p> <p>4.4-1(b) Reduce the overall size of the proposed structure by reducing the footprint of the building by approximately 20 percent (Photomontage Scenario A).</p> <p><i>Alternative Mitigation Measures</i></p> <p>4.4-1(c) Lower the height of the proposed project by approximately five feet while providing a flat or low monopitch roof (Photomontage Scenario B).</p> <p>4.4-1(d) Maintain the overall size of the proposed structure while setting the finished floor level of the home approximately 2 feet below existing grade (Photomontage Scenario B).</p> <p><i>Combined Mitigation Measures</i></p> <p>4.4-1(e) Lower the overall height of the structure in part by approximately 3 feet and maintain a modulated roof surface on the western portion of the building. Lower the overall height of the structure in part by approximately 5 feet and provide a flat or low monopitch roof over the eastern portion of the building.</p>	LS

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Table 2-1 (Continued)

Impacts	Significance Without Mitigation	Mitigation Measures	Significance With Mitigation
4.4-2 The proposed project would reduce open space and viewshed resources west of Sunset Drive, which conflict with the special objective of the City of Pacific Grove to retain open space on land seaward of Sunset Drive.	S	monopitch roof over the eastern portion of the building.	LS
		4.4-1(f) Reduce the overall footprint size of the structure (by approximately 20 percent) in combination with a lower roof height and different roof configuration on all or part of the structure.	
		4.4-2(a) The project shall incorporate to the maximum extent feasible design standards noted in the scenic resources policy statements outlined in the City of Pacific Grove's Local Coastal Program (Scenic Resources 2.5.5-1, 2.5.5-4, and 2.5.5-5).	
		4.4-2(b) The following mitigation measure would also be required to ensure that potential aesthetic impacts are lessened to an insignificant level: <ol style="list-style-type: none"> 1. All uncovered portions of the site shall be maintained in their natural condition, and planted only with native vegetation. 2. The proposed driveway shall be constructed of a material that is similar in color to the surrounding terrain, and located within the site topography, to visually blend into the surroundings to the greatest extent feasible. 	
		4.4-2c <u>Lowered Roof Line.</u> Lower the overall height of the proposed structure by a combination of methods as noted in Mitigation Measure 4.4-1.	

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Impacts	Significance Without Mitigation	Mitigation Measures	Significance With Mitigation
4.4-3 Overflow illumination from the proposed project would have significant impacts on the light and glare characteristics of the surrounding area from dusk to dawn.	S	4.4-3 All light sources emanating from the project site would be directed onto the site and/or screened to prevent overflow illumination of adjoining areas. The use of exterior lights would be kept to a minimum. Exterior spot or flood lighting would be directional to avoid impacts to marine life and local marine activity. Lighting would be designed and aimed in such a way that it does not conflict with lighthouse and security operations.	LS
4.5 CULTURAL RESOURCES			
4.5-1 Construction activities may unearth and damage unidentified cultural remains.	S	4.5-1 The following restrictions would be included as a condition for approval of this proposal: If archaeological resources or human remains are discovered during construction, all work shall be halted immediately within 50 meters (150 feet) of the find until it can be evaluated. An archaeological consultant would be retained to evaluate findings in accordance with standard practice and applicable regulations. Data/artifact recovery, if deemed appropriate, would be conducted during the period when construction activities are on hold. If human remains are discovered, an appropriate representative of Native American Indian Groups and the County Coroner would be informed and consulted, as required by State law.	LS
4.6 PUBLIC SERVICES AND UTILITIES			
4.6-1 The proposed project may generate a slight increase in the number of calls to the police and fire	LS	4.6-1 The police and fire departments would review site plans for the development in order to ensure adequate access for emergency equipment and that	LS

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Table 2-1 (Continued)

Impacts		Significance Without Mitigation	Mitigation Measures		Significance With Mitigation
	departments related to emergency assistance. This would be a less than significant impact.			all structures are built to meet applicable fire and safety codes.	
4.6-2	The proposed project could generate approximately one to two students. This would be a less than significant impact.	LS	4.6-2	None required.	LS
4.6-3	The proposed project would generate approximately 0.96 tons per year of solid waste. ⁸	LS	4.6-3	None required.	LS
4.6-4	The proposed project would generate an increase in demand for water and require connection to the city water system.	LS	4.6-4	The project sponsor would be required to obtain a water permit. The proposed project would be equipped with low flow fixtures and drought resistant landscaping.	LS
4.6-5	The proposed project would require that water utility lines be extended.	LS	4.6-5(a)	All utility lines on the proposed project site shall be placed underground in accordance with Policy 2.5.5 of the City of Pacific Grove Local Coastal Program.	LS
			4.6-5(b)	All trenches for underground utility lines shall avoid sensitive plant and animal species that are identified in Section 4.3, Vegetation and Wildlife, and archaeological resources that are listed in Section 4.5, Cultural Resources, of this DEIR.	
4.6-6	The proposed project would deduct one unit from the City's residential allocation for wastewater treatment.	LS	4.6-6	None required.	LS
4.6-7	Excavation and grading activities and sediment from trucks during construction of the proposed project could impact the water quality of the adjacent tidelands and the Pacific Ocean.	S	4.6-7(a)	To the extent feasible, construction grading would be scheduled during the dry season. An erosion and sediment-transport control plan would be in place prior to the first day of earthmoving activities.	LS

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Impacts	Significance Without Mitigation	Mitigation Measures	Significance With Mitigation
		Standard erosion control practices include retaining sediments within project sites during construction periods through the use of catch basins; mulching and planting all exposed soils with vegetation before the start of seasonal rains; removing mud from the tire treads of earthmoving equipment before allowing equipment to traverse project area streets; using interceptor ditches and benches to prevent gulying of slopes; and preparing and implementing erosion control plans in accordance with the appropriate regulatory agencies, including the Regional Water Quality Control Board (RWQCB).	
		4.6-7(b) Disturbed soil and slope areas shall be revegetated with indigenous vegetation and materials as soon as conditions allow.	
4.6-8 The proposed project would add impervious surface area which would increase the amount of surface runoff. The increase in surface runoff would cause more pollutants to enter the storm system and degrade water quality in adjacent tidelands and intertidal areas of the Pacific Ocean.	S	4.6-8 The project sponsor shall prepare drainage plans and erosion, sediment and pollution control measures as conditions of approval for development in accordance with Local Coastal Plan Policy 2.2.5-2.	LS
4.6-9 The proposed project would require that utility lines be extended.	LS	4.6-9 See Mitigation Measures 4.6-5(a) and 4.6-5(b).	LS

1. Foxx, Nielsen and Associates, p.32-33.

2. Foxx, Nielsen and Associates p.28-29.

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CITY COUNCIL
JEANNE C. BYRNE, AIA
MAYOR
FLORENCE "FLO" SCHAEFER
ROBERT (BOB) DAVIS
ELEANOR C. ROGGE
VERN YADON
TERRENCE B. ZITO
BRUCE D. ROBERTS

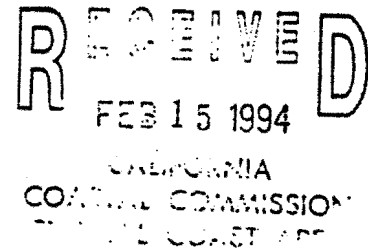


CITY OF PACIFIC GROVE

300 FOREST AVENUE
PACIFIC GROVE, CALIFORNIA 93950
TELEPHONE (408) 648-3100
FAX (408) 375-9863

GARY W. BALES
CITY MANAGER
WILLIAM S. PITT
ADMIN. SERVICES DIRECTOR
CITY CLERK AND TREASURER
GEORGE C. THACHER
CITY ATTORNEY

February 11, 1994



California Coastal Commission
725 Front Street, Suite 300
Santa Cruz, California 95060


Dear Commissioners:

The residence proposed for 1450 Sunset Drive has been approved by the Pacific Grove City Council. The resolution approving this project includes the City registering its support of the project with the Coastal Commission.

I encourage you to approve the application as presented to you as the project has met all the City requirements. The majority on the Council feel satisfied that the project presents a compromise which addresses community concerns while maintaining the owner's use of his property.

I concur with the design and siting of the project and again ask for your approval.

Sincerely,


Jeanne C. Byrne, AIA
Mayor

cc: City Council
George Thacher
Mike Stamp
John Matthams

EXHIBIT NO. C
APPLICATION NO. 3-96-102 PAGE 4
CITY LETTER #
COURT SETTLEMENT

PAGE SETTLEMENT (4-3 vote) 171193

MICHAEL W. STAMP
LORETTA L. LOOP

LAW OFFICES OF
MICHAEL W. STAMP
808 PINE AVENUE
PACIFIC GROVE, CALIFORNIA 93950
(408) 373-1814

FACSIMILE
(408) 373-0842

November 18, 1993

Federal Express

Stephen J.L. Page
2401 Turtle Creek Blvd.
Dallas, Texas 75219

RECEIVED
DEC 10 1993
CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

Dear Mr. Page:

Enclosed are the original and one copy of the proposed Stipulation, exclusive of Exhibit 2, which is a set of drawings made by your architect. Mr. Horan has provided me with a copy of Exhibit 2; a photocopy of a portion of that document is attached to the proposed Stipulation for identification purposes.

The Exhibit 2 drawings are illustrative only; they do not change the substantive terms of the Stipulation and do not supersede the City codes. For example, the newest version of the plans -- for the first time on any version provided to me -- adds language which says that the height limit is "measured @ any point above natural grade." This is a rough approximation of Municipal Code section 23.08.140, and may be intended as a shorthand reference, but it has no legal effect. In other words, the Stipulation, Exhibit 1, and the ordinances remain controlling.

If the proposed Stipulation is acceptable to you, please sign the original and send it by overnight delivery to Mr. Horan. We need both your signature and that of Mr. Horan before we can present the proposal to the City Council. If we receive the signed document on or before November 24, we will be on schedule.

Very truly yours,



Michael W. Stamp

MWS:bjs

cc: Laurence P. Horan (with enclosure)

Brian Finegan
Finegan & Cling
60 West Alisal St.
P.O. Box 2058
Salinas, CA 93902
Telephone: (408) 757-3641

Laurence P. Horan
Horan, Lloyd, Karachale, Dyer,
Horan & Schwartz, Incorporated
499 Van Buren St., P.O. Box 3350
Monterey, CA 93942-3350
Telephone: (408) 373-4131

Attorneys for Petitioner and Plaintiff

Michael W. Stamp
Law Offices of Michael W. Stamp
605 Pine Avenue
Pacific Grove, CA 93950
Telephone: (408) 373-1214

George Thacher
City Attorney
300 Forest Avenue
Pacific Grove, CA 93950
Telephone: (408) 648-3100

Attorneys for Respondents and Defendants

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF MONTEREY**

STEPHEN J. L. PAGE,) No. M 26049

Petitioner and Plaintiff,)

vs.)

**STIPULATION FOR ENTRY OF
JUDGMENT**

CITY OF PACIFIC GROVE; THE CITY)
COUNCIL OF THE CITY OF PACIFIC)
GROVE; HON. FLORENCE SHAEFER;)
HON. ROBERT DAVIS; HON. TERRENCE)
ZITO; HON. ELEANOR ROGGE, and)
DOES 1 through 50, inclusive,)

Respondents and Defendants.)

IT IS HEREBY STIPULATED by and between Petitioner/Plaintiff
Stephen J. L. Page and Respondent/Defendant City of Pacific Grove,

1 that judgment in the above-entitled action be entered on the
2 following terms:

3 1. The City of Pacific Grove has approved the application of
4 Stephen Page for architectural approval for construction of a new
5 single family dwelling at 1450 Sunset Drive, Pacific Grove. That
6 approval is upon the terms and conditions stated in Resolution No.
7 6322 of the City Council of the City of Pacific Grove, including
8 the Conditions of Approval and all exhibits to the Resolution,
9 except as specifically modified herein. Resolution No. 6322 is
10 attached as Exhibit 1. Approval of this stipulation constitutes
11 final discretionary design review by the City Council for the
12 application.

13 2. The maximum height of the residence shall be 15 feet
14 above grade, with the sole exception of the mezzanine roof which
15 shall not exceed 18 feet above grade. The mezzanine is
16 approximately 12 feet by 12 feet and is shown on Exhibit 2. The 20
17 foot sightline for the project and all setbacks and other size and
18 siting requirements imposed by Exhibit 1 shall be in effect, except
19 as specifically amended in Paragraph 4 below. Exhibit 2, showing
20 dimensions and location on the lot of the proposed project
21 improvements, including footprint, roof line, lengths, and widths,
22 is incorporated as an illustrative exhibit to this stipulation.

23 3. Siding and roofing materials for the proposed single
24 family dwelling shall be as specified in Exhibit 3. Qualities and
25 color of the materials shall be substantially identical to the
26 samples lodged with the City on November 9, 1993. The
27 architectural detail relating to the aforesaid materials, as shown
28

1 on Exhibit 2, shall be deemed to satisfy the Conditions of
2 Approval, Condition No. 3, previously adopted by the City Council.

3 4. The total covered footprint for the house and garage
4 shall not exceed 3,680 square feet (as generally shown in Exhibit
5 2), and Conditions of Approval, Condition No. 4, previously adopted
6 by the City Council, is modified accordingly. The covered parking
7 requirement of the City for parking for two vehicles may be
8 satisfied, at Petitioner's request, with the construction of under
9 grade parking to be located as shown on Exhibit 2. The plan for
10 the driveway for the parking area shall contain appropriate
11 measures to screen (by landscaping, by berm, or otherwise) the
12 driveway and garage entrance from public view. The City's Director
13 of Planning shall determine the appropriate method of screening and
14 the sufficiency of such screening prior to the City's issuance of a
15 building permit. The area of underground construction shall not
16 exceed 650 square feet, of which no more than 100 square feet may
17 be devoted to storage space. The entrance to the garage area shall
18 not be more than 20 feet wide. Under no circumstances shall any of
19 the underground area be habitable or converted to habitable uses.
20 Petitioner agrees to hold harmless the City in regard to all costs
21 and claims, if any, arising out of or related to the under grade
22 construction.

23 5. This approval shall be deemed effective on the date this
24 stipulation is signed by the City. This approval shall be valid
25 for two years, said term to commence upon obtaining a coastal
26 development permit for the project from the California Coastal
27 Commission, and Conditions of Approval, Condition No. 13,
28 previously adopted by the City Council, is modified accordingly.

1 6. All construction and other work on the property shall be
2 in strict compliance with the terms and conditions of approval,
3 including those specified in this Stipulation and Judgment. Any
4 deviation from any term or condition must be approved by the City
5 in advance, and may require City Council approval.

6 7. The landscape plan required by Resolution No. 6322 for
7 the architectural approval shall be prepared by Petitioner and
8 shall be submitted to the City for approval and approved by the
9 City prior to the building permit being issued. Petitioner and
10 City shall review the plan one year after work is completed, and
11 annually for the next two years in order to assess the success of
12 Petitioner's good faith efforts to restore native vegetation. The
13 landscape plan will be phased or staged so as to plant the dune and
14 the area of ice plant removed for construction, the second stage
15 one year later, and the third stage one year after the second
16 stage. Petitioner and the City shall make a good faith review of
17 the landscaping efforts one year after issuance of the occupancy
18 permit for the residence, and again one year after the first review
19 in order to determine the success of landscaping already in place,
20 and, based thereon, the feasibility and timing of continued
21 revegetation.

22 Because of the danger of erosion, and in order to maintain
23 stability on the westerly portion of the site, Petitioner is not
24 required as a condition of approval to remove the existing
25 vegetation to the west of the proposed residence. The landscape
26 plan shall require, however, that as to existing vegetation to the
27 west of the residence which is disturbed or damaged during
28

1 construction or other site work, Petitioner shall restore or
2 replace said vegetation in accordance with the landscaping plan.

3 8. Concurrent with the execution of this stipulation by
4 Petitioner, Petitioner shall deliver to counsel of record for the
5 City fully executed dismissals with prejudice of all causes of
6 action against all respondents and defendants other than the City
7 of Pacific Grove, which dismissals may only be filed upon the
8 granting to Petitioner of a Coastal Development Permit by the
9 California Coastal Commission for the single family residence
10 approved by the City. The City shall register with the California
11 Coastal Commission the City's support of the project approved
12 pursuant to this stipulation.

13 9. Each party shall bear its own costs and attorneys' fees.

14 //

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1 10. The Superior Court shall retain jurisdiction to enforce
2 the judgment herein.

3 11. The judgment herein may be recorded by either party.

4 Dated: November __, 1993

5
6 Stephen J.L. Page
7 Petitioner and Plaintiff

8 Dated: November __, 1993

9 FINEGAN & CLING

10 HORAN, LLOYD, KARACHALE, DYER,
11 HORAN & SCHWARTZ, INC.

12 By:

13 LAURENCE P. HORAN
14 Attorneys for Petitioner and
15 Plaintiff

16 Dated: December __, 1993

17 Jeanne Byrne
18 Mayor, City of Pacific Grove

19 Dated: December __, 1993

20 GEORGE THACHER
21 CITY OF PACIFIC GROVE
22 CITY ATTORNEY

23 LAW OFFICES OF MICHAEL W. STAMP

24 By:

25 MICHAEL W. STAMP
26 Attorneys for Defendant and
27 Respondent
28

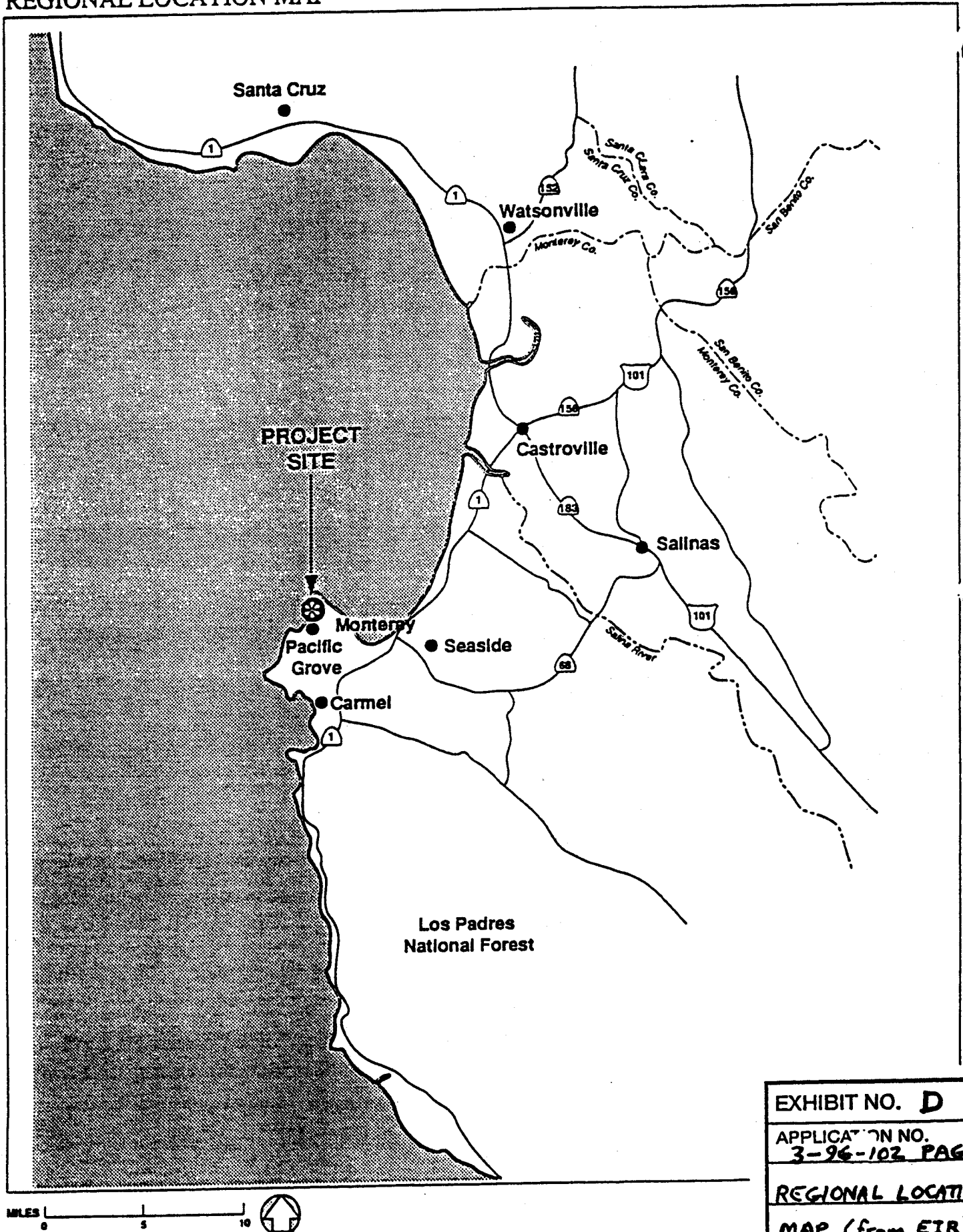


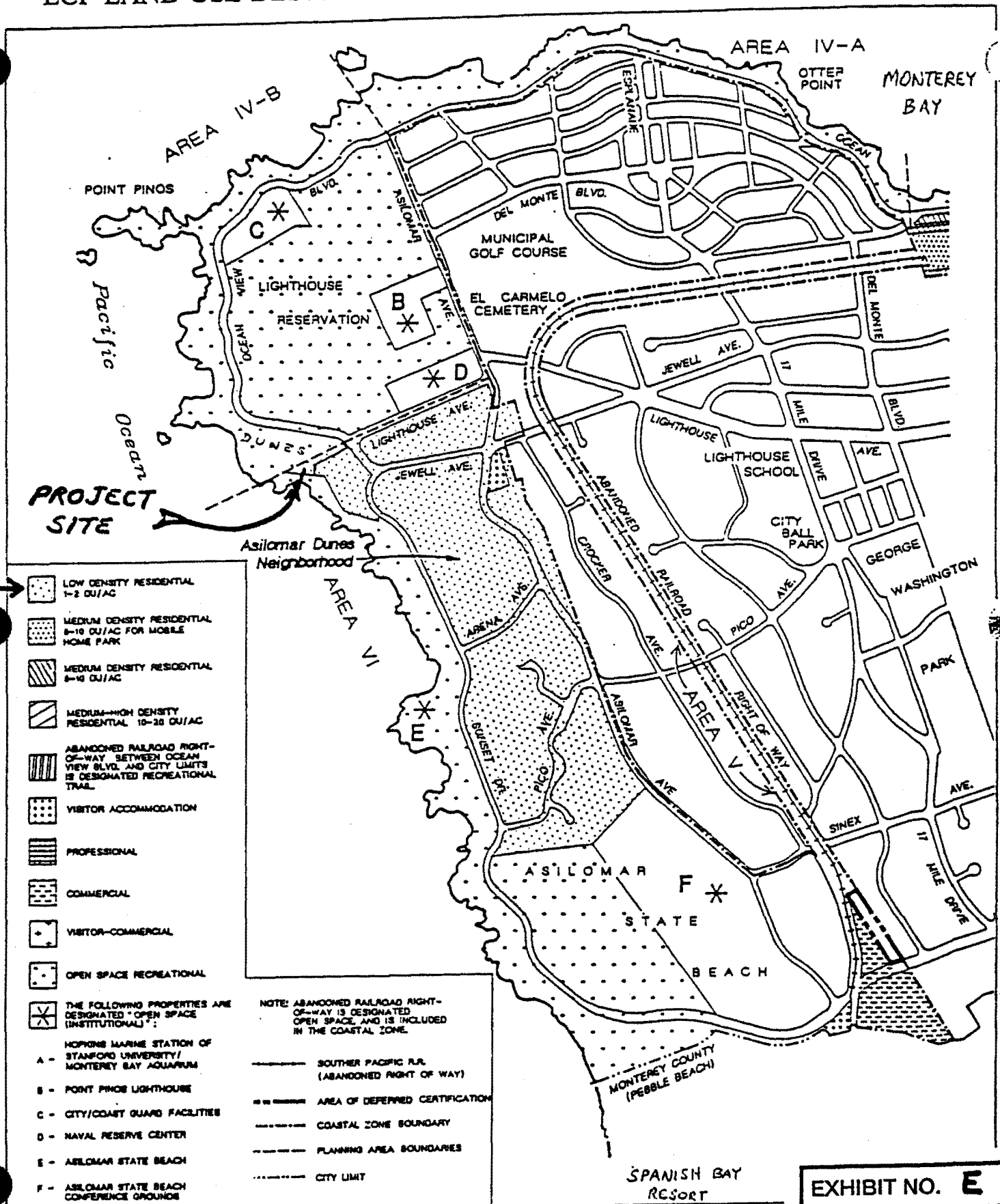
EXHIBIT NO. **D**

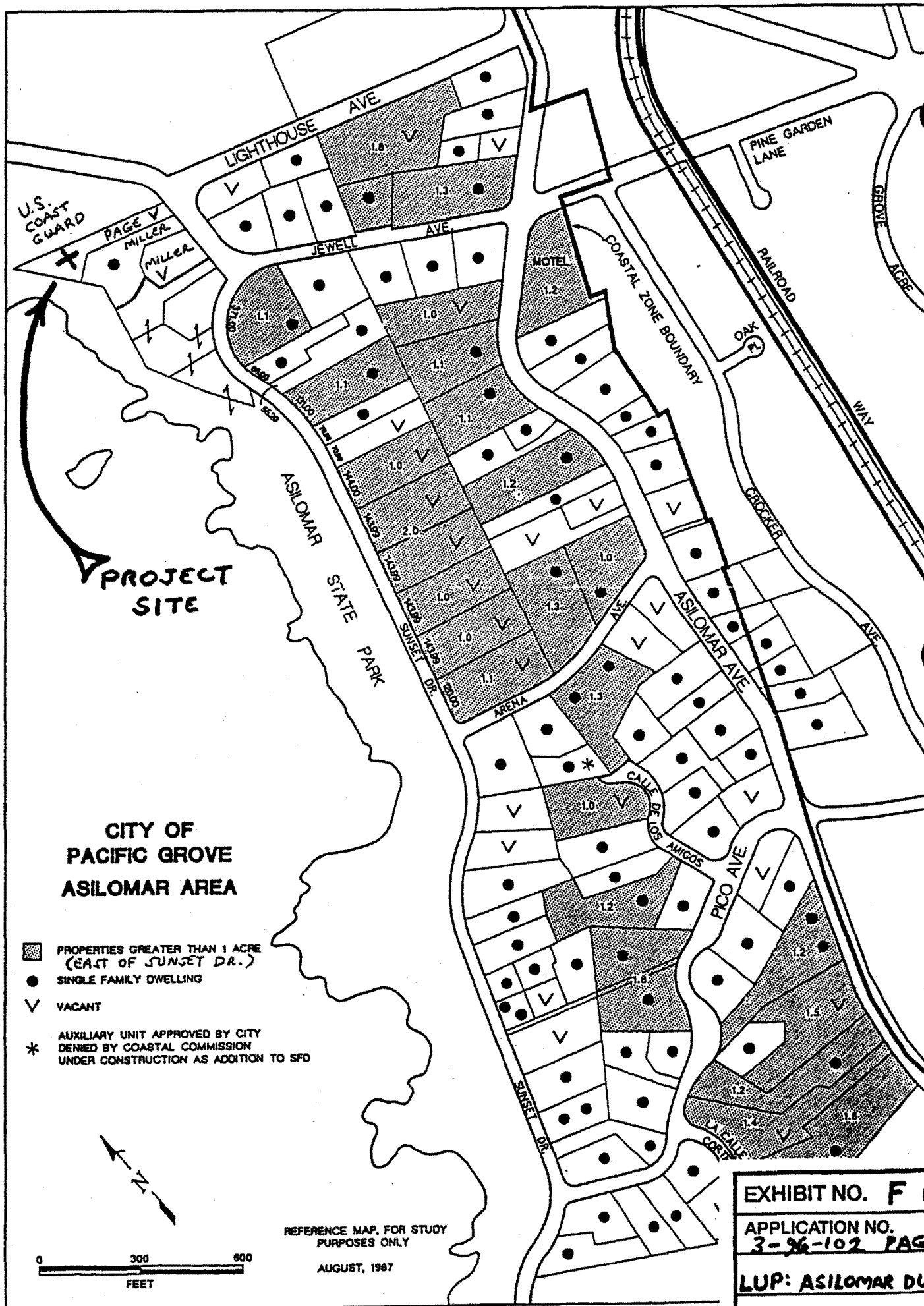
APPLICATION NO.
3-96-102 PAGE

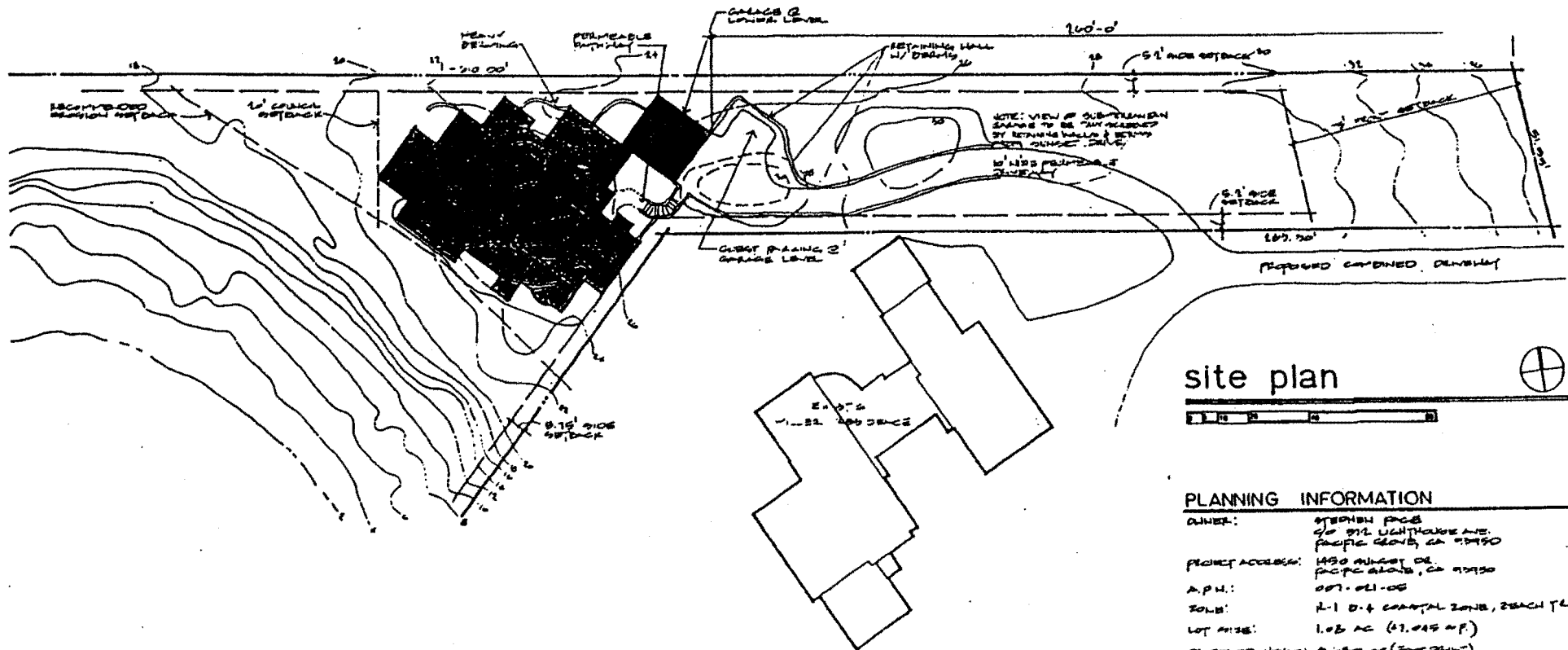
**REGIONAL LOCATION
MAP (from EIR)**

LCP LAND USE DESIGNATIONS

FIGURE 4.1-1







site plan

PLANNING INFORMATION

OWNER: STEPHEN PAGE
 578 LIGHTHOUSE AVE.
 PACIFIC GROVE, CA 93950

PROJECT ADDRESS: 1450 SUNSET DR.
 PACIFIC GROVE, CA 93950

A.P.N.: 007-011-05

ZONE: R-1 D-4 COASTAL ZONE, BEACH TRACT

LOT AREA: 1.03 AC (41,045 S.F.)

PROPOSED HOME: 4,000 S.F. (FOOTPRINT)
 600 S.F. (BASEMENT, -100' ELEV.)

PERIOD: 210 S.F.

TOTAL LOT ON
 PER L.U.D. 2,200 S.F.
 (197-)

DRIVEWAY & DRIVEWAY: 12,000 S.F. (PAVEMENT & DRIVEWAY)

REMARKS: 13' (10' TOWER) VERTICAL & 10' HORIZONTAL SETBACKS

JOHN E. MATTHAMS INTERNATIONAL DESIGN GROUP 578 LIGHTHOUSE AVE. PACIFIC GROVE CA. 93950-1251		
DESIGNED	DATE	REVISIONS
DRAWN	2/1/74	
APPROVED		
SCALE	CONSULTANT	

A New Residence for:

Mr. & Mrs. Stephen Page

1450 Sunset Drive

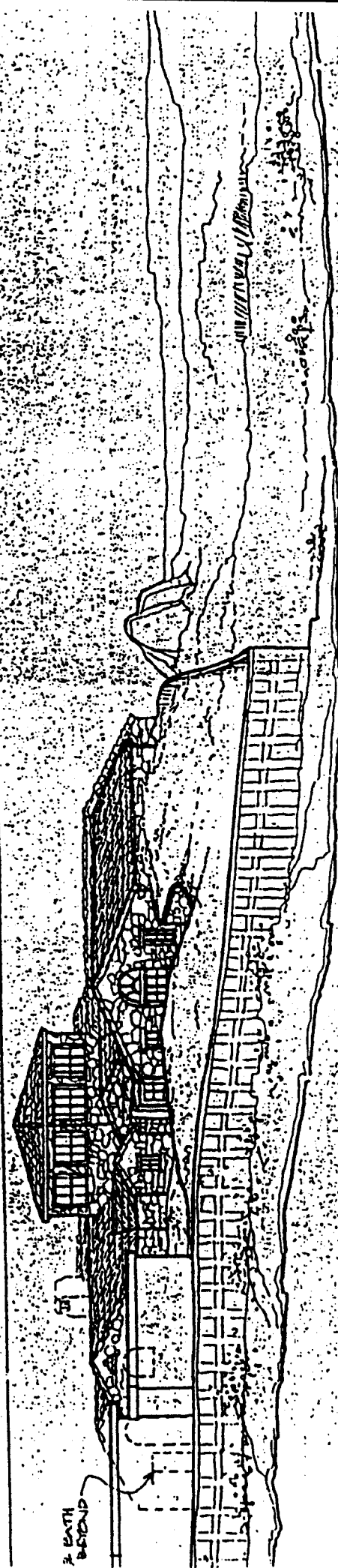
Pacific Grove, California

EXHIBIT NO. G

APPLICATION NO.
 3-96-102 PAGE

SITE PLAN

(AS SUBMITTED)



east elevation

VIEW FROM SUNSET DRIVE

EXHIBIT NO.	H
APPLICATION NO.	3-96-102 PAGE
ARCHITECTURAL ELEVATION—VIEW FROM SUNSET DR.	

DEPARTMENT OF FISH AND GAME

20 LOWER RAGSDALE DRIVE, SUITE 100
MONTEREY, CA 93940
(408) 649-2870

August 3, 1994

Mr. Les Strnad
California Coastal Commission
725 Front Street
Santa Cruz, CA 95060RECEIVED
AUG 8 1994CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

Dear Les:

In response to your inquiry of July 14, 1994, regarding the pending application of Page and Miller/Wilde, we have several comments. The biological reports prepared for the projects appear to be fairly complete, and conducted at the appropriate time of year to detect the plant species in question. We are assuming that in lieu of actual surveys for black legless lizard that suitable habitat has been designated, and that for the purposes of environmental review, it is assumed that the habitat is occupied.

The mitigation measures as proposed are appropriate; however, we would request that several additional measures be added. We recommend that all dune habitat outside of the building envelope be restored to a natural condition, and that a conservation easement be placed on those restored dune areas between the building envelopes and Sunset Drive.

We recommend that the driveway to be shared between the two residences be constructed further from the adjacent population of Tidestrom's lupine, state listed as endangered. Designation of the driveway location as straddling the property line between parcels may be the best location. In general we recommend a setback of 100' from populations of listed plant species (and this is consistent with Coastal Plan policies regarding Environmentally Sensitive Habitat areas). This site is very constrained, having populations of the lupine and of another rare plant species, the Monterey spineflower, in the vicinity of the drive; it appears 100' setback is not possible. For that reason, it is essential that a conservation easement be placed over the dune restoration area for protection of the lupine and spineflower.

Monitoring of the habitat restoration work should include specific goals for maintaining populations of both of the endangered species known from the site. Because there will be impacts to a state listed plant species (Tidestrom's lupine), the project proponent should enter into a Mitigation Agreement with the Department of Fish and Game. We request that this be included as a permit condition.

Thank you for the opportunity to comment on this project; please call me at (408) 726-3847 if you have questions regarding these comments.

Sincerely,

Deborah Hillyard
Plant Ecologist

EXHIBIT NO. I
APPLICATION NO. 3-96-102 PAGE
DF & G LETTER
re: BIO. REPORTS



United States Department of the Interior

FISH AND WILDLIFE SERVICE

Ecological Services
Ventura Field Office
2140 Eastman Avenue, Suite 100
Ventura, California 93003

August 23, 1994

RECEIVED
AUG 29 1994

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

Lee Otter
California Coastal Commission
Central Coast Area Office
725 Front Street, Suite 300
Santa Cruz, California 95060

Subject: Review of Botanical and Biological Report for APN 007-021-05, Pacific Grove, California

Dear Mr. Otter:

The U.S. Fish and Wildlife Service (Service) has reviewed the reports generated as a result of the botanical and biological surveys for the referenced site in Monterey County, California. The surveys were conducted to assess the potential impacts on biological resources of constructing a single family residence along Sunset Drive in Pacific Grove. You specifically requested that the Service evaluate the adequacy of the biological and botanical surveys.

The Service believes the biological and botanical reports adequately demonstrate that the proposed residential site and the surrounding area support significant wildlife resources, including the federally endangered Menzies' wallflower (*Erysimum menziesii*) and Tidestrom's lupine (*Lupinus tidestromii*), and the threatened Monterey spineflower (*Chorizanthe pungens* var. *pungens*). Suitable habitat for the black legless lizard (*Anniella pulchra nigra*), a species which is under consideration for listing pursuant to section 4 of the Endangered Species Act of 1973 (16 U.S.C. 1531-1544, 87 Stat. 884), as amended (Act), also occurs on-site. Because the black legless lizard is known to occur adjacent to the subject parcel and suitable habitat occurs on-site, the report appropriately indicates that this species may also be present.

We appreciate the opportunity to evaluate the biological and botanical reports. The Service encourages the California Coastal Commission (Commission) to fully consider the potential direct and indirect effects of the proposed action on these resources during its evaluation, and to provide us with notice of the Commission's proposed action, when it becomes available.

EXHIBIT NO. J
APPLICATION NO. 3-95-102 PAGE
USF & WS LETTER
re: BIO. REPORTS

Lee Otter

2

If you have any questions, please contact Ray Bransfield of my staff at (805) 644-1766.

Sincerely,

A handwritten signature in cursive script, appearing to read "Craig Faanes". The signature is written in dark ink and is positioned above the printed name and title.

Craig Faanes
Field Supervisor

Page-Wheatcroft & Co., Ltd.

SENIOR LEVEL EXECUTIVE SEARCH & CHANGE MANAGEMENT CONSULTANTS

August 8, 1994

RECEIVED
AUG 15 1994

To: California Coastal Commission Members

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

SUBJECT: California Coastal Commission Meeting, Scheduled September 13-16, 1994 Re: Stephen and Kathi Page Permit Approval, 1450 Sunset Drive, Pacific Grove, California 93950

Please find attached a narrative describing the regulatory horror story and malicious persecution endured by my family during the previous four years as we've attempted to build a single family residence on a recognized, residentially zoned lot in the City of Pacific Grove, California.

As a tax-paying, constitutionally-aware family, we have been forced to endure what could only be described as a nightmare during this process. We have been forced to spend in excess of \$400,000 in after-tax money to obtain our constitutionally-guaranteed private property development rights. The attached narrative describes in more detail the specific events that proceeded this hearing.

We respectfully ask you to vote positively on our application so that Kathi and I may move to California, build our dream house, and raise a family in what must surely be the most beautiful place on earth, the Monterey Peninsula.

Thank you for your consideration of the attached material. I look forward to speaking with you personally September 13-16, 1994 in Eureka, California.

Warmest personal regards,

Stephen J. L. Page

Stephen J. L. Page
Chairman & CEO

SJLP/gp

THE WHITEHOUSE ON RAWLINS
4420 RAWLINS STREET SUITE 2700 DALLAS, TEXAS 75219
TEL. (214) 522-2700 FAX - (214) 522-6661

EXHIBIT NO. K
APPLICATION NO. 3-96-102 PAGE
APPLICANT'S LETTER

California Coastal Commission

August 8, 1994

Page Two

Enclosure: Page Family Narrative Re: Permit Approval, 1450 Sunset Drive, Pacific
Grove, CA 93950

cc: Mr. Les Strnad
Superior of Planning and Regulation
California Coastal Commission
725 Front Street, Suite 300
Santa Cruz, CA 95060

Mr. Lee Otter
Senior Planner
California Coastal Commission
725 Front Street, Suite 300
Santa Cruz, CA 95060

Page-Wheatcroft & Co., Ltd.

SENIOR LEVEL EXECUTIVE SEARCH & CHANGE MANAGEMENT CONSULTANTS

TO: CALIFORNIA COASTAL COMMISSION MEMBERS
RE: RESIDENTIAL HOME-BUILDING APPLICATION
1450 SUNSET DRIVE, PACIFIC GROVE, CA 93950
APPLICANT- STEPHEN J. L. PAGE

Respectfully submitted to the California Coastal Commission.

The purpose of this letter is to make you aware of the circumstances and history regarding the above referenced application before you during the California Coastal Commission hearing scheduled for September 13-16, 1994 in Eureka, CA.

I purchased the subject property during February, 1991. Prior to closing escrow, we gave the City of Pacific Grove approximately a year and a half to purchase the property from the previous owners, Paul and Kirstie Miller, as requested by the City of Pacific Grove. When the good faith "option" period expired, we elected to close escrow and submitted our planning application.

The previous three years have been like an "Alice in Wonderland" experience. I had no sense that a government (of the people, by the people and for the people) could so divisively be manipulated and shamelessly corrupt laws that were meant to protect private property rights.

In order to give the Commission a greater sense of our trials and tribulations, I've detailed below some of the "highlights" of our journey.

- Stephen J. L. Page entered into escrow to purchase 1.07 acres of pristine beach front property on California's Monterey Peninsula during September, 1990. Escrow was formerly closed on the property identified by Monterey County Parcel No. AP 007-021-05 and street address 1450 Sunset Drive, Pacific Grove, CA 93950 during February, 1991.
- The property was purchased from Paul and Kirstie Miller for \$750,000.
- Prior to closing escrow, we (during July 1989, approximately) notified the City of Pacific Grove of our intent to purchase the property and, at the request of Mr. Miller and the City of Pacific Grove, gave the City approximately a year to raise the necessary funds to purchase the lot for public use. The City failed to raise the necessary funds and we closed escrow.

- The lot became the subject of local political divisiveness when some former (Bud Nunn et al) and current City of Pacific Grove Council Members ran on a re-election platform (November, 1992), to "Save our Rocky Shores". Two of the Council Members specifically, Flo Schaeffer (former Mayor) and Ken Zito raised money during their election campaigns utilizing the "Save Our Rocky Shores" election theme and stated their intent to condemn subject property, as part of their election platform.
- During the preceding two years, we have been forced to spend in excess of \$400,000 in architectural, geological, environmental impact report, carrying cost, and legal fees to protect our constitutionally guaranteed private property rights. Additionally, we have been forced to endure the most abusive Local Government, Building Permit Approval process in an attempt to obtain building permission for this City of Pacific Grove recognized residential lot.
- Ms. Schaeffer and Mr. Zito should have recused themselves from all City of Pacific Grove dealings with this application because of obvious conflict issues. Far from recusing themselves in the Council's deliberations, Ms. Schaeffer and Mr. Zito continually voted on issues negatively affecting and delaying our building application, despite the fact that their actions were a clear violation of the Brown Act (Rules of Conduct for Local Government).
- The City of Pacific Grove Land Use Plan states that we would be entitled to build a residence of up to 7,000 square feet in size. We originally filed a request to construct a residence of 4,200 square feet and reduced the size of the proposed residence, in the spirit of compromise, to 3,600 square feet.
- In complete defiance of the California Permit Streamlining Act, which states that a residential applicant shall have his building plans approved within one year of permit application, the City of Pacific Grove necessitated that we endure twenty documented public hearings and numerous other meetings over a two-plus year period and finally voted to allow us to build a 1,900 square foot house, (2,500 square foot residence, to include a garage) on our 1.07 acre beach front lot (January, 1993).
- After two years, I was forced to sue the City of Pacific Grove and two Council Members previously mentioned for a variety of violations of the Brown Rules of Conduct, applying to City governance.

- Three particularly telling events summarized the City of Pacific Grove's capricious behavior towards this application. The first occurred when then Mayor, Flo Shaeffer, requested bids to perform an environmental impact report study on the subject property. Ours was the first residential lot requiring an environmental impact report prior to a building application being approved in the history of the City of Pacific Grove. Then Mayor Shaeffer, at a Council Meeting, opened three bids submitted to perform the work necessary to create an environmental impact report. The bids estimates were respectively, \$18,000, \$36,000 & \$60,000. Without reviewing the merits of either of the lesser bid companies capabilities, she immediately selected the highest priced bidding company to perform the work. A second event occurred at an initial architectural review committee meeting, where one of the committee members described "in her life as a former sea gull she saw the house we were to construct being built out of drift wood and feathers to be shaped like a sea shell, with the aperture facing out to sea!" The third event occurred at a planning committee meeting where the Chairman was questioned from the floor about the City's recommended size for proposed residence, 2,500 square feet. When asked to quantify his calculations for the number he stated "I pulled the number out of a hat!"
- We have spent approximately \$100,000 in legal fees to achieve the compromised solution before you. The City has required that I bury the house, putting my family at great risk from an unusual wave run up. I was forced to bury a modest two car garage in a subterranean cellar to be able to park two cars on my property.
- The Miller house on the adjoining property stands approximately 35 feet tall and has been a fixture on the peninsula for approximately 66 years. It would not be unreasonable to raise the floor level of our property 5 or 10 feet to minimize the risk of a wave run up in an exceptional storm, which would still place the property some 10 feet below the Miller's property roof line.

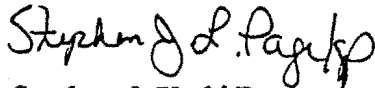
In summary, my family and I have been forced to endure a process that has made us sick to our stomachs. We have lost countless hours of sleep and spent untold months of personal time dealing with the very issues The Constitution was supposed to protect. This vindictive battle, conducted by a majority of the City of Pacific Grove's Council has forced an expenditure in excess of \$400,000 that could have been used to construct the proposed residence on this property.

We have before you an opportunity to approve this project and bring an end to the travesty of justice that has been waged by a vindictive and petty City of Pacific Grove council majority. The house that we proposed to build covers less than 10% of the surface area of our lot (60% of our allowable development space per the City of Pacific Grove's Land Use Plan).

California Coastal Commission Members
Page Four

Thank you for your consideration of the contents of this letter and in anticipation of your positive vote for this building application.

Warmest personal regards,

A handwritten signature in cursive script, appearing to read "Stephen & Kathi Page".

Stephen & Kathi Page
Property Owners

F.O.P.G.

RECEIVED
AUG 9 1994

June 1, 1994

Thomas H. Gwynn, Chairman
California Coastal Commission

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

Dear Mr. Gwynn,

You and the other members of the Coastal Commission will soon have before you an application from Mr. Stephen Page to build a home on his property at Rocky Shores in the City of Pacific Grove.

We, the undersigned residents of Pacific Grove and surrounding areas, fully support Mr. Page and urge the Commission to APPROVE his permit without delay.

The Commission has already considered the Coastal Act's relevance to land uses in Mr. Page's neighborhood (the Asilomar dunes), and based on those considerations has certified an L.U.P. which regulates development there. We believe that an impartial analysis of Mr. Page's project under the provisions of the Pacific Grove L.U.P. can only result in a vote for approval by the Coastal Commission. For example:

(1) The L.U.P. REAFFIRMS the zoning of Mr. Page's property for single-family residential use. That zoning has been in effect continuously since the lot's creation in 1963. Mr. Page's project is, of course, a single-family home.

(2) To protect public views and sensitive habitats, the L.U.P. recommends that Mr. Page's property be purchased by the government for preservation as open space if possible. Several owners of this property, including Mr. Page, have offered it for sale to the government without success. Twice (1991 and 1992) Pacific Grove voters REJECTED ballot initiatives to increase taxes to pay for land purchases at Rocky Shores.

(3) Also to protect public views and sensitive habitats, the L.U.P. drastically REDUCED the amount of lot coverage permitted on Asilomar lots from 35 percent (under City zoning) to only 15 percent. Yet Mr. Page is asking for no more than 10 percent.

P.O. Box 781, Pacific Grove, California 9395

EXHIBIT NO. L
APPLICATION NO. 3-96-102 PAGE
"FRIENDS OF PACIFIC GROVE"
(F.O.P.G.) LETTER

(4) To further protect public views, the L.U.P. cut maximum height for all new homes in the Asilomar Dunes from two-stories and 25 feet (under city zoning) to one story and 18 feet. Mr. Page's proposes a home that is one story and generally less than 14 feet high, and which will sit near and be much lower than the large existing home at Rocky Shores.

(5) Also to protect views from the last public road, the L.U.P. increased mandatory SETBACKS to a minimum of 75 feet from Sunset Drive. Mr. Page's home will be set back more than 250 feet from Sunset Drive.

(6) To further protect public views and sensitive habitats, the L.U.P. calls for RESTORATION of the un-built portion of Asilomar lots with native plants, and requires scenic and conservation easement dedications. There have been no endangered plants or animals found on Mr. Page's lot. Still, his project meets all the L.U.P. requirements for sensitive habitat protection and restoration.

(7) The L.U.P. calls for the "maximum" preservation of open space at Rocky Shores. Four of the lots at Rocky Shores which were zoned R-1 by the L.U.P. have recently been purchased by public agencies and will remain open. Mr. Page is more than contributing his share by the keeping the size of his home, as we have just stated, way below L.U.P. maximums.

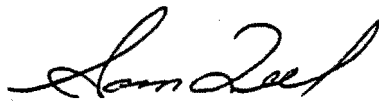
You will undoubtedly hear many loud voices demanding that Mr. Page be stopped from building altogether, or that his plans be significantly reduced. But during the five years it took Mr. Page's application to be approved by the City of Pacific Grove (through several major revisions and nearly 20 public hearings before various boards and commissions) there were dozens of members of the public who spoke up to support Mr. Page and to defend the right of a property owner to build a reasonable home on his property. There is absolutely no evidence that a majority of the public opposes Mr. Page.

Furthermore, we feel that it is very important that all property owners be able to rely on written, objective criteria for development of their property, that these criteria be as specific as possible and that they be interpreted evenly and fairly and in a manner that protects the property owner as well as the environment. If Mr. Page's project is rejected or reduced by the Coastal Commission it will necessarily be because new criteria, not

found in the L.U.P., were invented just for his project. Or it will be because the existing L.U.P. criteria were interpreted in a way that inflicted maximum damage on Mr. Page and neglected his rights as the owner of property. This is not the way our system of government is supposed to work.

We urge you not to obey the extremists who will demand extreme actions from you. Rather, you should give Stephen Page credit for having offered his property for sale to the government, recognize that his plans already meet L.U.P. criteria for protection of the coastal environment, and approve his permit.

Thank you very much.

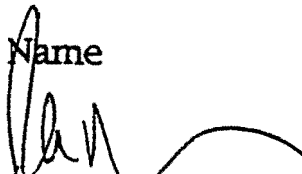


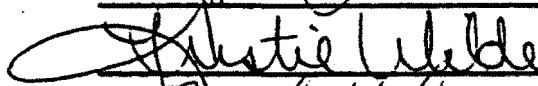
Sam Teel, President, Friends of Pacific Grove


Also signed by:

Name

City


 (PAUL MILVER) PACIFIC GROVE

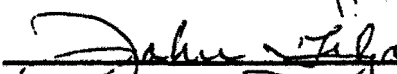
 KIRSTIE WILDE Pacific Grove, Ca.

 BERT HODGINS Pacific Grove, Ca.

 MARK E. WOODWARD PACIFIC GROVE, CA

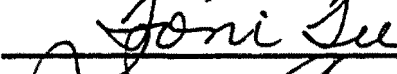
 ELMER P. FLATLEY PACIFIC GROVE, CA

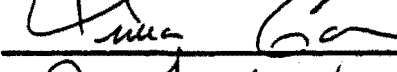
 MICHAEL O'HALLORAN Pacific Grove, CA

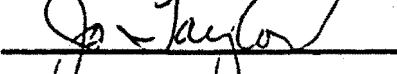
 JOHN FLATLEY PACIFIC GROVE, CA

 BRUCE D. ROBERTS PACIFIC GROVE, CA

 DON GASPERSO " " "

 TONI TEEL Pacific Grove, Ca.

 IRMA GARCIA Seaside Ca

 JO TAYLOR Pacific Grove, Ca

Name	City
Robert G. Dease	Pacific Grove, CA
Robert G. Dease	Pacific Grove
Mike D. McNally	PACIFIC GROVE
Mike D. McNally	PACIFIC GROVE
Richard C. Seidenzahn	Pacific Grove
Richard C. Seidenzahn	PACIFIC GROVE
Jeane C. Byrne	PACIFIC GROVE
Jeane C. Byrne	PACIFIC GROVE
Stephen M. Gorman	PACIFIC GROVE
Stephen M. Gorman	PACIFIC GROVE
Moe Ammar	Pacific Grove
Moe Ammar	Pacific Grove
Rod Shouby	Monterey
Rod Shouby	Monterey
Neva Haines	P.G.
Neva Haines	P.G.
Pat Herrgott	Pacific Grove
Pat Herrgott	Pacific Grove
Sally Herrgott	Pacific Grove CA
Sally Herrgott	Pacific Grove CA
Georgie A. Grothe	Pacific Grove CA
Georgie A. Grothe	Pacific Grove CA
Layne Casperson	Pacific Grove
Layne Casperson	Pacific Grove
Doris Chandler	Pacific Grove
Doris Chandler	Pacific Grove
Charles H. Howell	Pacific Grove
Charles H. Howell	Pacific Grove
Mary E. Howell	Pacific Grove, CA
Mary E. Howell	Pacific Grove, CA
Joy Lait	Pacific Grove CA
Joy Lait	Pacific Grove CA
Gary Luce	California, CA
Gary Luce	California, CA
Vivian L. Lewis	Pacific Grove
Vivian L. Lewis	Pacific Grove
Bill Stewart	Pacific Grove
Bill Stewart	Pacific Grove
Don Whitsett	PACIFIC GROVE, CA.
Don Whitsett	PACIFIC GROVE, CA.
Calvin B. Nance	PACIFIC GROVE CA
Calvin B. Nance	PACIFIC GROVE CA
Morris G. Fisher	PACIFIC GROVE, CA
Morris G. Fisher	PACIFIC GROVE, CA

Name

City

Lee Reed Pacific Grove, Ca. 93950

Richard W. Meyer NEELI - W. MEYER " "

Pana Thorsen Pacific Grove " "

Robert C. Quinn " " " "

MARIA L. Sullivan " " " "

Bruce D. Erik Pacific Grove CA 93950

Phyllis Margaret O'Connell Pacific Grove, CA 93950

Shirley M. Anderson Pacific Grove CA 93952

W. A. MEYER 702 4th Ave P.G. 93950

John L. Gure 547 Abilomar Blvd. PG 93950

RECEIVED
JUL 25 1994
CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

Robert H. Nunn, Ph.D., P.E.
1115 Melton Place
Pacific Grove, CA 93950
(408) 372-4061

RECEIVED
JUL 22 1994
CALIFORNIA
COASTAL COMMISSION

July 19, 1994

California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219

re: Page application for SFD at Rocky Shores in Pacific Grove

Dear Chairperson Gwyn and Commissioners:

In Pacific Grove there is a grassroots organization called The Friends of Rocky Shores (FORS) that has been active for some years in trying to preserve the particular piece of shoreline for which it is named. This work has included participation in fundraising efforts that to-date have led to the acquisition of four of the seven Rocky Shores lots, with significant funding left over to apply to the purchase of other lots.

You will soon have before you an application to build a structure that would double the number of residences abutting the shoreline of Pacific Grove. This building, if allowed, would be far larger than the typical Pacific Grove home and would displace shoreline dunes, destroy extensive habitats -- some belonging to rare and endangered species, block spectacular public views from adjacent roads, walkways, and sealanes, and permanently obstruct public access to and along a beautiful stretch of California shoreline.

The Friends of Rocky Shores oppose such a structure. They ask for more time to try to buy the property for preservation as public open space. Because of my long association with these efforts, when I was a city councilmember, FORS have asked me to prepare and submit a report for you, listing their objections and documenting the reasons for them and their justification in law. I have attempted to do so, and the result of this effort is enclosed herewith.

Chairperson Gwyn and Commissioners, we beg you to consider the arguments we make, and stand with us in our efforts.

Sincerely,



cc: Tami Grove, Central Coast District Director

EXHIBIT NO. M
APPLICATION NO. 3-96-102 PAGE
"FRIENDS OF ROCKY SHORES" LETTER
% R.H. NUNN



Friends of Rocky Shores

**PRESERVING THE PACIFIC GROVE SHORELINE -- THE PAGE APPLICATION
A Report to the California Coastal Commission
July, 1994**

PREFACE

REQUESTED ACTIONS

The Page application, if approved as submitted, would double the number of residences located seaward of the shoreline drive of the City of Pacific Grove. In doing so, it would permit a structure much larger than the typical Pacific Grove home to displace shoreline dunes, destroy extensive habitats -- some belonging to rare and endangered species, block spectacular public views from adjacent roads, walkways, and sealanes, and permanently obstruct public access to and along a beautiful stretch of California shoreline.

For these reasons, as well others cited herein and contained in the public record of testimony regarding this application, the Pacific Grove Friends of Rocky Shores hereby petition and request that the California Coastal Commission:

DENY THE APPLICATION, AS SUBMITTED, AND APPROVE A REDUCED PROJECT WITH HEIGHT, MASS, AND LOCATION CONFORMING TO THE LIMITS SET FORTH IN RESOLUTION NO. 6332 OF THE CITY COUNCIL OF THE CITY OF PACIFIC GROVE, DATED JANUARY 6, 1993; SPECIFICALLY, A PROJECT CONSISTING OF NO MORE THAN 2,500 SQUARE FEET OF SITE COVERAGE, INCLUDING GARAGE, WITH NO PORTION OF THE STRUCTURE TO EXCEED 15 FEET IN HEIGHT NOR, INCLUDING EXTERIOR CONSTRUCTIONS SUCH AS DECKS, APPROACH CLOSER TO THE WESTERLY BLUFF THAN THE 20-FOOT LIMIT LINE DEFINED BY THE CITY'S PLANNING COMMISSION, AND;

DEFER SAID DENIAL AND SUBSEQUENT APPROVAL OF REDUCED PROJECT FOR A PERIOD OF AT LEAST ONE YEAR IN ORDER TO ALLOW PUBLIC AGENCIES TO NEGOTIATE WITH THE OWNER FOR PURCHASE OF THE PROPERTY FOR PRESERVATION AS PUBLIC OPEN SPACE, AND TO SEEK SUFFICIENT FUNDING FOR SUCH ACQUISITION.

Walter Gourlay, Chairman ♦ 212 Park Street ♦ Pacific Grove ♦ California ♦ 93950 ♦ (408) 655-4467

EXECUTIVE SUMMARY

- The LUP mandates that funding assistance or other remedies be sought to preserve Rocky Shores as public open space.
- There is no precedent for single family dwellings westward of Sunset Drive.
- Initial fundraising efforts have resulted in successful acquisition of over half the property, and funding for Rocky Shores acquisition remains on hand.
- The California Coastal Act allows denial of application on grounds of contemplated acquisition by public agencies. Such contemplation has been clearly demonstrated.
- Widespread and intense public sentiment has been demonstrated in support of preservation.
 - The public hearing process addressing the proposed development spanned two years, involving three official city bodies and hundreds of written and oral statements favoring no project or minimal project.
 - In every case, the chief concerns of those seeking to limit the project were massiveness, height, and destruction of biota, habitat, viewshed, and public access.
 - Millions of dollars of public funding has been raised to preserve Rocky Shores. This is the result of the hard work and generosity of public agencies, private foundations, and hundreds of individuals.
- Approval of the application would seriously jeopardize public efforts to preserve adjacent undeveloped areas, and development of the property as proposed will inhibit city's ability to enforce LUP provisions on adjacent properties.
- Policies set forth in the LUP specifically require strict restriction of size and placement of structures at Rocky Shores.
- Reasonable arguments exist in the record to limit coverage, height, and location. Extensive findings to support such limitations have been documented by the city.
- The proposed driveway is unnecessarily long and it, as well as the proposed mezzanine with parapet, unnecessarily aggravates already significant adverse impacts of the project.

- The project as proposed would have 31 adverse environmental impacts, 16 of which are deemed significant unless mitigated.

- There are significant adverse impacts because the approval of the project as proposed is inconsistent with the Pacific Grove LCP Scenic Resources Policies which provide for, among other things, public access to shoreline areas.

- There are significant adverse impacts because the project as proposed is inconsistent with the Pacific Grove LCP Environmentally Sensitive Habitats and Scenic Areas Policies.

- There are significant adverse impacts related to shoreline erosion due to construction as well as to subsequent storm wave runup.

- There are significant adverse impacts due to degradation of dune habitat. This includes habitat potential for the federally endangered Tiedstrom's lupine, California black legless lizard, and others.

- There are significant adverse impacts because proposed development would change the aesthetic environment and visual quality of an area with widespread sensitive scenic resources and, in doing so, conflict with the city's special objective to retain open space on land seaward of Sunset Drive.

- A great number of the adverse impacts identified in environmental review of the project, including those listed above, are mitigated by lowering the overall size of the proposed building by reducing its height and footprint, and by providing more open space within the site boundary -- features of the commission action requested herein.



Friends of Rocky Shores

PRESERVING THE PACIFIC GROVE SHORELINE -- THE PAGE APPLICATION A Report to the California Coastal Commission

CHAPTER I.

MANDATES FOR PRESERVATION AS PUBLIC OPEN SPACE

THE PACIFIC GROVE LOCAL COASTAL PLAN LUP

Special Designation for Rocky Shores

The Land Use Plan of the Pacific Grove Local Coastal Program was certified in 1987 after many years of public testimony and debate. In this LUP the 7-lot shoreline property known as Rocky Shores is clearly designated as a region deserving of special attention. In fact, at Section 3.4.5 (Enc. 1), Specific Policy #4 requires that the city shall ... "seek funding assistance or other remedies to permanently establish the parcels as public open space." Thus the precedent for public open space for this area is clearly stated even to the extent of mandatory provisions to raise funds for this purpose.

Fundraising Efforts

In March of 1990 the city received applications for building permits for 6 Rocky Shores lots. In response to this, and in accordance with the LUP mandate, city and regional fundraising efforts were initiated. These efforts resulted in contributions and pledges more than sufficient to allow acquisition, in August of 1992, of the four southerly Rocky Shores lots then for sale. This purchase of 2.964 acres, for \$2.1-million, placed well over half of the property in public hands for preservation as public open space.

Beyond funding the preservation of the four lots, these fundraising have made immediately available more than 1/2-million dollars, as well as an additional pledge of \$600,000 in matching funds for Rocky Shores acquisition. A summary of the results of the fundraising efforts, as of August 12, 1992, is provided in Enclosure 2.

Community Support

As may be noted in Enclosure 2, funds raised for the preservation of Rocky Shores have come from a broad-based coalition of public and private sources. It is especially worthy of note that almost \$150,000 has been donated by the private sector, about half of which may be credited to individual contributions.

In addition, there are clear indications of significant public support for continued fundraising. This is demonstrated by the majority voter approval, in both 1990 and 1992, of a temporary 1% increment in Pacific Grove room tax to be dedicated to the Rocky Shores Preservation Fund. (In 1990, in fact, the tax increase measure came within 2 percentage points of the 2/3 vote required for passage.) Further, there have been several indications of private sector intent to contribute additional funds to acquire and preserve any of the remaining privately-owned Rocky Shores property that becomes available for purchase.

THE CALIFORNIA COASTAL ACT

Consideration of Public Efforts to Acquire

At §30604(e), the California Coastal Act allows denial of an application on the grounds that a public agency is contemplating acquisition of the property, or adjacent property, if ... "there are funds available, or funds which could reasonably be expected to be made available within one year, for such acquisition." The only known professional appraisal of the Rocky Shores Property was funded jointly by the city and Regional Park District in May of 1990 and updated the following November. Enclosure 3 shows the results of this appraisal, indicating \$4,015,000 as the appraised value of the entire property. Also shown in Enc. 3 are asking prices and estimates obtained from other sources, together with informational comments.

It is relevant to note that efforts by the city and the Regional Park District clearly demonstrate the contemplation of public acquisition of the Page property as well as lots adjacent to that property. Also, as previously noted, significant fundraising success has been attained even before submission of the subject application for a coastal development permit. If further time is made available by the Commission, there are many indications further donations will be forthcoming given a willingness to sell on behalf of existing owners.

Approval Prejudicial to Implementation of LCP Policies

Development of Lot #5, as proposed by the Page application, will preempt further public efforts to purchase the property. Perhaps even more significant is the fact that such development will enhance the probability of construction on adjacent ocean-front properties, drive up the cost of public acquisition, and further prejudice Rocky Shores owners against offering their property for sale in the public interest.

At present, no applications are pending for development of any Rocky Shores lots other than the Page property (Lot #5). As noted above, significant amounts of public funds are already available should any of the remaining property be offered for sale.

PRESERVATION OF PUBLIC ACCESS, BIOTA, AND VIEWSHED.

In certifying its LUP the City of Pacific Grove, in partnership with the California Coastal Commission, has undertaken to preserve public access to its coastal zone, the biota there, and the viewsheds. This requires the both agencies to enforce LUP Sections 3.4.4 (Enc. 4) and 3.4.5 (Enc. 1) and, as far as Rocky Shores is concerned, to ... "also require other measures as necessary to avoid impacts to the scenic character of the area." (Enc. 1.)

Construction Extent and Placement

Policies set forth in the LUP require strict restrictions as to the size and placement of structures intruding into the Pacific Grove oceanfront. These restrictions reinforce and amplify those required by the California Environmental Quality Act (CEQA).

These restrictions are contained in the Local Coastal Program LUP and city zoning ordinances, and are both qualitative (e.g. minimize damage to dunes, avoid disruption of habitats, etc.) and quantitative (limits on site coverage, location (set-backs), and height, etc.). The Commission is advised that, in the latter case, the developer and his agents have alleged that restrictions phrased as limits are, in effect, entitlements. For instance, they have often argued that their proposed project is within the "allowed" limits on height and coverage. The truth is that neither the city, the Commission, or any other permitting agency are obliged to approve applications simply because they do not violate such bounds. These limits are not "allowed" but "allowable" -- their purpose being to define the range within which projects must be restricted.

There is a long line of California court decisions affirming the principles justifying such limits, even including denial of projects when they are found to be in conflict with the "general welfare" standards of land-use regulations, including view impairment. For a recent appellate decision to this effect, the Commission is referred to Saad v. City of Berkeley 94 DAR 6161.

How far within these limits a project must be restricted is to be determined on a case-by-case basis. Needless to say, however, Rocky Shores is a very special case indeed and the local community expects that any development permit approvals will be sternly proscribed in terms of mass, height, and siting.

Several aspects of the present application are particularly objectionable from the point of view of extent and location. Two examples follow.

a. Proposed Driveway. Driveways destroy habitat every bit as much as houses do, and they have an additional effect of dynamic intrusion due to their associated vehicular activities.

In this regard, the Page proposal sites the house in the worst possible location in that it requires a driveway of maximal extent. In the name of environmental as well as aesthetic interests, and bearing in mind the intrusive nature of a driveway, it seems reasonable to consider it as consuming at least some portion of the allowable site coverage.

If the rock-strewn tidal area below the bluff on the westerly edge of the property is excluded, there is approximately 30,000 square feet of buildable area on the Page lot. The corridor of property extending through the dunes from Sunset Drive to the proposed building site is 50-ft. wide and roughly 280-ft. in length. A 10-ft. wide driveway running through this area would consume approximately 9% of the buildable area, leaving only 6% (1800 square feet) of the allowed 15% lot coverage available for a house, two-car garage (required by zoning), decks, and outdoor living space.

The above calculations, which have been used by others in earlier descriptions of the buildability of Rocky Shores lots, are repeated here to provide a quantitative measure of the detrimental effect of the proposed driveway. An obvious remedy to this problem would be to locate the residence well forward on the lot, within the 280-foot corridor and with minimal setback from Sunset Drive. This might present significant challenges for the designer, but it would have widespread mitigating effect on the driveway as well as other adverse impacts of the proposed dwelling location.

Given the developer's apparent rejection of the suitability of the 14,000 square foot corridor as buildable, it seems only fair, and reasonable from the point of view of preservation of public access, biota, and viewshed, to exclude it as buildable area when calculating allowable site coverage. In effect, these arguments demonstrate that a site coverage limit on the order of 2,400 square feet can be directly and objectively tied to the mitigation of adverse effects of the extensive driveway.

Late in the preparation of this report, there have been indications that the applicant may seek to gain access to his property via an easement arrangement. This would allow sharing of a new driveway built to serve the only existing oceanfront dwelling in Pacific Grove. It is clear that although this is an improvement some environmental damage will still accrue that could be avoided by relocating the structures. Without review and necessary environmental analysis, further comment cannot be made here.

b. The Parapet. As far as the parapet is concerned, it seems little more than a cosmetic touch -- with no virtues that would tend to offset the obstruction of the public viewshed and the increased real and apparent structural mass.

Nor does such a structure seem necessary for the well-being of the homeowner. Any house built at Rocky Shores can have virtually unlimited access to spectacular views using standard devices (i.e. windows) and/or the time-tested technique of stepping outside.

Finally, it should be stated that although this structure does not violate the height limit, it is up against it and makes no accommodation to the unique nature of the site or the express concerns of the community. The parapet is arguably a second story. Whether or not it is strictly judged to be so, it certainly violates the intent of the LUP restriction requiring single-story homes in this area.

Obstruction of Public Access

The city's Coastal Parks Plan, an adjunct to its Local Coastal Program, clearly supports and seeks to implement the mandate at Section 30001.5 of the California Coastal Act to maximize public access to and along the coast.

With a house in place on Lot #5, in addition to the existing structure on Lot #6, public access will be permanently denied to a significant stretch of the beach and tidepool areas of Rocky Shores. Traverse of an otherwise continuous Pacific Grove public shoreline area will be disrupted. Walkers will have to leave the coastline and walk along a busy roadway in order to skirt the project property and, in doing so, will be denied both physical and visual access to dunes, beaches, and tidepools.

Precedent Setting Aspects and Cumulative Impacts

The action of the Commission in this matter is bound to set precedents in that permissions given for Lot #5 will be cited as justification for similar permissions relative to the other two Rocky Shores lots still in private hands. Further, these effects will not be confined to the local area, since many of the features of the subject property are repeated up and down the coastlines of the Monterey Bay National Marine Sanctuary.

In addition, there is ample evidence in the record of the city's local review indicating that adverse impacts which would occur as a result of development of Lot #5 will be felt in the surrounding areas, both on land and in the adjacent waters.

CHAPTER II.

REVIEW AND ACTIONS BY LOCAL JURISDICTION

A great deal was happening with respect to Rocky Shores during the 1989-92 time period. In 1990, the Committee to Preserve Rocky Shores (CPRS) was formed by the city with the mission to organize and conduct fundraising efforts. We trust it is hoped that the Coastal Commission, in considering the Page application, will appreciate the extent of public concern for preservation of Rocky Shores -- not just Page's property -- as public open space. To this end, a chronological list of significant events, maintained by the (CPRS), is provided herewith as Enclosure 5.

In February of 1991, Page purchased Lot #5 of Rocky Shores, from co-owners Mr. Paul Miller and Mrs. Kirsty Wilde, for \$750,000. As will be appreciated from Enclosure 5, fundraising efforts were already underway at that time and, later in 1991, the Monterey Peninsula Regional Park District offered to buy Page's lot #5 for \$850,000. He refused to sell, insisting that the city continue with its processing of Miller's application for a building permit.

During a two-year period beginning in January of 1992, various versions of the Page application underwent architectural review in Pacific Grove. For many reasons, the process was more complicated than its name would imply: Page's application to build triggered the requirement for environmental review of the impacts of the specific project as proposed; in addition, it was necessary on several occasions for reviewing bodies to request that the applicant provide information responsive to their queries; and a deeply concerned public exercised its right of appeal whenever possible in the name of minimizing the adverse impacts of the project.

The project approved by the city's Architectural Review Board (ARB) was appealed to the Planning Commission and the decision of that body was in turn appealed to the City Council. None of the approvals, at any of these three levels, allowed the requested elevated mezzanine with parapet.

The action of the City Council was challenged by Page who filed charges against the city and the councilmembers who had voted in favor of the council resolution.

A brief review of these events, which are thoroughly documented in the city's records, is provided in what follows.

PUBLIC HEARINGS AND INITIAL ARCHITECTURAL APPROVAL

In January of 1992, in response to submissions by Page, the ARB began public hearings on the draft EIR and Application for Architectural Approval for a house of 5,100 to 5,200 sq.

ft., with parapet. After lengthy debate, during which a majority of the board objected to both the mass of the project and the parapet, the chair of the ARB became the swing vote on condition that the parapet would be deleted. The 4-3 vote endorsed the draft EIR and approved a house of 4,200 sq. ft.. Both actions were appealed to the Planning Commission by Gourlay, Nolan, and Corning. The ARB disallowed the parapet, an action appealed by Woodward.

PLANNING COMMISSION ACTION

In August of the same year the Planning Commission began conducting public hearings on the matter and, again by a 4-3 vote, endorsed the draft EIR and approved a house reduced in size to 3,000 to 3,500 sq. ft. and moved back on the lot 20 feet from the erosion line. This approval was appealed to the City Council by the Friends of Rocky Shores (FORS), represented by then-president Walter Gourlay. Denial of the the parapet was upheld by the Commission and Woodward again took exception.

INITIAL ACTION BY THE CITY COUNCIL

The council, acknowledging the political intensity surrounding the issue, delayed its hearing of Page's application until after the November 1992 election. The ensuing campaign was vicious, by any standards, because a handful of well-financed Rocky Shores developers and their allies circulated a plethora of innuendo and misinformation. Even so, the election maintained a preservation-minded council majority which, on December 14, 1992, voted 4-3 to cut the size of the proposed house to 2,500 sq. ft. with increased setback from the bluffs and without the parapet. This action was formalized by Resolution No. 6332 of 1/6/94 which is incorporated herein as Enclosure 6.

CITY COUNCIL REVERSALS IN CLOSED SESSION

Throughout the process, Page and his agents repeatedly and publicly threatened the city -- first the ARB, then the Planning Commission, then the city council -- with lawsuits. In order to protect against this inevitability, the action of the council was bolstered by detailed and copious findings prepared by the City Attorney and incorporated in the action of the council. These findings which are contained in Section II of the council resolution (Encl. 6) beginning at page 3, were to ensure that the action would be upheld, if necessary, in court.

In spite of these precautions, in March of 1993 Page filed suit against the city and against the four councilmembers who had carried the day in limiting his project. The following December, behind closed doors and without the benefit of public exposure, one councilmember abandoned his commitment to the council decision made in public, and the council agreed 4-to-3 to let Page enlarge the 2,500 sq. ft. house previously authorized by more than 47% to 3,680 sq. ft.. The parapet, having

been denied in public by three official bodies, was approved. In addition the council, without the benefit of public hearing or environmental review, approved construction of an underground area of up to 650 square feet.

These accommodations are documented in the Stipulated Judgment of the court, provided here as Enclosure 7. Concerning the so-called settlement, it will be found in paragraph 8 of Enclosure 7 that neither the city nor the councilmembers in jeopardy received relief in response to accommodation of Mr. Page. In fact, the Coastal Commission has been named in the suit as a party whose favorable action is required by the plaintiff prior to a dismissal of charges.

It cannot be over-emphasized that the enlargement of the project occurred behind closed doors after almost two years of public testimony in objection to the height and massing of the project and in spite of the expert legal assurances that the initial council decision would withstand legal court challenge. No explanation was given for these actions, nor were reasons given for the rejection of the appeals that had prevailed at the open council hearings.

If the Coastal Commission feels obliged to approve some sort of project at Rocky Shores, the rationale for a smaller more-modest project is fully documented. The Commission is urged to avail itself of this documentation, including the copious written and recorded public testimony of hundreds of individuals and groups, and the expert legal findings in support of such a constrained approval.

ENVIRONMENTAL ASPECTS OF THE ENLARGED PROJECT

Enclosure 8 is adapted for the purposes of this report from the environmental impact report prepared for the City of Pacific Grove. Perusal of the table will show a plethora of identified adverse impacts, 16 of which are deemed significant in the absence of adequate mitigation.

Most of the 16 impacts identified as significant have to do with matters that are legitimately of concern to the Coastal Commission. These include inconsistencies with the policies of the LUP of the Local Coastal Plan of the City of Pacific Grove, including those provisions intended to protect the public access to dune and beach areas. Also identified as significant adverse impacts are shoreline erosion, degradation of dune habitat, obstruction of public access, and destruction of the aesthetic environment and visual quality of the area.

All of the items mentioned above are mitigated to greater or lesser extent by lowering the overall size of the proposed building by reducing its height and footprint, and by providing more open space within the site boundary. The nexus existing between such constraints and the adverse environmental impacts

that are mitigated thereby was the primary justification of the actions taken in the city council resolution (Encl. 6). It is also the basis of the Commission action requested herein.

The City Council, in weakening its stance and allowing a larger structure with increased height, without explanation violated its own conditions once deemed necessary to mitigate significant adverse impacts. Particular reference is made to the findings at paragraph 7(ii) beginning on page 6 of Enclosure 6. Here are cited the reductions in square footage to 2,500 square feet and height reduction to 15 feet as substantially reducing impact on public viewshed -- the significant adverse impact referred to as Impact 4.4-1 in Enclosure 8.

We respectfully remind the Commission that the city's only authority was for architectural approval, and we ask that the Commission, in exercising its broad authority to permit coastal development, consider all the evidence gone before and embrace the concepts contained in the city's earlier findings. In doing so, the Commission will restore strength to the defence of the public's rights as mandated by the California Coastal Act.

In the foregoing we have assumed that the environmental review conducted for the project, and certified by the City of Pacific Grove is relevant to the project before the Coastal Commission. This, of course, is not strictly true, and we query whether the changes in the project subsequent to certification of the EIR have rendered that action invalid. A particular case in point is the city's permission to excavate up to 650 square feet below the project footprint. No such proposal has received the benefit of review outside of the closed sessions.



Friends of Rocky Shores

PRESERVING THE PACIFIC GROVE SHORELINE -- THE PAGE APPLICATION
A Report to the California Coastal Commission

ENCLOSURES

1. Pacific Grove Local Coastal Plan LUP Section 3.4.5.
2. Summary of funding for acquisition of Rocky Shores for preservation as public open space (Publication of the Pacific Grove Committee to Preserve Rocky Shores).
3. Table showing various cost figures relating to Rocky Shores properties (Publication of the Pacific Grove Committee to Preserve Rocky Shores).
4. Pacific Grove Local Coastal Plan LUP Section 3.4.4.
5. Chronology of significant events in the campaign to preserve Rocky Shores (Publication of the Pacific Grove Committee to Preserve Rocky Shores).
6. Resolution No. 6322 of the city council of the City of Pacific Grove, dated January 6, 1993 and certifying the environmental impact report prepared for an architectural approval application, and approving a reduced 2,500 square foot structure, without mezzanine: including Exhibits A through D.
7. Stipulated Judgement of Superior Court for the County of Monterey. Case No. M26049.
8. Copy of pages 2-3 through 2-16 (Table 2-1, Summary of Environmental Effects) of the document titled "Environmental Impact Report, Page Residential Development," prepared for the City of Pacific Grove, October, 1991. State Clearinghouse #900303687.

3. Coastal Zone Land Use and Development
3.4.5 Specific Policies

1. Minimum parcel size for new land divisions are one-half acre properties fronting on Asilomar Avenue north of Pico Avenue, and one acre for other areas of Asilomar Dunes or lots of record.

2. Maximum aggregate lot coverage for new development shall be 20% of the total lot area. However, a driveway area 12 feet in width the length of the front setback shall not be considered as coverage if paved by a material approved by the Site Plan Review Committee. Such review shall duly consider the minimization of dune destabilization and disturbance to endangered plants and their habitat.

3. In the event a dwelling is destroyed by fire or other natural causes, the dwelling would be allowed to be rebuilt as it existed prior to the destruction if less than 75% were destroyed.

4. It is the City's objective that vacant private parcels west of Jewel Avenue on the seaward side of Sunset Drive be permanently maintained as open space in recognition of the area's dune habitat values, scenic qualities, and in order to preserve public visual access to the ocean.

Permanent open space may be achieved through dedication of scenic conservation easements by the property owners, or by acquisition of fee title or development rights by the City, another governmental entity, or by a private foundation. The City encourages assistance from the State or suitable foundation in the acquisition of these important parcels.

In the event of an application for a coastal development permit to construct residences or other structures on these vacant parcels, the City shall seek funding assistance or other remedies to permanently establish the parcels as public open space. If after a reasonable time period no remedy has been found, the City shall consider the development application under the standards established in Sections 3.4.4 and 3.4.5 for areas inland of Sunset Drive, and shall also require other measures as necessary to avoid impacts to the scenic character of the area.

EXCERPTED FROM THE CITY OF PACIFIC GROVE LOCAL COASTAL PROGRAM LAND USE PLAN (CERTIFIED). EMPHASIS ADDED.

COMMITTEE TO PRESERVE ROCKY SHORES

SUMMARY OF FUNDING FOR ACQUISITION AS PUBLIC OPEN SPACE*

COMPLETE PURCHASE = 7-LOTS APPRAISED AT \$4,015,000:

Monterey Peninsula Regional Park District	\$2,000,000 ⁽¹⁾
Federal Land and Water Conservation Fund	\$ 550,000 ^(1,2)
Asilomar Operating Corporation	400,000 ⁽³⁾
State Coastal Conservancy	200,000 ⁽¹⁾
City of Pacific Grove	50,000
Grass-roots donations to date:	
R.S. 400 Club (55 members):	\$55,000
Private Foundations:	71,000
FORS Serendipity Auction:	8,784
Other donations/payments:	<u>14,309</u>
Total (Rocky Shores Preservation Fund) ..	\$ <u>149,093</u>
Total raised to date (for 7 lots)	\$3,349,093
Less CPRS Expenses	(<u>4,729</u>)
Net applicable to 7-lot purchase	\$3,344,364

PARTIAL PURCHASE = 4-LOTS PRICED AT \$2,100,000:

Monterey Peninsula Regional Park District	\$1,050,000 ⁽¹⁾
FLWCF, Coastal Conservancy, City, as above	800,000
Asilomar Operating Corporation	100,000 ⁽³⁾
Rocky Shores Preservation Fund	<u>142,100</u> ⁽⁴⁾
Net applicable to 4-lot purchase	\$2,092,100

Important Notes:

- (1) Conditional on matching funds.
- (2) FLWCF grant is approved, and budgeted as pass-through funding for Rocky Shores. Pending state budget adoption, MPRPD has advanced \$350,000 beyond 50% match and joined with city in 1-yr. loan in order to conclude the 4-lot transaction.
- (3) AOC pledge is for an initial payment of \$100,000 by 6/30/92 followed by 6 annual payments of \$50,000 each.
- (4) Amount shown is that transferred to escrow as of 7/19/92.

Potentials for additional funding:

Temporary 1% TOT increment (Measure D)
Reapplication to Wildlife Conservation Board
Further CPRS fundraising initiatives

* Totals estimated as of 8/12/92

August 17, 1992

ROCKY SHORES -- VARIOUS COST FIGURES

LOT #	MPRPD/PG APPRAISAL 11/15/90	MILLER SALES' FLYERS	MILLER TO TATE LTR. 12/13/90	REMARKS
5 ⁽¹⁾	680,000	900,000		Sold by M&W, 1/91, or \$750,000. Dev. appl. in process.
6 ⁽²⁾	835,000	-	Lots 5&6 2,250,000	Owner's home (not listed on flyers)
7 ⁽²⁾	400,000	600,000		No improvements. No applications.
9 ⁽³⁾	400,000	825,000		Abuts Asilomar
10 ⁽³⁾	650,000	850,000	Lots 7-12 3,250,000	
11 ⁽³⁾	400,000	500,000		Option to buy from M&W for \$475,000 expired 2/25/91
12 ⁽³⁾	650,000	850,000		
ALL LOTS	\$4,015,000	\$4,525,000 + #6	\$5,500,000	
LOTS 9-12	\$2,100,000	\$3,025,000		

Owners:

- (1) Page
- (2) Miller and Wilde
- (3) Consortium of public agencies, led by MPRPD. Lots #10 and #12 purchased 6/91 with options on #9 and #11. Four-lot deal consumated 8/14/92 at appraised value.

RHN

Enclosure 3

Land Use Plan
City of Pacific Grove Local Coastal Program

3.4.4 General Policies

1. All new development in the Asilomar Dunes area shall be controlled as necessary to ensure protection of coastal scenic values and maximum possible preservation of sand dunes and the habitat of rare and endangered plants.

2. The Asilomar Dunes neighborhood shall be maintained as a low density residential area. The principal permitted use is single-family residences. In order to maintain low densities necessary to protect coastal scenic and habitat resources, auxiliary housing units, or guest units shall not be permitted. Freestanding permanent commercial signs are prohibited in this area.

3. New subdivisions which create commitment to development within, or immediately adjacent to environmentally sensitive habitat areas shall be allowed only at densities compatible with protection and maintenance of these resources. New subdivisions may be approved only where potential adverse impacts to environmentally sensitive habitats can be prevented. No residential subdivision shall be allowed unless it is first demonstrated that, for each new residential lot, normal residential development, including driveway and utility connections, is feasible without damage to any environmentally sensitive habitat.

Contiguous areas of undisturbed land in open space uses shall be maintained wherever possible to protect environmentally sensitive habitat areas and associated wildlife values. To this end, development of parcels adjacent to environmentally sensitive habitat areas shall be planned to keep development intensity immediately adjacent to the sensitive habitats as low as possible, consistent with other planning criteria (e.g., drainage design, roadway design, and public safety).

COMMITTEE TO PRESERVE ROCKY SHORES
A Joint Project with the Monterey Peninsula Regional Park District

CHRONOLOGY OF SIGNIFICANT EVENTS

1989

MAY -- UNDATED FLYER APPEARS: "LANDMARK PACIFIC GROVE
PROPERTY SOLD"
JUNE 1 -- DATE CLAIMED BY MILLER AS BEGINNING OF CITY'S
"ONE-YEAR EXCLUSIVE RIGHT TO BUY THE PROPERTY"
JULY 13 -- INITIAL MEETING OF CONCERNED CITIZENS
AUGUST -- PROPERTY SOLD/OPTIONED TO MILLER FOR \$3-MILLION
[BASIS: \$1M FOR LOTS 5 & 6 (INCL. HOUSE);
\$4K EACH FOR LOTS 7, 9, 10, 11, 12; LOTS 9-12
IN EXTENDED ESCROW CLOSING 3/1/91]
10 -- P.G. SHORELINE PRESERVATION COMMITTEE FORMED (EATON,
NUNN, SCHAEFER)
SEPTEMBER 14 -- SPC MEETS WITH NEW OWNERS MILLER & WILDE
OCTOBER 5 -- CITY JOINS WITH MPRPD TO FUND APPRAISAL

1990

MARCH 12 -- APPLICATIONS SUBMITTED FOR 6 BUILDING PERMITS
MAY 8 -- INITIAL STUDY COMPLETED
15 -- CITY/MPRPD APPRAISAL COMPLETED -- \$3.52M
JUNE 6 -- EIR APPEAL DENIED ... MILLER SUES
SEPTEMBER 6 -- COMMITTEE TO PRESERVE ROCKY SHORES FORMED
24 -- INITIAL MAILINGS TO SUPPORTERS
OCTOBER 17 -- MEETING WITH ASILOMAR OPERATING CORP.
31 -- MEETING WITH LEON PANETTA
NOVEMBER 2 -- MEETING WITH TRUST FOR PUBLIC LANDS (MIKE JOYCE)
12 -- MEETING WITH STATE PARKS (ROSS HENRY)
14 -- MEETING WITH SAM FARR & KATHY HOUSTON (MELLO)
15 -- CITY/MPRPD APPRAISAL UPDATED TO \$4M (ALL 7 LOTS)
19 -- CONDITIONAL WRITTEN MPRPD OFFER OF \$4M MADE TO MILLER
27 -- PACIFIC GROVE COMMITS \$50,000 IN GEN'L FUND RESERVES
DECEMBER 3 -- MILLER: LOT #5 SOLD TO PAGE, LOT #6 NOT FOR SALE
6 -- TATE REAFFIRMS \$4M OFFER FOR 7 LOTS
6 -- ROCKY SHORES PRESERVATION FUND ESTABLISHED

1991

JANUARY 8 -- MPRPD BOARD COMMITS \$2M IN MATCHING FUNDS FOR 7 LOTS
9 -- PLENARY SESSION WITH INTERESTED PARTIES
18 -- P.G. RESOLUTION 6139 TO STATE LEGISLATURE
-- P.G. RESOLUTION 6140 TO STATE PARKS COMMISSION
FEBRUARY 13 -- MILLER EIR SCOPING MEETING
MARCH 4 -- SEN. MELLO INTRODUCES SB633 SEEKING \$800K
(LATER CONVERTED TO BUDGET REQUEST FOR \$580K
PASS-THROUGH OF FEDERAL LWCF GRANT)

Committee to Preserve Rocky Shores

CHRONOLOGY OF SIGNIFICANT EVENTS

1991 (continued)

MAY 5 -- MILLER SUIT DISMISSED
17 -- CDPR COMMITS \$550,000 IN FEDERAL LWC FUNDS
JUNE 5 -- MPRPD OBTAINS LOTS #10 AND #12 FOR \$1.3M;
BUYS OPTIONS EXPIRING 6/30/92 ON LOTS #9 AND #11
19 -- COUNCIL SETS TOT AUTHORIZATION FOR NOV. 5 BALLOT
-- MPRPD APPLICATION TO COASTAL CONSERVANCY (\$200K)
JULY 6 -- JOINT APPLICATION TO ENV. LIC. PLT. FUND (\$250K)
AUGUST 21 -- ASILOMAR OPER. CORP. COMMITS \$400K FOR LOT #9
(\$100K + 5 YRS. @ \$60K)
SEPTEMBER 20 -- COASTAL CONSERVANCY DISBURSES \$200,000 FOR
ROCKY SHORES ACQUISITION
OCTOBER 16 -- GOVERNOR VETOES SB 633
NOVEMBER 5 -- 1% TOT (MEASURE A) DEFEATED WITH 63.5% VOTING YES
(FOR = 2,340; AGAINST = 1,346; NOT VOTING = 6,440)
DECEMBER 9 -- CDPR HEARING: TOTAL PUBLIC SUPPORT FOR GRANT
24 -- CPRS KICKS OFF PRIVATE GRASS-ROOTS FUNDING CAMPAIGN

1992

JANUARY 16 -- HABITAT EVALUATION PROPOSAL SUBMITTED TO WCB
17 -- FEDERAL LWCF GRANT APPEARS IN GOVERNOR'S 92/93 BUDGET
27 -- ENVIRONMENTAL LICENSE PLATE FUNDS WITHHELD BY STATE
FEBRUARY 25 -- OPEN FORUM ON FUNDING
MARCH 18 -- KICKOFF OF ROCKY SHORES "400" CAMPAIGN
GROVER HERMANN FOUNDATION GRANT, \$25,000
APRIL 9 -- PACKARD FOUNDATION GRANT, \$40,000
MAY 6 -- SKAGGS FOUNDATION GRANT, \$5,000
JUNE 3 -- COUNCIL COMMITS TO BORROW FROM DORRIS AS NECESSARY TO
PRESERVE 4-LOT PURCHASE BY JUNE 30, 1992
7 -- ROCKY SHORES SERENDIPITY AUCTION
13 -- "SHOP P.G. FOR ROCKY SHORES DAY"
26 -- ESCROW OPENED BY MPRPD FOR \$2,100,000 4-LOT PURCHASE
17 -- TOT INITIATIVE REFERRED TO VOTERS FOR NOV. ELECTION
JULY 17 -- \$142,100 FROM ROCKY SHORES PRESERVATION FUND BRINGS
CITY'S ESCROW CONTRIBUTION TO \$192,100. (\$207,881
SHORTFALL REMAINS, ABSENT FEDERAL LWCF GRANT)
25 -- PARK DISTRICT AND CITY COSIGN PROMISSORY NOTE TO
COVER SHORTFALL
31 -- 4-LOT ESCROW EXTENDED AT REQUEST OF OWNER
AUGUST 14 -- ESCROW CLOSES LEAVING LOTS #9, 10, 11, AND 12 IN
PUBLIC OWNERSHIP
SEPTEMBER -- GOVERNOR SIGNS BUDGET WITH LWCF GRANT INTACT. STATE
PUBLIC WORK BOARD AUTHORIZES SPENDING DOCUMENT.
20 -- DEDICATION OF MONTEREY BAY NATIONAL MARINE SANCTUARY

EXHIBIT 1

RESOLUTION NO. 6322

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PACIFIC GROVE (1) CERTIFYING AN ENVIRONMENTAL IMPACT REPORT PREPARED FOR AN ARCHITECTURAL APPROVAL APPLICATION FOR CONSTRUCTION OF A NEW SINGLE FAMILY DWELLING AT 1450 SUNSET DRIVE; (2) DENYING AND APPROVING FOUR APPEALS, AND PARTS THEREOF, FROM AND DEALING WITH PLANNING COMMISSION APPROVAL OF SAID APPLICATION; AND (3) APPROVING SAID APPLICATION, WITH MODIFICATIONS

THE CITY COUNCIL OF THE CITY OF PACIFIC GROVE DOES RESOLVE AS FOLLOWS:

SECTION I. RECITALS.

A. This resolution concerns a decision by the city council regarding four appeals from City of Pacific Grove Planning Commission ("Planning Commission") Resolution No. 92-32.

B. Planning Commission Resolution No. 92-32 dealt with three appeals from City of Pacific Grove Architectural Review Board ("ARB") approval (by ARB Resolution No. 92-01) with modifications, of City of Pacific Grove Architectural Approval Application No. 1349-89 ("application"), said application being a proposal to develop property at 1450 Sunset Drive by constructing thereon a single family dwelling. The applicant/owner is Stephen J.R. Page.

C. The applicant is proposing to construct a one-story, single-family dwelling and garage with adjacent outdoor living areas, and driveway. The project location is the northernmost parcel of property commonly referred to as "Rocky Shores." The site is situated between Sunset Drive and the Pacific Ocean, west of Lighthouse Avenue with views across the site to the Pacific Ocean and Asilomar Beach/Point Joe from Sunset Drive, the Lighthouse Reservation, and the Municipal Golf Course. The parcel fronts onto Sunset Drive for a width of 51.55 feet and extends towards the Pacific Ocean in a 50 foot width that widens at the bluff top area near the shoreline. The dwelling is proposed to be constructed on a wider portion of the site near the bluff top. The total lot size of the project site is 1.08 acres, or 47,045 square feet. The undulating dune topography is part of the Asilomar dune system. A two-story, single-family dwelling is located on the adjacent lot to the south.

D. Pursuant to the requirements of the California Environmental Quality Act ("CEQA"), and state and city CEQA guidelines, a draft environmental impact report ("DEIR") was prepared in connection with the application. Following the required public comment period, responses to comments received were prepared and added to the DEIR.

Thus supplemented, the document was presented to the ARB for hearing and certification as a final environmental impact report for the application.

E. Following ARB certification of the EIR and approval of the application, appeals to the planning commission were filed by (1) Walter Gourlay for Friends of Rocky Shores, (2) Maureen Nolan and James Corning, and (3) Mark Woodward. A description of the appeals and copies thereof are contained in Planning Commission Resolution No. 92-32.

F. City of Pacific Grove guidelines provide that appeal of a project for which an EIR has been certified includes appeal of such certification. In addition, the Gourlay and Nolan/Corning appeals questioned, among other things, certification and adequacy of the EIR. Thus, the planning commission had before it on appeal the issues of certification of the EIR and the project as approved by ARB. By Resolution No. 92-32 the planning commission certified the EIR and approved the application, with modifications in addition to those imposed by the ARB.

G. Following the adoption (on October 1, 1992) of Resolution No. 92-32, four appeals were filed challenging various aspects of the planning commission's action. The four appeals are as follows: (1) By applicant Stephen J.R. Page (attached hereto and marked "Exhibit A-1"), disputing the validity of planning commission modifications to reduce the size of and to alter the location of the dwelling; (2) by Mark Woodward (attached hereto and marked "Exhibit A-2"), making the same objections as the Page appeal and asking for placement of a mezzanine rejected by both the ARB and planning commission; (3) by Walter Gourlay (attached hereto and marked "Exhibit A-3"), appealing the certification of the EIR and project approval on a number of grounds; (4) by Maureen Nolan and Jim Corning (attached hereto and marked "Exhibit A-4"), appealing the project on a number of grounds.

H. On November 24, 1992, this city council held a duly noticed public hearing on the appeals from the planning commission's action. On December 14, 1992, this city council met to deliberate on the appeals.

I. The materials and information presented to this council in connection with the appeals include, without limitation, the following:

1. The EIR, as reviewed by the ARB and planning commission, and as supplemented by certain of the materials listed below, collectively the final environmental impact report ("FEIR").

2. The four appeals and all materials submitted by appellants in support of the appeals.

3. The minutes of the planning commission from all meetings at which the commission heard and considered the application and appeals from the ARB regarding the application.

4. The minutes of the ARB from all meetings at which the ARB heard and considered the application.

5. The resolution (No. 92-32) of the planning commission setting out the commission's findings, conclusions and determinations regarding the application and the appeals from the ARB regarding the application.

6. The resolution (No. 92-01) of the ARB setting out the ARB's findings, conclusions and determinations regarding the application.

7. All written materials submitted by the public and agencies to the ARB, planning commission and this council regarding the application and appeals, at all stages of the application and appeals.

8. All reports and documents prepared by the community development department staff and city attorney regarding the application and appeals, for the ARB, planning commission and this council.

9. Comments made at this council's public hearing on the appeals.

10. All exhibits and models submitted by applicant/appellant and other appellants.

SECTION II. FINDINGS.

Based on the evidence presented to this council, the council hereby finds as follows:

A. With regard to the items on appeal alleging deficiencies in the FEIR, this council makes the following findings:

1. The FEIR adequately examines the no project alternative. In support of this finding this council adopts the analysis and conclusions of the city attorney, set out in his August 6, 1992, memorandum ("city attorney memorandum") at section 1, pages 3-4. (The memorandum, marked "Exhibit B," attached hereto, was written in response to items on appeal to the planning commission regarding the application, said items the same or similar to many items now on appeal to this council.)

2. Alternate site analysis is not legally required, given the nature of the project. In support of this finding the council adopts the analysis set out at page 4 of the city attorney memorandum. The administrative record does not contain evidence of any of the factors indicating a requirement for alternate site analysis. Further, the applicable land use policy (the land use plan ["LUP"] of city's local coastal plan) having recently proceeded through analysis, hearings and adoption, designates the subject site as single family residential.

3. The FEIR adequately addresses the question of significant biological impact. In support of this finding the council adopts the analysis set out at section 3 (pages 4-5) of the city attorney memorandum. Further, as to additional testimony and documentation regarding this impact and submitted during the public hearing process,

this council finds that such testimony and documentation does not require further environmental analysis; the mitigation measures suggested in the FEIR are adequately applicable as well to this additional information.

4. The FEIR adequately documents the unique character and nature of the project site and its surroundings. The absence of reference to particular available documentation is not fatal to the project description and analysis, so long as the description and analysis otherwise provide a good faith, reasoned effort at full disclosure, and are adequate to inform of all relevant facts.

5. The FEIR provides a sufficient degree of analysis to enable this council to make a decision which intelligently takes account of the visual impacts. The FEIR contains a lengthy discussion of "visual quality and aesthetics," including photo montages and analysis of city's LUP, an established community standard. Testimony and documentation received during the public hearing process does not require further environmental analysis in the context of modifications or additions to the FEIR.

6. The FEIR adequately discusses sensitive habitats. The FEIR does not conclude that there is no danger to threatened species, but that the proposed mitigation measures will either avoid or reduce to a less than significant level the affects on the habitat.

7. The FEIR does not include a determination of infeasibility vis-a-vis leaving the property undeveloped. The FEIR in fact considers the community value in leaving the property undeveloped, both in its discussion of the parkland and no project alternatives, and in its discussion of certain provisions of the local coastal plan.

8. The FEIR does not discuss potential damage to the Marine Refuge, because it was not identified as a potentially significant effect nor was evidence submitted to support a finding that a potential significant impact might occur. The project's effect on the Refuge would be highly speculative, thus its not being discussed in the FEIR is valid and legal.

9. The FEIR adequately discusses potential tsunami damage and corresponding setback. In support of this finding this council adopts the analysis set out in section 9 (page 7) of the city attorney memorandum.

10. The FEIR adequately discusses the possible effect on tidal ecosystems. In support of this finding this council adopts the analysis set out in section 10 (page 7) of the city attorney memorandum.

11. The FEIR adequately discusses Rocky Shores as habitat for threatened animal species and native dune plants. In support of this finding the council adopts the analysis set out in section 11 (page 7) of the city attorney memorandum.

12. The FEIR prepared for this project is not "generic." It contains a complete and adequate analysis of site specific effects identified as potentially significant. That it was prepared by people who do not live in the city and who may not have

immediate personal concern for the project site does not render it any less adequate. Indeed, preparation by disinterested consultants will, if anything, render the document more objective and neutral.

13. This council finds nothing in the record to indicate that any factual matters contained and represented in the FEIR are not true.

14. The FEIR discusses and analyzes the applicability of many provisions of the land use plan (LUP) of city's local coastal program. This commission finds no evidence in the record that the FEIR has improperly ignored or inadequately considered any provision of the LUP.

15. The FEIR discusses and analyses at length both the visual impact of placing the proposed project adjacent to the only building on Rocky Shores, and the visual impact from viewpoints commonly utilized by hikers, bicyclists and persons on neighboring rocky points.

16. Except as referred to specifically in subsections 1-15, immediately above, no later testimony or documentation has been received requiring this council to direct further analysis of any items challenged on appeal.

B. With regard to the remaining items in the Gourlay and Nolan/Corning appeals, this council makes the following findings:

1. The LUP land use map does not designate the project site as open space; it is designated as low density residential. The LUP (section 3.4.5-4) does provide that it is city's "objective" that the subject site, and others adjacent, be maintained as open space. However, absent findings to accomplish this objective the LUP provides that development applications shall be considered. In this case, consideration of the application is consistent with the land use designation and with the requirement that such application shall be considered. In support of this finding this council also adopts the analysis set out at sections 5 (pages 10-11) of the city attorney memorandum. Further, LUP section 3.4.5-4 is by its terms inapplicable to this application insofar as it provides that funding shall be sought in case of application for a "coastal development permit." The permit at issue is not for a coastal development permit; such application must be made with the California Coastal Commission, as city has yet to complete its local coastal program by adoption of an ordinance to implement the LUP.

2. The project as approved by the planning commission is not out of compliance with LUP provisions protective of archaeological resources. In support of this finding this council adopts the analysis set out at section 3 (page 9) of the city attorney memorandum.

3. The project as approved by the planning commission is not out of compliance with LUP provisions regarding public shoreline access. In support of this finding this council adopts the analysis set out at section 7 (page 11) of the city attorney memorandum.

4. City zoning regulations require that two covered parking spaces (in the form of a garage or carport) be constructed as part of the project at issue, a single family dwelling. Detaching the covered parking from the dwelling provides an opportunity to reduce the mass resulting from construction of a single large building on the site.

5. The monitoring process, i.e., the process to assure compliance with conditions imposed as mitigation measures for environmental protection, is adequate as provided by the planning commission. Requiring weekly monitoring, as suggested by appellant Nolan/Corning, is unnecessary. Quarterly monitoring, given the nature of the project and the mitigation measures, will assure compliance. In addition to quarterly monitoring, monitoring will occur at milestones as part of normal city inspection during construction.

6. Community sentiment for or against this application cannot stand legally as the determining factor in the decision of the council. This council has heard and read considerable comments and material both for and against the application. These comments and submittals have been duly considered in the contexts of the environmental, planning, architectural and/or other issues raised therein. Based on the materials and comments presented, council does not find community sentiment to be overwhelmingly against the application and the project it proposes.

7. Having considered the record regarding the issue of protection of scenic resources this council finds:

(a) This council has visited the site and has observed the potential for obstruction of views from all directions, as demonstrated by the poles and taping in place to simulate the outline of the proposed structure, taking into account the modifications to the project required by the planning commission.

(b) Numerous policies and provisions of the LUP and Coastal Act, and concerns identified by the FEIR process, bear on protection of scenic resources. These items and their application given the evidence in the record are as follows:

(i) LUP Section 2.5.4 sets out city policy that visual quality of scenic areas shall be protected, those areas including the location of the proposed dwelling. Section 2.5.4 requires that such development shall be sited and designed to protect views to and along the ocean and to be visually compatible with the open space character of surrounding areas. Further, land coverage shall be minimized and maximum set backs shall be provided from public-open space areas. Section 2.5.5-1 provides that to the maximum extent feasible new development shall not interfere with public views of the ocean and bay. The City's LUP policies are consistent with the California Coastal Act provisions regarding scenic and visual qualities. (California Public Resources Code, Section 30251)

(ii) Reduction in size and height of the proposed dwelling will lessen interference with the public viewshed. A reduction in square footage (house and garage) to 2500 square feet, a height reduction to 15 feet and siting between a line 245 feet from the eastern boundary and the westerly limit line imposed by the planning

commission, will combine to substantially reduce impact on public viewshed. From each of the viewpoints analyzed in the FEIR (Figure 4.4-1) these reductions and the location will provide a significantly enhanced vista of the bay, ocean and adjacent open space. Additional reductions, while they would further enhance views, are not feasible in that applicant would be deprived of a reasonable living space. At 2500 square feet applicant will be able to construct a dwelling having in excess of 2000 square feet of interior living space. This council notes testimony (Nolan) that homes developed pursuant to coastal development permits on lots of larger and similar size to the site at issue have been limited to sizes comparable to and smaller than 2500 square feet. (Otter Cove, Rocky Point, Yankee Point and Garrapata, for example)

8. Having considered the record regarding the issue of visual impact this council finds:

(a) The site abuts the ocean and consists of rock, sand dunes and vegetation. It is undeveloped. It is the only remaining developable parcel in Pacific Grove abutting the bay or ocean. Immediately south of and adjacent to the site is a lot developed with a large rectangular wood sided and stone two story single family dwelling. The existing dwelling and the site at issue are flanked by public open space in a largely natural state (sand dunes, rocks, ocean front terrain) seaward of Ocean View Boulevard and Sunset Drive.

(b) Numerous policies of the LUP and Coastal Act, city architectural regulations and concerns identified in the FEIR, bear on the issue of visual impact. These items and their application given the evidence in the record are as follows:

(i) LUP Section 2.5.5 provides that residential structures or parcels fronting on Sunset Drive shall compliment the open space character of the area, shall maintain a low profile to compliment the natural dune topography and shall be sited to minimize alteration of the natural dunes. Further, earthtone color schemes shall be utilized, and other design features shall be utilized to subordinate the structure to the natural setting.

(ii) The dwelling as approved by the planning commission would include a stucco finish and tile roof. The three-dimensional model submitted by applicant demonstrates the color and texture of this stucco finish and tile roof. The Mediterranean style shown on the model and approved by the planning commission is not compatible with the natural elements on the site and surrounding sites. The style, texture and color of the planning commission approval dominates and competes with, rather than compliments the gentle, natural dunescape of the area. Wood and stone, utilizing natural earthtone colors and a weathered look, would allow the structure to blend and harmonize with its natural surroundings.

(iii) As this application is for architectural approval, city's architectural review regulations (Chapter 23.73, Pacific Grove Municipal Code) apply to consideration of the application. Those regulations provide, among other things, that all structures shall have simplicity of mass and detail shall either harmonize with adjacent

structures or stand in dignified contrast thereto, and shall have colors appropriate for surrounding environment.

(iv) The complex detail of the proposed structure, as shown on the aforescribed model (and set out at Section 2, Exhibit C of ARB Resolution No. 92-01, adopted by the planning commission) is inappropriate for the simple natural setting of the site; it does not contain the simplicity of detail called for by city's architectural regulations. The wood and stone materials described in (ii), above, provide the simplicity called for by the regulation. Further, the roof lines should have a slight pitch, to harmonize with the gentle shapes and slopes of the dunes.

The architectural style of the planning commission approval is in stark contrast to the large but simple, rectangular, wood sided structure on a site adjacent to the proposed dwelling. Juxtaposing the two would not result in a "dignified contrast," but in a scene which would draw the eye to an unsightly contrast, thereby competing with and detracting from the natural viewscape. Wood and stone, again as described above, would create some harmony with the adjacent structure, leaving nature to predominate the development. To further harmonize the structures, the design should consist of straight lines. The dissimilar is more obtrusive, the similar is more harmonious.

9. Having considered the record regarding the issue of protection of the dunes habitat, this council finds:

(a) According to a report prepared by Bruce Cowan (Appendix B, FEIR) the site is occupied or is potential habitat for a number of "endangered" plant species and at least one "protected" animal species. Tom Moss has identified the site as prime habitat for the black legless lizard. The Asilomar Dunes Habitat Survey (Appendix C - LUP) and others (Yadon) have attested that protected plants have been found on the site.

(b) Numerous policies of the LUP and Coastal Act, and concerns identified in the FEIR, bear on the issue of habitat protection. These items and their application given the evidence in the record are as follows:

(i) Section 2.3.4-1 of the LUP requires the city to protect, maintain and enhance the habitat areas of Menzies' wallflower and Tidestrom's lupine. Section 2.3.5-1 provides, in part, that alteration of natural land forms and dune stabilization by development shall be minimized, and that undeveloped private parcels west of Sunset, which includes the site at issue, should be acquired by a public agency because of their potential for habitat restoration. LUP Section 3.4.4 provides that development in the Asilomar Dunes neighborhood shall be controlled for the maximum possible preservation of sand dunes and habitat of rare and endangered species. Appendix C ("Asilomar Dunes Habitat Survey with Policy Recommendations") of the LUP provides that protection of existing undisturbed habitat should be the highest goal of the planning process. The Coastal Act requires that environmentally sensitive habitat areas be protected against any significant disruption of habitat values. (California Public Resources Code, Section 30240)

(ii) Reduction of the project approved by the planning commission will result in additional dune habitat being left undisturbed and/or subject to restoration mitigation measures set out in Exhibit D of this resolution, in furtherance of the referenced policies.

C. With regard to the items on the Page and Woodward appeals, this council makes the following findings:

1. The planning commission's findings were supported by substantial evidence in the record. The commission viewed the site and considered the visual impairment demonstrated by both the poling/taping on site and by photographic evidence in the FEIR. In light of said evidence the commission determined that, in its judgment, (a) the development did not meet the LUP provision that to the maximum extent feasible new development shall not interfere with public views of the ocean and bay, and (b) the development's impact on visual access to the dunes, ocean and bay had not been mitigated to a less than significant level. The commission's response was to establish an easterly building line and to reduce the dwelling's size. The resolution of the planning commission more fully explains the commission's findings and the evidence in support thereof.

2. The planning commission action did not deprive owner of substantially all economic use of his property. He was granted the ability (subject to obtaining a Coastal Commission coastal development permit) to construct a dwelling (house and garage) of 3500 square feet. According to law, an owners investment-backed expectation is a factor to consider when determining whether all viable economic use has been taken. This expectation must be more than a unilateral expectation or an abstract need; it must be reasonable and consistent with law in effect at the time the expectation is formed. In this case, given the Coastal Act, city's LUP and the considerable environmental concerns attendant with development of the site, owner's reasonable expectations must be influenced by application of the discretionary permit process taking into account applicable lawful restrictions on development of the site.

3. As noted in 1. and 2., immediately above, the planning commission decisions were made following careful consideration of the facts and applicable law and standards. Thus, the decision of the planning commission was not unreasonable, arbitrary or capricious.

4. The planning commission properly upheld the deletion of the proposed mezzanine, their rationale -- that it would impede the viewshed, and that it would be incompatible with the balance of the architectural style -- was supported by evidence in the record and was reasonable.

SECTION III. DISPOSITION OF APPEALS AND APPLICATION; CONDITIONS.

Based on the forgoing and on the administrative record this council makes the following dispositions of the appeals:

A. The Woodward appeal hereby is denied.

B. The Page appeal hereby is denied.

C. The following items of the Gourlay appeal hereby are denied: (a) all items (1-16) on the section of the appeal entitled "Appeal of the Planning Committee's [sic] Approval of Environmental Impact Report for Application No. 1349-89 - 1450 Sunset Dr.", (b) items 1, 2, 3 and 9 on the section of the appeal entitled "Grounds for Appeal of Project Application 1349-89."

D. The following items of the Nolan/Corning appeal hereby are denied: Items 3, 6, 9e and 9(i) [second i listed under 9. on the itemized appeal].

E. To the extent that modifications to the proposed project (1) to reduce the square footage and height; (2) to restrict the location of the improvements, and (3) to modify the materials, colors and architectural details are hereinafter directed the following items of the Gourlay and Nolan/Corning appeals hereby are granted:

Gourlay: Items 4, 5, 6, 7 and 8 on the section of the appeal entitled "Grounds for Appeal of Project Application 1349-89."

Nolan/Corning: Items 1, 2, 4, 5, 7, 8, 9a, 9b, 9c, 9d, 9f, 9g, 9h, 9i, 9j, 9h (second h), 9j (second j).

F. This council certifies that (a) it has received and considered the information contained in the FEIR, (b) the FEIR is adequate and complete, and has been prepared and processed in compliance with CEQA and state and city guidelines, and (c) pursuant to California Public Resources Code, Section 21082.1(C)(3), the FEIR represents the independent judgment of the city as lead agency for environmental review of the project.

G. Architectural Approval Application No. 1349-89 hereby is approved, subject to conditions set out in Exhibit C, attached hereto and incorporated herein by this reference, and subject to mitigation measures set out in Exhibit D, attached hereto and incorporated herein by this reference.

H. This council finds that the significant environmental effects of the project identified in the FEIR have been either avoided or mitigated to a less than significant level by changes or alterations hereby or incorporated into the project. The specific facts and findings regarding these matters are set out in Exhibit D.

I. It is the intent of this council that the foregoing findings, including the findings, determinations and statements set out in the attachments to this resolution, be considered as an integrated whole whether or not any subdivision of these findings fails to cross-reference or incorporate by reference any other subdivision of these findings; and that any finding requested or permitted to be made by this council with respect to any particular subject shall be deemed made if it appears in any portion of these findings.

J. All conditions of approval and mitigation measures are and shall be conditions and covenants running with the land, and shall be recorded as such in the office of the county recorder.

K. Final design approval by this council shall occur following applicant's submittal of a modified site plan and architectural details consistent with the terms of this resolution.

L. The community development director is directed to file notice of determination with the County Clerk.


PASSED AND ADOPTED BY THE COUNCIL OF THE CITY OF PACIFIC GROVE this 6th day of January, 1993, by the following vote:

AYES: Davis, Rogge, Schaefer, Zito

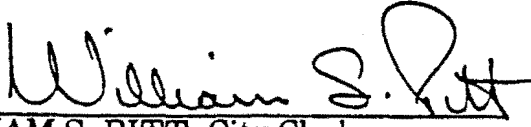
NOES: Byrne, Roberts, Yadon

ABSENT: None

APPROVED:


JEANNE C. BYRNE, Mayor

ATTEST:


WILLIAM S. PITT, City Clerk

APPROVED AS TO FORM:


GEORGE C. THACHER, City Attorney

RECEIVED

OCT 13 1992

COMMUNITY DEV. DEPT.

CITY OF PACIFIC GROVE
APPEAL OF PLANNING COMMISSION'S ACTION

SECTION I - PROJECT INFORMATION

Application No.: 1349-89

Applicant: STEPHEN PAGE

Project Address: 1450 SUNSET DRIVE, PACIFIC GROVE, CA

SECTION II - PLANNING COMMISSION ACTION

Date of Planning Commission Action: OCTOBER 1, 1992

Planning Commission Decision: APPROVED

SECTION III - APPEAL INFORMATION

Appellant: STEPHEN PAGE/JOHN E. MATTHAMS INTERNATIONAL DESIGN GROUP

Grounds for Appeal - Please explain why you *disagree* with the Planning Commission's decision. (If necessary, use additional pages)

SEE ATTACHED (2 pages)

Appellant's Signature: 

Date: 10/12/92

Attach appeal fee

ATTACHMENT TO STEPHEN PAGE APPEAL**GROUND'S FOR APPEAL:**

The Applicant, Stephen Page, hereby appeals from those portions of the Planning Commission Resolution No. 92-32 requiring that the total square footage of the house and garage be reduced to 3000 to 3500 square feet, and requiring that the structure be relocated easterly of the line labeled "building limit line" as delineated on Exhibit D attached to said Resolution.

Specifically, Applicant Stephen Page appeals from the following portions of Finding (j) of Section 4 of Resolution No. 92-32 on the grounds that said findings are not supported by substantial evidence in the record and are contrary to applicable law, ordinance, regulation and standards:

i) The finding that: "As conditioned by the ARB, the project's impact on visual access to the dunes, ocean and bay has not been mitigated to a less than significant level."

ii) The finding that: "The proposed structure approved by the ARB would significantly impact the viewshed as observed from northerly and northeasterly of the proposed structure, especially from locations on public property (Coast Guard dunes adjacent to the subject site) and on public roads (Ocean View Boulevard northerly from Lighthouse Avenue)."

iii) The finding that: "It is feasible to reduce the size of the proposed structure and to require that it be pulled back easterly from its ARB-approved location..."

(iv) The finding that: "In combination, these two changes will substantially increase the public viewshed from the public locations noted hereinabove, and...will (1) reduce the impact on visual access to a less than significant level, and (2) comply with LUP provisions regarding protection of public views of the ocean and bay."

Page Appeal Attachment - Page 2.

"Specifically, the Applicant Stephen Page appeals from Section 9 of Resolution No. 92-32, granting in part the appeals of Gourlay and Nolan/Corning on the grounds that the action reflected in Section 9 (a) is not supported by substantial evidence in the record, (b) is contrary to applicable law, ordinance, regulation and standards, (c) denies the Applicant the right to make economically viable use of his land in accordance with his reasonable investment-backed expectations, and (d) is unreasonable, arbitrary and capricious."

"Specifically, the Applicant Stephen Page appeals from Section 10 of Resolution No. 92-32, requiring that the total square footage of the house and garage shall not exceed 3000 to 3500 square feet, and that the structure as approved by ARB shall be located easterly of the line labeled "building limit line," as delineated on Exhibit D attached to said Resolution, on the Grounds that the action reflected in Section 10 (a) is not supported by substantial evidence in the record, (b) is contrary to applicable law, ordinance, regulation and standards, (c) denies the Applicant the right to make economically viable use of his land in accordance with his reasonable investment-backed expectations, and (d) is unreasonable, arbitrary and capricious."

RECEIVED

OCT - 9 1992

(page 1 of 2)

COMMUNITY DEV. DEPT.

CITY OF PACIFIC GROVE
APPEAL OF PLANNING COMMISSION'S ACTION

SECTION I - PROJECT INFORMATION

Application No.: 1349-89

Applicant: STEPHEN PAGE

Project Address: 1450 SUNSET DRIVE, PACIFIC GROVE, CA

SECTION II - PLANNING COMMISSION ACTION

Date of Planning Commission Action: October 1, 1992

Planning Commission Decision: Approved

SECTION III - APPEAL INFORMATION

Appellant: MARK E. WOODWARD

Grounds for Appeal -- Please explain why you *disagree* with the Planning Commission's decision. (If necessary, use additional pages)

See attached

Appellant's Signature:

Date: 10/9/92

Attach appeal fee \$15.00
RCPT# 01-01242/MARK WOODWARD

Enclosure 6

OCT - 9 1999

COMMUNITY DEV. DEPT.

Attachment to Appeal

Grounds for Appeal:

Items of appeal are as follows.

1. Moving the footprint of the house away from the ocean by a further 20'.
2. Reducing the house size to between 3,000 and 3,500 square feet.
3. Reinstate the mezzanine as originally approved by the ARB.

The Reasons for Appeal:

There is no documentation or specific information contained in the LCP, the LUP and City Ordinances that specifically address any of the three items above where it is reasonable that reduction in size, movement of the house and the removal of an architectural feature is consistent with any policies of the City.

EXHIBIT 11-185
(page 1 of 4)

RECEIVED

OCT - 7 1992

COMMUNITY DEV. DEPT. CITY OF PACIFIC GROVE
APPEAL OF PLANNING COMMISSION'S ACTION

SECTION I - PROJECT INFORMATION

Application No.: 1349-89
Stephen Page
Applicant: _____
1450 Sunset Drive
Project Address: _____

SECTION II - PLANNING COMMISSION ACTION

Oct. 1 1992

Date of Planning Commission Action: Approved

Planning Commission Decision: _____

SECTION III - APPEAL INFORMATION

Appellant: Walter E. Gourlay
For Friends of Rocky Shores

Grounds for Appeal - Please explain why you *disagree* with the Planning Commission's decision. (If necessary, use additional pages)

(SEE ATTACHED)

Appellant's Signature: Walter E. GourlayDate: Oct 7 1992

Oct.

Attached: 01-1291/FRIENDS OF R. SHORES/W. GOURLEY
PW/1115.00

--GOURLAY

October 7 1992

GROUNDS FOR APPEAL OF PROJECT APPLICATION 1349-89

1. Proposed project is inconsistent with city's Local Coastal Program to maintain Rocky Shores as open space for enjoyment of residents and visitors.
2. In accordance with California Coastal Act and Local Coastal Program, public agencies must be given adequate time to find funding to acquire property.
3. Planning Commission erred in not adequately considering "Parkland" alternative and potential means of financing.
4. Project as approved is too massive for location.
5. Architecture and general appearance are not in keeping with character of neighborhood.
6. Style, elements, materials and details of project (Mediterranean style architecture) are incompatible with terrain and natural landscape.
7. Project destroys scenic view. Project is next to only building on Rocky Shores; it would double objectionable visual impact. Planning Commission erred in not adequately considering visual impact on hikers, bicyclists and persons on neighboring rocky points.
8. Environmental effects of project identified in final EIR have not been avoided or mitigated to less than significant level. The Planning Commission did not protect the public interest.
9. Community sentiment is overwhelmingly against this project.

(A SEPARATE BUT RELATED APPEAL OF THE APPROVAL OF THE EIR IS ATTACHED. SEE NEXT PAGE.)

OCTOBER 7 1992

APPEAL OF PLANNING COMMITTEE'S APPROVAL OF ENVIRONMENTAL IMPACT
REPORT FOR APPLICATION NO. 1349-89 -- 1450 SUNSET DRIVE.

APPELLANT: Walter E. Courlay for FRIENDS OF ROCKY SHORES.

GROUND'S FOR APPEAL:

The EIR is deficient in the following respects:

1. The project is in violation of the city's Coastal Land Use Program.
2. The EIR does not adequately examine the "no project" alternative.
3. Project destroys scenic view. Project is next to only building on Rocky Shores; it would double objectionable visual impact. Planning Commission erred in not adequately considering visual impact on hikers, bicyclists and persons on neighboring rocky points.
4. Environmental effects of project identified in final EIR have not been avoided or mitigated to less than significant level. The Planning Commission did not protect the public interest.
5. The EIR does not examine alternative sites for the project.
6. Planning Commission erred in not adequately considering "Parkland" alternative and possible means of financing.
7. The EIR does not supply documents to support its conclusions about the lack of significant biological impact. There is no "good faith" effort to discuss disagreements among experts as to environmental impacts, as required by law.
8. The EIR does not refer to documents available that show the unique nature of the local environment.
9. The EIR does not adequately evaluate the visual impact and destruction of scenic views. The EIR does not refer to community standards when evaluating visual impact.
10. The EIR does not adequately discuss the sensitive habitats involved. It erroneously concludes that there is no danger to threatened species, despite evidence to the contrary supplied by local experts.
11. The EIR arbitrarily states that it is economically unfeasible to leave the property undeveloped, or to use it as parkland. It ignores community values, or the fact that an undisturbed shoreline is a prime economic asset to the city.
12. The EIR does not discuss potential damage to the P.G. Marine Refuge, and ignores documents pertaining to this issue:

EXHIBIT A-3
(page 4 of 4)

-- GOURLAY
October 7 1992

13. The EIR does not adequately discuss danger from tsunamis and provides for insufficient setback from the ocean.
14. The EIR does not discuss the possible effect on tidal ecosystems.
15. The EIR does not deal with the fact that Rocky Shores is the largest contiguous area locally for certain threatened animal species that depend on native dune plants for their existence, some of which plants are found on the property on which the project would be built.
16. This is a generic EIR patched together by people who do not live here and have little sensitivity to, or concern for the unique character of this shoreline.

RECEIVED

OCT 13 1992

COMMUNITY DEV. DEPT.

CITY OF PACIFIC GROVE
APPEAL OF PLANNING COMMISSION'S ACTION

SECTION I - PROJECT INFORMATION

Application No.: 1349-89Applicant: Stephen PageProject Address: 1450 Sunset Dr.

SECTION II - PLANNING COMMISSION ACTION

Date of Planning Commission Action: Oct. 1, 1992Planning Commission Decision: Approved with modifications

SECTION III - APPEAL INFORMATION

Appellant: Maureen Nolan James CorningGrounds for Appeal - Please explain why you disagree with the Planning Commission's decision. (If necessary, use additional pages)

(see attached)

Appellant's Signature: Maureen NolanDate: 10/13/92

Attach appeal fee

City Council

City of Pacific Grove

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COMMUNITY DEV. DEPT.

I am requesting the City Council of Pacific Grove to overturn the resolution approved by the Planning Commission concerning the proposed house to be developed at 1450 Sunset Dr., Pacific Grove.

1. The resolution of the Planning Commission of the City of Pacific Grove did not comply with the Local Coastal Plan (L.U.P.).
2. Project submitted does not comply with LCP intent to Protect environmental sensitive habitats. 2.3 - 2.4 inclusive.
3. Project submitted does not comply with LCP to Protect Archaeological Resources. 2.4 - 2.5 inclusive.
4. Project submitted does not comply with LCP to Protect Scenic Resources 2.5 - 3.0 inclusive.
5. Project submitted does not comply with LCP Coastal Zone Land Use and Development. 3.1 - 3.5.1 inclusive.
6. Project submitted does not comply with LCP Public Shoreline Access. 5.1 - 5.6 inclusive.
7. Project submitted does not comply with the California Coastal Act submitted in the City of Pacific Grove LCP as Appendix A.

RECEIVED

OCT 13 1977

COMMUNITY DEV. DEPT.

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EXHIBIT 11 FOR
(page 3 of 4)

8. Project submitted does not comply with the Asilomar Dunes Habitat Survey with Policy Recommendations included in the LCP of the City of Pacific Grove.
9. Project submitted does not conform in architectural elements or style to the Asilomar Dunes Neighborhood.
- a. Mediterrean does not blend with the surrounding dune environment.
 - b. Size of the proposed structure is too large for the building pad.
 - c. Mass of the structure restricts and negates scenic policies of the LCP.
 - d. Roofing materials do not blend with the dune environment rather, the materials dominate the surrounding dune habitat.
 - e. Detached garage lends to overall massing, rather than any attempt to blend into the scenic dune environment.
 - f. Proposed structure site sits too far west, thus negating scenic policy requirements in the LCP.
 - g. Proposed Structure site sits too close to the northern property line, thus inhibiting and negating potential dune habitat areas as required by the specific policies in the LCP.
 - h. Exterior materials of earth colored stucco dominate the site and surrounding viewsheds, making a statement house rather than a structure that blends with the environment.
 - i. A driveway policy should be included with restrictions on width, and clear drawings of siting on the Page property
 - j. Landscaping has not included easements as required by development on the Coast - including dune restoration, timelines, sensitive plant habitats and legless lizard habitats.
 - h. outdoor lighting has not been carefully outlined - no outdoor lighting should be lining the driveway as part of decorative effects and all outdoor lighting needs to be carefully defined.

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Resolution No. 6322

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(page 4 of 4)

COMMUNITY DEV. DEPT.

- i. The monitoring process should be on a weekly basis rather than once every three months.
- j. A maximum size for the proposed should not exceed 2500 sq. ft. however a smaller proposed structure should be encouraged.

Maureen Nolan

m e m o r a n d u m

August 6, 1992

TO: Members of the Planning Commission

FROM: George C. Thacher, City Attorney

SUBJECT: Appeal of Architectural Review Board Approval of
Architectural Approval Application No. 1349-90 for Property
Located at 1450 Sunset Drive

BACKGROUND: The owner (Stephen J. L. Page) of property at 1450 Sunset Drive has applied for architectural approval of a proposed plan for a single family dwelling on the property. Under applicable city regulations, this approval is the only city entitlement required for development of the site. If architectural approval is obtained here, then Mr. Page must also seek and obtain a coastal development permit from the California Coastal Commission. A coastal development permit is a separate discretionary permit which may be sought at the Commission level only if the property owner has in hand all required local (city) approvals. If architectural approval is not obtained from the city, then Mr. Page will not be in a position to apply to the Commission.

When Mr. Page's application was received, an "initial study" was prepared pursuant to local and state guidelines which implement the California Environmental Quality Act (CEQA). The initial study resulted in a finding that because the proposed project may have a significant effect on the environment, an environmental impact report (EIR) was indicated and would be prepared. A Draft EIR (DEIR) was prepared, comments were received regarding its contents and responses to those comments were included with the DEIR, combining to result in the Final EIR (FEIR) for the project.

With the preparation of the FEIR, the ARB was in a position to consider the proposed project. Their first task was to read, consider and certify the FEIR, following the public hearing required by city regulation. (To assist them I prepared a memorandum, which I attach here, summarizing some CEQA items. Although a number of the same points are covered in the memo you are now reading, please also read the attached for an explanation of required FEIR contents and the certification process.) A project for which an EIR has been prepared may not be approved, in whole or in part, until the EIR is first certified. The ARB did certify the FEIR. You will read on pages 3 and 4 of the attached memorandum a summary of the standard applied to the certification process.

Having certified the FEIR, the ARB turned to the project itself. After a number of hearings the ARB, on a 4-3 vote, decided to approve the proposed project with modifications, conditions and mitigations. The approval - and the certification

of the FEIR -- took the form of a resolution, also attached here. (Note that Exhibit B to the resolution, the site plan and project details, is not attached, but you have been given a copy.) The resolution, as required, addresses and includes certification of the FEIR, mitigation measures (for the most part taking the form of project conditions), and other conditions of approval of the project. Adoption of the resolution by the ARB resulted in project approval, subject to the right of appeal by interested persons.

APPEAL PROCESS: Attached is a copy of Municipal Code Chapter 23.73, the ARB regulations. You will read about appeals from ARB decisions at Section 23.73.080. Three appeals have been taken from the ARB decision on the Page project, all pursuant to Section 23.73.080. Two of the appeals (Gourlay, Nolan/Corning) have also been taken pursuant to Section 23.77.070, dealing with appeals from EIR certifications. In pertinent part, Section 23.77.070 reads: "Any interested person may -- at any time within 10 days following a decision on the project for which the environmental impact report is prepared -- appeal such determination to the body which would hear an appeal of the project. An appeal or call up of the project shall also result in automatic appeal of such determination."

When appeals are filed, they contain statements of objection to the action of body appealed from, thus defining the scope of the appeal. In the matter at hand, two of the appeals call into question the entire approval, including the appropriateness of the FEIR certification. A fair reading of these two appeals, taken in combination, is that appellants argue for no project or for a project significantly smaller, less massive, and/or of different architectural style. So, the appropriate range of actions regarding these appeals would include denial (certifying the FEIR and leaving the ARB approval in place), upholding the appeal by denying the proposed project (FEIR certification would not be required to totally deny the project, but as a practical matter certification would likely have occurred prior to reaching the point of considering the project), and upholding in part and denying in part. The latter action (following FEIR certification) could, for instance, take the form of approval of a smaller, less massive structure, either for environmental reasons or for reasons related to the permitted scope of ARB review, eg., neighborhood compatibility. The two appeals under discussion here do not provide latitude to approve, for instance, a larger, higher and/or more massive project than that approved by ARB.

The third appeal simply requests replacement of the mezzanine which the ARB excluded. Your range of options is limited here to granting (mezzanine returns), denying (mezzanine remains off) or a partial grant/partial deny or some mezzanine structure of a smaller, less intensive nature than that requested by appellant. Of course, the required environmental certification is a necessary element of this appeal as well.

Hearings on appeal in the City of Pacific Grove are "de novo." That is, we hold full hearings rather than rely solely on the written record of the body appealed from. So, the body hearing the appeal hears, reviews, and considers not only materials and the record submitted by the decision making body, but also all comments and materials made and submitted by anyone wishing to speak to the issues on appeal.

Taking into account the limitations imposed by the appeals themselves, discussed above, the planning commission in this case is sitting as if it were the ARB. You are to take into account those matters usually considered by the ARB pursuant

to Chapter 23.73. Treat this as an ARB application, and consider yourselves the ARB.

Occasionally an appeal matter will be returned to the body appealed from, but in this case the ARB fully considered the application, discussed all issues raised and came to a final determination. To return the matter to them for further deliberation at this point would be procedurally and practically inappropriate.

CEQA/EIR ISSUES RAISED ON APPEAL: Both the Gourlay and Nolan/Corning appeals raise issues regarding the adequacy of the FEIR and its compliance with CEQA and the CEQA Guidelines - although the Gourlay appeal does so with far more specificity. Because you must first certify the FEIR if you are to move on to consideration of the project itself, it is appropriate that you first address the points on appeal dealing with CEQA and the FEIR. And I will do so here.

1. The No Project Alternative. CEQA and its Guidelines require that a range of reasonable alternatives to the project, which could feasibly attain the basic objectives of the project, be evaluated, including the no project alternative. (CEQA Guidelines, Section 15126; note that the Guidelines are found at Title 14 of the California Code of Regulations, but for ease of reading references hereafter will be simply to the sections of that title.) Further, if the no project alternative is the superior alternative, the EIR shall identify an environmentally superior alternative among the other alternatives. (Guidelines, Section 15126)

In this case a reading of the FEIR discloses that the no project alternative promises less environmental impact than the proposed project. (Page 6-1, FEIR) While not called out specifically as an alternative, the FEIR, through the evaluation of potentially significant impacts, offers mitigation measures which, as applied to the project application, result in a project alternative which was apparently construed to be environmentally superior to that contained in the application. The consultant determined that because the project was relatively small when compared to most projects requiring an EIR, the scaling down by mitigation was more effective than proposing a series of alternatives. The ARB, by accepting and imposing the suggested mitigation measures, has selected a project which, in their opinion, not only results in development having less than a significant impact, but also is environmentally superior to the project applied for.

The Gourlay appeal contends that the EIR does not adequately examine the no project alternative. Neither CEQA nor the Guidelines have established a categorical imperative regarding either the range of alternatives to be discussed or the depth of required discussion of any particular alternative. Each case must be evaluated on its facts, and must be reviewed in light of CEQA's statutory purposes. (Citizens of Goleta Valley v. Board of Supervisors (1990) 52 Cal.3d 553) The key is whether the discussion fosters informed decision making and public participation.

Discussion of the no project alternative in the FEIR at issue points out that as to each of a number of potentially significant effects, this alternative will result in lesser impacts. That is, the analysis is detailed enough to present a valid comparison of potential environmental effects. It is my opinion that you can reasonably determine that the discussion and examination satisfies legal requirements. As noted by the court in Residents Ad Hoc Stadium Com. v. Board of Trustees (1979) 89 Cal.App.3d, the "discussion of alternatives need not be exhaustive, and the requirement as to the discussion of alternatives is subject to a construction of reasonableness. . . ." You can also reasonably conclude, given the state of the record,

that the discussion of the no project alternative has fostered informed decision making, public participation and debate.

CEQA does not require project denial whenever the no project alternative is deemed environmentally superior. If such were the case, very few projects requiring preparation of an EIR would be approved. CEQA does require, however, that as to identified significant impacts, mitigation measures be adopted to "avoid or substantially lessen" those impacts. (Guidelines, Section 15091)

2. The Alternative Site Discussion. The Gourlay appeal notes that the FEIR does not examine alternative sites for the project. Section 15126 of the Guidelines also suggests that alternative sites be discussed. Such discussion is most appropriate when the proposed project will create unavoidable significant environmental impacts. (Atherton v. Board of Supervisors (1983) 146 Cal.App.3d 346) The decision whether an EIR must consider availability of alternative sites is done on a case by case basis, but courts have provided some guidance.

The leading case on alternative site analysis is Citizens of Goleta Valley v. Board of Supervisors (1990) 52 Cal.3d 553. In determining the need to evaluate alternate sites, public and private projects could be distinguished, the court observed, as to relocation feasibility. A public agency, having the power of eminent domain and access to public lands, has a more feasible opportunity to develop on alternative sites. The court also stated that as to private projects, alternative sites may be feasible when, assuming compatible land use designations, the developer owns or controls feasible alternative sites, when the developer has the ability to purchase or lease such properties, when the developer otherwise has access to suitable alternatives, when two or more developers are seeking approval from a local agency for the same type of development at different locations, or when "other circumstances" necessitate such review.

While an individual capable of purchasing the lot at issue in theory is equally capable of purchasing other undeveloped residential properties in the area, the fact is that there are no other ocean front parcels available for private residential development in the city. If, as applicant has stated, it is his desire to develop and live immediately adjacent to the water, it is legitimate to take the position that alternative site analysis is not appropriate. Consider too, as did the court in Citizens of Goleta, that "an EIR is not ordinarily an occasion for the reconsideration or overhaul of fundamental land-use policy." (52 Cal.3d 553, 573) Thus, where a local coastal plan (LCP) - a document which, among other things, "strives to ensure planned, comprehensive development within the coastal zone . . ." (52 Cal.3d 553, 571) - is in place and has analyzed and identified areas available for development, analysis of alternative site becomes less necessary. Alternate site analysis is more appropriate where land use designations are at issue, i.e., when the decision is being made where to allow a particular use. Case-by-case "reconsideration of regional land-use policies, in the context of a project specific EIR, is the very antithesis of the [goal of long-term comprehensive planning]. . ." (52 Cal.3d 553, 573)

3. Adequacy of discussion regarding "biological impact." The Gourlay appeal notes that the EIR does not supply documents to support conclusions about lack of significant biological impact, and that there is no "good faith" effort to discuss disagreements among experts as to such impacts.

Section 15065 of the Guidelines provides, among other things, that an EIR shall be prepared if a project has the potential to substantially reduce the habitat of a

fish or wildlife species. The initial study done for this project noted that the project might ("maybe") have such an effect, thus supporting the preparation of an EIR. It is left to the EIR itself to address this issue and, if possible, to suggest and require mitigation measures.

The DEIR contains summaries of wildlife and vegetation surveys conducted on the site. Although there was little evidence at that time of the presence of endangered species on the site, there was evidence of same on adjacent sites. On the basis of the surveys, the DEIR disclosed an "impact," i.e., that the project "would result in the degradation of dune habitat which is potential habitat for the federally endangered Tidestrom's lupine and California black legless lizard." Consequently, a number of mitigation measures were suggested, and those measures were integrated into the ARB resolution granting project approval.

The EIR appends and discusses a plant survey, and notes and discusses a wildlife survey done by a biologist. Both support the conclusion that the site has clear potential as a habitat, a factor contributing significantly to the mitigation measures required. Neither the surveys nor the EIR suggest that there is a "lack" of "impact," rather that there is an impact and that certain mitigation measures, if implemented, will avoid or reduce that impact. In coming to a decision on the project you have, of course, on the basis of substantial evidence in the record, the ability to impose additional mitigations which you believe better respond to the identified impact. You should independently judge the project and you may modify the approval as warranted.

Section 15151 of the Guidelines provides that disagreement among experts "does not make an EIR inadequate, but the EIR should summarize the main points of disagreement among the experts." Further, this guideline states that the "courts have looked not for perfection but for adequacy, completeness, and a good faith effort at full disclosure." In its responses to comments the FEIR includes responses to the only information submitted during the EIR preparation process that can be construed as experts in conflict with information contained in the DEIR. The responses (to Fish and Game, State Resources Agency, Office of Planning and Research, Sierra Club) comply with the Guidelines, Section 15088, in that they describe the disposition of the significant issues raised (eg., revisions to project to mitigate impacts or objections), and, it appears, provide good faith, reasoned and supported analysis. The points of disagreement are discussed and disposed of, in my opinion, adequately given the level of analysis required.

4. Documentation regarding unique nature of local environment. It is not clear from the appeal on this issue whether this item is intended to present a legal objection to the adequacy of the FEIR. Of note is that Section 15125 of the Guidelines requires a description of the environmental setting prior to commencement of the project, and a discussion of any inconsistencies between the proposed project and applicable land use plans. In this case the setting is discussed at Section 4 of the DEIR. Further, an impact analysis is contained in that section, describing, explaining and noting appropriate mitigations, with reference to the city's adopted land use plan (LUP) of our LCP.

It appears to me that the environmental setting is adequately described and addressed, and that reference to the many specific environmental concerns and mandates in the LUP point up the uniqueness and sensitiveness of the project site.

Enclosure 6

5. Evaluation of visual impact and destruction of scenic views. The Gourlay appeal here complains of the adequacy of the evaluation and the absence of reference to community standards. On the general adequacy question you are again referred to Section 15151 of the Guidelines, which requires EIR preparation "with a sufficient degree of analysis to provide decision-makers with information which enables them to make a decision which intelligently take account of environmental consequences." Going on, the section notes that an "evaluation of the environmental effects of a proposed project need not be exhaustive, but the sufficiency of an EIR is to be reviewed in the light of what is reasonably feasible."

At pages 4.4-1 through 4.4-23 (with attachments, including photo montage) of the DEIR you find a discussion of "visual quality and aesthetics." Among other references in these pages are citations to applicable provisions of the LUP, an established community standard. On the face of the DEIR, it appears that the discussion of the visual impacts is legally adequate. And the responses to comments in the FEIR on this subject are extensive.

6. Evaluation of sensitive habitats. Again, the appeal charges that discussion is inadequate in this area. Again, you are referred to Section 15151 and the analysis contained in the DEIR on this item. Again, it appears to be legally adequate.

On this point, the DEIR concludes not that there is "no danger to threatened species," but that the proposed mitigation measures will either avoid or reduce to a less than significant level the effects on the habitat; the ARB resolution adopts the measures and arrives at the same conclusions.

7. Economic infeasibility of undeveloped property. This objection on appeal argues that a statement of "economic infeasibility" in the EIR is arbitrary and that such a finding ignores community values, or the fact that an undisturbed shoreline is a prime economic municipal asset.

The EIR itself does not make the point on infeasibility, rather that language is found in the ARB resolution by way of explanation for the no project and parkland alternatives not being adopted. The infeasibility noted by the ARB is the likelihood that refusing all development on the site would result in economic exposure (a "takings" claim) for the city. There is little doubt, at the appeal notes, that an undisturbed shoreline begets increased municipal value. But it comes at a corresponding cost to the city.

(On this point, please understand that if on the basis of evidence in the record you determine that there exist unmitigatable significant impacts for which findings of overriding consideration can not be made, the application may be denied. [As noted elsewhere in this memorandum you may also, for legitimate supportable reasons, scale back the project.] If such impacts exist as to any development on the site, and denial of any and all development ultimately occurs, a takings claim would be in order. Development is a privilege, not a right, and a specific development proposal may legitimately be denied if such denial is supported by law and the law as applied to evidence in the record. What is a right, however, is the property owner's right to be compensated -- at fair market value -- in the event an owner is denied economically viable use of his/her property.)

8. Discussion of damage to Marine Refuge. The Gourlay appeal alleges that potential damage to the Marine Refuge is not discussed, and that documents pertaining to this issue have been ignored.

The DEIR does not identify as significant, or insignificant, potential of damage to the Refuge itself. There is some discussion regarding tidal ecosystems (see below), but the Refuge per se is not noted or discussed. This judgment apparently was made with reference to information available at the time of EIR preparation. The comments received on the DEIR did not include specific reference to Marine Refuge impacts, thus the FEIR's responses to comments include nothing specific on the Refuge. Mere speculation is not ordinarily enough to trigger a finding of significant impact; some evidence in support is required.

9. Tsunami damage potential and corresponding setback. The appeal notes that there is inadequate discussion regarding tsunamis, and that insufficient setbacks are provided for such danger.

Tsunamis are discussed at page 4.2-5 of the DEIR, and the decisions regarding tsunami potential in the DEIR are based on a survey done by a geologic and environmental consulting firm. The danger associated with tsunami action is dismissed as minimal. A response to a comment on tsunami action notes that the comment was not specific enough to allow precise response; also, reference was again made to the geologic report to substantiate previous discussion and determinations.

Again, questions of adequacy are dealt with pursuant to the standard noted above, from Section 15151 of the Guidelines.

10. Discussion of effect on tidal ecosystems. The appeal states that the EIR does not discuss the possible effect on tidal ecosystems. In both the DEIR and in responses to comments discussion is found regarding the possibility of surface runoff and pollutants entering adjacent tidelands and intertidal areas. In both instances it is noted that plans for drainage, erosion, sediment and pollution control measures shall be prepared in accordance with LUP policy 2.2.5-2., which provides for reduction in the potential for degradation of tidelands, by specifically requiring such measures as part of any city approval near tidelands.. The ARB resolution includes this requirement.

11. Discussion of Rocky Shores as habitat for threatened animal species and native dune plants. The appeal claims that the EIR does not deal with Rocky Shores as the largest contiguous area for certain threatened animals and plants that depend on native dune plants for their existence, some of which are found on the project property.

First, please note the discussion above regarding the adequacy of habitat discussion.

The dune restoration mitigation requirements are responsive to the recognition that (1) the proposed dwelling will cover and eliminate dune habitat over a certain percentage of the site, and (2) that restoration work constitutes an attempt to re-establish the project site, and consequently at least part of Rocky Shores, as an acceptable habitat for native flora and fauna. If the EIR hadn't dealt with the fact that these dunes are natural hosts to native plants and animals, it surely would have been defective. But it did, recognized the environmental issues, and suggested mitigation accordingly. The ARB resolution included the suggestions.

12. Generic EIR. Finally, the Gourlay EIR holds that the EIR is generic, patched together by people who do not live here, and have no sensitivity to or

concern for the unique character of the affected shoreline. I have no comment here, as this point does not raise any identifiable legal issue.

13. Adequacy of mitigation. Although not mentioned in the Gourlay EIR appeal, in his separate appeal on the project itself Mr Gourlay avers that the environmental effects of the project identified in the FEIR have not been mitigated to less than a significant level, and that, therefore, the ARB did not protect the public interest.

Testing the adequacy of mitigation measures is not a precise science. Section 15091 of the Guidelines requires that as to any identified significant effects, one of three findings must be made: (1) That changes or alterations have been required which avoid or substantially lessen the effect, (2) that another agency has jurisdiction over the mitigations and will or should impose them, or (3) that specific economic, social or other considerations make infeasible the mitigation measures.

"Significant effect on the environment" is defined as follows at Section 15382 of the Guidelines: "... a substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the project including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic interest..."

Section 15370 describes the scope of permitted "mitigation" as follows: "(a) Avoiding the impact altogether by not taking a certain action or parts of an action.

(b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation.

(c) Rectifying the impacts by repairing, rehabilitating, or restoring the impacted environment.

(d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.

(e) Compensating for the impact by replacing or providing substitute resources or environments."

As to the identified significant impacts (and as to some of the less than significant impacts) in this case the ARB, in its resolution, has required mitigation measures which it found to reduce the identified effect to less than significant. You should evaluate each impact independently of the ARB's conclusions and you may disagree, based on the evidence in the record, that "substantial lessening" has been accomplished by the measures imposed. If you do, you may impose other, reasonable mitigation measures supported by evidence in the record. You are reminded here that certification of the FEIR does not foreclose your options with respect to additional or different mitigation measures. Section 15121 of the Guidelines points out that an EIR is informational, to inform decision makers and the public regarding the effects of a proposed project. Section 15121 notes that the information in the EIR "does not control" ultimate discretion on the project, thus certification of the document as having been completed in compliance with CEQA does not preclude consideration or imposition of project conditions or reasonable mitigation measures not specifically contained in the EIR.

LCP/LUP ISSUES RAISED ON APPEAL: The Nolan/Corning appeal contains a number of points which focus on alleged non-compliance with the city's land use plan (LUP) of its local coastal program (LCP).

As a preliminary comment, the LUP is an integral part of any local agency's LCP. In the case of Pacific Grove, it has been adopted as part of the general plan. Any development or other activity taking place within the area of this city covered by the LUP shall comply with the requirements of the LUP. It is law just as surely as are the various other land use regulations adopted by the city. If the LUP conflicts with any other land use policy, rule or regulation, the LUP prevails.

1. Untrue facts in ARB resolution; non-compliance with LUP. Nolan/Corning assert that there are untrue facts in the ARB resolution, and that the ARB did not comply with the LUP.

I can not find in the appeal or in submittals any further specification of untrue facts, so no comment is offered.

The assertion that the action of the ARB did not comply with the LUP is dealt with below, as individual LUP provisions are called into question.

2. Non-compliance with LUP provisions regarding environmentally sensitive habitats, LUP Sections 2.3 and 2.4

Nolan/Corning failed to provide specific references to the various subsections in the LUP they claim are violated, making it difficult to identify their precise objections. However, note that in Section 2.3 the DEIR (page 4.1-5), the land use policies having a bearing on the project are 2.3.2 (citing the Coastal Act requirement that sensitive areas be protected against significant disruption, and that only resource dependent uses be allowed in such areas), and 2.3.4-2 (habitat areas of Tidestrom's lupine and Menzies' wallflower be protected, enhanced and maintained).

As to subsection 2.3.2 the DEIR notes that (1) the general area has been determined sensitive, however (2) the LUP land use designation allows for single family development and (3) the site itself does not contain environmentally sensitive habitats as considered by 2.3.2.

As to subsection 2.3.4-2, the DEIR specifies construction methods for the protection of the two named plants on adjacent properties during construction.

As well, the specific policies dealing with development of parcels in the Asilomar Dunes area (found at LUP subsection 2.3.5-1) have been integrated, as appropriate, into the conditions and mitigation measures found in the DEIR and the ARB resolution.

3. Non-compliance with LUP provisions re protection of archaeological resources, LUP Section 2.4.

Again, finding no specific references, precise response is difficult. As required by subsection 2.4.5, an archaeological survey was done (see page 4.5-2, DEIR). Although the survey revealed substantially less archaeological evidence than expected, the DEIR nonetheless requires suspension of construction work in the event of an archaeological find, and recovery work done as appropriate. This is a common mitigation measure where nothing unique is identified, to safeguard against unexpected discoveries during construction.

4. Non-compliance with LUP provisions re protection of scenic resources, LUP Section 2.5. (For ease of reference, Section 2.5 is attached here.)

The objection here is that general and specific policies have not been followed. Please note in a number of these policies the use of language such as "retain the maximum amount of open space possible," minimization of "alteration of natural

dune topography," "compliment the open space character of the area," development "to the maximum extent feasible, shall not interfere with public views," and development to be "sited and designed to protect views . . . to minimize alteration of land forms . . . to be visually compatible [with surrounding open space] . . . and, where feasible, to restore and enhance visual quality. . . ." Note that these policies do not bar all development, but only seek to make development as sensitive as possible.

As to each of these policies reasonable minds will differ as to compliance, and perhaps differ widely. The DEIR, and the ARB in arriving at a decision on the project, considered the application of these policies to the project at hand. Mitigation measures and conditions were imposed (eg., reduction in foot print) in light of these policies. The key here, i.e., what a court may ask when looking at such an approval, is whether the interpretation and decision of the city is in compliance with planning policies, is reasonable, and is supported by the evidence. Those measures and conditions are, in my judgment, within legal bounds.

If, however, it is the reasoned judgment of the planning commission, based on the record before it, that these policies have not been appropriately addressed, and that additional mitigation and conditioning is necessary, the commission may order such additional mitigation.

There are other, less subjective, policies in Section 2.5 which are included in the project approval, eg., 75' setback, earthtone colors, etc. The ARB concluded that each of these has been complied with.

5. Non-compliance with LUP provisions re land use and development, LUP Sections 3.1 through 3.5.

There are several objective policies in subsection 3.1.1 which have been integrated into the project approval either as written or made more restrictive by the ARB, eg., building height, parking.

In their submittal in support of the appeal, Nolan/Corning cite subsection 3.4.2, which in turn notes Coastal Act policy that development in coastal areas shall protect views, minimize land form alteration, be visually compatible, and restore and enhance visual quality. As stated above, these are requirements the implementation of which are subject to interpretation of decision makers. So long as decisions are within reasonable limits and based on the evidence in the record, they will be upheld.

There are also some specific policies at subsection 3.4.5-2, all of which have been acknowledged and integrated into the project approvals.

Nolan/Corning cite subsection 3.4.5-4, focusing on the statement that Rocky Shores should be maintained as open space, and that in the event of an application for development the city shall seek funding to establish permanent open space on the properties. The subsection goes on to say that if after a reasonable time period no funding or other remedy has been found, the application shall be processed under applicable standards. This provision must be read and interpreted in light of time limits placed on public agency handling of development applications. Sections 65920-65960 of the California Government Code -- the so-called Permit Streamlining Act -- provide that for projects which require an EIR, a local agency must make a decision on applications within one year from the date a complete application is received. City's LUP, even though approved and ratified by the California Coastal Commission, does not have the effect of superseding statutory law adopted by the state legislature. Thus, the "reasonable" time delay provision in our LUP must be exercised with due regard for the Permit Streamlining Act. More than a year has now passed since the filing of a complete application for the project at issue here.

(While it is arguable that the city is no longer at risk under the Act because a decision has now been made at the ARB level, the city has an obligation to proceed expeditiously to complete the appeal process.)

6. Non-compliance with LUP provisions re public facilities, Sections 4.0 through 4.2.

Without further explanation from appellant, analysis of this facet of the appeal is not possible. I do note that a quick review of the public facilities provisions of the LUP reveals no policies applicable to the project application which appear to have been violated.

7. Non-compliance with LUP provisions re public shoreline access, Sections 5.1 through 5.6.

Aside from the summary statement in the appeal itself, there is no explanation of this objection. Of note, however, is a finding of "less than significant impact" in the DEIR regarding LUP subsection 5.5.4, which provides for public access in conjunction with development in the area at issue except where it is unsafe or damaging to coastal resources, or where adequate access exists nearby. Despite the finding of less than significant, the ARB did address this matter as an additional mitigation measure in their resolution, to wit, noting that the city does not yet have in place ordinances to require such access, but that the coastal commission should consider such access when it hears the coastal development permit application for the site. (Ordinances are in process, and the Coastal Commission has not objected to our pace in completing them.)

8. Non-compliance with California Coastal Act. Except to the extent that Coastal Act policies underpin the various elements of the LUP cited by Nolan/Corning and discussed above, there is no further explanation of this broad objection.

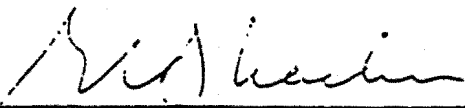
9. Non-compliance with Asilomar Dunes Habitat Survey. Once again, there is no additional argument on this issue. Note, however, that the Survey, appended to the LUP, contains a number of recommendations for handling of development proposed in the Dunes area. Reading the many recommendations, I do not find any that appear to have been avoided or violated during this process.

OTHER ISSUES RAISED ON APPEAL: The Gourlay appeal is in two parts, one regarding the project approval itself and the other dealing with the handing of the CEQA/EIR issues, the latter discussed above. The Gourlay project appeal contains some LUP issues, which have been covered above under discussion of the Nolan/Corning appeal. It also contains an environmental issue, which is discussed at 13. of the CEQA/EIR issues, above.

The balance of the issues on appeal concern project size, materials and details of the structure, architecture, general appearance, massiveness, harmony/conformity with the Asilomar Dunes neighborhood, and the appropriateness of the mezzanine. These issues all fall within the considerable discretion afforded by Chapter 23.73 ("Architectural Review Board"), attached, of the Municipal Code, especially at Sections 23.73.020, .060 and .070.

A final comment. During the course of this appeal, and throughout the ARB process, numerous references have been made to the many size, height, etc., limitations contained in the LUP and other city regulations. Please know that these limitations are maximums, eg., no more than 15% of a site on the Asilomar Dunes may be covered; the city is under no obligation to allow development to stated maximums. Pursuant to your obligations and authority under CEQA (via the FEIR) and under the ARB regulations, you have the ability reasonably to lower, render less massive and otherwise subject any approval to conditions resulting in a structure not built to maximum allowances. (See, for example, Guinnane v. City and County of San Francisco (1989) 209 Cal.App.3d 732., in which the court affirmed a city's ability to deny a building permit application for a dwelling proposed for near maximum limits, where the city had a standard requiring neighborhood compatibility.)

If you have any questions about this memo or anything else regarding the appeal, please call me at 648-3106.


George C. Thatcher, City Attorney

Attachment

cc: Tony Lobay
Bob Tiernan
Mayor and Council Members
Walter Gourlay
Maureen Nolan and James Corning
John Matthams
Mark Woodward

EXHIBIT C**CONDITIONS OF APPROVAL FOR ARCHITECTURAL APPROVAL
APPLICATION NO. 1349-89, APPROVED AS MODIFIED BY THE
CITY COUNCIL ON APPEAL**

1. The precise dimensions and location on the lot of the proposed project improvements, including footprint, roof line, lengths, and widths, shall be as approved by the council following submittal pursuant to Section III.K. of the resolution.
2. The height of the structure shall not exceed 15 feet.
3. Siding and roofing materials shall be wood; the roof shall be shingles. Native stone materials shall also be utilized to assist in blending and harmonizing the structures with the natural elements of the site. Remaining architectural details shall be as approved by the council following submittal pursuant to Section III.K. of the resolution. Provided, that (a) roof lines shall have a slight pitch to harmonize with dune slope and shape, and (b) the design should consist of straight lines to further harmonize the structure with the adjoining dwelling.
4. Total area of the house and garage shall not exceed 2500 square feet.
5. No structure shall be located westerly of the line labeled "building limit line" as delineated on Exhibit D of Planning Commission Resolution No. 92-32.
6. No structure shall be located easterly of a line parallel to and 245 feet westerly of the west side of Sunset Drive as it abuts the site.
7. All water collected in the guttering system shall be collected and directed, by means subject to approval of the city engineer, to the storm drain system main adjacent to the project site or outfall to the ocean as approved by the coastal commission.
8. Connection shall be made to the regional sewer system prior to any approval for occupancy being issued by the community development department.
9. Owner shall secure a coastal development permit from the coastal commission prior to issuance of a building permit.
10. Owner shall secure a water permit from the Monterey Peninsula Water Management District prior to issuance of a building permit.

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11. A domestic sprinkler system shall be installed, subject to approval of the fire chief.

12. A turn around area shall be provided, to permit head-out exiting onto Sunset Drive. Prior to issuance of the building permit, owner is requested to make a good faith effort to reach agreement with the owner of 1500 Sunset Drive for a shared driveway in order to reduce driveway coverage and contain construction related traffic within a single access route. Driveway design and turn around shall be approved by the site plan review committee.

13. Architectural approval shall be valid for one year, said year to commence upon obtaining of a coastal development permit for the project.

14. Construction shall not commence until a copy of this resolution is signed by the owner, acknowledging receipt of the permit and acceptance of its terms and conditions, and is returned to the community development department.

15. All construction and improvement must occur in strict compliance with the proposal as set forth in the application for permit, as modified by this resolution. Any deviation from the approved plans must be reviewed and approved by staff and may require city council approval.

16. These terms and conditions shall be perpetual, and it is the intention of the city council and owner to bind all future owners and successors in interest of the property to the terms and conditions of the resolution, all its attachments, and all documents, plans and other items referenced herein.

17. Owner shall defend and save harmless the City of Pacific Grove against and from any claims, suits, judgments, costs and attorney fees arising out of this approval or assertions that this approval is invalid, illegal, unconstitutional or otherwise contrary to law.

18. Should any inconsistencies arise in the items listed in these conditions or should any condition of this resolution require interpretation, the Community Development Director shall interpret the requirements of this resolution consistent with the Environmental Impact Report.

19. The boundary fence along the north side of the site shall be retained; when replacement becomes necessary it shall be replaced in kind.

EXHIBIT D

FINDINGS RELATIVE TO ARCHITECTURAL APPROVAL APPLICATION
NO. 1349-89 AS MODIFIED (APPROVED BY THE CITY COUNCIL ON
APPEAL) PURSUANT TO THE CALIFORNIA ENVIRONMENTAL QUALITY
ACT; FINDINGS REGARDING MONITORING OR REPORTING OF
CALIFORNIA ENVIRONMENTAL QUALITY ACT
MITIGATION MEASURES

I. INTRODUCTION**A. Certification and Overview.**

1. These findings are made by the City Council of the City of Pacific Grove pursuant to the California Environmental Quality Act ("CEQA") and State and City Guidelines.

2. The purposes of these findings include (a) acknowledgment of certification of the Final EIR prepared for Architectural Approval Application No. 1349-89 (hereinafter, "project"), (b) description and summary of the potentially significant environmental impacts of the project, (c) description of the mitigation measures suggested by the Final EIR for the project, (d) statement of the city council's findings as to the impacts of the project after adoption or rejection of the mitigation measures. The description of the impacts is in summary form only; the Final EIR describes the impacts in detail, and is incorporated herein by this reference. Certain mitigation measures have been proposed in the Final EIR. These findings adopt such mitigation measures as proposed or as modified. Certain additional mitigation measures, not proposed in the Final EIR as responsive to significant effects, are also adopted in these findings.

3. Although in some cases the mitigation measures may not use the exact wording of the mitigation measures recommended in the Final EIR, in each such instance the adopted mitigation measure is deemed to be identical to or substantially similar to the recommended mitigation measure. Unless specifically stated to the contrary, all such measures are, and are hereby found to be, equally effective in reducing the identified impact to a less than significant level as are the mitigation measures as worded in the Final EIR. In each instance where this council finds that one or more mitigation measures from the Final EIR are adopted, this council means that such measures or their equivalents are adopted.

4. The Final EIR is comprised of those materials described in the recitals in the body of this resolution of which this Exhibit D is an integral part.

5. At Section III.F. of the body of this resolution this city council has certified the Final EIR as required and provided by law. In so certifying, this council recognizes that there may be differences among and between the information and

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opinions offered in the documents and testimony that make up the Final EIR and the administrative record. Experts may disagree and this council must base its decision and these findings on that substantial evidence in the record that it finds most compelling. This council has considered all the opinions submitted to it. Therefore, by these findings, this council ratifies, clarifies and/or modifies the Final EIR as set forth in these findings, and determines that these findings shall control and that the Final EIR shall be deemed certified subject to the determinations reached by this council in these findings which are based on substantial evidence in the administrative record.

6. Unless otherwise indicated, all mitigation measures hereby adopted will avoid or reduce to a less than significant level any significant adverse environmental impacts, and all mitigation measures, themselves, are determined not to result in any potentially significant adverse impacts.

B. The Project. Architectural Approval Application No. 1349-89 is adequately described in the administrative record, in particular in the Final EIR, staff report and in the plan and model submittals made by owner.

C. The Record. The administrative record before this council relating to this project includes those materials described in the recitals of the body of the resolution of which this Exhibit D is a part, and also includes matters of common knowledge, such as City's general plan, zoning regulations and other Federal, State and City policies, laws and regulations.

D. Integration. This council intends that these findings be considered as an integrated whole and, whether or not any subdivision of these findings fails to cross-reference or incorporate by reference any other subdivision of these findings, that any finding required or permitted to be made by this council shall be deemed made if it appears in any portion of this document. All of the text in this findings document constitutes the findings and determinations of this council, whether or not any particular caption, sentence or clause includes a statement to that effect.

II. FINDINGS REGARDING ENVIRONMENTAL IMPACTS AND MITIGATION MEASURES

A. Introduction. The Final EIR discusses the project's environmental setting, potential environmental impacts, and measures and alternatives proposed to mitigate such impacts. The Final EIR includes specific subsections addressing land use and planning, coastal processes and geotechnical issues, vegetation and wildlife, visual quality and aesthetics, cultural resources, and public services and utilities. The organizational format of these findings is intended to follow the organizational format of the Final EIR. Each impact and mitigation measure relative to the project is discussed in the order presented in the Final EIR. Except for those impacts discussed below in subsections B. through G., this council finds that there are no other areas of significant impact. However, at the end of this section II (subsection H.), certain additional mitigation measures -- suggested by the Final EIR to address

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non-significant impacts -- are included as well as mitigation measures to assure the most environmentally sensitive project possible.

B. Land Use and Planning.

1. Scenic Resources Policies.

a. Potential Impact. The proposed project would not be entirely consistent with city's LUP scenic resources policies (2.5.2, 2.5.5-1, 2.5.5-4(b) and (c), and 2.5.5-7) in that it would partially obstruct visual access to the ocean and bay, would alter dune topography, would interfere with public views, and would not maximize open space seaward of Sunset Drive.

b. Mitigation measures. The footprint, height, and size of the building as initially proposed have been, respectively, lowered and reduced by this council to levels so as to reduce the visual obstruction and interference with public views to a less than significant impact. Further, construction activities and staging areas shall not take place on lands or sensitive habitats adjacent to the project parcel. No dirt or sand shall be removed from sensitive habitats during construction or grading. The area upon which all construction shall take place shall be fenced and all construction equipment and vehicle storage will be confined within the fenced area. No travel or other use of the surrounding area will be permitted.

2. Environmentally Sensitive Habitats and Scenic Areas Policy.

a. Potential impact. The proposed project would not be entirely consistent with city's LUP environmentally sensitive habitats and scenic areas policy (3.4.4-1 and 3.4.5-2) in that the dunes would be degraded by the project, and, as initially proposed, had a lot coverage of 15%, the maximum allowed.

b. Mitigation measures. Incorporated here by reference are the mitigation measures set out at section 4.4-1(f) of the FEIR, with additional reduction of structure (house and garage) to a maximum of 2500 square feet. Further incorporated here by reference is the "suggested additional mitigation measure" set out in section 6.3 related to the blending of sand dune topography with the dwelling. The actual extent of the proposed sand dune screening is similar in concept to the "suggested mitigation measure" and is a variation of the description in section 6.3.

C. Coastal Processes and Geotechnical Issues.

1. Construction Activity Disturbances.

a. Potential impact. Portions of the project site disturbed by construction activities could be subject to erosion.

4.4-1(f): Reduce the overall footprint size of the structure (approximately 20%) in combination with a lower roof height and different roof configuration on all or part of the structure.

*Parapet would defect
proper of dune screening!*

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b. Mitigation measures. To the maximum extent possible the existing ground cover that protects the sand dunes shall not be disturbed. If such area is disturbed it shall be replanted immediately or as soon as feasible.

The proposed residential structure shall be supported with deep-seated pier or pole foundation systems. Conventional spread foundations shall not be used because the near-surface sand dunes are too loose to support such foundations, and in order to redensify the soils to bear the weight of the structure, the dunes would have to be graded. This grading action could strip large portions of the existing vegetation from the dunes, which would then exacerbate wind erosion. The drilled pier foundations will disturb less of the ground cover compared to conventional spread foundation. The concrete pier or wood pole foundations shall penetrate all sand dune and terrace deposits and shall be embedded four feet or more into the underlying bedrock. (Piers along the seaward side of the coastline house would be expected to be 12 to 20 feet deep.)

Areas used to store construction materials and house the construction shed shall be restricted and construction vehicle access to driveways or designated pathways shall be limited as much as possible.

2. Drilling Holes -- Foundation Piers.

a. Potential impact. Loose sands and groundwater pools may make the drilling holes for foundation piers unstable.

b. Mitigation measure. Drilled holes shall be bolstered and supported by shielding three drilled hole sides as required by site conditions.

3. Roof/Driveway Water Erosion.

a. Potential impact. Runoff from roof and driveways could erode sand dunes or marine deposits seaward of the homesite.

b. Mitigation measure. Full roof gutters and downspouts shall be placed on all eaves of all structures proposed for development on the site. All roof and driveway runoff as well as surface drainage shall be directed away from building site and into storm drain systems that carry the accumulated water in a closed conduit to the storm sewer system. Alternatively, drainage may also be directed to outfall into the ocean and shall be designed to have no impact upon marine or intertidal biota. Drainage into the ocean shall be designed in conjunction with a coastal biologist and approved by the coastal commission. Non-corrosive segmented drain pipe shall be used where coastal erosion may take place. (As the coastline erodes, the segments could be removed easily.)

4. Earthquake Damage Potential.

a. Potential impact. Earthquake - induced groundshaking could cause structural damage and safety hazards to building occupants.

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b. Mitigation measure. Foxx, Nielsen and Associates, geotechnical consultants, recommend the use of concrete pier and grade beam foundations and such shall be employed on the project. This construction strategy will prevent major damage to the structures should surficial materials fail. Also incorporated here by reference are the mitigation measures set out above at sections C.1.b. and C.2.b.

All construction, including the infrastructure, shall comply with the most recent edition of the Uniform Building Code Seismic Zone 4 Standards, or local seismic requirements, whichever are most stringent.

5. Landsliding due to Seismic Shaking.

a. Potential impact. Seismic shaking could trigger landsliding or liquefaction of soils on the site.

b. Mitigation measure. Incorporated here by reference are the mitigation measures set out above at section C.4.b.

6. Coastal Bluff Erosion.

a. Potential impact. Proposed structures would be subject to damage from erosion of the coastal bluff and storm wave runup within 50 years.

b. Mitigation measures. The foundation of the home shall be set back landward of the recommended development setback line as indicated on approved architectural plans. The floor system of all living spaces must be elevated or protected from hazardous conditions to a height at least one foot above the 50-year wave runup level. The proposed residence shall comply with recommended elevations for finished floors and the bottom of the horizontal structural elements of the foundations as listed in Table 4.2-1 of the Final EIR.

D. Vegetation and Wildlife.

1. Dune Habitat Degradation.

a. Potential impact. The project will result in the degradation of dune habitat which is potential habitat for the federally endangered Tidestrom's lupine and California black legless lizard.

b. Mitigation measures. Leave natural vegetation intact in all portions of the property, except as required for the normal construction of buildings, utility infrastructure, roadways, driveways, parking, and to comply with fire safety specifications and recommendations.

Do not introduce fill or soil from outside the property. (These could contain seeds of weeds, genista or other undesirable species capable of overrunning the habitat and outcompeting native species.)

One or more new dune restoration sites must be located on the property, preferably in one of the setback areas, and excess sand from grading used to form

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new dunes. A revegetation or landscaping plan shall be adopted for the restoration sites using only native dune species. (A list of approved plants and possible sources is included in Appendix B of the Final EIR.) The following measures shall be included in the restoration plan:

(i) Use none of the following invasive non-native species in landscaping: Blue gum (Eucalyptus globulus); Acacias (Acacia spp.); Genista (Cytisus spp.); Pampas grass (Cortaderia spp.); Hottentot fig ice plant (Carpobrotus edulis); Cape weed (Arctotheca calendula); Dune grass (Ammophila arenaria); Pennisetum and all of its species such as fountain grass (Pennisetum setaceum).

(ii) Plant only drought tolerant vegetation in the general landscapes. Plants requiring frequent irrigation must be confined to special landscape features or planters near the homes. Topsoil may be imported only for these specific confined and high maintenance areas. In dune habitat or easements, only native dune species shall be used, and no imported soil may be spread.

(iii) All plants used for dune or swale revegetation must be approved by the Director of the Pacific Grove Museum of Natural History or selected from Appendix B. Plants must come from local vegetation (i.e. grown by contract from seeds and/or cuttings collected from the general Asilomar dunes area, rather than from the general commercial trade) to maintain genetic purity in the local native vegetation. Sources which may be able to provide native plants grown by contract are listed in Appendix B. It is suggested that the majority of the plants be grown in Supercells, as these generally adapt to the habitat more quickly than plants of 1-gallon size or larger, and can be produced in larger quantities more economically.

(iv) To monitor the success of the Restoration Plan, a botanist approved by the City of Pacific Grove shall be hired by the applicant/owner to visit the site to oversee or supervise the planting, and thereafter at least once a year for five years to ensure that the restoration or revegetation is succeeding. A report or letter shall be sent to the City following each visit, with a copy sent to the applicant/owner. If deficiencies occur (such as dead plants and shrubs, or presence of pampas grass, weeds or ice plant), the applicant/owner shall replace the dead plants and remove the invasive species. Staff of the City of Pacific Grove, the California Department of Fish and Game, the U.S. Fish and Wildlife Service, or the Coastal Commission may inspect the property at any time indefinitely and recommend additional studies if the property does not appear to be in compliance with the intent of this mitigation measure.

(v) The areas containing sensitive habitat/endangered species that remain following construction of the proposed project (including the dune restoration area) shall be dedicated as scenic easements. Site specific populations of Menzies' wallflower (Erysimum menziesii) and Tidestrom's lupine (Lupinus tidestromii) shall be retained.

(vi) Native dune building grasses and forbs shall be retained.

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(vii) The owner shall provide sufficient funding to properly manage and maintain the preserved area over time.

All ice plant now occurring on the property shall be removed to enhance the habitat according to the following instructions: Ice plant shall be removed by spraying with a non-persistent systemic herbicide such as Roundup, as recommended by a licensed Pest Control Advisor. Ice plant should only be pulled by hand, and not sprayed, within 20 feet of any Tidestrom's lupines, or where significant native vegetation occurs with the ice plant.

All dune restoration shall be accomplished per a landscaping plan prepared by a qualified coastal biologist and implemented under the direction of the coastal biologist as required per LUP provisions 2.3.5.1.e and f. Eradication of ice plant shall be by herbicide only and the dead vegetation shall remain and decay in place. This method will provide erosion protection until the native species become established and a source of nourishment for the new plantings. Dune restoration measures shall be implemented in a manner that avoids increasing erosion by being accomplished in phases or some other method deemed appropriate by the coastal biologist. Snow fencing shall be utilized to control blowing sand until sand is stabilized by restoration planting.

Dune restoration of areas "beyond the approved building site and outdoor living space" and protecting the restored areas shall conform with a written agreement, deed restrictions or conservation easement granted to an appropriate public agency or conservation foundation as contained in LUP section 2.3.5.1.e. Where large areas are involved, such is the case in this proposal, the conservation easement is the instrument required by the City.

The presence of California black legless lizard shall be determined by trapping, combing, or other means deemed appropriate by the coastal biologist within all areas to be disturbed by construction activity immediately prior to grading operations. The determination of the presence of black legless lizard shall be made by a qualified coastal biologist. All individuals of the reptile found during the reconnaissance shall be relocated to suitable habitat.

A detailed grading plan indicating grading proposals in all areas to be disturbed is required to be submitted to the City prior to approval of the Coastal Permit per LUP section 2.3.5.1.d.

E. Visual Quality and Aesthetics.

1. Change to Aesthetic and Visual Quality.

a. Potential impact. Development of the proposed project would result in a change to the aesthetic environment and visual quality of an area with widely recognized sensitive scenic resources.

b. Mitigation measures. The height of the buildings as initially proposed has been lowered as set out in Exhibit C of this resolution. The overall size of the buildings as initially proposed has been reduced as set out in Exhibit C of this resolution.

15' max.

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2. Overnight Illumination.

a. Potential impact. Overflow illumination from the proposed project would have significant impacts of the light and glare characteristics of the surrounding area from dusk to dawn.

b. Mitigation measures. All light sources emanating from the project site shall be directed onto the site and/or screened to prevent overflow illumination of adjoining areas. The use of exterior lights shall be kept to a minimum. Exterior spot or flood lighting shall be directional to avoid impacts to marine life and local marine activity. Lighting shall be designed and aimed in such a way that it does not conflict with lighthouse and security operations.

3. Reduction of Open Space and Viewshed Resources.

a. Potential impact. The proposed project would reduce open space and viewshed resources west of Sunset Drive, which conflicts with the special objective of the City of Pacific Grove to retain open space on land seaward of Sunset Drive.

b. Mitigation measures. The project shall incorporate to the maximum extent feasible design standards noted in the scenic resources policy statements outlined in the City of Pacific Grove's LUP (Scenic Resources 2.5.5-1, 2.5.5-4, and 2.5.5-5).

The following mitigation measures shall also be required to ensure that potential aesthetic impacts are lessened to an insignificant level:

1. All uncovered portions of the site shall be maintained in their natural condition, and planted only with native vegetation.

2. The proposed driveway shall be constructed of a material that is similar in color to the surrounding terrain, and located within the site topography, to visually blend into the surroundings to the greatest extent feasible.

The overall height of the proposed structure shall be lowered as noted in subsections E.1.b. and B.1.b., above, and in the body of this resolution.

F. Cultural Resources.**1. Protection of Cultural Remains.**

a. Potential impact. Construction activities may unearth and damage unidentified cultural remains.

b. Mitigation measures. If archaeological resources or human remains are discovered during construction, all work shall be halted immediately within 50 meters (150 feet) of the find until it can be evaluated. An archaeological consultant shall be retained to evaluate findings in accordance with standard practice and applicable regulations. Date/artifact recovery, if deemed

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appropriate, would be conducted during the period when construction activities are on hold. If human remains are discovered, an appropriate representative of Native American Indian Groups and the County Coroner would be informed and consulted, as required by State law.

G. Public Services and Utilities.

1. Water Quality.

a. Potential impact. Excavation and grading activities and sediment from trucks during construction of the project could impact water quality of the adjacent tidelands and the Pacific Ocean.

b. Mitigation measure. To the extent feasible, construction shall be scheduled during the dry season. An erosion and sediment-transport control plan shall be in place prior to the commencement of earthmoving activities.

2. Surface Runoff.

a. Potential impact. The proposed project would add impervious surface area which would increase the amount of surface runoff. The increase in surface runoff would cause more pollutants to enter the storm system and degrade water quality in adjacent tidelands and intertidal areas of the ocean.

b. Mitigation measure. Drainage plans and erosion, sediment and pollution control measures shall be prepared as conditions of approval for development in accordance with LUP policy 2.2.5-2.

H. Additional Mitigation Measures. The following additional mitigation measures, suggested by the Final EIR to address impacts determined to be less than significant, hereby are included as additional mitigation measures for this project.

1. A landscape plan shall be submitted to the city council at the final design stage, for approval.

2. All utility lines shall be constructed underground, in accord with LUP policy 2.5.5.

3. Because the City of Pacific Grove does not yet have in place ordinances implementing the LUP, the decision whether to require shoreline access easement rests with the coastal commission at such time as it considers an application. Project design could accommodate such easement.

4. The police and fire departments shall review final site plans for the development to ensure adequate access for emergency equipment, and to confirm that all structures are built to meet applicable fire and safety codes.

EXHIBIT D

5. The owner shall be required to obtain a water permit. The proposed project shall be equipped with low flow fixtures and drought tolerant landscaping.

6. All trenches for underground utility lines shall avoid sensitive plant and animal species that are identified in section 4.3 of the Final EIR, and archaeological resources listed in section 4.5 of the Final EIR.

I. Discussion of Alternatives. This council makes the following comments and disposition of the project alternatives set out in the Final EIR.

1. No Project Alternative. This alternative would leave the site as undeveloped coastal dune habitat and open space. None of the identified significant or less than significant impacts would occur with this alternative. While, therefore, this would be an environmentally superior alternative, failure of the city to approve reasonable development on a parcel zoned for residential use could result in considerable economic exposure for the city and its taxpayers. This alternative is, therefore, presently infeasible.

2. The Parkland Alternative. This alternative too, would result in none of the identified impacts, and, in fact, could result in preservation and enhancement of the habitat on the site. However, presently neither the city nor any other agency is in a position to purchase the property for public parkland purposes. Thus, this alternative is also presently infeasible.

3. The Reconfigured Project Alternative. In fact, this alternative presents only one change, i.e., construction of a single driveway for use with the proposed project and the adjacent developed lot. Although it is not legally possible for the city to require an adjacent owner to comply with a condition of approval on this project, the mitigation measures previously set out include a non-mandatory suggestion that the owner attempt to arrange a shared driveway agreement with his neighbor. If the owner is able to do so, this project "alternative" will be realized. Otherwise, it is not feasible.

4. The council finds that alternative design of the project has been adequately considered, in that while the EIR only considered one design alternative, the EIR did make substantial modifications to the project through mitigation measures.

III. Findings Regarding Monitoring or Reporting of CEQA Mitigation Measures

Section 21081.6 of the California Public Resources Code requires the City of Pacific Grove to adopt a monitoring or reporting program regarding CEQA mitigation measures in connection with the approval of the project. The following program is adopted in fulfillment of this requirement:

EXHIBIT D

Page 11 of 11

A. The Community Development Director shall develop a master checklist from the findings and conditions of approval related to this project, identifying each mitigation measure together with the person, department or agency responsible for overseeing the implementation of such measures. The master checklist shall be recorded in the office of the County Recorder. The master checklist shall include a fee schedule for payment to City by owner of all costs of preparation of the checklist and monitoring the implementation of the mitigation measures.

B. The owner shall file a written report with the Community Development Director every three (3) months, or more frequently if directed by the Community Development Director, stating the status of implementation of the measures. Once construction is complete, the Community Development Director may establish a less frequent reporting schedule. In the event of sale of the property, subsequent purchasers shall be responsible for all monitoring requirements.

C. The Community Development Director shall review the written reports and determine whether the mitigation measures are being implemented in a proper and timely manner. The Community Development Director may conduct on site inspections to monitor mitigation implementation and to verify the written report.

D. The result of the Community Development Director's review will be provided to the owner in writing. If a measure is not being properly implemented or maintained, the Director and owner shall consult and, if possible, agree to additional actions to be taken to implement the measure. If they are unable to agree, the Director shall impose reasonable action as permitted by law. Such decision of the Community Development Director may be appealed to this council.

E. The Community Development Director shall monitor the implementation of the required mitigation measures and shall report to the city council periodically regarding compliance.

F. Owner shall pay City fees equal to the actual cost of performing required monitoring. Actual costs shall include, without limitation, City personnel costs and consultation fees and costs.

ENTERED FILED

DEC 2 1993

DEC 02 1993

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ERNEST A. MAGGINI
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DEPUTY

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Attorneys for Respondents and Defendants

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF MONTEREY

STEPHEN J. L. PAGE,) No. M 26049

Petitioner and Plaintiff,)

vs.)

STIPULATED JUDGMENT

CITY OF PACIFIC GROVE; THE CITY)
COUNCIL OF THE CITY OF PACIFIC)
GROVE; HON. FLORENCE SHAEFER;)
HON. ROBERT DAVIS; HON. TERRENCE)
ZITO; HON. ELEANOR ROGGE, and)
DOES 1 through 50, inclusive,)

Respondents and Defendants.)

The parties having stipulated that judgment in the above-
entitled action be entered on the following terms, and good cause

1 appearing therefor, it is hereby ORDERED, ADJUDGED AND DECREED as
2 follows:

3 1. The City of Pacific Grove has approved the application of
4 Stephen Page for architectural approval for construction of a new
5 single family dwelling at 1450 Sunset Drive, Pacific Grove. That
6 approval is upon the terms and conditions stated in Resolution No.
7 6322 of the City Council of the City of Pacific Grove, including
8 the Conditions of Approval and all exhibits to the Resolution,
9 except as specifically modified herein. Resolution No. 6322 is
10 attached as Exhibit 1. Entry of this Judgment constitutes final
11 discretionary design review by the City Council for the
12 application.

13 2. The maximum height of the residence shall be 15 feet
14 above grade, with the sole exception of the mezzanine roof which
15 shall not exceed 18 feet above grade. The mezzanine is
16 approximately 12 feet by 12 feet and is shown on Exhibit 2. The 20
17 foot sightline for the project and all setbacks and other size and
18 siting requirements imposed by Exhibit 1 shall be in effect, except
19 as specifically amended in Paragraph 4 below. Exhibit 2, showing
20 dimensions and location on the lot of the proposed project
21 improvements, including footprint, roof line, lengths, and widths,
22 is incorporated as an illustrative exhibit to this Judgment.

23 3. Siding and roofing materials for the proposed single
24 family dwelling shall be as specified in Exhibit 3. Qualities and
25 color of the materials shall be substantially identical to the
26 samples lodged with the City on November 9, 1993. The
27 architectural detail relating to the aforesaid materials, as shown
28

No 33, previously denied

1 on Exhibit 2, shall be deemed to satisfy the Conditions of
2 Approval, Condition No. 3, previously adopted by the City Council.

3 4. The total covered footprint for the house and garage
4 shall not exceed 3,680 square feet (as generally shown in Exhibit
5 2), and Conditions of Approval, Condition No. 4, previously adopted
6 by the City Council, is modified accordingly. The covered parking
7 requirement of the City for parking for two vehicles may be
8 satisfied, at Petitioner's request, with the construction of under
9 grade parking to be located as shown on Exhibit 2. The plan for
10 the driveway for the parking area shall contain appropriate
11 measures to screen (by landscaping, by berm, or otherwise) the
12 driveway and garage entrance from public view. The City's Director
13 of Planning shall determine the appropriate method of screening and
14 the sufficiency of such screening prior to the City's issuance of a
15 building permit. The area of underground construction shall not
16 exceed 650 square feet, of which no more than 100 square feet may
17 be devoted to storage space. The entrance to the garage area shall
18 not be more than 20 feet wide. Under no circumstances shall any of
19 the underground area be habitable or converted to habitable uses.
20 Petitioner agrees to hold harmless the City in regard to all costs
21 and claims, if any, arising out of or related to the under grade
22 construction.

23 5. This approval shall be deemed effective on December 1,
24 1993. This approval shall be valid for two years, said term to
25 commence upon obtaining a coastal development permit for the
26 project from the California Coastal Commission, and Conditions of
27 Approval, Condition No. 13, previously adopted by the City Council,
28 is modified accordingly.

1 6. All construction and other work on the property shall be
2 in strict compliance with the terms and conditions of approval,
3 including those specified in this Judgment. Any deviation from any
4 term or condition must be approved by the City in advance, and may
5 require City Council approval.

6 7. The landscape plan required by Resolution No. 6322 for
7 the architectural approval shall be prepared by Petitioner and
8 shall be submitted to the City for approval and approved by the
9 City prior to the building permit being issued. Petitioner and
10 City shall review the plan one year after work is completed, and
11 annually for the next two years in order to assess the success of
12 Petitioner's good faith efforts to restore native vegetation. The
13 landscape plan will be phased or staged so as to plant the dune and
14 the area of ice plant removed for construction, the second stage
15 one year later, and the third stage one year after the second
16 stage. Petitioner and the City shall make a good faith review of
17 the landscaping efforts one year after issuance of the occupancy
18 permit for the residence, and again one year after the first review
19 in order to determine the success of landscaping already in place,
20 and, based thereon, the feasibility and timing of continued
21 revegetation.

22 Because of the danger of erosion, and in order to maintain
23 stability on the westerly portion of the site, Petitioner is not
24 required as a condition of approval to remove the existing
25 vegetation to the west of the proposed residence. The landscape
26 plan shall require, however, that as to existing vegetation to the
27 west of the residence which is disturbed or damaged during
28

1 construction or other site work, Petitioner shall restore or
2 replace said vegetation in accordance with the landscaping plan.

3 8. Upon the granting to Petitioner of a Coastal Development
4 Permit by the California Coastal Commission for the single family
5 residence approved by the City, all causes of action against all
6 respondents and defendants other than City of Pacific Grove shall
7 be dismissed with prejudice. The City shall register with the
8 California Coastal Commission the City's support of the project
9 approved pursuant to this Judgment.

10 9. Each party shall bear its own costs and attorneys' fees.

11 10. This Superior Court shall retain jurisdiction to enforce
12 the judgment herein.

13 11. The judgment herein may be recorded by either party.

14 Dated: December 2, 1993

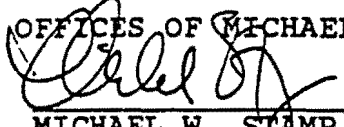
15 **ROBERT O'FARRELL**
16 JUDGE OF THE SUPERIOR COURT

17 APPROVED AS TO FORM:

18 Dated: December 2, 1993


19 GEORGE THACHER
20 CITY ATTORNEY

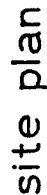
21 LAW OFFICES OF MICHAEL W. STAMP

22 By: 
23 MICHAEL W. STAMP
Attorneys for Defendant and
Respondent

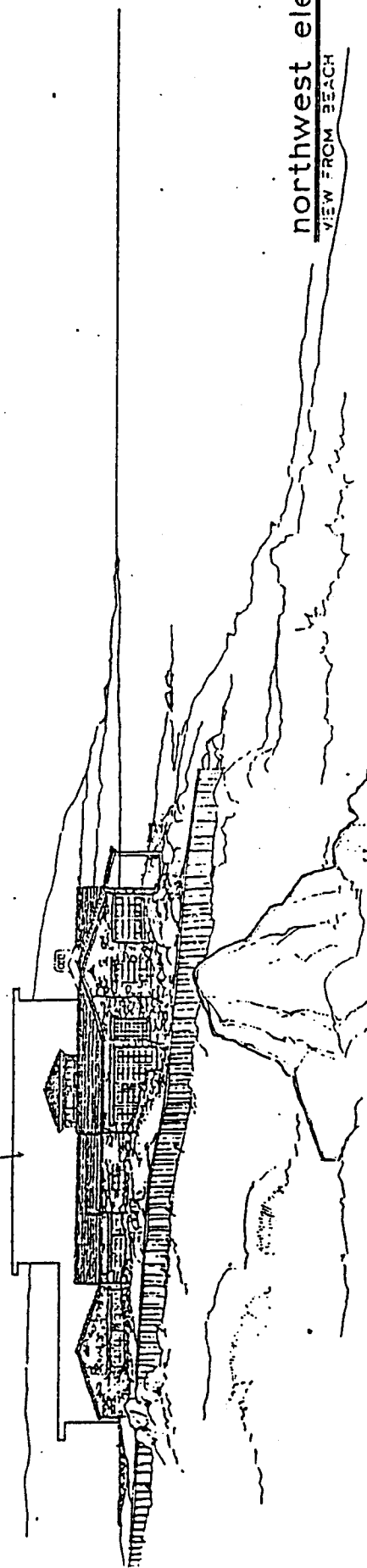
24 Dated: December 2, 1993

25 FINEGAN & CLING
26 HORAN, LLOYD, KARACHALE, DYER,
HORAN & SCHWARTZ, INC.

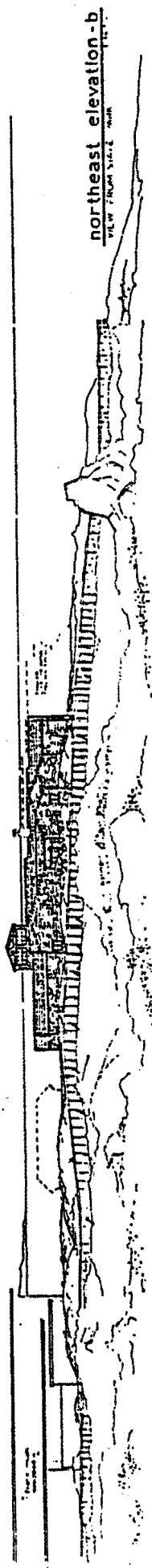
27 By: 
28 LAURENCE P. HORAN
Attorneys for Petitioner and
Plaintiff

[illegible]

BOB'S HOUSE
HARBOR STONE

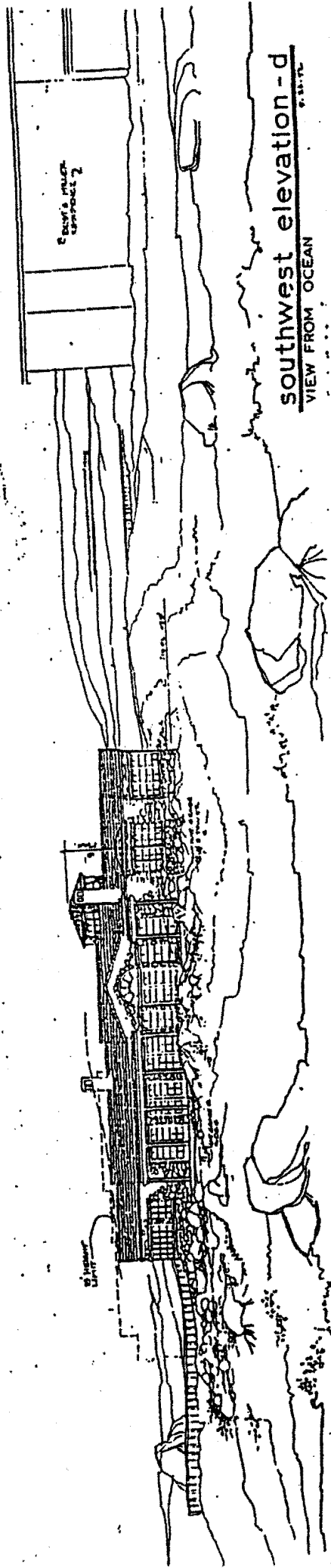


northwest elevation - a
VIEW FROM BEACH





east elevation - c
VIEW FROM SUNSET DR.



Page v. City of Pacific Grove, et al.
STIPULATION FOR ENTRY OF JUDGMENT

EXHIBIT 3

MATERIALS:

- Between 70% and 90% Stone Clad walls with balance in sand colored stucco
- Roof used clay tile with barrel shape (grayish rather than orange)
- All metals in copper
- All windows, doors and frames painted

[STAFF NOTE: SEE EXHIBIT B FOR BALANCE OF EIR TABLE 2-1] Enclosure 8 [See Note, Left]

TABLE 2-1
SUMMARY OF ENVIRONMENTAL EFFECTS

Enclosure 8

Impacts		Significance Without Mitigation	Mitigation Measures	Significance With Mitigation
4.1	LAND USE AND PLANNING			
4.1-1	The proposed project would be consistent with City of Pacific Grove LCP Environmentally Sensitive Habitats Policy 2.3.2.	LS	4.1-1 The mitigation measures proposed in this EIR are intended to ensure development of a project design consistent with City policies. <u>Development of the site is anticipated in City of Pacific Grove General Plan and LCP policies.</u>	LS
4.1-2	The proposed project would be consistent with City of Pacific Grove LCP Environmentally Sensitive Habitats Policy 2.3.4-2.	LS	4.1-2(a) Construction activities and staging areas shall not take place on lands or sensitive habitat adjacent to the proposed project parcel. 4.1-2(b) <u>No dirt or sand shall be moved onto or removed from sensitive habitats during construction or grading.</u> 4.1-2(c) The area upon which all construction shall take place shall be fenced and all construction equipment and vehicle storage will be confined within the fenced area. No travel or other use of the surrounding area will be permitted.	LS
4.1-3	The proposed project would not be entirely consistent with City of Pacific Grove LCP Scenic Resources Policies 2.5.2, 2.5.5-1, 2.5.5-4(b) and (c), and 2.5.5-7.	S	4.1-3 Lower the overall size of the proposed building by reducing its height and footprint. Adopt measures to modify the roof profile and provide more open space within the site boundary. See Mitigation Measures 4.4-1 and 4.4-2.	LS

Legend: S = Significant; LS = Less than Significant; SU = Significant but Unavoidable; B = Beneficial.