

CALIFORNIA COASTAL COMMISSION

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STAFF REPORT: REGULAR CALENDAR

APPLICATION NO.: 3-96-81
APPLICANT: JOHNNY MILLER Agent: Anthony Lombardo
PROJECT LOCATION: 1681 Sunset Drive, Asilomar Dunes area, City of Pacific Grove, Monterey County, APN 007-041-027
PROJECT DESCRIPTION: Construction of a one-story, single-family dwelling with an attached garage, driveway, boardwalk, decks, fencing, retaining wall and grading.

Lot area: 1.06 acres ft.
Building coverage: 5,247 sq. ft.
Pavement coverage: 1,775 sq. ft. (driveway and decks)
Landscape coverage: 838 sq. ft.
Parking spaces: 3 spaces
Zoning: Residential
Plan designation: Special Zone, 1-2 units/acre
Project density: 1 unit/1 acre
Ht abv fin grade: 17 1/2 feet

LOCAL APPROVALS RECEIVED:
Architectural Review Board, Planning Commission and City Council approvals.
CEQA - Negative Declaration granted 5/1/96.

SUBSTANTIVE FILE DOCUMENTS:

- o Botanical/Biological Reports and Supplemental Addenda by Bruce Cowan 4/18/96, 4/12/96, 4/11/96, 3/15/96, 12/26/95 and 4/25/94.
- o Draft Botanical Survey and Landscape Restoration Plan by Bruce Cowan - 7/22/96.
- o Preliminary Cultural Reconnaissance by Archaeological Consulting - 11/7/94.
- o Pacific Grove Land Use Plan.
- o 3-95-42 Spradling
- o 3-95-32 Page
- o 3-94-24 McCulloch
- o 3-93-64 Kenedy

SUMMARY OF STAFF RECOMMENDATION:

The staff recommends that the Commission approve the proposed project, subject to conditions needed for conformance with the requirements of the Coastal Act, and to avoid prejudicing the City's ability to complete its LCP consistent with the policies contained in Chapter 3 of the Coastal Act. These conditions are needed to assure: that the undeveloped portion of the property, which is

SUMMARY OF STAFF RECOMMENDATION: (Continued)

comprised entirely of environmentally sensitive sand dune habitat in the Asilomar Dunes neighborhood, will be maintained as natural habitat over the long run; that the mitigation measures which offset the impacts of the permitted residential development are applied in a consistent manner; and that the project will not undermine the City's efforts to develop an implementation program for its certified Coastal Land Use Plan (LUP). The LUP contains specific policies to protect scenic views from Sunset Drive and environmentally sensitive habitats (including a 15% max. site coverage standard). However, the 15% standard does not include driveway areas resulting from required setbacks. This issue is the focus of the opposition to the project.

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, 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 Conditions and Mitigation Requirements. The Conditions of Approval and the Mitigations adopted by the City of Pacific Grove for its final Negative Declaration for this project are attached as Exhibit B to this permit; these Conditions and Mitigations are hereby incorporated as conditions of this permit. Any revision or amendment of these adopted conditions and 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.

III. Special Conditions (continued).

2. 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 the protection of the scenic and natural habitat values on all portions of the environmentally sensitive native dune habitat area on the site, except for a "building envelope area" not to exceed 15 percent, a residential driveway as shown on approved final plans, 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 area of the lot.

Such restriction shall include provisions to prohibit development; to prevent disturbance of native groundcover and wildlife (including the permanent protective fencing identified in Special Condition 5.B); to provide for maintenance and restoration needs in accordance with approved native plant maintenance and restoration plans; to provide for approved drainage improvements; and to specify conditions under which non-native species may be planted or removed, trespass prevented, entry for scientific research purposes secured, and private pedestrian access accommodated. Provisions for necessary utility corridors may be included in accord with Condition No. 9.

- B. For measures to implement the approved final native plant maintenance and restoration plan prepared for the subject property.
- C. For fencing restrictions to protect public views and allow free passage of native wildlife, as provided by Local Coastal Program Land Use Plan Policy 2.3.5.1(e).
- D. For a monitoring program as set forth in the approved maintenance and restoration plan; provided that, following construction, annual monitoring reports shall be submitted to the Executive Director and the City of Pacific Grove for review and approval for a period of five years.

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

A final native plant restoration and maintenance plan prepared by a professional botanist. The plan shall show the removal of all ice plant and non-native species found in the native dune plant habitat areas and revegetation of these areas with vegetation native to the Asilomar dunes. The ice plant shall be removed in stages and the dunes stabilized with native plantings to minimize erosion. The plan shall also include maintenance measures to control non-native species on the remainder of the property and to protect the native dune plant habitat areas from invasion by non-native plant species.

III. Special Conditions (continued).

The plan shall also include a timetable and a monitoring program. 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 the timetable and permanently maintained in good condition. Evidence of review by the City of Pacific Grove and the Department of Fish and Game shall accompany the submittal.

4. Final Project Plans. PRIOR TO TRANSMITTAL OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit the following for the Executive Director's review and approval:

- A. Final project plans including site plan, floor plans, elevations and grading plans. The site plan shall designate a "building envelope area" not to exceed 15 percent of the lot. The building envelope shall include the approved house, garage, decks, immediate outdoor living area, and driveway (but not the excluded portion of residential driveway (2735 square feet)). The "immediate outdoor living area" is that portion of the yard closest to the residence, which shall be left in a natural condition or landscaped, not to exceed 5 percent of the lot. The submittal shall include evidence of review and approval by the City of Pacific Grove.
- B. A final landscaping plan covering the "building envelope area" 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 coordination with the approved native plant maintenance and restoration plan required in Special Condition 3 above. Evidence of review and approval by the project biologist shall accompany the submittal.

Within 30 days of completion of the landscape installation, the permittee shall submit a letter from the project biologist indicating plant installation has taken place in accord with the approved landscape plan.

5. Fencing and Spoils Disposal. PRIOR TO COMMENCEMENT OF CONSTRUCTION, the permittee shall satisfy the following requirements:

- A. Plans for temporary exclusionary fences to protect sensitive areas from disturbance during construction. 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.

III. Special Conditions (continued).

The exact placement of the fences shall be identified on site by the project's environmental consultant. Evidence of inspection of the installed construction fence location by the environmental consultant shall be submitted to the Executive Director prior to commencement of construction. 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.

- B. Plans for permanent split rail fencing or similar landscaping fence, as necessary to discourage trampling within Protected Area B (identified on Exhibit 3, attached). The type of fencing shall be consistent with Condition 2.C. At a minimum, the permanent fence shall run from the northeast corner of the garage to the northerly property line. The fence shall be installed prior to occupancy (or, prior to commencement of construction if used in lieu of temporary fencing required for habitat protection for that portion of the project site).
- C. Identify disposal site for excess excavated spoils. Disposal site and methods employed shall be subject to review and approval by the City of Pacific Grove, the project biologist and the Executive Director. While off-site beneficial re-use of excess sand is strongly encouraged, Asilomar sand may not be exported from the Asilomar Dunes - Spanish Bay area.

6. Archaeologic Mitigation. Evidence of compliance with the recommendations contained in the "Preliminary Cultural Reconnaissance" for the subject parcel by Archaeological Consulting on November 7, 1994, shall be submitted for the Executive Director's review and approval prior to any grading and/or construction. This submittal shall be accompanied by a monitoring program for the protection of archaeological resources during the grading and construction phase of the project. If any archaeological resources are encountered, all work shall stop 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.

7. 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 condition and 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

III. Special Conditions (continued).

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.

8. Exterior Finish. All exterior finishes and window frames shall be of wood or earthen-tone colors as proposed. Any changes shall require prior review and approval by the Executive Director.

9. Utility Connections. All utility connections shall be installed underground as proposed. When installing the necessary utility connections, care shall be taken to minimize surface disturbance of the deed-restricted area described above. Any dune areas disturbed shall be subject to revegetation in accordance with Conditions 3 and 4.

10. Future Additions. Unless waived by the Executive Director, an amendment to this permit or a separate coastal development permit shall be required for any additions to the permitted development.

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 one-story, single-family dwelling with an attached garage, driveway, boardwalk, decks, fencing, retaining wall and grading. The subject property is located at 1681 Sunset Drive in the Asilomar Dunes area of the City of Pacific Grove. The proposed dwelling is single-story and covers about 4,287 square feet with an attached garage of 960 square feet. Approximately 620 cubic yards of grading is proposed.

The subject property is rectangular in shape. There is a gradual slope from the front of the site towards the southeast corner of the property. Low dunes with broken groupings of vegetation cover the lot. This is typical of other sites in the area. Vegetation on the site includes both native and non-native plants. Surrounding land use is low density residential development in the Asilomar Dunes neighborhood. Asilomar Conference Center is south of the subject site.

2. Basis of 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 approximately one-acre parcel 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. 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. 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 or 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 invest-backed expectations for the site.

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. The proposed single-family dwelling 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 few acres of the original approximately 480 acre habitat area remain in a 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 and are now Federally-listed endangered species. 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.

A Botanical/Biological Report was prepared by Bruce Cowan, Environmental Landscape Consultant, on April 25, 1994, and supplemental addenda dated December 26, 1995, March 15, 1996, April 11, 1996, April 12, 1996, and April 18, 1996, were submitted with the coastal permit application. The March 15, 1996, addendum to the Botanical/Biological Report updated the plant survey on April 25, 1994. The reports detail the botanical and biological values of the site and recommend a series of mitigation measures to protect the sensitive habitat and endangered species. These measures, which are incorporated in the City's Conditions and, by reference, in this permit, provide for protection of

native dune habitat. See Exhibit B. Based upon these reports, testimony received at the local hearing and on staff observations, the Commission finds that the site is on environmentally sensitive habitat consistent with definition found in Section 30107.5 of the Coastal Act.

The March 15, 1996 Addendum to the Botanical/Biological Report notes that six Menzies wallflowers were found on the property; and the distribution of Tidestrom's lupines differed from the 1994 survey -- over 200 lupines were counted on the property. The addendum suggested additional mitigations such as moving the house to a position half way between the two populations (Populations A and B) and installing protective fencing. The report concludes as follows:

If the house is built and ongoing mitigation measures are taken to remove the ice plant and physically protect Menzies wallflowers and Tidestrom's lupines, there is a good potential for both species to increase in numbers. Since ice plant presently occupies more area than a house and driveway, there would be a net gain of viable habitat over what exists now.

This is an example where a compromise approach could benefit both the property owner and the endangered plants in question.

The Cowan Botanical/Biological Surveys indicate that about a 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 Menzies wallflowers, but also adjacent areas which support or potentially support native dune flora must be considered environmentally sensitive habitat areas. In other words, 100% of the lot comprises environmentally sensitive habitat.

B. Balancing Section 30010 and 30240 of the Coastal Act

The entire area of the applicant's parcel, is an environmentally sensitive dune habitat. The proposed development as submitted includes a single-family dwelling, garage, driveway, and deck. This project will require 620 cubic yards of grading and will result in a permanent loss (i.e., site coverage) of over 6000 sq. ft. of environmentally sensitive dune habitat.

Additional disruptions will result, but are amenable to native plant restoration and maintenance measures; these include: installation of storm drain system, 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 effect 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. ___; 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.) (There are several other factors that may be reviewed in conducting a takings analysis, such as whether the land use regulation substantially advances a legitimate state interest (Nollan v. California Coastal Commission (1987) 483 U.S. 825) or whether the proposed use of the property would constitute a public nuisance (Lucas v. South Carolina Coastal Counsel, *supra*, 505 U.S. ___), but these issues are not presented by this permit application.)

In this situation, the Asilomar Dunes area has already been subdivided into residential lots, and has over the years been partially developed. In view of the location of the applicant's parcel, the limited +/- one acre lot size, and the other residential uses in the immediate vicinity of the lot, the Commission finds that no other use of the property would provide an economic use except residential use.

Additionally, the applicant's parcel is on an improved street, Sunset Drive, and public utility service is currently available. Moreover, a substantial number of the other parcels in the Asilomar Dunes area in the immediate vicinity of this site are developed, and have been for a considerable amount of time. These factors lead the Commission to conclude that the applicant could have reasonably expected that residential use of the subject property would be permitted when the property was purchased.

In 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.

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. 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 over 6,000 sq. ft. of the one acre parcel with building and paving. As a result, this area of dune habitat be permanently lost, and additional area will also be disrupted by construction activities. However, the proportionate extent of this disruption and dune alteration can be minimized by the implementation of appropriate conditions.

Therefore, several additional conditions are necessary to offset these direct and indirect project impacts as discussed in these findings. 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, and is needed to ensure that future owners are aware of the constraints associated with this site.

C. 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 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. The adverse effects from the sum of past development impacts have 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.

D. 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 Land Use Plan (LUP). (This portion of the dune formation was annexed by the City in October, 1980). The City's LUP residential development criteria include the Coastal Act requirement of "no significant disruption" of environmentally sensitive habitat areas, 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. 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.

Section 3.4.5.2 of the LUP's Specific Policies states:

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.

E. Project Analysis. The proposed development is for a single-family dwelling with an attached garage, driveway, boardwalk, decks, fencing, retaining wall and grading. The proposed house and garage cover approximately 5,247 square feet of the site. The proposed driveway and decks cover 4,171 square feet. The total site coverage figure is 9,418 square feet or 20 percent.

The maximum site coverage allowed by the LUP is 15 percent. However, Section 3.4.5.2 of the LUP, cited above, allows that portion of additional driveway coverage that falls within the front setback to be excluded from the site coverage calculations. In this case, to reduce the visual impact of the proposed residence, the City's Architectural Review Board asked that the

garage be sited at the rear of the house, so that it would not face the street. This means that about 1,043 sq. ft. of additional driveway coverage is needed to accommodate the resultant 90 degree turn and garage apron. This measure alone effectively increased the amount of front setback.

The LUP also excludes the 12 foot wide driveway for the length of the standard front setback from Sunset Drive (75 feet). In this case, the City required an additional setback of about 66 feet beyond the minimum 75-foot setback requirement, to improve visual resource protection. For the purposes of calculating the driveway coverage, the amount of coverage within the entire front setback distance is excluded by LUP Policy 3.4.5.2. Implicitly, this is the total of the setback distances that have been required, rather than the front setback as originally submitted by applicant. Therefore, the only driveway area that is included in the site coverage calculation is the amount beyond the required setbacks and beyond the 12 foot width -- which totals approximately 600 square feet.

The proposed deck coverage of 830 square feet would also be included within the lot coverage figure. The only type of deck that would not be included would be a second story deck designed not to interfere with the passage of water and light to the dune surface below. This project does not have this type of second story deck. The building coverage figures, with credit for the entire required front setback length, is 6,407 square feet or 13.7 percent (house/garage at 5,247 sq. ft., plus 600 sq. ft. of the driveway, plus decks at 830 sq. ft.= 6,407 sq. ft.). The project is therefore consistent with the LUP's 15% maximum site coverage standard.

The plans also show 838 square feet, or 1.8 percent, of the lot as landscaped yard area. This is within the maximum 5 percent immediate outdoor living area allowed by the LUP. The remaining undeveloped portion of the lot, except for the "building envelope" and the "immediate outdoor living" areas will be protected by deed restriction, as a natural habitat area under private stewardship, in accord with conditions of the City's approval and conditions of this permit.

When the project was being analyzed by the City, the Department of Fish and Game (DF&G) wrote a letter reviewing the project Botanical/Biological Report and supplemental addenda (see Exhibit 6). The letter states in part,

If the current design of the project is determined not to exceed that allowable under the LUP, we recommend the project be moved back to allow for a minimum 20-foot setback from the front population of Menzies' wallflower and the balance of the site be restored in such a way as to encourage the maintenance and expansion of the Menzies' wallflower and the Tidestrom's lupine on the site. This alternative will probably increase the total number of individuals who will be removed from the project site, and the details of a restoration plan will need to address this loss.

We are requesting the City, as a condition of permit approval, require the property owner to enter into a Memorandum of Understanding (MOU) regarding the loss of the listed plant species; MOU's approved by this Department typically include a combination of set-a-side and enhancement such that there is a net benefit to the species impacted. Such an MOU would satisfy the requirements of Section 2081 of the California Endangered Species Act.

The project plans submitted with the application show a 20-foot setback from population of Menzies' wallflower as recommended by DF&G. As a condition of permit approval, the City required the property owner to enter into a MOU regarding the loss of the listed plant species (see Exhibit B). Commission staff contacted Deborah Hillyard, DF&G Plant Ecologist, regarding the setback from the Tidestrom's lupine in protected Area B. Ms. Hillyard stated that the 20-foot setback from the Menzies' wallflower was the most important and a lesser setback for the Tidestrom's lupine in protected Area B could be mitigated with a permanent fence, the development and implementation of a landscape restoration plan and satisfying MOU requirements. Accordingly, conditions of this permit require such measures.

Fifteen other homes have previously been approved within the same environmentally sensitive habitat area by the State or Regional Commissions. As conditioned, six of these eleven approvals limited site coverage to 10 percent and the remainder limited 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.

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. In order to ensure that the habitat values of the site will continue to be protected into the future, such a recorded document is necessary.

A draft native plant restoration and management plan was submitted subsequent to the application. The draft plan includes provisions for replanting of native dune plants including Menzies' wallflower and Tidestrom's lupine. 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. Commission staff has not had sufficient time to undertake a detailed analysis of the draft restoration plan. The final native plant restoration and management plan will need to include a monitoring program. Given

experience in the area, an appropriate monitoring schedule would be for weekly inspections during the first month after landscape installation and annual inspections thereafter for a period of five years. As conditioned by this permit and consistent with previous coastal permit approvals in this area, a final restoration and management plan including a monitoring requirement for five years and review and approval by the Department of Fish and Game is required. It is also appropriate to require evidence of an enforceable legal agreement (deed restriction) for implementation of the final restoration and management plan and to define the maximum building envelope. Definition of a building envelope will help reduce adverse impacts to the environmentally sensitive habitat area, as well as minimize disruption to the sand dunes, throughout the life of the development.

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 landscape/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.

To ensure that the objectives of the Botanical Survey and landscape restoration plan are achieved over the long term, the environmental consultant recommended that the applicant record a deed restriction to implement the final restoration plan. Future owners of the property would thus have the same obligation for protecting, maintaining and perpetuating the native vegetation on the site. This is consistent with previous Coastal Commission approvals, LUP policies and conditions of the City's approval and is necessary to ensure the long term protection of this habitat consistent with Coastal Act Section 30240.

As conditioned, to require implementation of the recommendations of the Botanical/Biological Report and final landscape and native plant restoration plans; incorporation of the City's mitigation measures and Calif. Dept. of Fish & Game recommendations; recordation of deed restrictions, including restoration and maintenance of natural habitat equivalent to at least 80 percent of the lot area; identification of temporary exclusionary fencing and monitoring, to assure no disturbance of the existing native plant habitat areas; and separate permit or amendment for additions, the proposed development can be found consistent with Section 30240 of the Coastal Act and LUP sensitive habitat policies.

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 inland side of Sunset Drive, across the street from Asilomar State Beach. While previous development has already impaired many views, the overall visual character of the dunes still predominates. Therefore, views from these important public use areas along Sunset Drive and the State Beach towards the adjacent dunes and the sea are an issue of concern.

The proposed dwelling will be directly visible from Asilomar State Beach, as are other existing dwellings in the area. The house is a one-story (18 foot maximum height) contemporary design. The dwelling will be finished with shingle siding and Carmel stone and have a shake roof. The applicant proposes to underground the utilities.

The City, through its' architectural review process, called for an additional approx. 66 feet of setback, in addition to the minimum required 75 ft. setback. Also requested was placement of the garage behind the residence, so as not to add to building mass facing Sunset Drive.

Preliminary grading plans were submitted with the application. Approximately 620 cubic yards of grading is proposed. Approximately 227 cubic yards of material will be used on-site to accommodate the building foundation; and approximately 392 cubic yards of material will be exported off site, according to the project architect. The proposed grading and undergrounding of utilities will help in reducing the visual impact of the dwelling. Conditions of the City's Mitigations require Asilomar sand to be incorporated into dune restoration in the Asilomar area.

As conditioned by this permit, future additions will require a separate permit waiver or amendment. Additional required visual resource mitigation measures include the use of earthen-tone finishes and the undergrounding of utilities as proposed, and final grading plans as conditioned. Accordingly, the project can be found consistent with Section 30251 and 30240(b) of the Coastal Act and LUP visual resource policies.

5. Archaeology.

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 guidance on this topic as follows:

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. A "Preliminary Cultural Resources Reconnaissance" was prepared for the site by Anna Runnings and Trudy Haversat, Archaeological Consulting, November 7, 1994. The report concludes as follows:

Based upon the background research and the surface reconnaissance, we conclude that the project area does contain surface evidence of potentially significant cultural resources. ... Because of this, we make the following recommendations: ...

3. Following the test excavation, a Preliminary Archaeological Report and Archaeological Mitigation Plan should be prepared. This should evaluate the significance of the cultural resource on the project parcel and make the appropriate mitigation recommendations. This report should be submitted to the lead agency for their use during project review.
- C. A Final Technical Report should be completed within approximately one year of completion of the field work. This should be submitted to the lead agency and to the Regional Information Center at Sonoma State University.

Because of the possibility of unidentified (e.g., buried) cultural resources being found during construction, the preliminary archaeological report also specifies that additional archaeological tests should be conducted; and, recommends that the following standard language, or the equivalent, be included in any permits issued within the project area:

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 evidence of compliance with the recommendations contained in the preliminary archaeological report and a monitoring program to protect archaeological resources during construction, the proposed development is consistent with Section 30244 of the Coastal Act and approved LUP archaeological resource policies.

6. 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 will need to assure long-range protection of the undisturbed Asilomar Dunes.

While the northern Asilomar Dunes area was originally included in the 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 LUP, which the Commission approved with modifications in December, 1988. The City has now revised and adopted the LUP, and is formulating implementing ordinances. In the interim, the City has adopted an ordinance which requires that new projects conform to LUP policies. (Of course, the standard of review for coastal development permits, pending LCP completion, is conformance with the policies of the Coastal Act.)

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 and scenic resources. Finding No. 2 above summarizes the applicable habitat protection policies; Finding No. 3 addresses the LUP's visual resource policies; and Finding No. 4 discusses archaeological resource policies. The City's action on the project has generally accounted for the proposed LUP policies. Where procedural standards are absent, the City's mitigations are augmented by the conditions of this permit, particularly with respect to native plant restoration and maintenance.

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.

7. CEQA. On May 1, 1996, the City of Pacific Grove granted a Negative Declaration, with mitigations, for the proposed development. The Botanical/Biological Report submitted by the applicant, along with the City's required conditions and the conditions attached to this permit, will together offset the impacts of the proposed development. Therefore, over the long run, the proposed project will not create any significant adverse environmental impacts within the meaning of the California Environmental Quality Act.

EXHIBITS.

- A. Standard Conditions.
- B. City's Conditions.
 - 1. Location Map.
 - 2. Land Use Map.
 - 3. Site Plan.
 - 4. Elevations (East and West).
 - 5. Elevations (South and Northwest).
 - 6. Letter from Department of Fish and Game -- Review of Biological Report.
 - 7. Letter of Concern from Joan Vorphal.

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.

3-96-81

Standard Conditions



California Coastal Commission

has not been and will not be misled by imposing of new mitigation measures. Therefore, this council will not recirculate the new mitigation measures.

SECTION III. DISPOSITION OF APPEAL AND APPLICATION: CONDITIONS

Based on the foregoing and on the administrative record this council makes the following disposition:

A. This council certifies that it has received and considered the mitigated negative declaration and initial study, and all other material referred to in the recitals; above:

B. With the addition of the new mitigation measures set out above the mitigated negative declaration is approved.

C. There is no substantial evidence in the record that the project, as mitigated, will have a significant effect on the environment.

D. The appeal is denied.

E. The project heretofore has been approved and not appealed. Denial of this appeal of the negative declaration results in final administrative approval of the project, subject to all imposed conditions and mitigations. Imposed conditions and mitigations are as set out herein and in (1) a four page memorandum from community development director to city council (with attachments) dated May 1, 1996, attached hereto, marked Exhibit A, and incorporated herein by this reference, and (2) a one page memorandum from community development director to city council dated May 1, 1996, attached hereto, marked Exhibit B, and incorporated herein by this reference. In addition the following conditions are hereby imposed:

1. Appropriate permits from the California Department of Fish and Game shall be requested for the purpose of collecting seed from site specific endangered plants for growing and reintroduction to the subject property, i.e. Tidestrom's lupine and Menzies' wallflower. The revegetation effort shall be an on-going project which must take into consideration that deer cause losses to both species necessitating protective measures.

2. Design of decking proposed for the project shall be subject to final approval by Coastal Commission regarding its compatibility with LUP coverage requirements.

F. All conditions of approval and mitigation measures are and shall be conditions running with the land and shall be recorded in the office of the council recorder.

G. The community development director is directed to file notice of determination with the county clerk.

H. Additional mitigation measures hereby imposed do not result in modifications to the project requiring additional review by the ARB. The structure and improvements approved by the ARB will, if built as hereby mitigated, simply be approximately 33 feet to the rear (eastward) of the ARB approval.

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| EXHIBIT NO. B |
| APPLICATION NO. 3-96-81 |

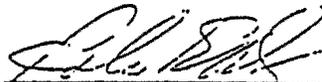
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| <i>City Conditions</i> |
| <i>1/7</i> |

I. 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.

PASSED AND ADOPTED BY THE COUNCIL OF THE CITY OF PACIFIC GROVE
this 1st day of May, 1996, by the following vote:

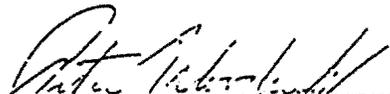
- AYES: Costello, Davis, Honegger, Huitt, Yadon
- NOES: Zito
- ABSENT: Koffman

APPROVED:

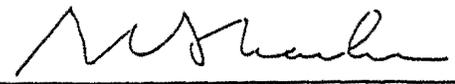


ROBERT E. DAVIS, Mayor Pro Tem

ATTEST:


PETER WOODRUFF, City Clerk

APPROVED AS TO FORM:


GEORGE C. THACHER, City Attorney

ACKNOWLEDGEMENT AND ACCEPTANCE OF RESOLUTION NO. 6-022


APPLICANT'S SIGNATURE

DATE 5/1


PROPERTY OWNER'S SIGNATURE

DATE M

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|--------------------------------|
| EXHIBIT NO. <u>B</u> |
| APPLICATION NO. <u>3-96-81</u> |
| City Conditions |
| <u>2/7</u> |

EXHIBIT A (PAGE 1 OF 7)

CITY OF PACIFIC GROVE



MEMORANDUM

TO: Honorable Mayor and Members of the City Council

FROM: Community Development Department

MEETING DATE: May 1, 1996

SUBJECT: California Department of Fish and Game Report Regarding 1681 Sunset Drive.

DISCUSSION

Attached is a letter from Brian Hunter, Regional Manager of Region 3 of the California Department of Fish and Game, received by fax on the afternoon of April 25, 1996. The letter asks some questions and identifies several issues.

In his letter, Mr. Hunter asks whether the lot coverage on the site exceeds 15%. The proposed lot coverage for this site, excluding wood decks and the 12' wide portion of the driveway between the front property line and the front of the proposed structure, does not exceed 15%.

Mr. Hunter comments:

" If the current design of the project is determined not to exceed that allowable under the LUP, we recommend the project be moved back to allow for a minimum 20-foot setback from the front population of Menzies' wallflower and the balance of the site be restored in such a way as to encourage the maintenance and expansion of the Menzies' wallflower and the Tidestrom's lupine on the site. This alternative will probably increase the total number of individuals who will be removed from the project site, and the details of a restoration plan will need to address this loss."

This statement is consistent with the verbal recommendation from Deborah Hillyard of the California Department of Fish and Game and our staff recommendation.

Mr. Hunter further recommends that as a condition of approval, the property owner enter into a Memorandum of Understanding (MOU) with the California Department of Fish and Game regarding the loss of the plant species.

Staff concurs and recommends that the following mitigation measure be added to the mitigation measures adopted as part of the Mitigated Negative Declaration and those contained in the Staff Report to Council.

Prior to issuance of a building permit, the property owner shall enter into a Memorandum of Understanding with the California Department of Fish and Game regarding the loss or transplantation of listed plant species in order to achieve a net benefit of the species impacted.

CALIFORNIA COASTAL COMMISSION
EXHIBIT B 3-96-81
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EXHIBIT A (PAGE 2 OF 7)

In the last paragraph of page two of his letter, Mr. Hunter also references a "redesign" and "a conservation easement put over the balance of the site". Staff is seeking a clarification from the Department of Fish and Game whether the conservation easement is an additional mitigation measure needed if the dwelling is relocated. Staff will inform Council when this has been clarified.

The following is a listing of mitigations adopted as part of the Mitigated Negative Declaration for ease of reading and additional suggested mitigation measures; which in staff's opinion will reduce the impacts of the project to less than significant:

Mitigation Measures Adopted as Part of the Mitigated Negative Declaration:

1. Should it be necessary for excavated soil (Asilomar Sand) to be removed from the site, the soil shall be incorporated into dune restoration in the Asilomar area, but not in a way that negatively affects existing vegetation.
2. Leave native vegetation intact in all portions of the property, except as required for the normal construction of buildings, driveways, parking pads/turaround areas, and approved landscaping.
3. Confine development to those areas shown on the approved plans which shall be maintained at the Pacific Grove Community Development Department.
4. Provide adequate temporary fencing (snow fencing or other suitable barriers) to designate the building envelope and proper access prior to construction.
5. Instruct, through signage and other means, that access to sensitive habitat outside the building envelope is prohibited, except for work related to control or removal of ice plant.
6. Do not move soil into sensitive habitat while doing construction or grading.
7. Introduce no topsoil from outside the property, which could contain seeds, roots, rhizomes or bulbs of weeds or other invasive non-native species that could overrun the habitat, except for use in maintained planting spaces and containers.
8. Prepare a native landscape restoration plan which shall incorporate the mitigation measures, standards and procedures contained in the Botanical/Biological Report by Bruce Cowan, dated April 25, 1995. The plan shall include measures for maintenance and monitoring of the landscape restoration.
9. A qualified coastal biologist shall monitor the installation and maintenance of the landscape restoration plan.
10. Only the native plant species listed in Appendix 'A' of the Botanical Biological Report prepared by Bruce Cowan for the site in April of 1994 shall be used in the landscape restoration plan.
11. Use none of the following invasive non-native species in landscaping:
 - a. Blue gum (*Eucalyptus globulus*)
 - b. Acacias (*Acacia* spp.)
 - c. Genista (*Cytisus* spp.)
 - d. Jubata or pampas grass (*Cortaderia* spp.)
 - e. Ice plant (*Carpobrotus* spp.)

CALIFORNIA COASTAL COMMISSION
EXHIBIT B 3-96-81
4/7 2

EXHIBIT A (PAGE 3 OF 7)

12. The landscape and restoration plan requires the approval of the Architectural Review Board. Modifications to the landscape restoration plan must be reviewed and approved by Community Development Department Staff and may require approval by the Architectural Review Board.

13. Implementation of the landscape restoration plan shall be required prior to final building code inspection and granting of occupancy.

14. The area outside of the approved building envelope, driveway and an "immediate outdoor living area" left in a natural condition or landscaped to avoid impervious surfaces not to exceed 5% of the entire property, shall be protected by a deed restriction. The deed restriction shall contain the provisions found in section 2.3.5. e) of the Pacific Grove Local Coastal Program Land Use Plan. The deed restriction shall be submitted to the City of Pacific Grove for review and approval by the City Attorney prior to recording.

15. Staff of the City of Pacific Grove Community Development Department, the California Coastal Commission, the California Department of Fish and Game or their agent may visit the property and recommend replanting or additional planting or other work where deficiencies occur if the property does not appear to be in compliance with the conditions of the development permit. If deficiencies do occur the applicant/owner will replace the dead plants and remove the invasive species.

16. Prior to construction, a gentle raking through the sandy area within the construction envelope shall be completed by a qualified coastal biologist. Any black legless lizards found shall be relocated by the coastal biologist to a suitable habitat location at least 100 yards away from any construction activity.

17. To minimize inconvenience to surrounding neighbors, days and hours of construction shall be limited to 7:30 a.m. to 7:30 p.m., Monday through Saturday, interior work excepted.

18. Exterior lighting shall be screened to confine light splay to site.

19. A qualified archaeological monitor shall be present during initial grading of the site.

20. Should an archaeological site be uncovered, an archaeological unit shall be excavated under the direction of a qualified archaeologist using standard archaeological techniques. The following studies shall be conducted on the material recovered:

- a. Professional evaluation of the animal bone recovered.
- b. Professional evaluation of the lithic artifacts and debitage recovered.
- c. At least one radiocarbon date shall be run on material covered.
- d. Any other analysis determined necessary by the archaeologist, bead analysis for example.

21. A final technical archaeological report shall be completed within approximately one year of completion of any field work. This should be submitted to the City of Pacific Grove and the Regional Information Center at Sonoma State University.

22. Any excavations on the parcel that extend below a depth of 1.6 meters (5 feet) below the present surface should be observed by a qualified archaeological monitor. If significant archaeological features or human remains are found work shall be halted within 50 meters (150 feet) of the find until it can be evaluated by the monitor. If the find is determined to be significant, appropriate mitigation measures shall be formulated and implemented.

CALIFORNIA COASTAL COMMISSION
EXHIBIT B 3-96-81
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EXHIBIT A (PAGE 4 OF 7)

23. The Community Development Department shall prepare a deed restriction containing the mitigation measures for this project. The property owner shall record the deed restriction with the Monterey County Office of the Recorder prior to a final on the building permit.

24. Prior to issuance of a building permit, a plan showing protective fencing locations, construction methods of protective fencing, signage to be added to fencing and locations of signage shall be submitted to the Architectural Review Board for approval.

25. Prior to an construction activity, an on-site preconstruction meeting between the designer, contractor, a member of the Community Development Department staff, the projects Botanical/Biological Consultant, and two Architectural Review Board Members shall be held.

26. Prior to issuance of a building permit, a construction management plan shall be submitted for approval by Community Development Department staff. The plan shall address site access, parking locations material storage locations and waste collection areas.

27. Temporary protective fencing shall be installed around all sensitive habitat areas identified by the projects Botanical/Biological Consultant as soon as possible in order to protect these areas from any pre-construction activities.

28. In order to preserve the scenic and open space character of the area, all fencing on the site shall require Architectural Review Board approval.

Additional Suggested Mitigation Measures Recommended in the Council Agenda Report

1. All endangered plants within the footprint of the proposed building shall be transplanted to a suitable habitat location of the site. Monitoring and maintenance of the plants shall be made a part of the landscape restoration maintenance and monitoring program to be approved by the Architectural Review Board.

2. The property owner or designated representative shall obtain all necessary permits from the California Department of Fish and Game prior to transplanting any plants on the site.

3. Menzies' wallflowers shall be caged with appropriate materials which allow rain and sunlight to reach the plant. The size and type of construction of the cages shall be determined by the coastal biologist monitoring the landscape restoration program.

4. In addition to the temporary fencing designating the building envelope and site access, temporary fencing shall be installed around individual protected areas identified by the Cowan/Moss Botanical Survey.

FISCAL IMPACT

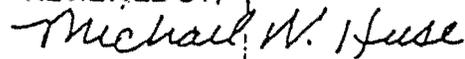
Undetermined cost of mitigation monitoring and permit compliance.

Thank you and please call me if you have any questions.

RESPECTFULLY SUBMITTED,


JON BIGGS
ASSISTANT PLANNER

REVIEWED BY,


MICHAEL W. HUSE
CITY MANAGER

CALIFORNIA COASTAL COMMISSION
EXHIBIT B 3-96-81
6/7



CITY OF PACIFIC GROVE

MEMORANDUM

TO: Honorable Mayor and Members of the City Council

FROM: Community Development Department

MEETING DATE: May 1, 1996

SUBJECT: Conservation Easement for the Project at 1681 Sunset Drive

DISCUSSION

As noted in the last memo to Council, staff was seeking a clarification from the Department of Fish and Game whether the Department is recommending a conservation easement as an additional mitigation measure intended to reduce environmental impacts to less than significant.

On April 29, 1996 staff was informed by Deborah Hillyard of the California Department of Fish and Game that a conservation easement should be included as a mitigation measure for the project at 1681 Sunset Drive. This was confirmed by her supervisor, Bruce Elliot, on April 30, 1996. Therefore, staff recommends the following mitigation measure:

The property owner shall record an offer to dedicate a conservation easement over the portion of the property beyond the approved building site and outdoor living space. The conservation easement shall include provisions which guarantee the maintenance of remaining dune habitat in a natural state, provide for restoration of native dune plants under the approved landscape restoration plan, provide for long-term monitoring of rare and endangered plants and maintenance of supporting dune habitat and restrict fencing to that which would not impact public views or free passage of native wildlife. The offer to dedicate a conservation easement shall be reviewed and approved by the City Attorney prior to recording. The property owner shall pay applicable mitigation monitoring costs as determined by the City.

FISCAL IMPACT

Undetermined cost of mitigation monitoring and permit compliance.

Thank you and please call me if you have any questions.

RESPECTFULLY SUBMITTED,

Jon Biggs
 JON BIGGS
 ASSISTANT PLANNER

REVIEWED BY,

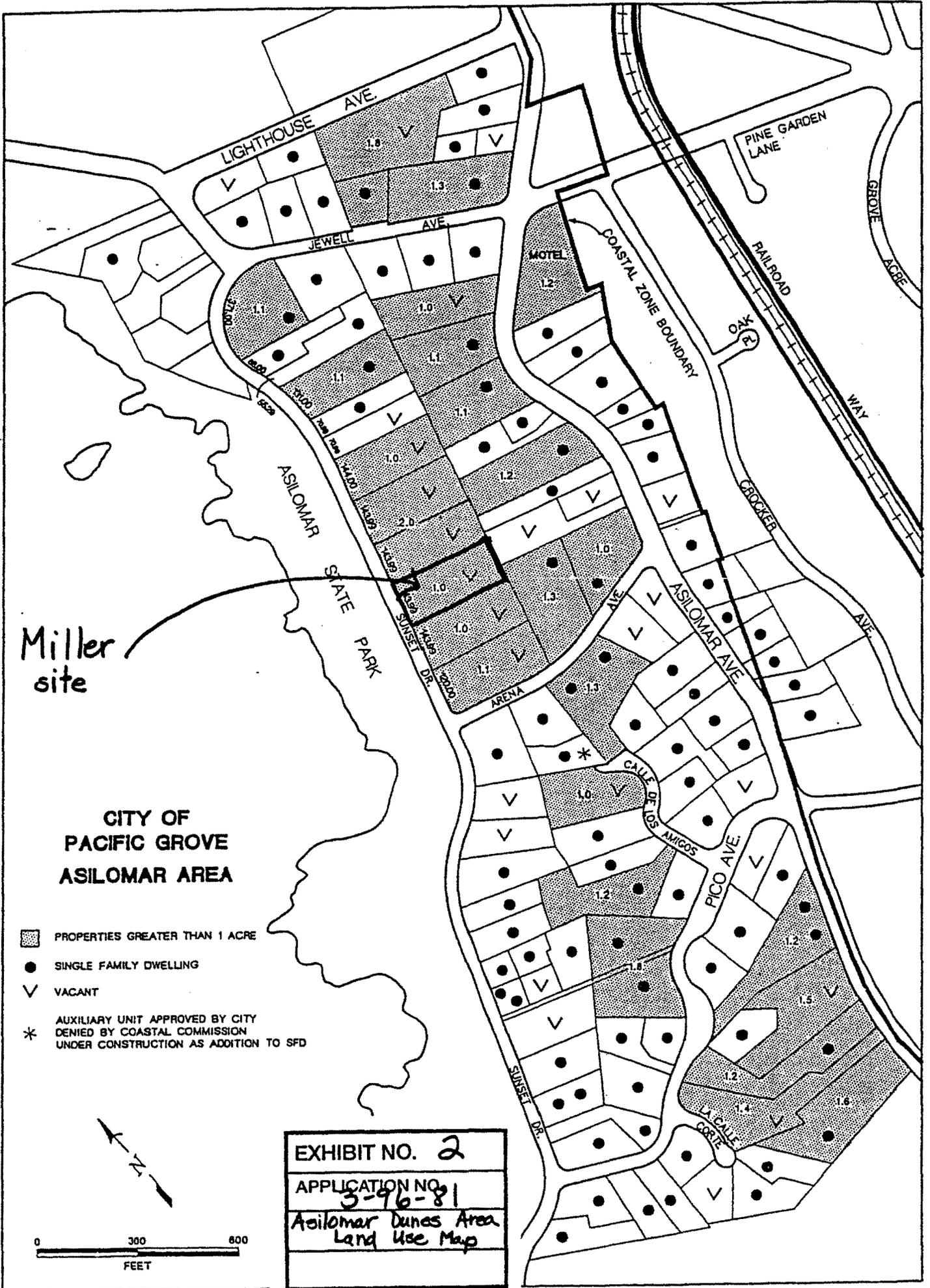
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 MICHAEL W. HUSE
 CITY MANAGER

CALIFORNIA COASTAL COMMISSION
 EXHIBIT B 3-96-81
 7/7



Miller site

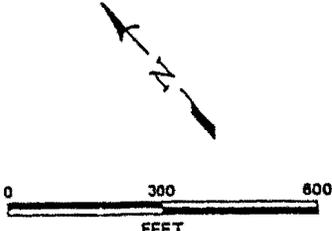
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| EXHIBIT NO. 1 |
| APPLICATION NO 3-96-81 |
| Location Map |
| California Coastal Commission |



Miller site

**CITY OF
PACIFIC GROVE
ASILOMAR AREA**

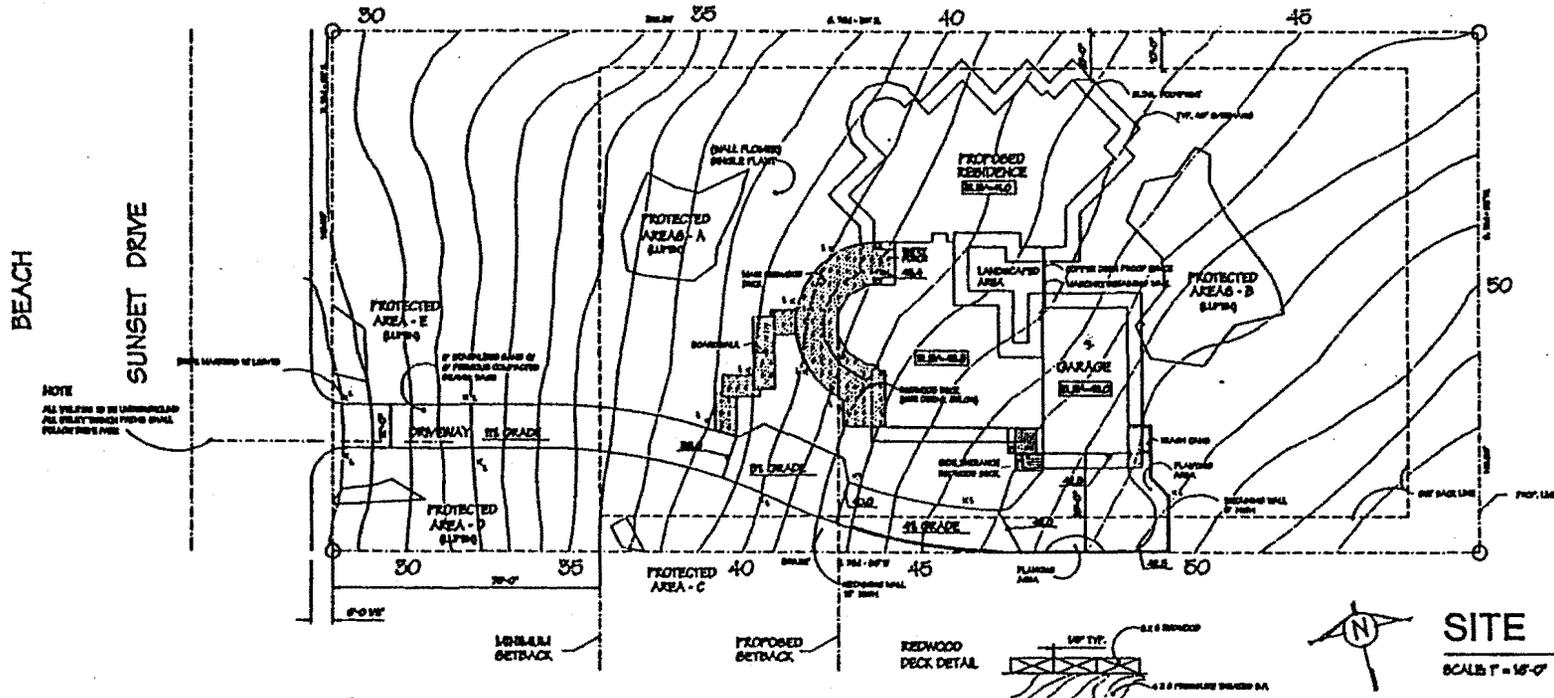
- ▨ PROPERTIES GREATER THAN 1 ACRE
- SINGLE FAMILY DWELLING
- ∨ VACANT
- * AUXILIARY UNIT APPROVED BY CITY DENIED BY COASTAL COMMISSION UNDER CONSTRUCTION AS ADDITION TO SFD



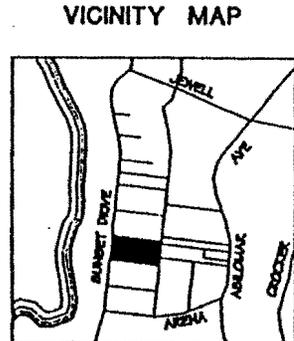
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| EXHIBIT NO. 2 |
| APPLICATION NO. 3-96-81 |
| Asilomar Dunes Area Land Use Map |

MILLER RESIDENCE - PACIFIC GROVE, CA

EXHIBIT NO. 3
 APPLICATION NO. 3-46-81
 Site Plan



SITE PLAN
 SCALE 1" = 15'-0"



PROJECT INFORMATION

| | |
|--------------------------|------------------|
| A.P.N. 007-041-027 | 1066 ACRES |
| SITE AREA | 46,422 sq. ft. |
| ADDRESS: LOT 20 DUX DIB | |
| BUILDING COVERAGE | |
| ALLOWED = 1% | 6,906 S.F. |
| HOUSE | 4,207 S.F. |
| GARAGES | 900 S.F. |
| DRIVEWAYS-IMPERVIOUS | 1,778 S.F. |
| PROPOSED = 81% | TOTAL 7,022 S.F. |

LANDSCAPED AREAS

| | |
|----------------|----------|
| REAR YARD | 602 S.F. |
| SOUTH PLANTERS | 166 S.F. |

DRIVE

| | |
|------------------|-----------|
| MINIMUM SETBACK | 994 S.F. |
| PROPOSED SETBACK | 1004 S.F. |
| BALANCE | 1445 S.F. |
| TOTAL | 2544 S.F. |

DECKS

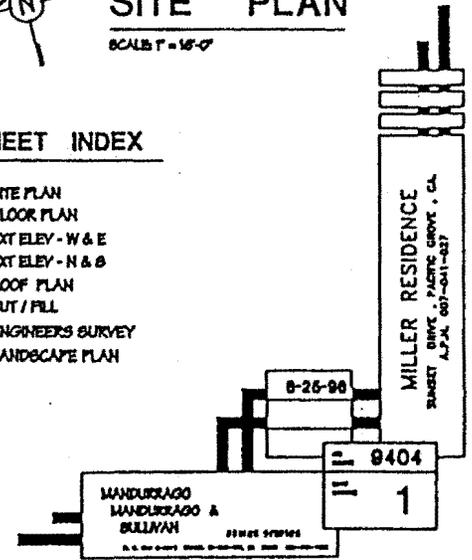
| | |
|-----------------|----------|
| MAIN DECK | 740 S.F. |
| SIDE ENTRY DECK | 51 S.F. |
| TOTAL | 690 S.F. |

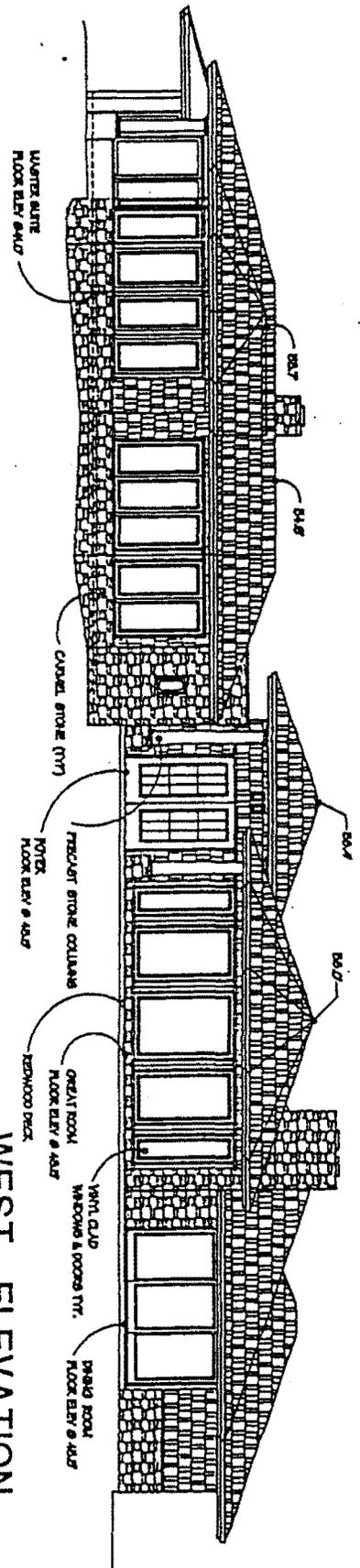
BOARDWALK

| | |
|------------|----------|
| FRONT YARD | 201 S.F. |
|------------|----------|

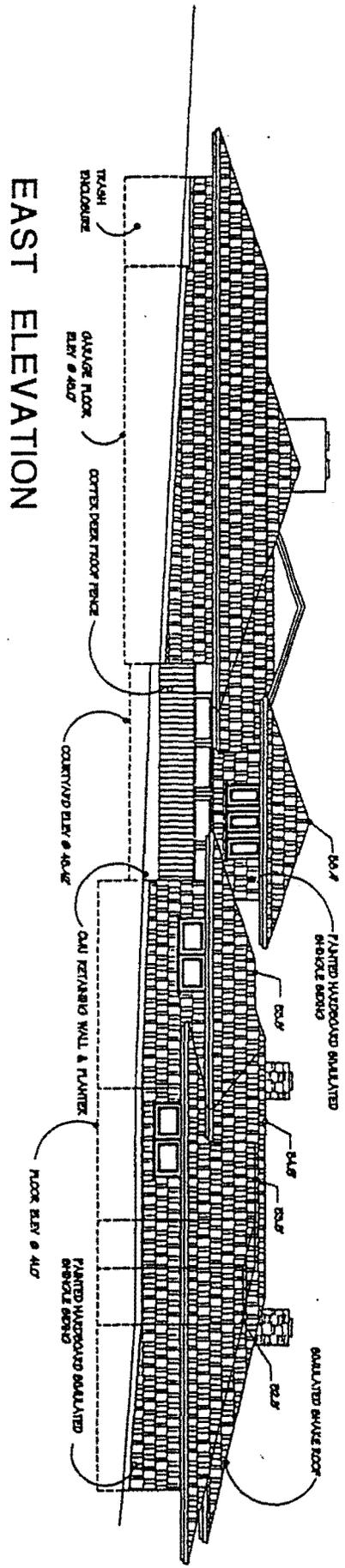
SHEET INDEX

1. SITE PLAN
2. FLOOR PLAN
3. EXT ELEV - W & E
4. EXT ELEV - N & S
5. ROOF PLAN
6. CUT / FILL
7. ENGINEERS SURVEY
8. LANDSCAPE PLAN





WEST ELEVATION



EAST ELEVATION

| |
|-------------------------|
| EXHIBIT NO. 7 |
| APPLICATION NO. 3-96-81 |
| Elevations - |
| E + W |

EXTERIOR ELEVATIONS

SCALE 1/8" = 1'-0"

WANDERLAD & WANDERLAD ARCHITECTS
 1111 17th Street, Pacific Grove, CA 93950
 Phone 3404
 6-23-86
 MILLER RESIDENCE
 3
 MILLER RESIDENCE
 BANGS DRIVE, PACIFIC GROVE, CA
 A.P.N. 007-041-027

DEPARTMENT OF FISH AND GAME

POST OFFICE BOX 47

YOUNTVILLE, CALIFORNIA 94599

(707) 944-5500



April 25, 1996

RECEIVED
APR 30 1996

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

Mr. Jon Biggs
City of Pacific Grove
Planning Department
300 16th Street
Pacific Grove, California 93950

Dear Mr. Biggs:

Department of Fish and Game personnel have reviewed supplemental materials for the Miller Residence at 1681 Sunset Drive in Pacific Grove. This project is a single-family residence that will have the potential to impact two State- and Federally-listed plant species, Tidestrom's lupine and Menzies' wallflower. Supplemental materials include supplemental addenda to Botanical/Biological Report dated March 15, 1996; April 12, 1996; and April 18, 1996; and a revised site plan with populations of listed plant species indicated on the map along with the outline of the house, garage, decks, and driveway.

After review of all materials, we believe that the project has the potential to adversely affect both listed plant species, and do not believe that the mitigation measures identified in the Negative Declaration will reduce those impacts to a level of less than significant. In addition, the project will result in the loss of three Tidestrom's lupine within the building footprint, and potentially an unknown number located in the vicinity of the house, but outside of the footprint.

The Local Coastal Plan recommends that the overall footprint of development not exceed 15 percent of the total lot; policy 3.4.5 specifies:

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.

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| EXHIBIT NO. 6 |
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| DF+G Letter |
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Mr. Jon Biggs
April 25, 1996
Page Two

It is not clear whether this project has complied with that requirement, since it appears decks have been excluded from the determination of the coverage of this project, and there is no indication that the proposed decks would not "eliminate potential native plant habitat."

In addition, there is the ability to allow up to 20 percent of a lot to be developed if 80 percent of the total lot will be restored to dune habitat and the additional site coverage is essential for protecting public views or for avoiding hardships in the case of existing parcels of one-half acre or less. It is not clear whether these conditions exist; and, in view of the status of this parcel within an environmentally sensitive habitat area, we encourage the City to require 15 percent as the maximum site coverage allowed.

Should the City determine that the project must be redesigned to comply with the limitations regarding allowable lot coverage, we request that one goal of the redesign be to provide for at least a 20-foot setback from all populations of listed species on the project site, with the exception of the three plants that are within the currently designated building footprint.

If the current design of the project is determined not to exceed that allowable under the LUP, we recommend the project be moved back to allow for a minimum 20-foot setback from the front population of Menzies' wallflower and the balance of the site be restored in such a way as to encourage the maintenance and expansion of the Menzies' wallflower and the Tidestrom's lupine on the site. This alternative will probably increase the total number of individuals who will be removed from the project site, and the details of a restoration plan will need to address this loss.

We are requesting the City, as a condition of permit approval, require the property owner to enter into a Memorandum of Understanding (MOU) regarding the loss of the listed plant species; MOU's approved by this Department typically include a combination of set-a-side and enhancement such that there is a net benefit to the species impacted. Such an MOU would satisfy the requirements of Section 2081 of the California Endangered Species Act.

Should the project be redesigned to substantially avoid the populations of listed plants on the project site, a conservation easement put over the balance of the site, and a restoration plan developed and implemented, we believe that the impacts identified can be mitigated to a level of less than significant.

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Mr. Jon Biggs
April 25, 1996
Page Three

Thank you for the opportunity to comment on the new information regarding this project. Our staff remains available to work with you to identify a project that will serve to protect the sensitive resources on the project site. Please contact Deborah Hillyard, Plant Ecologist, at (408) 726-3847; or Terry Palmisano, Associate Biologist, at (408) 848-2576 if you have any questions regarding our comments.

Sincerely,



Brian Hunter
Regional Manager
Region 3

cc: Ms. Jeri Sheele
California Coastal Commission
Santa Cruz

CALIFORNIA COASTAL COMMISSION
EXHIBIT 6 3-96-81

3/3

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JUL 22 1996

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

July 17, 1996

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

RE: Application by John Miller
for development of lot at:
1681 Sunset Drive, Pacific Grove, CA

Dear Mr. Otter:

"Applicant" herein means property owner and/or his agents, e.g., architect, real estate broker, botanist, etc

The purpose of this letter is to express our strong objections to the size of the house, as it is currently proposed. The manner in which this application has gone through the Planning Department of the City of Pacific Grove, as well as now through the Coastal Commission, has made a joke of the entire review process. The proposed project contains flagrant violations of the Land Use Plan for Pacific Grove and for the State of California. This project has been allowed to proceed with NONE of the restrictions and criteria required of other property owners desiring to build in the same area.

In particular:

- 1) The botanical report submitted by the Applicant was ERRONEOUS AND INACCURATE! After months of lack of response, we were forced to hire an attorney and another botanist to bring it to the Applicant's attention. In fact, when the other botanist, Tom Moss, went out to the property, it was very obvious that: endangered species had been UNDERESTIMATED, plants had been MISIDENTIFIED, the Menzies wallflower (rarest) was NOT IDENTIFIED at all...and THE FOOTPRINT OF THE PROPOSED HOUSE WAS RIGHT ON TOP of some endangered plants!!
- 2) The buffer distance between the house appears to be only 4 ft (to the east side of the house) from endangered species! This is despite the fact that the goal of Fish and Game and the Coastal Commission has been close to 20 ft; and OTHER LOCAL CITIZENS WANTING TO DEVELOP THEIR LOTS had to maintain this size of distance from endangered species!! (*The 4' overhang brings the buffer to 0 distance!!)
- 3) The proposed development is much greater than the maximum 15% coverage specified by the Land Use Plan. The Applicant continues to exclude in the coverage calculation items that are required by the law, e.g., a) decking that "does not allow natural light and precipitation to fall on the plants"; and b) the section of the driveway from the 75 ft setback to the front of the house.
- 4) The minimal buffer distance and the north/south orientation of the Applicant's house will shade endangered species for the MAJOR part of the day! Botanical reports for other developments in the area explicitly stated that: "Shadows would significantly degrade the ability of the area to support endangered plants". Note that an 18' high structure casts a 40' shadow(!) THROUGH MIDDORNING and from MIDAFTERNOON ONWARD;

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expected shading for the Applicant's development would be more than 50% and SOME PLANTS WILL GET NO NECESSARY ULTRAVIOLET RAYS AT ALL! As reference, "no shading at ANY TIME OF DAY and at ANY TIME OF YEAR" was allowed in the mitigations for OTHER property owners in the building of their home (ref. J. Corning's lot at 1501 Sunset).

5) The Applicant's development is a gross violation of the concept of "open scenic area", as well as the "visual impact" from Sunset Drive, that has been designated for the Asilomar region.

6) Allowing the Applicant to proceed with the current plan drastically alters the precedent for homes in this area. An atmosphere of "wall-to-wall" housing will result if all 5 lots along Sunset (and adjacent to the Applicant's) are built in a similar manner.

We have tried to keep this discussion as brief as possible. Please note, however, that at least a hundred hours of research have gone into this study and all the statements contained herein can be verified.

We are NOT proposing denial of the project...simply advocating a smaller one and one that adheres to LOCAL LAWS ALREADY IN EXISTENCE.

Why should this project be granted special consideration-when other land owners had to follow (voluntarily and involuntarily) more restrictive constraints??

Mr. James Corning (1501 Sunset Drive) met a lot of opposition from Pacific Grove when submitting his initial proposal several years ago. Members of the Architectural Review Board cited the "high visibility" of the area and described it as the "Gateway" to the Asilomar region. The Cornings wrote a very moving letter to the City (after their house was built). I quote, in part: "Faced with the prospects of a complete redesign, how did we address the concerns of the ARB...We did NOT protest the City's yet-to-be-adopted Land Use guidelines...We did NOT advise our architect to pour on the horsepower and play games of intimidation. Instead we listened. We built a house that captured the spirit of Asilomar and responded to the sensitive nature of the site."

Hopefully the members of the Coastal Commission will also listen.

Sincerely,


Joan Vorpanl
2118 Wilshire Blvd, No 856
Santa Monica, CA 90403
Tel/fax: (310) 394-6868

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|-----------------------------|
| EXHIBIT NO. 7 |
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| Vorpanl - Letter of Concern |
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NB: Please note that I would like to also give a presentation at the Meeting when this project is discussed.

SUPPORTING EVIDENCE FOR STATEMENTS MADE ON PAGE 1 and 2

We have studied in great detail 4 other projects that have been approved in the Asilomar area-to demonstrate that the CURRENT APPLICANT'S PROJECT HAS NOT abided by the same restrictions. In particular:

1) Figure 1 shows that these other 4 projects had a lot coverage of 14% or less AND THESE CALCULATIONS WERE REQUIRED (by PACIFIC GROVE) to INCLUDE DECK, PATIO, and the PORTION OF THE DRIVEWAY from the 75' setback to the front of the house! In fact, three of the houses had to include the driveway from the 20' setback. Figure 2 shows the Applicant's lack of consistency with these previous projects.

2) The buffer between development and endangered species was 20' or more in all cases. Only for the property on Calle Corte was one small area as close as 14'-- but note that this property was covered by endangered species over 50% of its area! (This means that the owners had very little lot on which to build--yet they followed the criterion for an adequate buffer.)

3) At the hearing on May 1, 1996, Debra Hilyard from Fish and Game explicitly stated that: "the buffer should be 20 ft and that there should be a recirculation of the proposal". The Fish and Game letter, dated April 25, 1996, said: "After review of all materials, we believe that the project has the potential to adversely affect both listed plant species and do NOT believe that the mitigation measures identified in the Negative Declaration will reduce those impacts to a level of less than significant." The respected botanist, Tom Moss, advises a 20' buffer.

4) In a resolution from Pacific Grove's City Council there was a statement saying: "This Council is aware that buffer areas of 12' and less from structures and other improvements have not resulted in harm to endangered species at other locations in the Asilomar dunes at 418 Calle Corte and 1691 Sunset". This comment is astounding since THESE ARE BARE LOTS...there are no structures to "prove" that a 12' buffer is adequate! Apparently the City Council didn't check out their own statements.

5) Regarding shading of endangered species: Required mitigations for the other properties demanded: a) "no shading at any time of day or any time of year (1501 Sunset)"; b) "no more than 15% shading maximum (Calle Corte)"; c) "no significant shading at all (1691 Sunset)". By comparison, Applicant's house will cause 50-100% shading.

The Applicant's "expert" botanist said that shading isn't important because "Pacific Grove has fog much of the time". Perhaps he is not aware that plants use primarily ultraviolet light-- and this penetrates fog! Ultraviolet light is blocked by wood and stucco however, and is totally blocked by a house/garage/deck structure. (I am a research scientist with Ph.D's in physics and mathematics--light transmission happens to be a personal speciality.)

6) Given the fact that the Applicant's botanist provided an erroneous report, how much credibility should be given to his comment that "an 8.5' buffer is adequate"?

CALIFORNIA COASTAL COMMISSION
 EXHIBIT 7 3-96-81
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Comparison: 1681 Sunset with other approved plans

| PROJECT | DRIVEWAY | DECK/PATIO | % Coverage With Deck & Driveway |
|--------------|--------------|------------|---------------------------------|
| 1681 Sunset | Excluded (1) | Excluded | 21% |
| Page Lot | Included (1) | Included | 14% |
| 1691 Sunset | Included (2) | None | 13% |
| 1501 Sunset | Included (2) | Included | 14% (< .5 ac) |
| 418 C. Corte | Included (2) | Included | 14.8% (< .5 ac) |

- (1) from 75 foot set back to the front of house
- (2) From 20 foot set back to the house

FIGURE 1

(SUBMITTED BY
PROJECT OPPONENT)

Coverage 1681 Sunset

| | | |
|------------|-------------|---------------------------|
| Dwelling = | 5,247 Sq Ft | (Includes Garage) |
| Porch = | 72 Sq Ft | |
| Paving = | 1,646 Sq Ft | |
| Total = | 6,965 Sq Ft | (15% of 46,430 Sq Ft lot) |

However the above DOES NOT INCLUDE:

1. Drive way from the 75 foot setback to the front of the house approximately 745 Sq Ft
2. Decking and sidewalks approximately 1945 Sq Ft
3. Fire equipment turnaround space

These items must be included or they violate Land Use Plan and are inconsistent with other approved developments in the area.

FIGURE 2

(SUBMITTED BY
PROJECT OPPONENT)

Comparisons of Houses Facing Sunset

| Address | DWELLING | Lot Size |
|-------------|----------|----------|
| 1681 Sunset | 4,898 | 46,430 |
| Page Lot | 3,680 | 47,045 |
| 1691 Sunset | 3,290 | 46,609 |
| 1501 Sunset | 3,352 | 22,839 |
| 1551 Sunset | 2,588 | 21,585 |
| 1601 Sunset | 2,200 | 43,560 |
| 1619 Sunset | 2,959 | 19,166 |
| 1715 Sunset | 1,843 | 26,400 |
| 1725 Sunset | 2,200 | 33,000 |
| 1805 Sunset | 1,750 | 26,100 |

FIGURE 3

CALIFORNIA COASTAL COMMISSION
 EXHIBIT 7
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