

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST AREA OFFICE
FRONT STREET, STE. 300
SAN CRUZ, CA 95060
(408) 427-4863
HEARING IMPAIRED: (415) 904-5200

Filed: 12/13/96
49th Day: 01/31/97
180th Day: 04/12/97
Staff: SM-SC
Staff Report: 12/17/96 0470M
Hearing Date: 01/10/97
Commission Action:

*Ph 13a*STAFF REPORT: REGULAR CALENDAR

APPLICATION NO.: 3-96-112

APPLICANTS: DANIEL ARCHER and MARY LOU NICHOLS

PROJECT LOCATION: 21 Spray Avenue, Del Monte Beach Tract #2, City of Monterey, APN 011-461-031

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

Lot area: 3,600 sq. ft.
Building coverage: 1,439.65 ft.
Pavement coverage (residential): 537 sq. ft.
Pavement coverage (street): 1,600 sq. ft.
Landscape coverage: 1,809.78 sq. ft.
Parking spaces: 2 spaces
Zoning: Residential-Low Density
Project density: 12 units/acre
Ht abv fin grade: 23 feet

SUBSTANTIVE FILE DOCUMENTS: Coastal Development Permit files 3-89-210 Vargas; P-79-34, 3-89-250 and 3-93-62 Sewald; P-79-338 and 3-93-63 Boyden; Appeal Files A-134-79 Sewald and A-19-80 Boyden; 3-93-28 Bram; 3-96-73 Bram; Del Monte Beach Land Use Plan Resubmittal 1992 and Commission's adopted LUP Findings for Approval 6/9/93; Negative Declaration granted 3/19/96; Botanical Survey by Zander Associates, 7/17/95; Letter from Foxx Nielsen & Associates, 9/21/95; Letter from Zander and Associates, 12/13/95; and Geotechnical Investigation (APN 011-455-008) by M. Jacobs and Associates, 6/1/92.

SUMMARY OF STAFF RECOMMENDATION: The key issues involved in this application include the development of a single family residence in a dune area which is considered environmentally sensitive habitat, as well as the extension of a city street, Spray Avenue into this habitat area in order to provide access to the new residence. This dune area, a portion of the old Del Monte Beach Tract #2, is subdivided but completely without roads, utilities or other existing development. Prior to October, 1996, the Commission only approved residential applications in this neighborhood which have existing paved street frontage and utilities in place. At its October 1996 meeting, the Commission approved an application for a single family residence and associated street

improvements for the lot immediately north of the subject property, which was the first time the Commission approved an application on an interior lot (without existing street access) in Tract #2 of the Del Monte Dunes. The current application proposes to extend the street improvements approved by the Commission at the October 1996 meeting by an additional 40 feet.

Staff is recommending approval of the proposed residence, along with the same condition that was applied to 23 Spray Avenue (CDP 3-96-34) in order to ensure that only the minimal-width and length paved auto access improvements within the Spray Avenue "paper street" right-of-way are constructed. Such paved access would be enough to meet fire department requirements for a residential driveway, but would be substantially less than the full-dimension street with curbs, gutters and sidewalks requested in the application. As conditioned, the permittee or any future owner would still be obligated to finance the full-treatment street if called for in the future LCP. The other recommended conditions mirror those previously applied by the Commission in this neighborhood for the protection of environmentally sensitive dune habitat, scenic views, public access and recreation.

The following chart provides a summary of the Coastal Act issues surrounding this application, and the conditions of approval being recommended by the staff.

Summary of Issues and Conditions

Issues	Coastal Act Requirements	Analysis	Necessary Conditions
<i>Takings</i>	<p>Commission actions can not take or damage private property for public use without payment of just compensation (Coastal Act Section 30010).</p> <p>Environmentally Sensitive Habitat Areas (ESHA's) must be protected (Coastal Act Section 30240(a)).</p> <p>Policy conflicts must be balanced in a manner which is most protective of significant coastal resources (Coastal Act Section 30007.5)</p>	<ul style="list-style-type: none"> * Reasonable economic use of the property can not be denied. * The only reasonable economic use of the subject property is residential. * Economic use of the property must be balanced with the protection of ESHA's 	<ul style="list-style-type: none"> * See conditions designed to allow reasonable development to move forward, and at the same time protect Environmentally Sensitive Habitat areas, below.
<i>Environmentally Sensitive Habitat Area</i>	<p>Protection of ESHA's (Coastal Act Section 30240(a)).</p> <p>Prior Commission approvals (Sewald, Boyden, Bram, Archer) on same size lots in this tract allowed 1,800 square feet of site coverage (50%) to insure that no taking would result.</p> <p>Prior Commission approval of Spray Ave. extension (Archer, 23 Spray) limited roadway construction to the minimum necessary to provide auto access.</p>	<ul style="list-style-type: none"> * Entire parcel is environmentally sensitive habitat. * Proposed site coverage is 50% of lot (1,799 s.f.) * Proposed street extension would result in up to 5,000 s.f. additional coverage. 	<ul style="list-style-type: none"> * Special Condition 1 incorporates City's requirement for environmental monitoring during construction. * Special Condition 2 requires street extension be reduced to minimal width and length. * Special Condition 3 requires an on-site native plant restoration plan. * Special Condition 4 requires a deed restriction over 50% of the lot to protect & restore native dune habitat. * Special Condition 5 requires deposit of fee for off-site dune restoration. * Special Condition 7 requires relocation of any black legless lizards.

Issues	Coastal Act Requirements	Analysis	Necessary Conditions
<i>Visual Resources</i>	Protection of views in scenic areas (Coastal Act Sections 30251 & 30240(b)).	<ul style="list-style-type: none"> * Project site is adjacent to existing and approved 2-story SFD's, distant from public beach. * Proposed 2-story SFD is consistent with neighboring structures. 	<ul style="list-style-type: none"> * Special Condition 1 incorporates City conditions including Architectural Review committee recommendations.
<i>Public Access</i>	Development shall not interfere with public access rights (Coastal Act Section 30211).	<ul style="list-style-type: none"> * Long history of public use in general area; however, prescriptive rights have not been established for this site. 	<ul style="list-style-type: none"> * Special Condition 6 specifies that this permit does not waive any public rights which may exist on the property.
<i>Geologic Hazards</i>	New development must assure geologic stability and minimize risk (Coastal Act Section 30253).	<ul style="list-style-type: none"> * Project located in active dune field. * Submitted report for foundations is for a different lot. * Submitted report on sand dune movement is not adequate. 	<ul style="list-style-type: none"> * Special Condition 8 requires geotechnical report specific to this location, in order to supplement previously submitted reports.
<i>LCP</i>	Commission action cannot prejudice options available to City in preparing an LCP (Coastal Act Section 30604).	<ul style="list-style-type: none"> * No certified LCP in this area. * Group of about 67 vacant lots in Tract # 2 represents opportunity to protect ESHA, scenic, and recreation resources. * City has planning effort underway to identify appropriate development and protection strategies. * Extension of paving along "paper" streets will prejudice LCP options. 	<ul style="list-style-type: none"> * Special Conditions 1-9 ensure project is consistent with Chapter 3 of the Coastal Act & will not prejudice the ability of the City to complete their LCP consistent with Coastal Act policies. * Special Condition 2 requires revision of street plan to reduce width and length to minimum required to serve this residence; provides for completion at full width if allowed by future LCP or essential for public safety.

STAFF RECOMMENDATION:

The staff recommends that the Commission adopt the following resolution:

I. Approval with Conditions.

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

II. Standard Conditions. (See Exhibit 1.)

III. Special Conditions

1. Incorporation of City's Conditions and Mitigation Requirements. The Conditions of Approval adopted by the City of Monterey for this project on 5/17/96 are attached as Exhibit 2 to this permit; these Conditions are hereby incorporated as conditions of this permit. However, the street improvements specified in the City's Condition No. 9 will be limited to those which are approved in accordance with Special Condition No. 2 (Revised Plans), below. Any revision or amendment of these adopted mitigation measures or the project plans as approved pursuant to the City's architectural review procedures shall not be effective until reviewed by the Executive Director for determination of materiality, and if found material, approved by the Commission.

2. REVISED PLANS: PRIOR TO TRANSMITTAL OF THE COASTAL DEVELOPMENT PERMIT, the permittees shall submit to the Executive Director for review and approval, a revised street plan; and (if different from submitted plans) final residential grading plan, site plan and elevations. The revised street plan may be submitted only after the Executive Director has reviewed and approved the revised street plan providing for minimal auto access to the approved residence at 23 Spray Avenue (Special Condition Number 2 of Coastal Development Permit No. 3-96-34); the revised street plan for access to 21 Spray Avenue shall have the same width as the street plan approved by the Executive Director for 23 Spray Avenue (a single paved lane, representing one half of the full pavement width of the street [13 ft.]), and shall terminate at the westerly corner of permittees' lot at 21 Spray Avenue.

However, additional "full width" improvements, up to and including two paved lanes, curbs, gutters and sidewalks, are authorized by this permit in accordance with City condition No. 9, up to 40 ft. in width, provided that such additional improvements, or portions thereof, are documented to the satisfaction of the Executive Director as:

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

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

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

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

which would block public views or introduce invasive non-indigenous plant species shall be prohibited. Such deed restriction shall encompass the undeveloped remainder of parcel APN 011-461-031 (minimum 1,800 sq. ft.). The document shall be recorded free of prior liens and any other encumbrances which the Executive Director determines may affect said interest. The restriction shall run with the land in favor of the People of the State of California, binding all successors and assignees.

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

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

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

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

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

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

IV. Findings and Declarations.

The Commission hereby finds and declares:

1. PROJECT AND LOCAL AREA DESCRIPTION

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

Eighteen lots on the periphery of the undeveloped area and having access and utilities from the existing streets contain residences which were constructed prior to the Coastal Act of 1976. One of the eighteen houses destroyed by fire was reconstructed. In 1990 the Commission approved 3-89-210 Maria Vargas for a residence on an improved street with utilities, Dunecrest, the highest and most distant street from the ocean. In March, 1994 two additional houses were approved on the Beach Way frontage (3-93-62 Sewald and 3-93-63 Boyden). In June, 1994 a third house (3-93-28 Bram) was approved on one of the five remaining "perimeter" lots; this permit has expired, and new owners of this property have submitted a new application for a similar residence on this lot which has not yet been filed. In October, 1996, the Commission approved a permit (3-96-34 Archer) for a single family residence immediately north of the subject property. Currently, the Vargas house is completed, the Sewald house is under construction, the Boyden lot has been purchased by the City for open space, and the permit for the Archer lot at #21 Dunecrest has not yet been issued as prior to transmittal conditions have not yet been satisfied. (See Exhibit 5 for a graphic description of the subdivision development).

Upcoast (east) of the "paper" subdivision is the almost fully developed residential subdivision of approximately 25 acres known as the Del Monte Beach Tract #1. To the west of the subdivision is the Monterey Water Pollution Control District facilities on the Naval Postgraduate School property. The City's Del Monte Public Beach lies seaward of the subdivisions. The site looks downslope towards Monterey Bay, across the dune field to the City Beach about 400 ft. to the north.

The applicants' proposal to construct a two-story, single-family dwelling on this vacant 40 x 90 ft. lot (23 Spray Avenue) is dependent upon grading and street improvements. In the application for construction of a residence at 21 Spray Avenue (CDP No. 3-96-34), the applicant proposed to grade and construct pavement, curbs, gutters and sidewalks on the adjacent unimproved 40 by 120 ft. Spray Avenue right-of-way, which would have extended Spray Avenue to the western terminus of the subject property. However, in approving CDP No. 3-96-34, the Commission limited the length of the proposed street improvements to the western limit of 21 Spray Avenue. As a result, the subject application proposes to extend Spray Avenue by an additional 40 feet. (See Exhibits 6, 7 and 8 for residential and street extension plans).

2. BACKGROUND INFORMATION

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

Status of Development in the Monterey City dunes: See Exhibit 9 attached. In Monterey City the dunes begin at Laguna Grande at the City's boundary to the north and continue to the City's harbor. The City's land use policy direction in the past several years has been to retain in, or convert back to, open space the beach front areas between Del Monte Boulevard and the sea for recreational and dune restoration purposes. Specific efforts have been directed to removing most of the commercial/residential development between Del Monte Boulevard and the Monterey City/State Beach from Wharf #2 to the U.S. Naval Postgraduate School property for "Monterey Bay Park" (also known as "Window to the Bay"). Several commercial parcels have been purchased, buildings demolished and visual and physical access opened to the beach.

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

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

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

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

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

In 1979 and 1980 the Commission denied two requests to construct single family dwellings on vacant sand dune lots within Del Monte Beach Tract #2 (Boyden A-19-80; Sewald A-134-79). The Commission found that among other reasons, potential prescriptive rights existed and must be protected, and open space and habitat resource values must be preserved. In 1989 the Commission denied a request for a perimeter fence on the Sewald lot (Sewald 3-89-250) and a similar request by Manfred Droh (3-89-251). An exception in 1989 was the Vargas residence (3-89-210) on Dunecrest Avenue, which was approved by the

Commission because it could be distinguished by its location on an improved street, most distant from the beachfront, with no native plant habitat, and no evidence of public use.

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

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

In 1992 a resubmittal of the Del Monte Beach Land Use Plan was approved by the Commission. With the exception of the undeveloped portion of Del Monte Beach Tract #2 the Land Use Plan designations did not raise Coastal Act issues. Again the Commission required protection of potential public rights of access through an implied dedication study by the City or through each individual applicant's demonstration that their proposed development did not interfere with public use. The City did not adopt the Land Use Plan.

Actions Undertaken to Resolve Issue:

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

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

The possible acquisition and preservation of the dunes habitat comprising 67 lots in the Del Monte Beach subdivision under multiple ownership has been an issue of concern to the City and State since the 1970s. Past efforts have been attempted to consolidate private ownership in this area or to acquire the land publicly, but they were unsuccessful. The land was once identified for acquisition by the State for expanding beach park land in the vicinity. Funds for the State acquisition were to be provided by proposition 2, passed in 1976, and administered by the Department of Parks and Recreation. The State did not purchase the undeveloped subdivision

land because the land was found to lack suitability as a State recreation area and funding was limited. The State consequently withdrew plans to acquire the property. The City of Monterey later explored possible California Coastal Conservancy programs that might be used to acquire the property...

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

In March of 1987 the Airport District's noise compatibility study identified the 68 lots west of Beach Way as a potential acquisition for FAA grant funding, as the lots are located directly below the Monterey Peninsula airport flight path. The City sponsored a grant application. However, insufficient funds were and are available from the FAA, so this funding source has not been pursued by the City. In addition, in 1989, the City Council passed an ordinance authorizing expenditures of \$400,000 for purchase through third party arrangements of 16 lots in the undeveloped Del Monte Beach area. The Big Sur Land Trust was to acquire the lots subsequently to be purchased by the City. The effort was not successful and no lots were purchased.

Current Purchase Efforts: As of 1994, the City Neighborhood Improvement Program (NIP) Committee had set aside \$840,000 of this neighborhood's allocations toward purchase of vacant lots west of Beach Way. A total of \$932,000 had been allocated toward acquisitions. Expenditures had totaled \$312,439 for eight lots (includes negotiation costs). The remaining balance available was \$619,561, a substantial portion of which has now been used to purchase the Boyden lot. (Exhibit 9 attached to this report contains a map illustrating lots currently in public ownership).

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

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

Section 30603.1(e) of the Coastal Act states:

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

Both public agencies, the City of Monterey and the Monterey Peninsula Regional Park District (MPRPD) are currently buying lots from willing sellers in the Del Monte Beach Tract II on an opportunity basis. The City previously focused their acquisition efforts on the 22 lots closest to the sea (the block between Seafoam and Tide Avenues). To date, a total of 9 lots have been purchased by the City in this block. Currently, the City Council has now authorized acquisition over a broader area, specifically a block of 38 vacant lots between Dunecrest Ave. and the beach. Information submitted by the Park District states that the City has \pm \$310,000 available for additional purchases within the entire 38-lot area. The Park District has acquired seven lots in the two block area between Seafoam and Dunecrest. No additional funds for acquisition are currently available to the Park District, however, they anticipate new allocations within the year.

Given these facts, it could be argued that the Commission should defer action on a permit for the subject property in order to allow either the City or the Park District to acquire the site. It is, however, the practice, thus far, of both agencies to buy lots only from willing sellers in this area. Although both have authority to condemn property for public use, neither the City nor the Park District have initiated any eminent domain proceedings in order to acquire lots in this tract. The applicants, in this case, have stated that they are not willing sellers; therefore invocation of Section 30604(e) to deny or delay the project would be inappropriate.

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

Summary of current permit actions: Efforts to develop a comprehensive plan for the area continue. Through its contractor, EMC Planning Group, the City is conducting a comprehensive opportunities and constraints analysis. This effort has already yielded detailed mapping of the present (Spring 1996)

locations of each sensitive plant species and dune plant cover types. Ultimately, this project, the Del Monte Dunes Planning Study, will also identify various planning and implementation options, including further purchases, transfer of development credits, and Planned Unit Development. The results of these planning efforts, as of October 1996, are attached to this report as Exhibit 9. Subsequently, the consultants have issued a draft report which summarizes their work to date. The conditions of this permit, with respect to the street extension, are intended to accommodate each of the development alternatives outlined by the draft report (i.e., both one-way and two-way street configurations); this will help to avoid prejudicing the options available to the City for completing its LCP consistent with Coastal Act policies.

In the meanwhile, all of the parcels in this tract are designated for residential use and the City approved three permits for houses in 1992: Sewald (2 Beach Way), Boyden (10 Beach Way), and Bram (4 Dunecrest Ave.). Each of these sites are on existing streets with utilities. None were approved during the period of 1993-1995. In 1996, so far, the City has approved 3 more houses in Tract #2: Bram (12 Dunecrest Ave.), Archer (23 Spray Ave.), and Archer (21 Spray Ave., this project). The two Archer houses are the first to be approved in the interior of the subdivision.

In 1994, the Coastal Commission approved three coastal development permits (3-93-62 Sewald, 3-93-63 Boyden and 3-93-28 Bram). In 1996, the Commission approved another two residences (3-96-73 Bram, and 3-96-34 Archer). Each lot is the same size and shape as applicant Archer's 3,600 sq. ft. parcel, with exception of the residence approved at 12 Dunecrest (Bram), which consists of two combined lots totalling 7,200 sq. ft.. Each was conditioned with a requirement to retain 50% of the lot as undeveloped open space (including 50% of the 7,200 sq.ft. lot), for the reasons discussed in the following finding.

3. ENVIRONMENTALLY SENSITIVE HABITAT

Section 30240 of the Coastal Act states:

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

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

Section 30250 of the Coastal Act states:

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

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

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

According to the Technical Review Draft for the Smith's Blue Butterfly Recovery Plan, U.S. Fish and Wildlife Service, "More than 50 percent of the Seaside [Monterey Bay] dune system has been destroyed or altered significantly by sand mining, urbanization, military activities, construction, and the introduction of two aggressive exotic plants, European marram grass (*Ammophila arenaria*), and iceplant (*Mesembryanthemum* spp.). Even considering this, these dunes are the largest and best preserved of any of the central California dune systems except for the Oso Flaco Dunes near San Luis Obispo. The dune system at San Francisco has been almost totally destroyed (Powell, 1981)."

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

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

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

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

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

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

b. Restoration Programs on Surrounding Dune Areas:

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

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

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

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

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

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

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

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

A botanic survey and follow-up investigations specifically for this site at 21 Spray Avenue were conducted by Zander Associates (see Exhibit 3). During the time period of the investigations (Spring, 1995), a few scattered individuals of Monterey spineflower were found on the northern portion of the lot. The report also noted that one rare species, the black legless lizard (Anniella pulchra nigra) is known to occur in the vicinity of the project and could potentially occur on the site. The report indicates that the habitat for the species is marginal because of lack of suitable native shrubby vegetation. However, the botanic report does recommend mitigation measures for the protection of the potential black legless lizard habitat area.

Each of the above-listed plant and animal species is either migratory or intermittent in occurrence. Because this site is a component of the larger dune complex, one or more of these species will occupy the site periodically. This explains why species which are not there in one year may well be there the next. It also explains why the entire dune (not just the particular spot where a rare plant may be growing in a particular year) must be considered an environmentally sensitive habitat area (ESHA).

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

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

Impacts from construction activity, from shadows cast by the residence and trampling incident to residential use, and (potentially) from the introduction of plant species not native to these dunes will adversely affect or eliminate all environmentally sensitive habitat over the entire 3,600 sq. ft. lot, as well as up to 1,600 sq. ft. within the street extension.

In approving the project the City incorporated the botanical mitigation measures previously required by the City of Monterey and the Coastal Commission when approving similar projects in the Del Monte Beach Tract #2, to achieve protection and restoration of the dunes on the project site outside of the building envelope. These measures are listed in the Botanical Survey (Exhibit 3, attached). In combination, these measures will reduce impacts on the undeveloped 1,800 sq. ft. of the lot, and will partially mitigate development impacts resulting from 1,800 sq. ft. of site coverage. However, no particular mitigation measures are listed for the proposed street extension.

ANALYSIS: The applicant's site represents potential habitat for several rare species (upon restoration), including the endangered Smith's blue butterfly and the Black legless lizard. The applicant's biotic survey reports that the subject site has been degraded by grading to accommodate the adjacent residences and road and is dominated by non-native ruderal (weedy) vegetation. However, the parcel is part of the natural dune formation and it is clearly evident from the restoration success at the adjacent U.S. Naval Postgraduate School dunes that the Del Monte Beach Tract #2 dunes retain important natural habitat values. In the context of the natural resources of

the area this parcel could be an important component of an area-wide dune restoration program (including a public access/recreation impact management plan). Therefore, applicant's parcel represents both existing and restorable environmentally sensitive habitat area as defined by Sec. 30107.5 of the Coastal Act.

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

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

Section 30240 does not exist in isolation, however, and must be read along with other provisions of the Act, particularly Section 30010. This section provides that the policies of the Coastal Act "shall not be construed as authorizing the commission . . . to exercise [its] power to grant or deny a permit in a manner which will take or damage private property for public use, without payment of just compensation." Thus, if application of the restrictions in Section 30240 would cause a taking of property, the section must not be so applied and instead must be implemented in a manner that will avoid this result.

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

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

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

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

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

Additionally, in contrast to many of the other parcels in Del Monte Beach Tract #2, the applicant's parcel is adjacent to a lot on which the development of a single family home has been approved by the Commission (CDP No. 3-96-34), which is adjacent to an existing residential development located on an improved street (Beach Way), where public utility service is currently available. Many of the other lots on Beach Way are developed, including the lot immediately southeast of the subject parcel. Moreover, a substantial number of the other parcels in Del Monte Beach Tract #'s 1 and 2 are also developed, and have been for a considerable amount of time. In addition to these observations, the applicant has submitted information which states that the purchase price of this parcel in 1978 was \$40,000. (A detailed description of all of the expenditures to date associated with the parcel is available in the Commission file for this project). According to the applicants, the fact that the property was a legal lot of record in an approved subdivision zoned for residential use, in close proximity to existing residences, were factors which influenced the purchase of the site with the expectation that a dwelling could be constructed upon it. Furthermore, given the small size of the site ($\pm 3,600$ sq. ft.), opportunities for other economic but non-residential uses are not feasible. These factors lead the Commission to conclude that the applicant could have reasonably expected that residential use of the subject property would be permitted when the property was purchased.

In summary, the co-applicant Mary Lou Nichols has shown that the property was purchased for \$40,000 which was the fair market value for residential property in this area at the time. This observation is supported by a review of

purchases of similar sized lots in the tract by the City and the Monterey Peninsula Regional Park District during the last five years. During that period, the two public agencies acquired sixteen lots. With the exception of one lot all of the others cost between \$33,000 and \$53,000 each. (Please see Exhibit 10 for detailed acquisition costs and locations). Since the applicants' purchase of the property, it has generated no income, but has been taxed based on its zoning as residential land.

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

Having reached this conclusion, however, the Commission also finds that Section 30010 only instructs the Commission to construe the policies of the Coastal Act, including Section 30240, in a manner that will avoid a taking of property. It does not authorize the Commission to otherwise suspend the operation of or ignore these policies in acting on permit applications. Moreover, while the applicant in this instance may have reasonably anticipated that residential use of the subject property might be allowed, the Coastal Act and recent Coastal Commission actions on similarly situated lots in the Del Monte Beach Tract No. 2 (Boyden, Bram, Seawald) provided notice that such residential use would be contingent on the implementation measures necessary to minimize the impacts of development on environmentally sensitive habitat. Thus, the Commission must still comply with the requirements of Section 30240 by protecting against the significant disruption of habitat values at the site, and avoiding impacts that would degrade these values, to the extent that this can be done consistent with the direction to avoid a taking of property. Mitigations must also be generally proportionate to the adverse impacts caused by development of the house and associated infrastructure.

MITIGATION: In the present situation, there are several conditions that the Commission can adopt that implement Section 30240 without taking the applicant's property. First, the applicant currently proposes to cover approximately 1800 sq. ft. of the 3600 sq. ft. parcel with building and paving. Further, as approved by the City, an additional 1,600 sq. ft. will be covered by the Spray Avenue street extension, for a total of 3,400 sq. ft. However, this degree of dune habitat disruption can be partially reduced. By reducing the street coverage to the bare minimum needed for paved auto access to the residence, dune alteration can be minimized and the area available for dune restoration can be increased. Specifically, by building only a half-width street (approx. 13 ft.), by shortening the paved area (so that it does not extend past 21 Spray Ave.), and by eliminating curbs, gutters and sidewalks, the surfaced area will be reduced from 1,600 sq. ft. to approximately 520 sq. ft.

Accordingly, the Commission finds that a reasonable development can be achieved consistent with the direction of Section 30240 by adoption of a condition (Special Condition No. 2) that limits site impacts by, among other means, requiring that if the project is redesigned to meet City conditions or otherwise, residential site coverage will be concentrated so that development covers no more than one-half (1800 sq. ft.) of the parcel; and, by limiting street extension impacts to the minimum required for paved auto access.

Even as so conditioned, development on the parcel will permanently displace dune habitat and prevent revegetation of half the lot. There also will be indirect impacts on the undeveloped portions of the lot through construction activity, shadowing and other activities associated with adjacent residential use. Moreover, although the actual square footages at issue in this permit are relatively small (1800 sq. ft. developed and 1800 sq. ft. of adjacent open area, and up to 1,600 sq. ft. of street extension), these impacts are significant given the importance of the Monterey Bay Dune system as a whole and the potential for cumulative impacts if the remainder of the 67 lots in the area are similarly developed. In fact, on a cumulative basis, a development of the kind proposed by the applicant, even as conditioned, would result in the loss of approximately 7 acres of additional environmentally sensitive coastal dune habitat in the Del Monte Beach Tract #2 area alone. Therefore, several additional conditions are necessary to offset these direct, indirect, and cumulative project impacts.

The first of these, Special Condition No. 4, requires that the 1800 sq. ft. area of the parcel that will not be developed shall be preserved in open space, subject to a conservation deed restriction. The deed restriction shall prohibit uses that are inconsistent with dune habitat restoration and preservation. The deed restriction will also act to reserve this portion of the lot for eventual consideration in an overall City plan for dune restoration and enhancement throughout the area. Thus, this condition will also maintain the City's ability to develop a comprehensive plan for the Del Monte Beach Tract #2 area consistent with Coastal Act Chapter 3 policies.

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

Last, because the developed half of the lot and street extension represent a permanent loss of environmentally sensitive habitat, the permit also has been conditioned in Special Condition No. 5 to require project mitigation through an in-lieu fee. The purpose of the in-lieu fee is to provide for off-site restoration of degraded environmentally sensitive habitat, to mitigate on-site loss of environmentally sensitive habitat (the lot is too small for substantive on-site restoration). More specifically, the in-lieu fee will provide funds to pay for the cost of restoring an area exactly proportionate to the area of environmentally sensitive habitat that will be destroyed due to

construction of the house and street extension. The in-lieu fee will be used for future native plant habitat preservation and restoration in nearby dune areas through the acquisition of restoration sites, eradication of invasive exotic vegetation, installation of boardwalks, and other dune restoration measures identified in the planning or LCP process.

The amount of the in-lieu fee is based on an estimate made in December 1993 by dune restoration botanist Thomas Moss, a local expert in preparing and implementing dune restoration. His figures showed that for similarly situated projects the cost of restoration for an acre is \$13,500. If adjusted for inflation to estimated construction date, this cost can be projected to be \$15,000 per acre. For an area of 1,800 sq. ft., the area to be covered by the proposed residential development, the proportional cost is \$620. For the additional street area ultimately authorized by this permit (40 ft. x 40 ft. = 1,600 sq. ft.), the proportional cost at maximum coverage would be an additional \$550. As conditioned, the total will be dependent on the amount of street coverage actually authorized pursuant to the terms of this permit; and, may be remitted in stages if additional street improvements are authorized in the future. The City of Monterey, which has already established a fund for the protection of the Monterey Dunes, would be the recipient of these funds. As conditioned, the expenditure of such funds would be subject to review by the Executive Director to insure conformance with the intended habitat protection and restoration purposes of this condition.

Conclusion: The area of the Seaside (Monterey Bay) Dunes in which the applicant's parcel is located is an environmentally sensitive habitat area within the meaning of Section 30240 of the Coastal Act. This section of the Act requires that such habitat areas be protected against significant disruption or degradation. Strict application of this section is not authorized in this situation, however, because to do so would cause a taking of property in violation of Section 30010 of the Coastal Act, as well as the State and United States Constitutions. Therefore, the applicant may be permitted to develop his parcel, subject to Special Conditions which will reduce or mitigate the project's impact on dune habitat to the maximum extent feasible. As so conditioned, the project will be consistent with the habitat preservation policies of the Coastal Act.

4. STREET EXTENSION ISSUES

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

Section 30250

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

Section 30604

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

KEY ISSUE: This project, along with the adjacent project approved by the Commission in October, 1996, represents a departure from previous development patterns. All of the lots approved by the Commission for residences in this partially-developed tract prior to October 1996, have been adjacent to an existing paved street with utilities in place. The most recent examples include the following: 3-89-210 Vargas; 3-93-62 Sewald; 3-93-63 Boyden; 3-93-28 Bram (#4 Dunecrest); and 3-96-73 Bram (#12 Dunecrest).

Expansion of Existing Residential Development Pattern. In contrast to these preceding sites, the applicants' lot is not located on an existing improved street. At present, this portion of Spray Ave. is sand dune. Accordingly, it is sometimes referred to as a "paper street", that is, it exists only on paper. Nonetheless, it is located just beyond the perimeter of the existing residential enclave. Furthermore, it is adjacent to a lot on which the Commission approved the construction of a single family residence (and associated street extension) in October 1996. Therefore, while development of applicant's site can be viewed as an encroachment or reduction of the existing de facto open space area of the Del Monte Dunes, it also represents a logical expansion of the existing residential pattern (rather than "skip out" or "leapfrog" development). Accordingly, it would be "contiguous with" existing development as required by Coastal Act Section 30250.

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

Therefore, a number of alternatives to minimize the impacts of such a street extension were evaluated by Commission staff with respect to the adjacent development at 23 Spray Avenue. These alternatives included: a) no street construction (assumes on-street parking on Beach Way and a pedestrian boardwalk for access to the house); b) construction of an ordinary 12-ft. width residential driveway within the Spray Avenue right-of-way (i.e., no curbs, gutters or sidewalks); c) construction of the street at half width; and, d) construction of the street at full width, but only as far as the westerly property line of 23 Spray Avenue; and, e) construction of the street at full width to the easterly boundary of 21 Spray Ave. (per the City).

The above-listed alternatives were evaluated in detail in the staff report for 23 Spray Avenue (CDP No. 3-96-34) as follows:

The "no street alternative".

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

The "driveway only" alternative. A standard 12-ft. width driveway would be extended from Beach, through the City's Spray Ave. right-of-way, and up to the proposed garage at 23 Spray Ave.. This would provide paved auto access to the house, while retaining 28 ft. of the 40 ft. right-of-way in open space. However, the compaction standards, based material requirements, and other construction criteria for residential driveways are less than for city streets. Therefore, this option would not lend itself to completion as a normal one-way or two-lane city street in event the LCP determines this to be desirable.

The limited street expansion (half-width) alternative. This alternative would result in a single paved lane, approximately 13 ft. in width, ending at 23 Spray Ave.. This alternative combines the advantages of retaining the maximum amount of open space within the City-owned street right of way, and preserving options for alternative development/preservation patterns within Tract #2. These alternatives include, but are not limited to, PUD's, exchange of City and Park District-owned lots with private owners, resubdivision to better concentrate development, further acquisitions by the City and/or Regional park District, and transfer of development credit (TDC) scenarios. Some of these would require no additional street expansion along the Spray Ave. right of way, while others would entail completion as either a one-way or conventional two-way street.

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

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

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

This circumstance will predictably induce an expansion of residential development along Spray Ave. Because this would tend to prejudice the City's ability to complete the planning work necessary to create its local coastal program (LCP), those street development alternatives designed to serve more than the project at 23 Spray Ave. were rejected by the Commission in its action on that application.

Instead, in its action on CDP No. 3-96-34, the Commission concluded that a combination of redesign and recordation of a lien or covenant for future full street improvements would best serve to balance several competing needs. These needs included improved access to the residence at 23 Spray Ave., maximum feasible open space retention, and preservation of options for alternative development patterns for the entire undeveloped area of this tract such as that which could be achieved through resubdivision or a planned unit development (PUD). The Commission therefore required a redesigned roadway which would provide only for a half-width street with minimal drainage features, no sidewalk, not extending beyond the 23 Spray Ave. lot.

Furthermore, in order to avoid a possible future financial burden to the City in event the LCP calls for full-dimension street development in this area, the Commission retained the financial responsibility component through a condition requiring recordation of a lien, covenant or comparable obligation running with the land.

CONCLUSION:

Consistent with the Commission's October, 1996 action on an application to develop the lot immediately adjacent to the subject lot, this permit incorporates the same special conditions requiring that minimum-level auto access, terminating at the end of the subject property, be constructed, and that the applicants submit a recordable instrument (e.g., deed restriction) obligating the owner of the property (and any successors in interest) to be financially responsible for their share of the reasonable costs to construct a full width street to the City of Monterey standards.

As conditioned accordingly, and as revised to provide a normal-width (13 ft.) single lane access as the minimum-level form of improvement for this portion of Spray Avenue pending completion of the LCP, the necessary balance will be achieved. (To clarify, this permit allows completion of part or all of the full dimension street according to submitted plans, but only when and if certain circumstances apply -- such as certification of LCP policies which call for it, or a determination of necessity for public safety, access, or drainage.)

5. PUBLIC ACCESS AND RECREATION

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

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

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

Section 30211 of the Coastal Act states:

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

Section 30210 of the Coastal Act states:

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

Section 30221 of the Coastal Act states:

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

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

The Commission has had a long history of grappling with the issue of public access in the Del Monte Beach Tract #2. An excerpt from the findings adopted by the Commission for a 1992 LUP submittal for this area describes the most recent position on this subject. (This LUP was not, however, certified.) The

Commission found that the seven and one-half acre Del Monte Beach Tract #2, which includes the subject site, has been subject to public use for many years. In order to finally resolve the question of the extent of prescriptive rights existing in this area, the LUP modifications adopted by the Commission required the City to prepare such a study. Adopted Modification No. 14 reads:

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

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

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

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

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

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

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

Coastal Commission adoption of the LUP resubmitted in 1992 also included findings which adopted the previous evidence collected regarding historic public use, including fifteen letters from the 1979 Sewald file stating that the authors had used and had seen many people using the Sewald lot for picnicking, sunbathing, hiking, dog-walking, kite flying, and nature study. The period of public use was as early as 1922 with most of the use occurring from 1958 to 1979 (1979 is the date that the letters were written). As evidence that the public use continued to be substantial, Mr. Sewald applied for a permit to fence his vacant property in 1990 (3-89-250). Among the reasons cited by the applicant as to why the fence was needed included that "people have driven on to his property", he "has found people letting their animals loose on the property", and, the "No Trespassing signs have been torn down by drunken beachgoers." The Commission denied the fence permit, substantially for the same reasons that the earlier residential development had been denied, most significantly the presence of historic public use.

By 1994, however, no new evidence on prescriptive rights had been forthcoming. In the absence of additional, more conclusive proof of such public rights, the Commission determined it was no longer in a position to further deny the Sewald and Boyden applications for residences.

As it affects the applicant's parcel, aerial photo analysis shows extensive areas of bare sand and probable pedestrian trails on the site for the years sampled (1977, 1986, 1993). However, the fact that dune vegetation was documented over parts of the lot in the spring of 1995 is evidence that (at least currently) such public use is not intensive. Instead, it appears that pedestrian use has concentrated on the adjacent Spray Ave. "paper street."

Therefore, while the Commission notes that testimony related to past projects in the Del Monte Dunes Tract No. 2 indicates there has been general public recreational use in this area over the last 40 years, including possible use of the applicant's site, there is still not sufficient evidence to more conclusively support a finding that the area is subject to prescriptive rights. Although additional evidence of public use of the area, including petitions and photographs, was given at the Commission's October 1996 hearing relevant to the permit for construction of the adjacent residence at 23 Spray Avenue, this information was insufficient to establish prescriptive rights. Further, no entity or individual has stepped forward to litigate this matter. Thus, the Commission is not in a position to find that there is sufficient evidence in this case to justify a denial of the applicant's proposal based on the conclusion that the parcel is subject to prescriptive rights. Moreover,

there also is insufficient evidence of prescriptive rights to avoid a claim of a taking if the Commission determined that it should deny all use of the property.

Conclusion

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

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

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

6. SCENIC RESOURCES

Section 30251 of the Coastal Act states:

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

East of the parcel is Del Monte Beach Tract #1, almost fully developed with one and two story residences on small, 3600 sq. ft. parcels. South of the project site at the crest of the dune are several other comparable houses. See Exhibit 5 for development pattern.

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

The parcel is 3,600 sq. ft. in area. The structure proposed is a two-story, three bedroom, two bath residence. A two car garage is accessed from Spray Avenue. As approved by the City, the house will be a maximum height of 23 feet.

The building's proposed design, scale, and siting on the parcel are consistent with the residential development in the almost fully built out Del Monte Beach Tract #1 to the east. The building would also be consistent with the existing residence in Tract # 2, including the house approved at 23 Spray Ave., and the two-story house to the west of 23 Spray Ave.. Therefore, the residence design is approved as submitted. However, because the City's conditions No. 4, 5, 8 and 14 (Exhibit 2, attached) may result in architectural modifications to the structure, this permit is conditioned to require submittal of final residential plans. Such review is a prudent safeguard, in order to assure that the project in its final form will minimize the impact to views to and along the ocean, minimize alteration of the natural dune form and provide for compatibility with the character of the area.

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

7. GEOLOGIC HAZARDS

Section 30253 of the Coastal Act states:

New development shall:

- (1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.
- (2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.

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

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

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

8. PUBLIC SERVICES

Section 30250 of the Coastal Act states in part:

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

Section 30254 provides in part:.

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

The subject parcel is located on an unimproved portion of Spray Avenue, a vacant street right-of-way without utilities. However, it is directly adjacent to a lot on which the Commission approved the construction of a

single family residence, and associated street extension, in October, 1996 (CDP No. 3-96-34, Archer). This project, as conditioned, would allow an additional 40 feet of the street extension approved by 3-96-34 to be developed. The Del Monte Beach vehicular access for both subdivisions and for public beach use is impeded by a single entrance off Del Monte Avenue and a narrow loop road system. However, the development of this residence by itself will have an insignificant impact on traffic volume. As discussed in the preceding findings this development site can be distinguished from the other interior Tract #2 dune parcels because of the close proximity of existing street access and utilities, as well as the fact that it is directly adjacent to a lot on which the construction of a single family residence and associated street improvements have been approved by the Commission.

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

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

9. LOCAL COASTAL PROGRAM

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

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

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

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

In this case, the Commission has found that it is not authorized to deny residential development of the applicant's parcel because this would lead to a taking of property in violation of Coastal Act Section 30010. The Commission also has conditioned the approval of this development, however, to preserve one-half of the lot as scenic open space to mitigate impacts on scenic resources and dune habitat. Likewise, permit conditions require that only a minimal portion of the street extension be built at this time, pending resolution of alternative scenarios including completion of the LCP planning process. These conditions will minimize site and street coverage, providing a better opportunity for the City to plan for dune restoration and scenic view preservation in the area of Del Monte Beach Tract #2. The Commission therefore finds that approval of this project will not prejudice the ability of the City to prepare a Local Coastal Program in conformance with the policies of Chapter 3 of the Coastal Act. The project as conditioned is therefore consistent with the requirements of Coastal Act Section 30604(a).

10. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

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

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

EXHIBITS

1. Standard Conditions
2. City's Conditions of Approval
3. Botanical Survey by Zander Associates, July 17, 1995
4. Location Map
5. Del Monte Beach LUP Map
6. Site Plan
7. Elevations
8. Road Improvement Plans
9. Del Monte Beach Planning Efforts
10. Map Showing Tract 2 Parcels in Public Ownership

0470M

CALIFORNIA COASTAL COMMISSION

STANDARD CONDITIONS:

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

EXHIBIT NO. 1
APPLICATION NO. 3-96-112
Standard
Conditions

May 7, 1996

Mr. Archer said he will do a combination of grading and landscaping on the north elevation. Staff explained the choices.

On motion by Albert, seconded by Canepa and carried by the following Roll Call vote the redesign was approved as submitted, with findings that the house architecture, floor levels, setbacks, roof height and garage level below the street conforms with Del Monte Beach Shared View guidelines and that the building style, bulk and mass are compatible with other homes in the neighborhood and with amended conditions of approval.

AYES: 3 COUNCILMEMBERS: CANEPA, EDGREN, ALBERT

NOES: 2 COUNCILMEMBERS: POTTER, VREELAND

ABSENT: 0 COUNCILMEMBERS: NONE

Conditions of Approval:

1. The project shall be required to conform to the recommended grading specifications prepared by Myron Jacobs in a geotechnical report dated 6/1/92 in evaluating structural development on Assessor's Parcel Number 011-455-08 (10 Beach Way).
2. A sand stabilization program during construction and permanent landscaping and stabilization program approved by the Architectural Review Committee (ARC) shall be required.
3. The applicant shall do the following as recommended in the Botanical Survey prepared by Zander and Associates on 7/17/95.

a. Pre-Construction Period.

- 1) Prepare a Vegetation Restoration and Maintenance Plan that defines procedures and standards for restoration, maintenance and monitoring of the undeveloped portions of the property.
- 2) A qualified biologist should be retained by the owner to serve as the Environmental Monitor during construction and restoration of the landscape.
- 3) Temporary fencing should be installed to protect the Monterey Spineflower and the dunes outside the project site. The Environmental Monitor will confer with the General Contractor and identify the nature and location of the fence. The fence will be maintained in good condition and remain in place until all construction on the site is completed. Removal or changing the location of the fence will require the approval of the Environmental Monitor. The area protected by the fence will be maintained in a trash-free condition and not used for material stockpiling, storage or disposal, or vehicle parking. All construction personnel shall be prohibited from entering the fenced area. It shall be the property owner's responsibility to uphold this requirement.

b. Construction Period.

- 1) All activities associated with construction, trenching, storage of materials, and disposal of construction wastes and excavated soil should not impact areas protected by fencing.

13
5/7/96

EXHIBIT NO. 2
APPLICATION NO. 3-96-112
Local Conditions of Approval

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

c. Post-construction Period

- 1) Remove the temporary fence.
- 2) Retain a qualified biologist to monitor the landscape restoration project on an annual basis for at least five years and provide an annual status report to the lead permitting agency.
- 3) Any exotic plants that are used for ornamental purposes within the building envelope should not include species which are capable of naturalizing or spreading into the adjacent dunes. In particular, the following invasive species will not be used: acacias, (Acacia ssp.) genista (Cystisus ssp.), pampas grass (Cortaderia ssp.) and ice plant (Carpobrotus ssp., Mesembryanthemum ssp., and Drosanthemum ssp.). Plants requiring frequent irrigation must be confined to special landscape features or planters near to the house.
- 4) Maintain the native and restored landscape in the manner prescribed by the restoration plan.
- 5) Perform or provide funding for restoration of dune areas off-site to compensate for the loss of sensitive species habitat.
- 6) If the property should change ownership, future owners of the property should have the same obligation for preserving, maintaining and perpetuating the native landscape on the site as provided in the restoration plan. To ensure that this objective is achieved over the long term, the property owner will record an agreement as a deed restriction that all the provisions for restoring and maintaining the native landscape on the site will run with and burden title to the property in perpetuity and will bind the property owner and their successors.

4. Building architecture, modulation and setbacks shall be consistent with the plans dated 4/3/96, as modified by Condition No. 14.

5. The garage floor elevation shall be 45.42' as shown on the plan dated 4/3/96 to provide a finished floor height that is 4.80' below the southwest corner property elevation. The ground floor elevation and upper floor elevation and roof ridge elevations shall be as shown on the 4/3/96 plan, as modified by Condition No. 14.
6. A detailed landscape and dune restoration plan shall be prepared and submitted for ARC review and approval prior to completion of the project and issuance of final occupancy.
7. The roof pitch shall be 4 in 12, as shown on the 4/3/96 plan.
8. Preliminary architectural and detailed grading plans shall be prepared and submitted for ARC review and approval.
9. All street improvements shall comply with the requirements of the Public Works Department.
10. The applicant shall be required to enter into a developer's agreement (which provides for financial security to build the same should the project be abandoned) for the road improvements or build the road improvements prior to construction of the house.
11. Prior to submittal of plans for a building permit, an accurate survey of the lot and street right-of-way shall be prepared by a licensed surveyor or registered civil engineer.
12. This project is subject to the categorical water allocation program approved by the City Council. The applicant will proceed at their own risk that water may not be available at the time they request building permits. No building permits will be issued if water is not available to this project.
13. This permit shall become null and void if not exercised or extended within twenty-four (24) months of the date of granting by the Planning Commission. It is the applicant's responsibility to track the 24 month expiration date and request permit approval extensions prior to the permit expiration date. No renewal notice will be sent to the applicant.
14. The visual impact of the understory shall be reduced by a) flipping the plan, grading the lot or moving the house back on the lot to lower the overall height.

Mayor Albert recessed the meeting at 10:06 p.m. and again called the meeting to order at 10:10 p.m.

(OTHER BUSINESS ADDED TO AGENDA)

REFERRED TO NIP
TO CONSIDER PROVIDING
ADDITIONAL FUND FOR
COMPLETION OF SAN
CARLOS BEACH PARK

1. Referral to Neighborhood Improvement Program Committee to consider applying deappropriated funds, plus other funds to fund final phase of San Carlos Beach Park

Staff reiterated Councilmember Vreeland's suggestion of a referral to the Neighborhood Improvement Program Committee (NIP) to consider funding the completion of San Carlos Beach Park.

ZANDER ASSOCIATES

Environmental Consultants

July 17, 1995

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

Botanical Survey

21 18 Spray Avenue, Monterey
APN 011-461-31

EXHIBIT NO. 3
APPLICATION NO. 3-96-112
Botanical Report

Dear Dan:

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

A. Project Location

The project site consists of a 40 x 90 foot vacant lot (APN 011-461-31) near the intersection of Spray Avenue and Beach Way located within Del Monte Beach Tract #2, an 85 parcel subdivision of approximately 7 acres. Figure 1 attached to this report identifies the project location on a regional site map. Residential development has occurred on approximately 25% of the lots in the subdivision. Del Monte Beach Tract #2 is adjacent to Del Monte Beach Tract #1, which lies immediately to the east, encompasses approximately 25 acres and is almost fully developed with several hundred houses and condominiums. To the west of the Del Monte Beach Tract #2 are the Monterey Water Pollution Control District wastewater treatment facilities. The project site is located approximately 500-ft south of the City Beach and is adjacent to existing residences to the east and south, and vacant parcels to the west and north.

B. Site Conditions

The project site includes ²¹18 Spray Avenue and the land required to extend Spray Avenue for access to the lot. The site is located in an area of coastal dunes that have been degraded as a result of human activity. Adjacent residential development and public recreation uses have affected both the landforms and vegetation patterns in the area. The extension area of Spray Avenue leading to the lot is most heavily disturbed at its intersection with Beach Way. The area has been graded and otherwise recontoured to accommodate the adjacent residences and road and is dominated by non-native ruderal (weedy) vegetation. South of the road alignment, the dune form rises to a ridge and large areas of bare sand are typical between this ridge and the lower

elevations of the dunes northerly of the project area. The lot area is gradually sloping towards the southeast corner and ranges in elevation from 36 feet to 50 feet above sea level.

C. Plant Communities

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

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

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

The lot area of ²¹ Spray Avenue contains a mixture of non-native plants such as iceplant (*Carpobrotus edulis*), ripgut brome, and sow thistle interspersed with common native dune species including beach bur (*Ambrosia chamissonis*), beach evening primrose (*Camissonia cheiranthifolia*) and pink sand verbena (*Abronia umbellata*). In places, the iceplant forms large mats that preclude successful establishment of native dune vegetation.

D. Sensitive Species

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

Botanical surveys were conducted on the project site on May 4, May 26 and June 9, 1995 to look for the sensitive plant species mentioned previously and to look for dune buckwheat and coast buckwheat (*Eriogonum parvifolium* and *E. latifolium*, respectively) which are not sensitive

Exhibit 3, p. 2
3-96-112

species themselves but are host plants for the federally-endangered Smith's blue butterfly (*Euphilotes enoptes smithi*). The May 26, 1995 survey was conducted concurrent with a visit to the nearby Navy Dunes which supports a known population of sand gilia to confirm that the species was still blooming and identifiable at the time of this survey.

The entire project site was visually inspected and all plants observed were recorded and identified to species. A complete plant list is provided as an attachment to this report. No sand gilia, coast wallflower, Monterey paintbrush or buckwheat were found on the project site. A few scattered individuals of Monterey spineflower were observed on the northern portion of Lot 18 (see attached map).

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

E. Assessment of Potential Effects and Recommended Mitigation Measures

Based on the site plan you have prepared, dated June 15, 1995, the proposed development will result in a total lot coverage of less than 50%, including house, garage, driveway, and walkway. The proposed residence is to be situated toward the south portion of the property, thereby maximizing the amount of open space on the north side, which is contiguous with the adjacent undeveloped dunes.

It appears that the proposed project will avoid the few individuals of Monterey spineflower that were identified in the northern portion of the lot. However, if some of the Monterey spineflower on the site are lost during construction it would not be difficult to mitigate this loss onsite since the species is an aggressive colonizer given the appropriate substrates and other conditions.

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

Exhibit 3, p. 3
3-96-112

immediately into containers with moist paper towels and released in the undisturbed portion of the site in similar habitat and at the same depth in the soil as captured.

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

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

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

1. Pre-construction Period

- a. Prepare a Vegetation Restoration and Maintenance Plan that defines procedures and standards for restoration, maintenance and monitoring of the undeveloped portions of the property.
- b. A qualified biologist should be retained by the owner to serve as the Environmental Monitor during construction and restoration of the landscape.

Exhibit 3, p. 4
3-96-112

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

2. Construction Period

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

3. Post-construction Period

- a. Remove the temporary fence.
- b. Retain a qualified biologist to monitor the landscape restoration project on an annual basis for at least five years and provide an annual status report to the lead permitting agency.

Exhibit 3, p.5

3-96-112

- c. Any exotic plants that are used for ornamental purposes within the building envelope, should not include species which are capable of naturalizing or spreading into the adjacent dunes. In particular, the following invasive species will not be used: acacias (*Acacia* spp.), genista (*Cytisus* spp.), pampas grass (*Cortaderia* spp.) and ice plant (*Carpobrotus* spp., *Mesembryanthemum* spp., and *Drosanthemum* spp.). Plants requiring frequent irrigation must be confined to special landscape features or planters near to the house.
- d. Maintain the native and restored landscape in the manner prescribed by the restoration plan.
- e. Perform or provide funding for restoration of dune areas off-site to compensate for the loss of sensitive species habitat.
- f. If the property should change ownership, future owners of the property should have the same obligation for preserving, maintaining and perpetuating the native landscape on the site as provided in the restoration plan. To ensure that this objective is achieved over the long term, the property owner will record an agreement as a deed restriction that all the provisions for restoring and maintaining the native landscape on the site will run with and burden title to the property in perpetuity and will bind the property owner and their successors.

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

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

Sincerely,



Michael J. Zander
Principal

Attachments

Exhibit 3, p. 6
3-96-112

Plant List
18 Spray Avenue

Plant species observed on lot 18 and the extension area of Spray Avenue during surveys conducted on 5/4/95, 5/26/95, and 6/9/95

<u>Scientific Name</u>	<u>Common Name</u>
<i>Abronia latifolia</i>	Yellow sand verbena
<i>Abronia umbellata</i>	Pink sand verbena
<i>Amorpha canescens</i>	Beach bur
<i>Artemisia pycnantha</i>	Beach sage
<i>Avena barbata</i>	Slender oat
<i>Bromus diandrus</i>	Ripgut brome
<i>Cakile maritima</i>	Sea rocket
<i>Calystegia soldanella</i>	Beach morning glory
<i>Camissonia cheiranthifolia</i>	Beach evening primrose
<i>Carpobrotus edulis</i>	Hottentot fig
<i>Chorizanthe pungens</i>	Monterey spineflower
<i>Cupressus macrocarpa</i>	Monterey cypress
<i>Dioscorea alata</i>	Jack-in-the-pulpit
<i>Ericameria ericoides</i>	Mock heather
<i>Erodium sp.</i>	Crane's bill
<i>Hordeum murinum leporinum</i>	Hare barley
<i>Medicago sp.</i>	Bur colver
<i>Phacelia ramosissima</i> var. <i>montereyensis</i>	Branching phacelia
<i>Raphanus sativus</i>	Wild radish
<i>Sonchus oleraceus</i>	Sow thistle

Exhibit 3, p. 8
3-96-112

Monterey

Bay

CITY BEACH

DEL MONTE BEACH TRACT #2

* 21 Spray
Archer
+
Nichols
(this application)

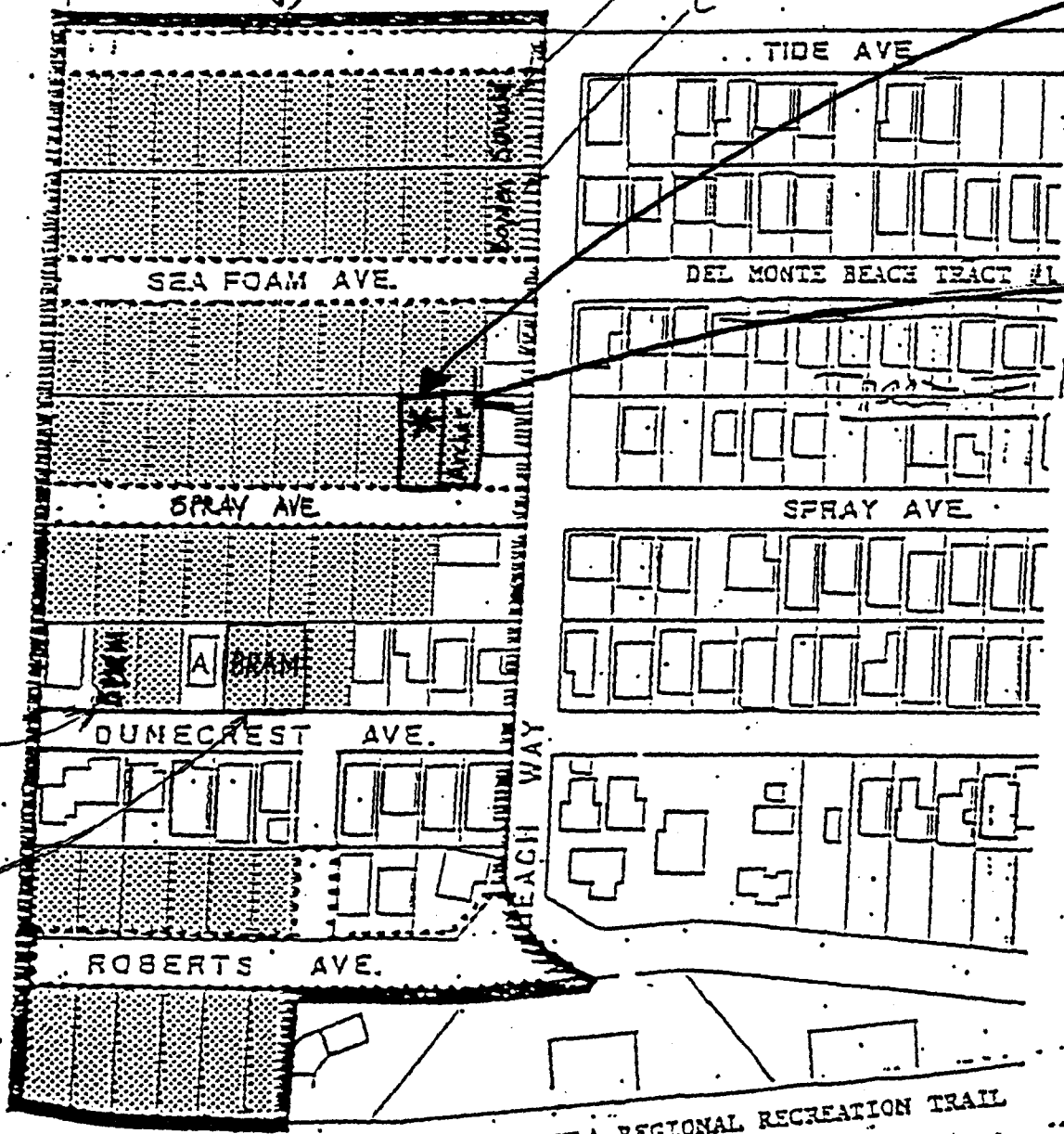
Archer

23 Spray
(approved
Oct., 1996)

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

HAVAL POST GRADUATE SCHOOL

D (vacant)
(permit
expired)
E (vacant)



MONTEREY PENINSULA REGIONAL RECREATION TRAIL

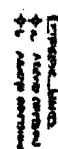
Undeveloped Residential Lots

Undeveloped Streets

CALIFORNIA COASTAL COMMISSION

EXHIBIT 5 3-96-112

DMG LWF



Site Plan

Upper Floor

View

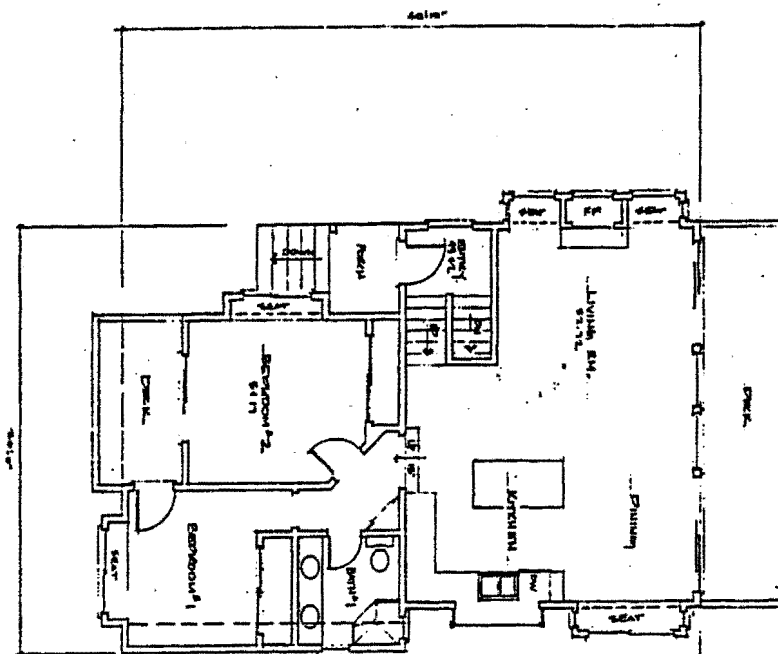


Exhibit A.B.D.
Upper Floor
View
TOTAL
481.41

Ground Floor

View

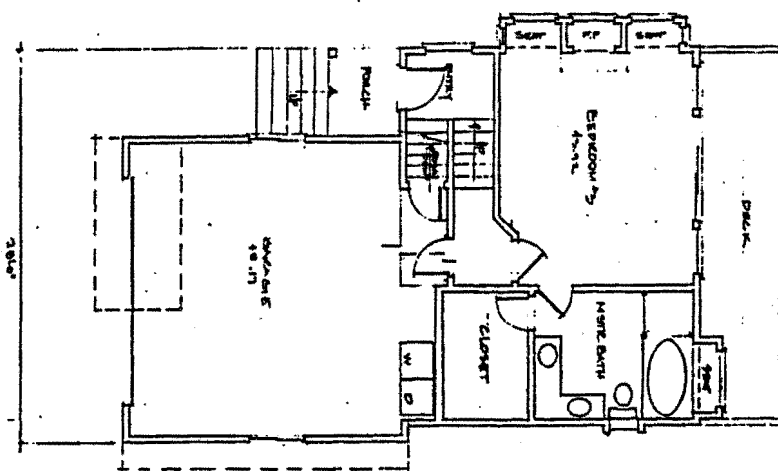
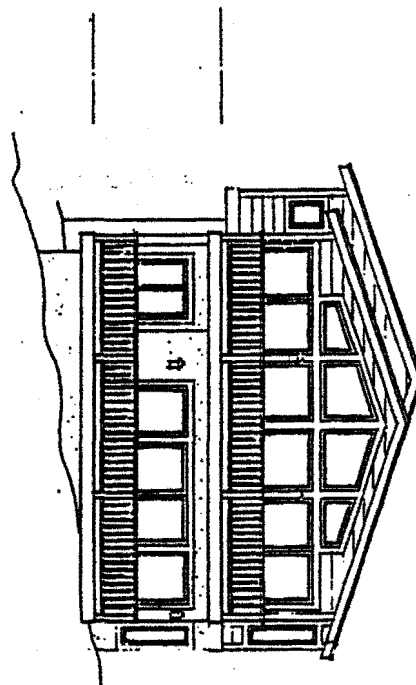
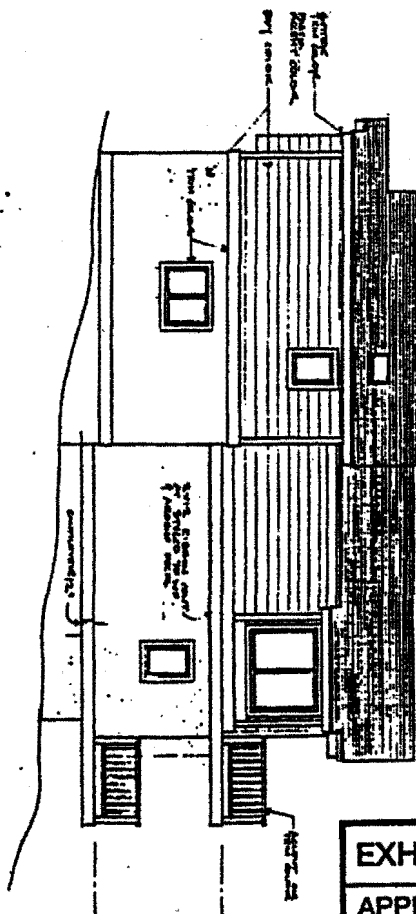


Exhibit A.B.D.
Ground Floor
View
TOTAL
481.41

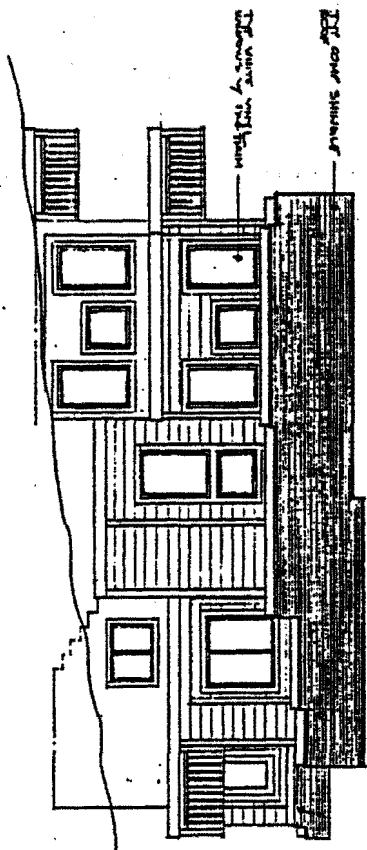
Exhibit 6, p.2
3-96-112



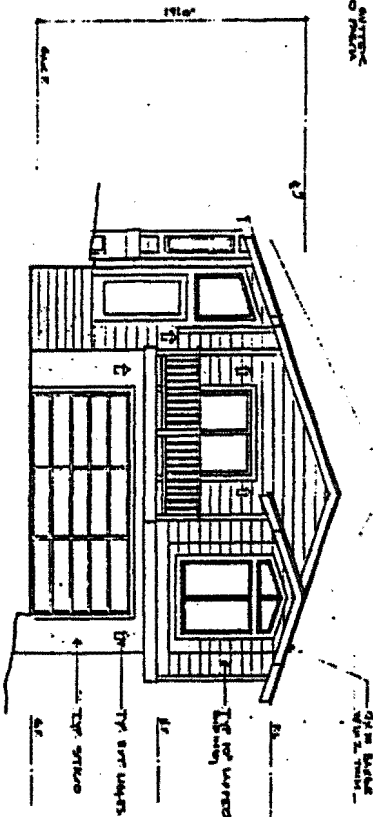
NORTH ELEVATION



EAST ELEVATION



WEST ELEVATION



SOUTH ELEVATION

EXHIBIT NO. 7

APPLICATION NO.
3-96-112

Elevations

PROPOSED RESIDENCE FOR:
DAN ARCHER
21 SPRAY AVENUE, MONTEREY
LOT 18, BLOCK J, MAP 2, DEL MONTE BEACH
APN: 011-481-000

WALSH DESIGN & CONSULTING
draftsman
2150 GARDEN RD., SUITE 100 / MONTEREY, CA 93940
TEL: 669-4000 FAX: 669-4000



COPYRIGHT
1996

[illegible][illegible]

Product Details

Manufacturer: [Redacted]

Model Number: [Redacted]

Serial Number: [Redacted]

Part Number: [Redacted]

Accessories: [Redacted]

Warranty: [Redacted]

Notes: [Redacted]

Signature: [Redacted]

Date: [Redacted]

Page 2 of 2

DECLASSIFIED BY: 6032



COMMISSION MTG 10/3/96

AGENDA ITEM 1.1

CITY OF MONTEREY

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

FOR INFORMATION ONLY

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

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

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



Bill Fell

BF/pk

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

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

EXHIBIT NO. 9
APPLICATION NO. 3-96-112
Del Monte Beach Planning Efforts

ATTACHMENT 1

Del Monte Beach Planning Study

Neighborhood Workshop #2 Agenda







- A. Introduction**
 - Introduce City Staff/Consultants
 - Purpose of Meeting
 - Review planning process to date
 - Overview of tasks to be accomplished
- B. Alternatives Design Process Overview**
 - Goals Considered in Designing Alternative Development Scenarios
 - Balancing Competing Objectives
- C. Status Quo - Basis for Comparison**
- D. Alternative 1 - Modified Development Standards**
- E. Alternative 2 - Large-Lot Development**
- F. Alternative 3 - PUD Project**
 - Design A
 - Design B
- G. Alternative 4 - Transfer of Development Credits**
- H. Next Steps**
 - Testing and Refinement of Development Alternatives (Biotic. Visual. Financial)
 - Preparation of Draft Planning Study
 - Planning Commission/Architectural Review Committee Meeting
- I. Adjourn**

Exhibit 9, p.2
3-96-112

(5)

ATTACHMENT 2

LEGEND

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

WATER LINE

Del Monte Beach
Planning Study
City of Monterey

Parcel Ownership

Scale 1" = 200' - 0"



30

10

20

NAVY
PROPERTY

TIDE AVE.

BEACH WAY

SEA FOAM AVE.

SPRAY AVE.

DUNECREST AVE.

DUNECREST
LANE

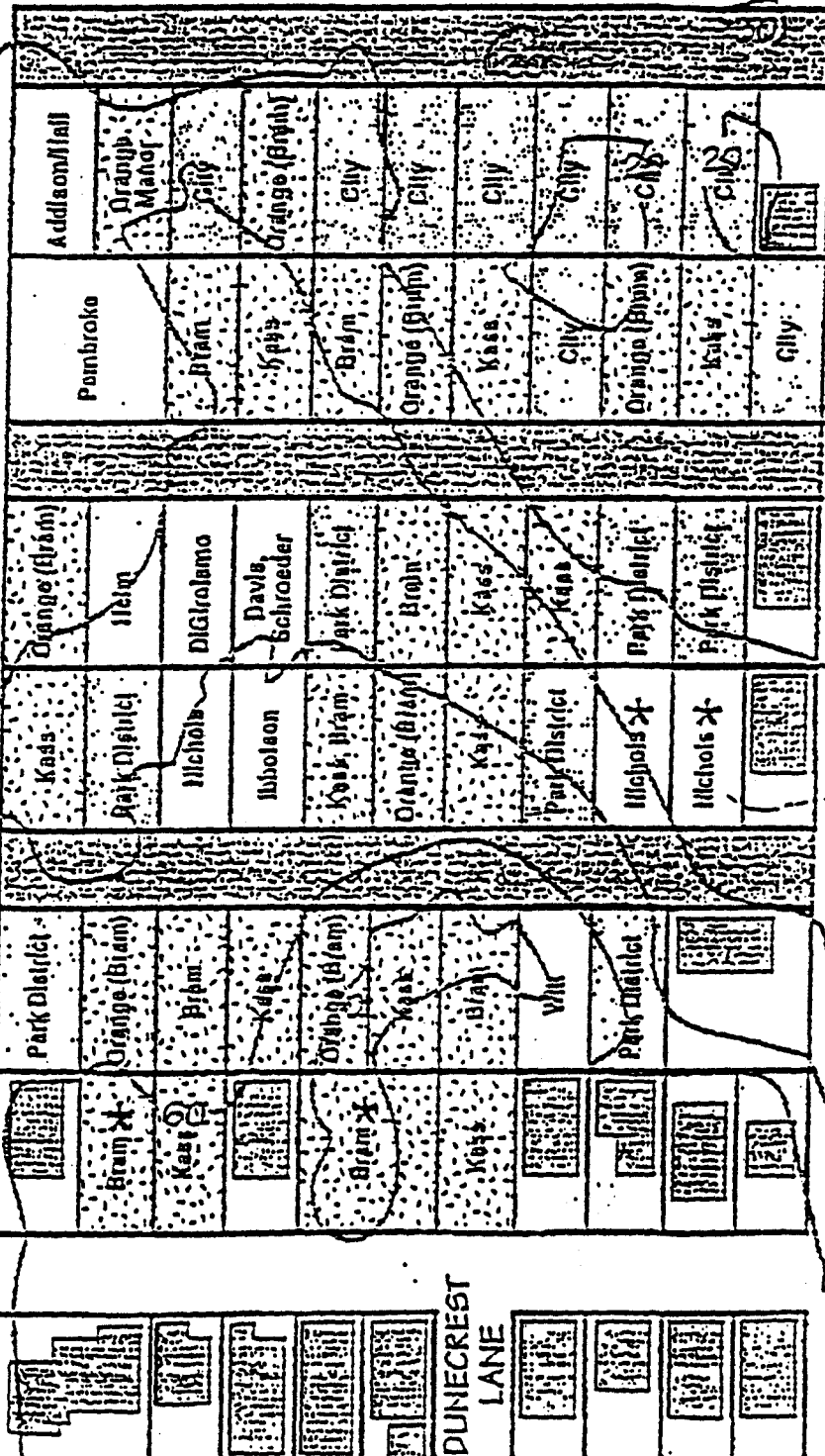
20

30

40

50

60



10-07-1995

2

2

ATTACHMENT 3

Del Monte Beach Planning Study

Major goals considered in designing alternative development scenarios:

Biotic Resources

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

Visual Resources

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

Public Access

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

Circulation/Infrastructure/Public Facilities

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

Topography

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

Financial Concerns

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

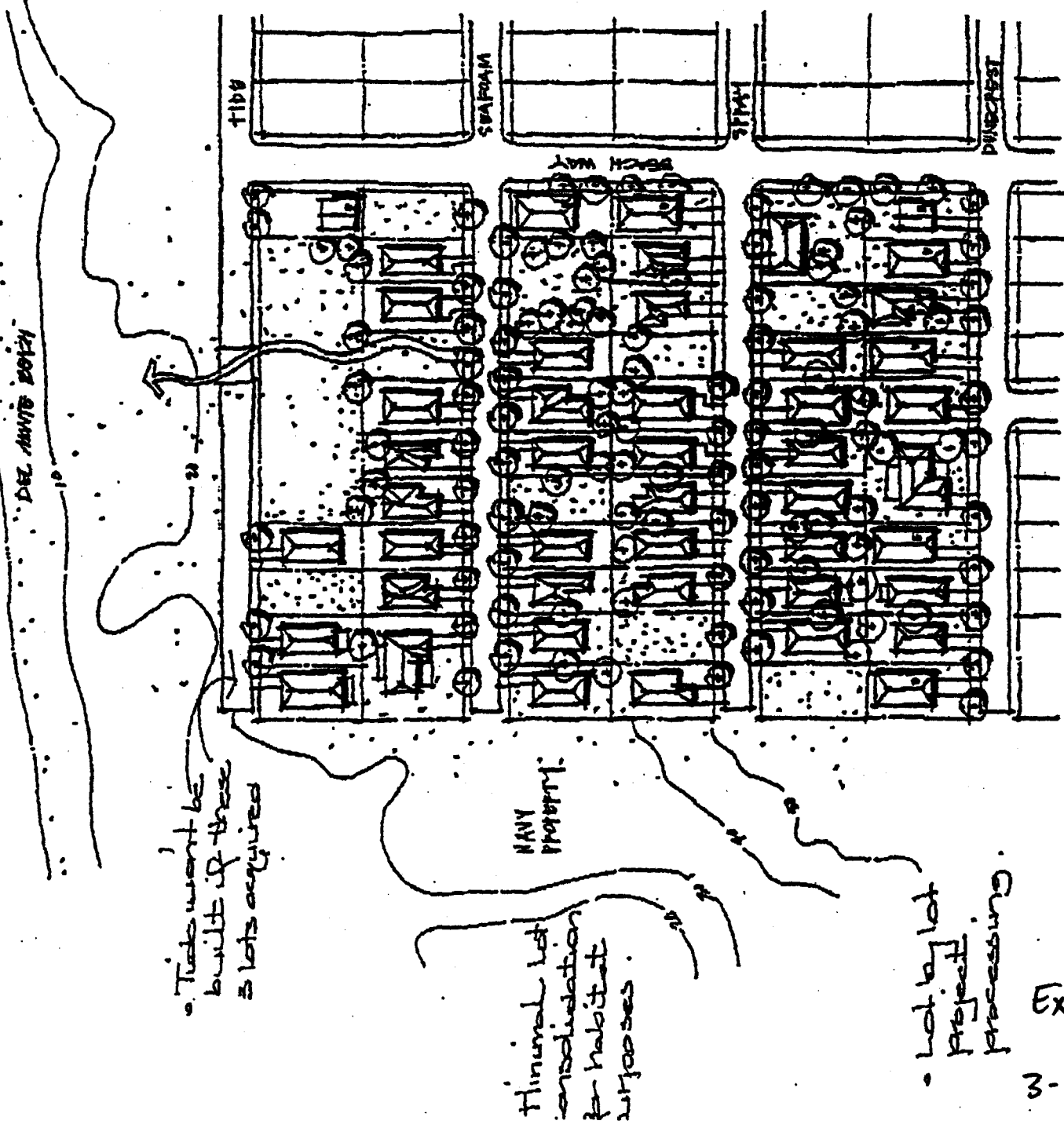
Exhibit 9, p.4
3-96-112

4

- Maximum road development
- Houses similar to 21 & 23 Spring
- Current zoning & Coastal Commission requirements



DEC. 1997 2071 PLANNING STUDY
15.000' 11/16



Tide won't be built if these 3 lots acquired

Minimal lot consolidation for habitat purposes

Not by lot project processing

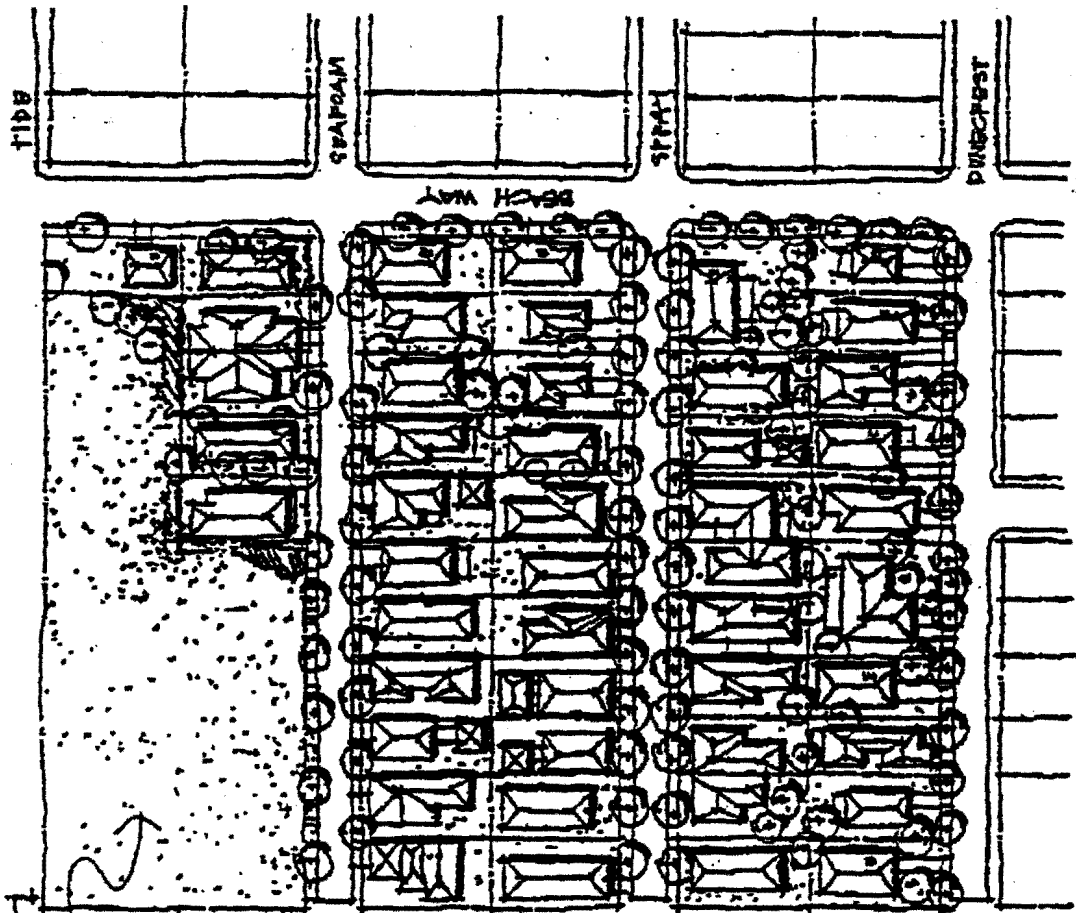
STATUS QUO - SUBDIVISION BUILDOUT SCENARIO

Exhibit
p. 5
3-96-112

DEL ANTE RICH PLANNING STUDY

- City of Park District
lots consolidated
here to provide
contiguous habitat

- Eliminates
20% on site
open space
requirement.

HAY
PROPERTY

- Houses come
FAR as Status
Plus Alternative

- All new
houses one
story.

- Lots terraced
to provide
views.

- City can impose
this Alternative.

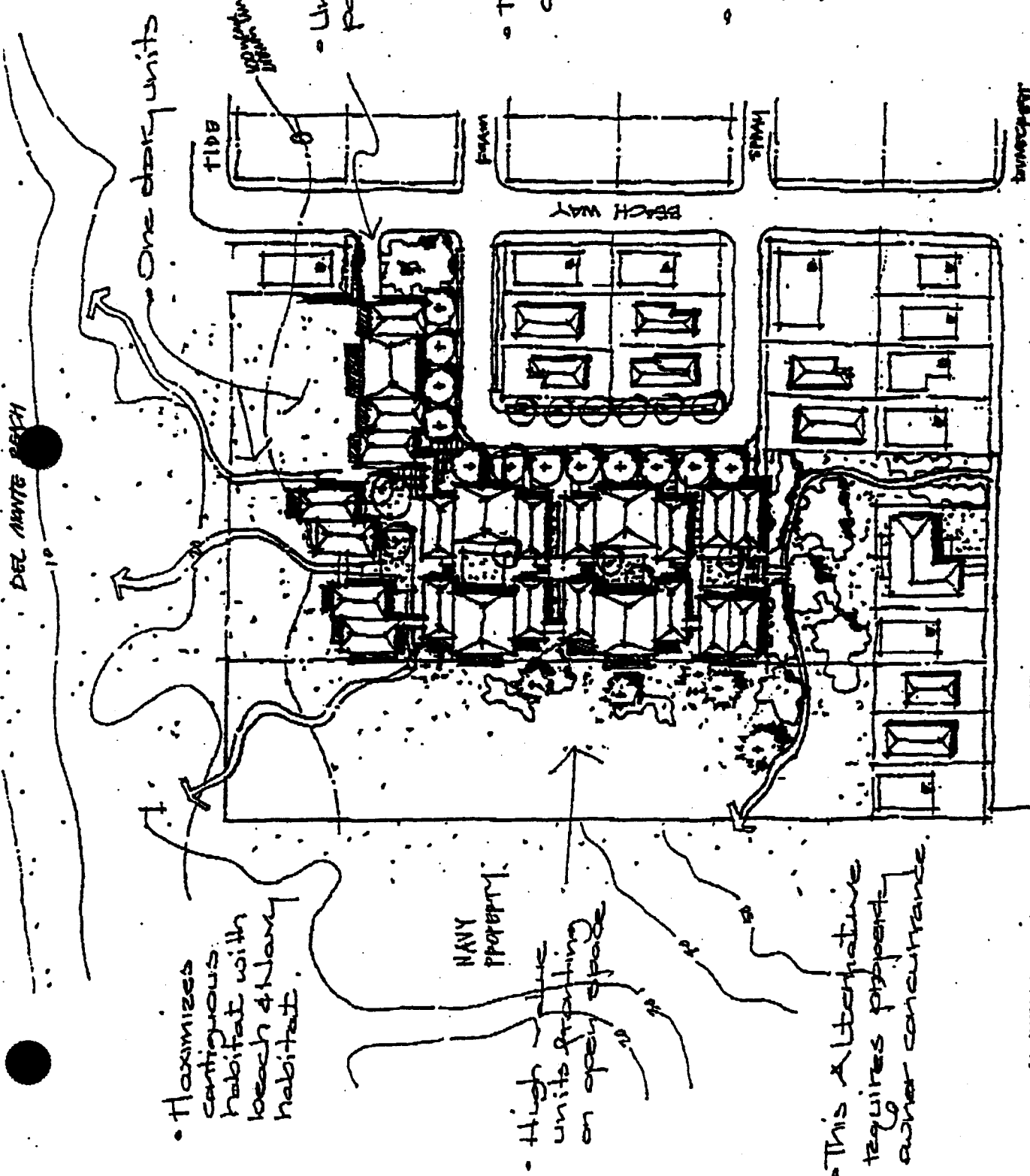
Exhibit 9,
p. 6
3-96-112



DEL ANTE RICH PLANNING STUDY

ALTERNATIVE 1 - MODIFIED DEVELOPMENT STANDARDS

(16)



DEL ANTE BEACH

One story units

Maximizes contiguous habitat with beach & Navy habitat.

NAVY PROPERTY

High rise units fronting on open space

BEACH WAY

110B

110M

110N

110P

Underground parking entrance

Minimizes road development.

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



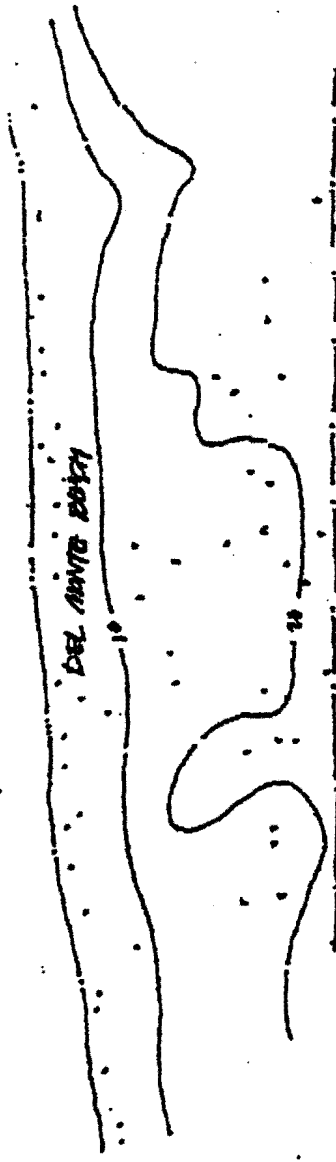
ALTERNATIVE PLAN

ALTERNATIVE 3A - PLANNED UNIT DEVELOPMENT

EDM, INC.

DEL ANTE BEACH PLANNING STUDY

11-01-01 01-11-01



DEL ANTE BEACH

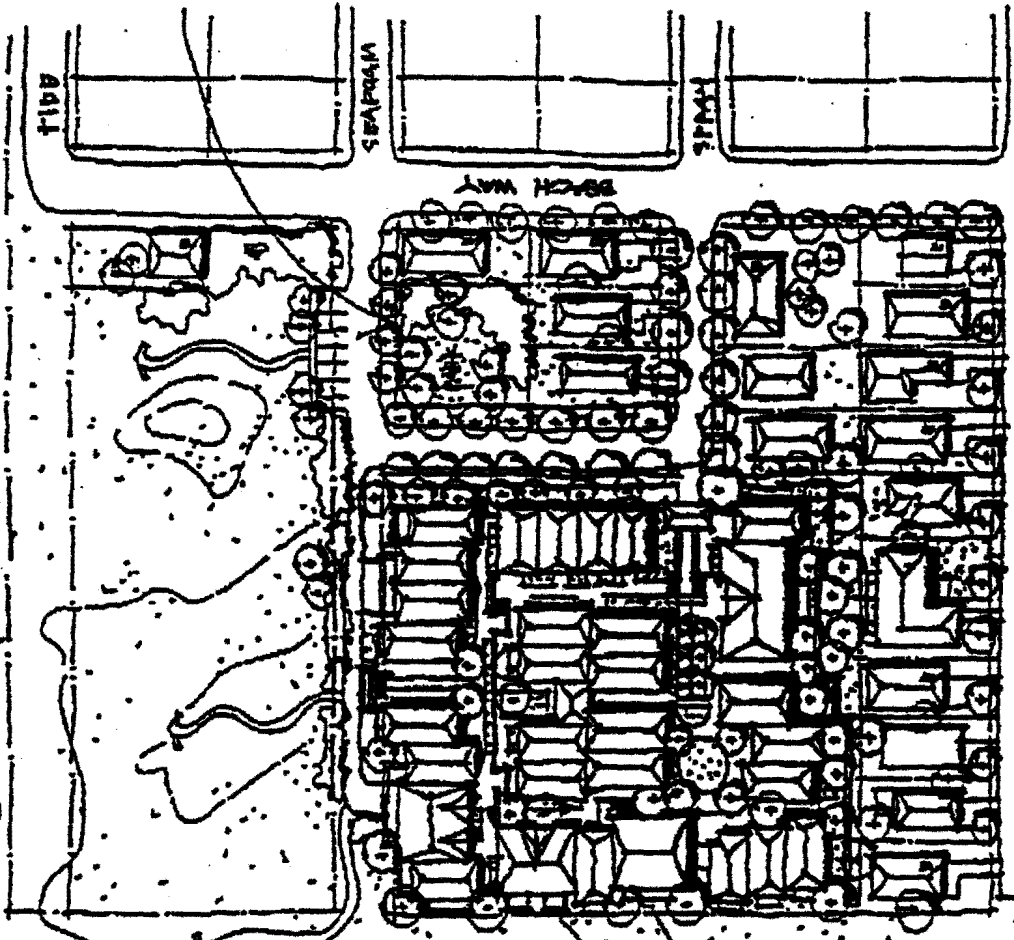
• Maximizes beach habitat.

• Neighborhoods but provides

• Two entrances to underground parking.

• View protection hinges on topography and roof angles

• Could range from 50-150 units depending on unit sizes.



• Could provide connection to new emergency access

NANY PROPERTY

This Alternative requires property owner concurrence



DEL ANTE BEACH PLANNING STUDY 7-5-90 - update

ALTERNATIVE 3B - PLANNED UNIT DEVELOPMENT ILLUSTRATIVE PLAN

Sheet No.

DATE: Oct. 30, 1995

Community Development
Department

DEL MONTE BEACH ACQUISITIONS

North

CITY COUNCIL PRIORITY
ACQUISITION AREA



Lots Acquired by City as of
November, 1994

A.	\$ 48,000
B.	\$ 53,000
C.	\$ 53,000
D.	\$ 53,000
E.	\$ 53,000
F.	\$ 53,000
G.	\$ 48,000
H.	\$ 37,000
I.	\$197,500
	\$590,500 *(9 Lots)

*Does not include broker fees, closing
costs, and administrative costs.

REMAINING FUNDS: \$310,000 ±



Lots Acquired by Park District
as of October 30, 1995

1.	\$53,000*
2.	\$38,000
3.	\$33,000
4.	\$33,000
5.	\$33,000
6.	\$38,000
7.	\$35,000
	\$263,000 (7 Lots)

* Park District also paid \$20,000
under separate contract to reimburse
seller for predevelopment costs.



= Vacant Lot



= Developed Lot



= Undeveloped
Street

Projects In Process *

- I. Bram (4 Dunecrest)
- II. Bram/Orange
- III. Nichols (Archer)

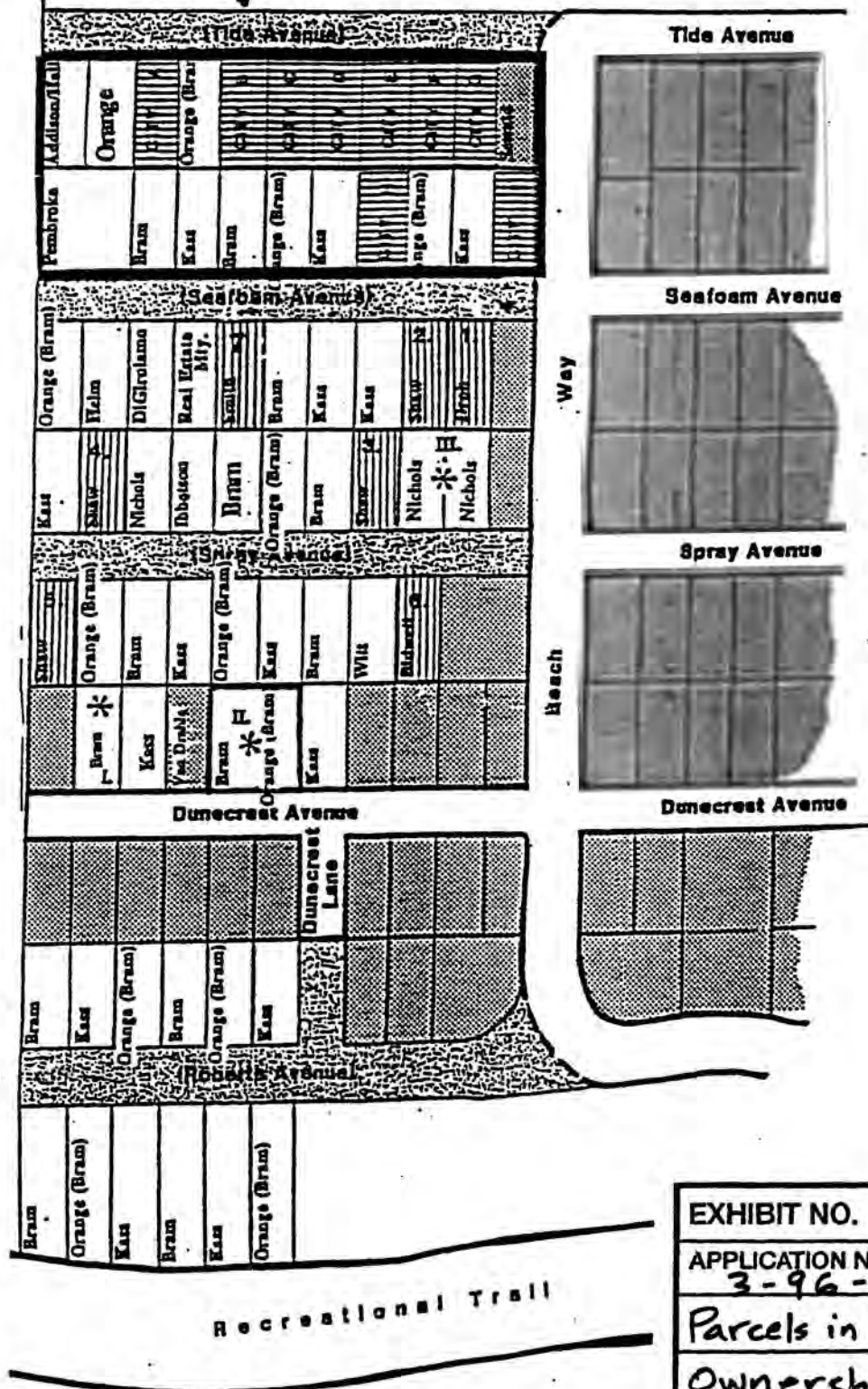


EXHIBIT NO. 10

APPLICATION NO.
3-96-112

Parcels in Public
Ownership

