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STATE OF CALIFORNIA—THE RESOURCES AGENCY

PETE WILSON, Governor

CALIFORNIA COASTAL COMMISSION

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

Filed: 01/10/97
49th Day: 02/28/97
180th Day: 07/09/97
Staff: SM-SC
Staff Report: 01/15/97 1833P
Hearing Date: 02/04-07/97
Commission Action:



TH206

STAFF REPORT: REGULAR CALENDAR

APPLICATION NO.: 3-96-117

APPLICANTS: DONALD P. GAMBLE, JR. AND MARILYN S. GAMBLE

AGENT: Pedro Rosado

PROJECT LOCATION: 4 Dunecrest Avenue, Del Monte Beach Tract #2, City of Monterey, APN 011-464-020

PROJECT DESCRIPTION: Construct two-story single-family dwelling on a vacant 40 x 90 ft. lot.

Lot area:	3,600 sq. ft.
Building coverage:	1,047 sq. ft.
Pavement coverage:	825 sq. ft.
Zoning:	R-1-6-D-1
Project density:	12 units/acre
Ht abv fin grade:	25 feet

SUBSTANTIVE FILE DOCUMENTS: Coastal Development Permit files 3-96-112 Archer; 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; Draft EIR, Jan. 1992; Final EIR, April 1992; Botanical Survey Report, as revised with maps, Thomas Moss, 8/19/93; Letter from Reynolds Associates, 12/16/96; and Geotechnical Investigation, M. Jacobs and Associates, 9/11/91.

SUMMARY OF STAFF RECOMMENDATION: The key issue involved in this application is the development of a single family residence in a dune area which is considered environmentally sensitive habitat. In addressing Coastal Act requirements for the protection of such areas, avoiding a taking of private property must also be considered.

The subject project represents the same project that was approved on this same site by the Commission in 1993 (Coastal Development Permit 3-93-28), with the addition of a basement. The original permit expired on June 8, 1996, approximately one month after the property was sold to the current applicants. The new owners of the property, Mr. and Mrs. Gamble, seek to renew the previous approval with this application, and construct the residence.

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MR & MRS. GAMBLE

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Staff is recommending approval of the proposed residence, with the same conditions that were applied to this permit by the Commission in 1993. However, the previous property owner recorded the two deed restrictions previously required (Notice of Potential Adjacent Public Works and Recreational Development, and a Conservation Easement over 50% of the property), making these previous conditions of approval unnecessary to apply to the current application.

The remaining conditions which were attached to the Commission's previous approval of this project and have not yet been complied with include the requirements for: revised plans reducing the total site coverage (to no more than one-half of the lot); submission of a restoration plan covering the undeveloped portions of the lot; and, contribution to the City of Monterey dune restoration fund as mitigation for the habitat loss attributable to project construction. These requirements are recommended to be maintained in this permit, with minor wording changes which provide consistency with conditions recently placed on similar projects in the area by the Commission. In addition, the condition acknowledging that this permit, and construction of the permitted development, shall not interfere with any prescriptive or public trust rights that may exist on the property, is recommended to be retained in order to address Coastal Act access and recreation policies.

The staff is also recommending two new conditions which address the addition of the basement. One specifies that the applicant shall identify and utilize a sand disposal site within the Monterey Dunes approved by the City of Monterey, the project biologist, and the Executive Director. The other requires compliance with geotechnical recommendations recently developed with respect to the foundation of the structure. Finally, the staff recommends that the Commission attach an additional condition to address the potential presence of the Black legless lizard on the site, a rare dune animal native to the area which has recently been identified as a candidate species for Federal listing as endangered.

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. REVISED PLANS: PRIOR TO TRANSMITTAL OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and approval, revised site plan and elevations, which limit impacts by incorporating the following site plan refinements: reduction of site coverage so that the revised residence, paving and private yard area together cover no more than one-half of the lot; maximizing the width of the habitat conservation corridor seaward from Dunecrest Avenue, between the revised residence and adjacent vacant lot, as needed for protection of known Monterey spineflower concentrations; and, eliminating all non-essential pavement of sand dune area. As provided by the conservation easement that has been recorded on the property, the remaining undeveloped area of the lot (minimum 1800 sq. ft.) shall be preserved as a natural habitat conservation area, subject to existing or future dune restoration/public access/recreation uses which are consistent with the primary purpose of environmentally sensitive habitat protection. These final plans shall be accompanied by evidence of approval by the City of any necessary resiting and redesign.

2. RESTORATION PLAN: PRIOR TO TRANSMITTAL OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and approval, a restoration and dune stabilization plan for the subject parcel. The plan shall provide for removal of exotic species, and shall incorporate all of the recommended impact assessment and mitigation measures listed in the Botanical Survey, Supplemental Report, by Thomas K. Moss, as revised August 19, 1993 (Exhibit 2, attached). The restoration plan shall include a revised landscape plan and dunes restoration program, consistent with these recommended measures and with the City's biotic resources mitigation requirements for this site. If proposed by the applicant, temporary 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 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 referenced Botanical Survey.

3. DUNE RESTORATION FUND: PRIOR TO TRANSMITTAL OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall provide evidence, in a form and content acceptable to the Executive Director, that a fee of \$620 has been deposited in an interest bearing account managed by the City of Monterey, in lieu of providing on/off site dune restoration to mitigate for the impacts caused by the residential construction. All interest earned shall be payable to the account for the purposes stated below.

The purpose of the account shall be to provide a dune restoration fund for the protection and restoration of the Monterey Bay dunes (Seaside dune system) within the City of Monterey. The funds shall be solely used to acquire restoration sites and to implement projects which restore dune native plant habitats (including installation of boardwalks to reduce public access

impacts), not to fund operations, maintenance or planning studies. The funds in the account shall be released as provided for in a memorandum of agreement between the City of Monterey and the Commission, setting forth terms and conditions to assure that the in-lieu fee will be expended in the manner intended by the Commission.

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

5. SAND DISPOSAL: PRIOR TO THE COMMENCEMENT OF CONSTRUCTION, the permittee shall identify a disposal site for excavated sand within the Monterey Dunes. The disposal site and proposed method of sand disposal shall be subject to the review and approval of the City of Monterey, the project biologist, and the Executive Director.

6. COMPLIANCE WITH GEOTECHNICAL RECOMMENDATIONS: PRIOR TO THE COMMENCEMENT OF CONSTRUCTION, permittee shall submit to the Executive Director, written evidence of compliance with the recommendations contained in the 12/16/96 letter from Reynolds Associates (attached as Exhibit 8).

7. BIOLOGICAL MITIGATION: PRIOR TO THE COMMENCEMENT OF CONSTRUCTION, AND ON A DAILY BASIS PRIOR TO THE COMPLETION OF GRADING, the project biologist shall conduct a survey for Black legless lizard in the construction area utilizing raking, coverboards, or other biologically acceptable method. Surveys should be done in the mornings and evenings, when black legless lizards are most likely to be found. If found, the lizards should be captured and immediately placed into containers with moist paper towels, and released in similar habitat on undisturbed portions of the site at the same depth in the soil as when found. Evidence of compliance with this condition shall be prepared by the project biologist and submitted for confirmation by the Executive Director PRIOR TO THE COMMENCEMENT OF CONSTRUCTION AND AT THE CONCLUSION OF GRADING ACTIVITIES.

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 3 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 the subject lot, which is one of the five remaining "perimeter" lots; this permit expired in June, 1996. In October, 1996, the Commission approved a permit (3-96-34 Archer) for a single family residence on an interior lot, but adjacent to a developed lot fronting Beach Way, which involves an 80 foot extension of Spray Avenue into previously undeveloped portions of Tract 2. Subsequently, in January 1997, the Commission approved an additional home, adjacent to the one approved in October 1996, which involves the extension of Spray Avenue by an additional 40 feet (3-96-112 Archer/Nichols). 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 permits for development of #12 Dunecrest, #21 Spray, and #23 Spray have not yet been issued as prior to transmittal conditions have not yet been satisfied. (See Exhibit 4 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 700 ft. to the north. The applicants' propose to construct a two-story, single-family dwelling on this vacant 40 x 90 ft. lot (see Exhibit 5) which is 40 ft. west of the developed Vargas property (CDP No. 3-89-210) and accessible by the existing Dunecrest avenue.

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: 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. (The Archer and Archer/Nichols lots approved for residential use pursuant to CDP's 3-96-34 and 3-96-112 would be an exception if actually developed.)

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 1990 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. The permit history for Tract #2 after 1990 is detailed in Finding 1 above.

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 approved the LUP with modifications 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. However, 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 7 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. However, on January 6, 1996, the Park District Board of Directors authorized Park District staff to undertake a Prescriptive Rights Investigation for the Del Monte Beach area. This investigation is expected to commence during the summer of 1997.

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, with the purchase of an additional lot currently being negotiated via Purchase Agreement. Funding for additional acquisitions by the Park District is anticipated to be allocated this 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, are not willing sellers; therefore invocation of Section 30604(e) to deny or delay the project would be inappropriate. Approval of this project does not prejudice the prescriptive rights study to be undertaken by the Park District, as Special Condition 3 requires the permittee to acknowledge that this permit, and construction of the permitted development, shall not interfere with any prescriptive or public trust rights that may exist on the property.

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.

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. A summary of this planning effort, as of January 1997, is attached to this report as Exhibit 6. All of the alternatives being considered assume that the subject lot will be developed with a single family residence.

Summary of current permit actions: In the meanwhile, all of the parcels in this tract remain designated for residential use. The City approved three permits for houses in 1992: Sewald (2 Beach Way), Boyden (10 Beach Way), and Bram (4 Dunecrest Ave., the subject site). 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). The Sewald site is under construction, and the Boyden site was purchased for public purposes by the City of Monterey. The Bram site, which is the subject of this application, was purchased in May, 1996 by the current applicants, one month prior to the permit's expiration. No extension was secured, thus leading to the subject application, which represents the same project approved in 1994, with the addition of a basement.

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.. All of the permits approved by the Commission in Tract #2 have been 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 accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have a significant adverse effect, either individually or cumulatively, on coastal resources...

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 has been observed on the subject property, and the coast wallflower and sand gilia have both been observed within the adjacent dune area.

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

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

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

Another animal species, the black legless lizard (Anniella pulchra nigra) has been sighted in the 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 Phillips Petroleum property which is upcoast and adjacent to Del Monte Beach Tract #1. In 1992 the California State Parks Dept. purchased the 37 acre 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 ammophilum), 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.

Mr. Moss also conducted a botanic survey and follow-up investigations specifically for this site at 4 Dunecrest Avenue. As reported and mapped in his Botanic Survey Supplemental Report, as revised Aug. 19, 1993 (attached as Exhibit 2), the lot was found to support 77 specimens of the rare Monterey spineflower. The presence of this dune species confirms the importance of the site as environmentally sensitive habitat.

d. Potential Impacts and Mitigation: Originally, the 1993 application for the subject site proposed to cover approximately 1872 sq. ft. of the 3600 sq. ft. parcel with building and paving. The house was proposed to be located in the center of the parcel, which raised concerns that the development plans for the site would result in the unavoidable loss of at least 16 endangered Monterey spineflower plants. In addition, the 1993 application included a landscape plan that proposed some species not indigenous to this site, and did not include measures to limit impacts from construction activities nor a monitoring and maintenance program.

As a result, the Commission adopted conditions of approval which required a revised site plan that reduced the footprint of site development to less than 50% of the lot size, and moved the footprint of the development to the west, away from the observed spineflower plants. The current development plan submitted with the subject application proposes to cover 1872 square feet, inconsistent with the Commission's previous condition and the conservation easement that has been recorded on this property, which requires that a minimum of 1800 square feet be left in open space and restored for environmentally sensitive habitat protection. The current plan does comply, however, with previous requirements that the development be shifted to the west to avoid impacting the Monterey spineflower populations observed on the site.

In addition, 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, could impact or eliminate environmentally sensitive habitat over the entire 3600 sq. ft. lot. Without containment measures, the remaining 1728 sq. ft. dune area would likely also be degraded by construction activities.

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ANALYSIS: The applicant's site currently supports at least one rare species, the Monterey spineflower, and represents potential habitat for several others (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 introduced ice plant growth. 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 potential 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 potentially restorable environmentally sensitive habitat.

Because the proposed development plan as currently submitted will permanently prevent revegetation on more than 50% 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. More intensive use would not be viable on the parcel due to the need to accommodate parking which would destroy more of the environmentally sensitive habitat. The potential of the site for resource dependent uses -- interpretive trail, etc., has also been reviewed, but it was 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 applicants' parcel is on an improved street, Dunecrest Avenue, and public utility service is currently available. Many of the other lots on Dunecrest Avenue are developed, including the lot immediately south of the subject parcel. Moreover, a substantial number of the other parcels on the improved streets in Del Monte Beach Tract #'s 1 and 2 are also developed, and have been for a considerable amount of time. Furthermore, the Commission approved a coastal development permit for the development of a single family residence on the subject site in June, 1994. In addition to these observations, the applicant has submitted information which states that the purchase price of this parcel in 1996 was \$235,000. (A detailed description of all of the expenditures to date associated with the parcel is available in the Commission file for this project). These factors, combined with the fact that the small size of the site ($\pm 3,600$ sq. ft.) makes opportunities for other

economic but non-residential uses infeasible, lead the Commission to conclude that the applicant could have reasonably expected that residential use of the subject property would be permitted when the property was purchased.

In view of the findings that (1) 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, Archer, and Archer/Nichols) 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 situations such as these, there are several conditions that the Commission can adopt that implement Section 30240 without taking the applicant's property. As previously discussed, many of the conditions typically required by the Commission for similar projects have already been complied with. Appropriate measures include: concentrating residential site coverage so that development covers no more than one-half (1800 sq. ft.) of the parcel; and, requiring that the area of the parcel that will not be developed (1800 sq. ft. minimum) shall be preserved in open space, subject to a conservation deed restriction. Because the conservation deed restriction has already been recorded and found to be consistent with Commission requirements, it is no longer necessary to include it as a condition of approval. And, while the submitted plans would cover 1872 sq. ft. of the lot (more than 50%), the conditions of this permit require submittal of a revised site plan meeting the 50% maximum coverage standard. This will also serve to harmonize the site coverage with the recorded deed restriction.

Nevertheless, development on the parcel will permanently displace dune habitat and prevent revegetation on up to 50% of the lot. There also will be indirect impacts on the undeveloped portions of the lot through construction activity, shadowing and other activities associated with adjacent residential use. Moreover, although the actual square footages at issue in this permit are relatively small (up to 1800 sq. ft. developed and at least 1800 sq. ft of adjacent open area), 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, 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 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 2, attached.) Special Condition No. 1 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.

In addition, because the developed half of the lot represents a permanent loss of environmentally sensitive habitat, the permit also has been conditioned in Special Condition No. 2 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. 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. 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.

To address the potential taking of the Black legless lizard, a rare and sensitive dune animal that is a candidate for listing as endangered by the U.S. Fish and Wildlife service, Special Condition 7 requires the project site to be surveyed for these lizards by the project biologist prior to the commencement of construction, and on a daily basis until grading is completed. If found, the lizards must be captured and immediately placed into containers with moist paper towels, and released in similar habitat on undisturbed portions of the site at the same depth in the soil as when found.

Finally, in order to protect the unique sands of the Monterey Dunes, on which sensitive native habitats depend, as well as to prevent spoils disposal from adversely impacting other sensitive habitat areas, Special Condition 5 requires the permittee to identify a disposal site for excavated sand within the Monterey Dunes system, as well as a disposal method, subject to the review and approval of the City of Monterey, the project biologist, and the Executive Director.

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

4. PUBLIC ACCESS AND RECREATION

The applicant's sand dune site lies between the first public road and the sea. It is contiguous with and indistinguishable from the adjacent dune field, which extends seaward about 700 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 Seawald and Boyden applications for residences.

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 nearby 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.

In January, 1997, the Monterey Peninsula Regional Park District Board of Directors authorized its staff to undertake a prescriptive rights investigation for this area. However, according to Park District staff, this survey would be conducted during the summer months. Thus, any court finding with respect to prescriptive rights could not be expected for a substantial time afterward.

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 Park District has authorized the necessary study, but its results will not be available within the timeframe for processing this permit application. Accordingly, it is concluded that 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.

5. SCENIC RESOURCES

Section 30251 of the Coastal Act states:

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

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 4 for development pattern.

The site is located on Dunecrest Avenue separated from the City's Del Monte Beach by the vacant intervening dune field extending to the beach. The undeveloped 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 will permanently block a section of this view and will (distantly) impact the views from the public beach to the north.

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 Dunecrest Avenue. As approved by the City, the house will be a maximum height of 25 feet.

As submitted, 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 residences in Tract # 2.

The conditions attached to this permit require that any permanent fencing not substantially impair public views. Therefore, as conditioned 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.

6. 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 on 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 (700 ft.), no shoreline erosion rate study was done. However, the potential for wind erosion and sand dune movement was considered in the geotechnical analysis for the site (M. Jacobs, 1991). 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.

Because the project evaluated by the 1991 geotechnical report did not include a basement, which has since been added to the project plans, an additional geotechnical investigation of the proposed foundation was completed. As part of this review, the geotechnical engineer developed recommendations to ensure the structural integrity of the proposed residence (attached as Exhibit 8). Compliance with these recommendations is required by Special Condition 6 attached to this permit.

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Therefore, as conditioned, the proposed development is consistent with Section 30253 of the Coastal Act.

7. 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 Dunecrest Avenue, a developed street with utilities. 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 interior Tract #2 dune parcels because of the availability of existing street access and utilities. Hence, only six other vacant parcels are so situated (two now have coastal permits) and no precedent is established in this respect for the other 60 vacant lots.

Water for the site will be provided by Cal Am Water Company. A water connection moratorium imposed by the Monterey Peninsula Water Management District was repealed on August 19, 1993. The Water District allocates existing water supplies, and establishes conservation measures and new sources, including the Peralta well in Seaside approved for construction in 1994. Adequate water is available in the interim. 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.

8. LOCAL COASTAL PROGRAM

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

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

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

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. To insure that every effort is made to retain Local Coastal Program (LCP) planning options for the LUP, a condition was placed on the previous permit for this site, which required a deed restriction providing notice that a variety of public benefit projects, including facilities for public access, habitat restoration, or concentrations of relocated residential development density, may be anticipated on adjacent public and private lands. This deed restriction was recorded by the previous property owner, and is therefore no longer necessary to attach to this permit.

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. One-half of the lot has been preserved as scenic open space through a conservation easement that was recorded by the previous property owner to mitigate impacts on scenic resources and dune habitat that would result from the construction of the proposed residence. 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, as further detailed in previous findings. 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 certified an Environmental Impact Report for this project on September 15, 1992. Additional impacts and mitigation measures, 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. Botanical Survey
3. Location Map
4. Development Patterns
5. Site Plan
6. Excerpts from the Draft Del Monte Beach Planning Study
7. Parcels in Public Ownership
8. Geotechnical Recommendations

1833P

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. 3-96-117 Gamble
Standard
Conditions

THOMAS K. MOSS
Coastal Biologist

RECEIVED
AUG 30 1993

CENTRAL COAST AREA

Botanical Survey, Supplemental Report
4 Dunecrest, Monterey, California

Prepared For:

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

June 20, 1993
Revised August 19, 1993

248 Chestnut Street
Pacific Grove, CA 93950

EXHIBIT NO. 2
APPLICATION NO. 3-96-117 Gramble
Botanical
Survey

Botanical Survey, Supplemental Report 4 Dunecrest, Monterey, California

INTRODUCTION

This report has been prepared in conjunction with a proposal to develop a single-family dwelling at 4 Dunecrest in the Del Monte Beach dunes of Monterey, California. This report updates the results of two previous botanical surveys that were conducted on February 5, 1991 and April 4, 1992. Both survey reports are attached at the end of this report. This report provides the following information: 1) identification of any significant changes in plant composition and distribution; 2) an assessment of potential impacts, and; 3) recommended mitigation measures to reduce or avoid impacts.

PLANT SURVEY

The site was surveyed again on May 13, 1993. The neighboring "Navy Dunes," the less disturbed dunes immediately to the west of the Del Monte Beach tract, were also inspected for the purpose of confirming that the current survey was being conducted at the proper time of year when the plant species of special concern are both evident and identifiable. Of special concern are two annual species, sand gilia (*Gilia tenuiflora* ssp. *arenaria*) and Monterey spineflower (*Corisanthe pungens* var. *pungens*). Large numbers of both species were observed on the "Navy Dunes."

Monterey spineflower was not present on the site when the previous two botanical surveys were conducted, but now exists there. A total of 77 individual plants were counted on the property. Of the total, at least 16 were located within the area that would be directly impacted if development of the proposed house was to occur at this time. The majority of the plants (61) were located within five to six feet of the property line and, primarily, in three groups along the property's eastern and northern boundaries (Figure 1).

Between patches of ice plant, the remaining area is open sand with a scattering of beach primrose and pink sand verbena, as described in the earlier surveys. With the exception of Monterey spineflower, no additional species were observed. The federally-listed endangered sand gilia is not present on the project site.

ENDANGERED SPECIES PROTECTION

Although not legally protected at this time, Monterey spineflower has been proposed to be listed as an endangered species by the U.S. Fish and Wildlife Service (FWS). According to FWS Biologist Ellen Dillion, a federal permit (Section 10-a-1) for the taking of Monterey spineflower plants is not presently

required. When Monterey spineflower is listed, the proposed project at 4 Dunescrest will become subject to the provisions of the Federal Endangered Species Act. At that time, construction of projects on land containing newly listed species could be halted until appropriate protection or mitigation measures are identified and approved by the FWS.

Rare plants are also protected by the state Department of Fish and Game (DFG), which administers the California Endangered Species Act (CESA) and maintains the Natural Diversity Data Base (NDDDB). The NDDDB is a computerized inventory that is used to keep track of sensitive biological resources, regardless of their legal or protection status. It includes all listed state and federal wildlife, species that are candidates for federal listing and plants that are listed by the California Native Plant Society. The DFG lists Monterey spineflower as a "Special Plant." Monterey spineflower, therefore, warrants special consideration in planning a project. According to DFG Plant Ecologist Deborah Hillyard, the DFG's policy is that impacts to the Monterey spineflower should be avoided, but when impacts are unavoidable, appropriate mitigation should be provided.

IMPACT ASSESSMENT AND MITIGATION

The proposed project will result in the unavoidable taking of some Monterey spineflower plants and a reduction in the available habitat. Because Monterey spineflower is an annual, its distribution and density can fluctuate greatly from year to year, depending on weather conditions. Therefore, the actual number of plants affected by the proposed project will not be possible to determine until the time of construction. To mitigate the loss of Monterey spineflower plants and habitat resulting from the proposed project and to protect plants outside of the building envelope, the following provisions are recommended:

1. Pre-construction period

- a. The location of all plants of special concern should be located on the site plan.
- b. A qualified biologist should be retained by the owner to serve as the project environmental monitor.
- c. Temporary fencing should be installed to protect all of the plants of special concern that are located outside of the building envelope. The project environmental monitor should install the fence. No workers should be permitted to enter the protected area and no materials should be stored or disposed of in this area.
- d. A pre-construction meeting should be held between the owner or the owner's representative, the general contractor, the city planner or

building inspector, and the project environmental monitor to ensure that everyone understands the environmental concerns of the site.

2. Construction period

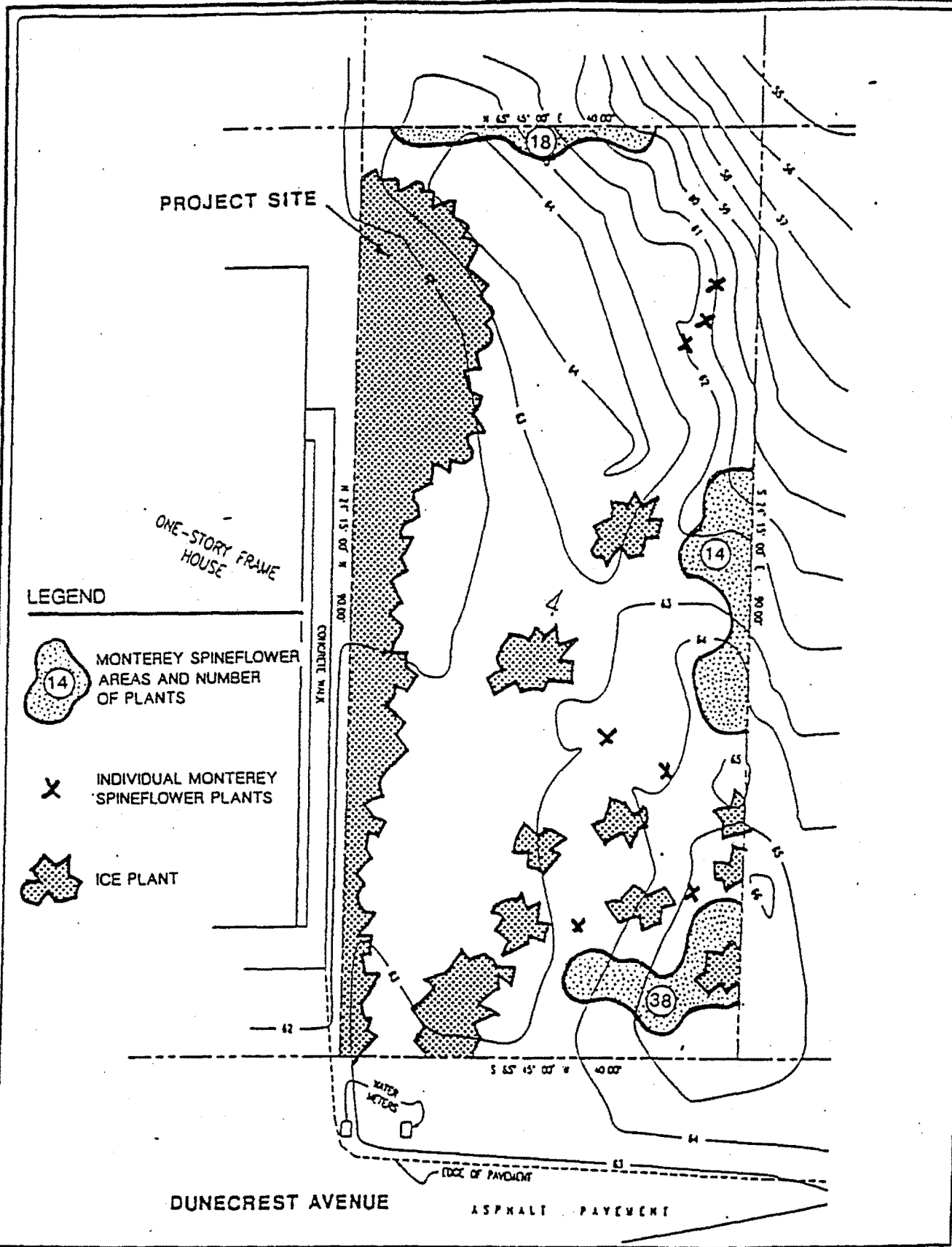
- a. All activities associated with construction, trenching, storage of materials, and disposal of construction wastes and excavated soil should not impact areas protected by fencing.
- b. The environmental monitor should inspect the site no less than one time each week to ensure compliance with all provisions for protecting the surrounding environment.

3. Post-construction period

- a. The property owner should implement within one year after construction a native landscape restoration and maintenance plan.
- b. The property owner should replace Monterey spineflower plants removed by construction on a 2:1 basis.
- c. The property owner should perform or provide funding for off-site mitigation to compensate for the loss of rare species habitat. Ideally, this area should be within or contiguous to a designated natural area, such as the nearby "Navy Dunes."
- d. The property owner should retain a qualified coastal biologist to monitor and report on implementation of the landscape restoration and maintenance plan for at least five years.
- e. If the property should change ownership, future owners of the property should have the same obligation for preserving, maintaining and perpetuating the native landscape on the site. To ensure that this objective is achieved over the long term, the property owner will record an agreement as a deed restriction that all of the provisions for restoring and maintaining the native landscape on the site will run with and burden title to the property in perpetuity and will bind the property owner and their successors.

Prepared By: Sharon S. May

Date: 8/19/93



	<p>DISTRIBUTION OF MONTEREY SPINEFLOWER & ICE PLANT</p> <p>4 DUNECREST AVENUE, MONTEREY</p>	<p>Figure 1</p>
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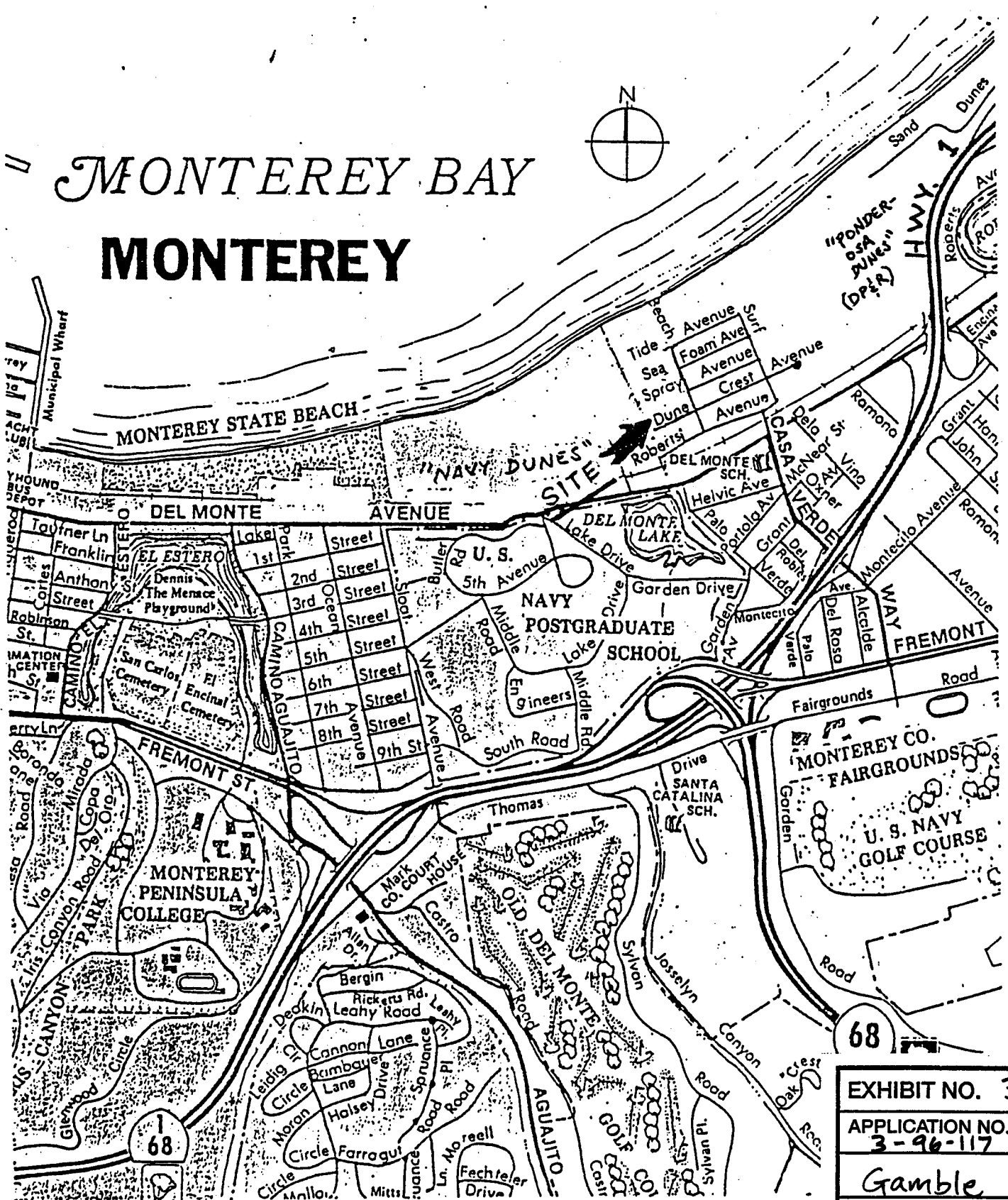
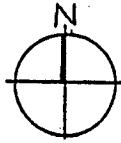
8-18-93

PLANT SURVEY BY THOMAS K. MOSS

3-96-117 Exhibit 2, p. 5

LOCATION AND VICINITY MAP

MONTEREY BAY MONTEREY



68

EXHIBIT NO. 3
APPLICATION NO. 3-96-117
Gamble
Location Map

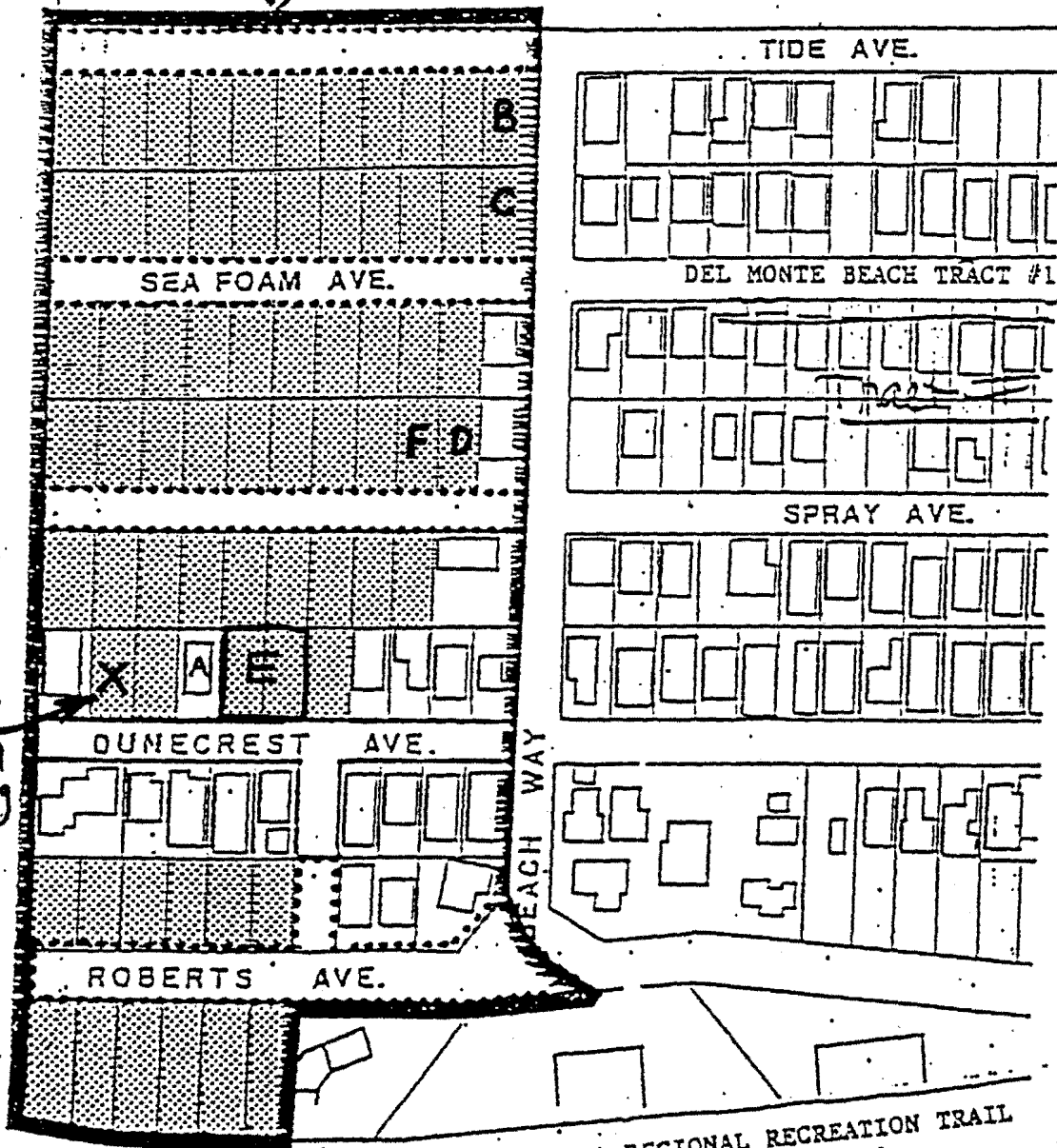
Monterey Bay

CITY BEACH

DEL MONTE BEACH TRACT #2

0 N 200

NAVAL POST GRADUATE SCHOOL



- Prior Coastal Permits:
- A - VARGA (constructed)
 - B - SEWALD (under construction)
 - C - BOYDEN (purchased for open space)
 - D - ARCHER (vacant)
 - E - BRAM (vacant)
 - F - ARCHER / NICHOLS (vacant)

SITE *X*
 note: coastal permit allowing single family residence on this site previously approved but expired (3-93-28)

Undeveloped Residential Lots
 Undeveloped Streets

CALIFORNIA COASTAL COMMISSION

3-96-117

EXHIBIT 4

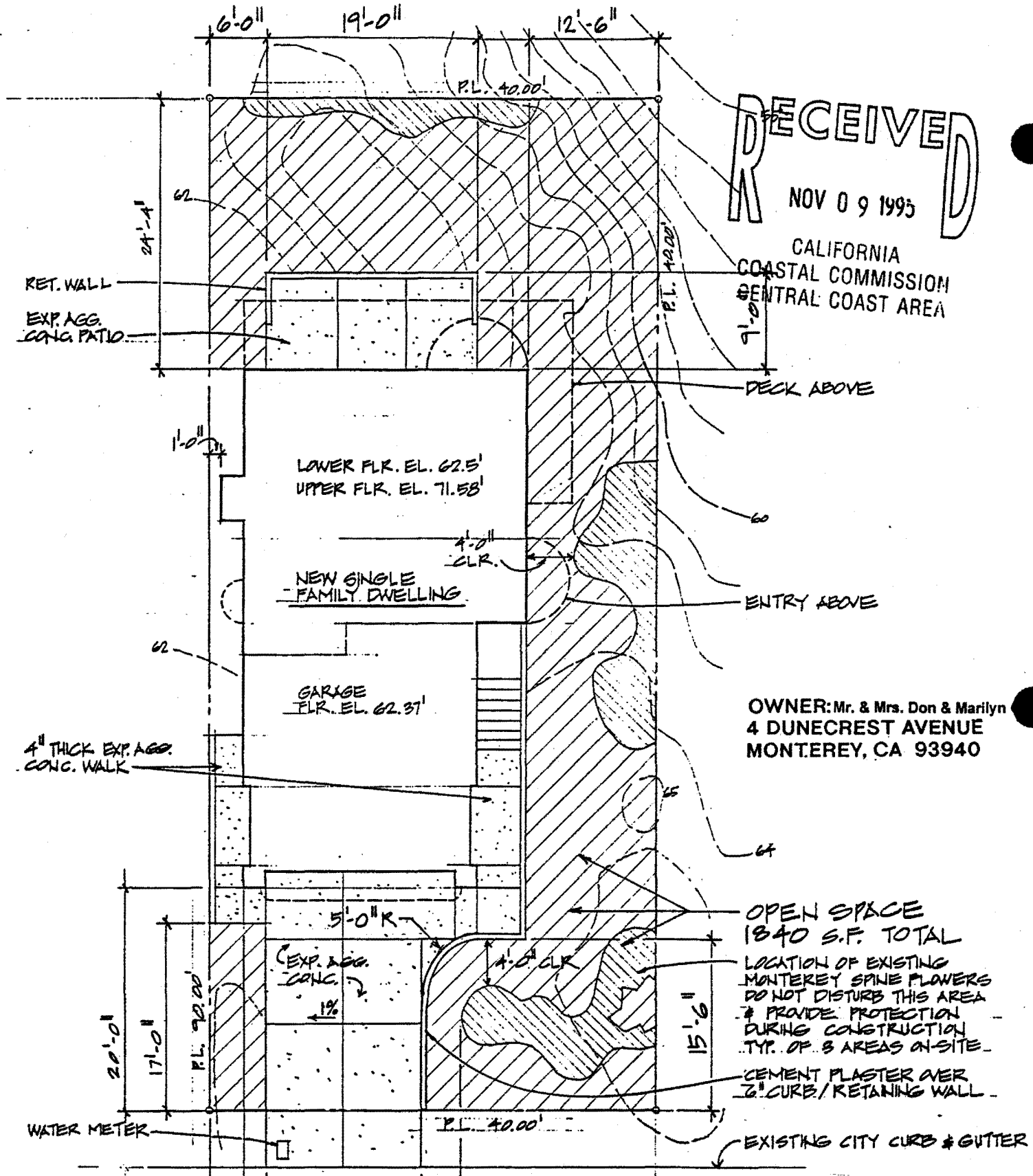
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GAMBLE

RECEIVED
 NOV 09 1993

CALIFORNIA
 COASTAL COMMISSION
 CENTRAL COAST AREA

OWNER: Mr. & Mrs. Don & Marilyn
 4 DUNECREST AVENUE
 MONTEREY, CA 93940



OPEN SPACE
 1840 S.F. TOTAL
 LOCATION OF EXISTING
 MONTEREY SPINE PLANTERS
 DO NOT DISTURB THIS AREA
 & PROVIDE PROTECTION
 DURING CONSTRUCTION
 TYP. OF 3 AREAS ON-SITE
 CEMENT PLASTER OVER
 2" CURB/RETAINING WALL

EXISTING CITY CURB & GUTTER

3'-0" 2'-0" 14'-0" 3'-0" CLR FIELD VERIFY
 DRIVEWAY

DUNECREST AVE.



SITE PLAN

SCALE: 1/8" = 1'-0"

EXHIBIT NO. 5
APPLICATION NO. 3-96-117 GAMBL
Site Plan

- NOTES:
1. NO TREES ON SITE
 2. NO SHRUBS ON SITE

PROJECT DATA
 ASSESSOR'S PARCEL NUMBER: 011-464-20

**DEL MONTE BEACH TRACT #2
PLANNING STUDY**

DRAFT

City of Monterey
November 1996



A Land Use Planning and Design Firm

EXHIBIT NO. 6
APPLICATION NO. 3-96-117 GAMBLE
Del Monte Beach Planning Study

Executive Summary

This planning study addresses a portion of the Del Monte Beach Tract #2 in Monterey. The focus of the study is 55 vacant lots located between Beach Way, Dunecrest Avenue, United States Navy property and Del Monte Beach. Of the 55 lots, a total of 17 lots are publicly owned and five have been approved by the City for development of single family units. This leaves a total of 33 vacant privately owned lots which are the focus of the study.

The purpose of the planning study is to identify and evaluate alternative development scenarios to determine whether a development pattern other than the "status quo" would be preferable. The status quo is defined as buildout of the subdivision under the existing lot pattern and under current development standards. The planning study includes information intended to aid the City, Coastal Commission, property owners, and public to make informed decisions concerning the future of the planning area.

The planning study is comprised of four elements: 1) a resources and constraints analysis addressing biotics, views, topography and infrastructure; 2) identification of planning goals; 3) a presentation of alternative development scenarios for the planning area; and 4) an economic analysis addressing the financial feasibility of each alternative.

Resources and Constraints Analysis. The biotic analysis determined that the entire planning area is sensitive habitat or potential habitat but that no one area is more or less sensitive than another. Therefore, the primary goals relating to biotics should be to retain the maximum amount of open space possible for habitat restoration and that the area be contiguous to existing areas of dune habitat within the adjacent Navy property and Del Monte Beach.

The visual analysis describes existing public and private views from and across the planning area. Views exist of the Monterey Peninsula, Monterey Bay, and the north shoreline of Monterey Bay from the Ocean Harbor House (at the east end of the Del Monte Beach Subdivision) to Santa Cruz. The scattered existing units block these views to a varying extent depending on the particular viewpoint.

Planning Goals. Based on the resources and constraints analysis, input received at two public workshops, review of planning documents and City input, the project team identified several goals for the planning area:

- Maximize opportunities for restoration of dune habitat contiguous to existing habitat.
- Minimize potential for interference with habitat resources (access limitations)
- Minimize obstruction of views from public viewpoints
- Minimize obstruction of views from on- and off-site private viewpoints

- Use grading to enhance views
- Use grading and habitat restoration to minimize sand transport
- Provide for open space and trails within the planning area and connections to existing trails
- Consolidate publicly-owned portions of planning area
- Minimize environmental and fiscal costs of street, water and sewer extensions
- Meet City fire standards for street extensions
- Provide secondary and/or emergency access to Del Monte Beach subdivision
- Provide financially viable development alternatives for property owners

In designing the alternative development scenarios, the team attempted to address each of these goals.

Alternative Development Scenarios. The status quo development scenario provides a basis for comparison for the three alternative development scenarios. The following alternatives to the status quo are presented and evaluated in the study:

- **Modified Development Standards.** This scenario assumes lot trading to consolidate the publicly owned lots in the most seaward block of the planning area and purchase of four additional lots to eliminate additional development from this area. This scenario proposes modified standards allowing only one-story units on a larger portion of the lot. The Coastal Commission "50 percent open space" rule would not applied under this scenario. Also, it is assumed a public trail would be provided through the planning area. Tide Avenue would not need to be constructed. under this scenario. This scenario could be imposed by the City.
- **Resubdivision into Larger Lots.** This scenario assumes the same consolidation of open space in the most seaward block as the previous scenario. In addition, the planning area would be resubdivided to provide 6,000 square foot lots, consistent with the existing zoning. The zoning standards would be modified to allow only one-story units and the floor area ratio would be increased. This scenario would also provide the opportunity to include a public trail through the planning area. Neither Tide Avenue nor Sea Foam Avenue would need to be constructed under this scenario. Access to the seaward lots would be provided by driveways off of Spray Avenue. This scenario would require participation by the private lot owners.
- **Planned Unit Development (PUD).** Under this scenario, a PUD would be developed on a portion of the planning area. The PUD would include surface parking and a mix of one and two story buildings. Density ranging between 20 and 35 units could be accommodated in this area. Public trails could be provided through the planning area. Access would be provided from the Spray Avenue extension. Neither Tide Avenue nor Sea Foam Avenue would need to be constructed. This scenario would require participation by the private lot owners.

Conceptual plans for the status quo and alternative development scenarios are presented on the following pages.

Each alternative scenario was analyzed to determine the extent to which it meets each of the planning goals. The analysis also includes view modeling and financial analysis.

Conclusion

Based on the analysis, it appears that both the resubdivision into larger lots and the planned unit development scenarios better meet the identified planning goals than the status quo scenario or modified development standards scenario.

Modified zoning standards could be imposed by the City and, given lot trading and acquisition of four additional lots, would provide contiguous open space in the front block. Limiting units to one-story would reduce visual impacts over the status quo scenario. Relaxed setbacks, increased FAR and elimination of the 50 percent rule would allow for units of a comparable size to the status quo.

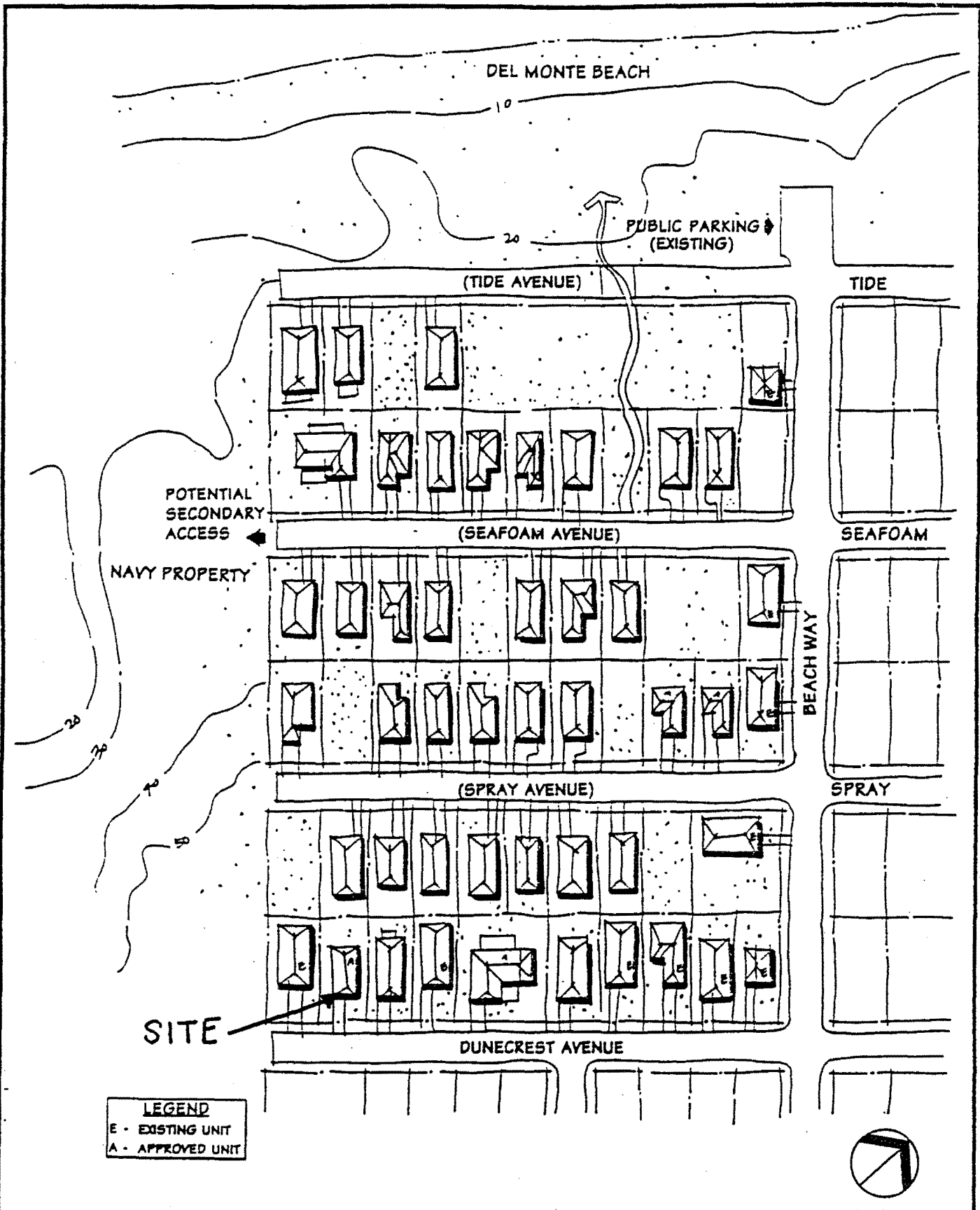
The large lot scenario would result in less density (18 units versus 33 under the status quo), the same pattern of detached housing as the rest of the subdivision, single story units, lower but larger units, and public trail opportunities. This scenario would provide a transition between the existing subdivision and open space areas. This scenario would also provide more open space for habitat restoration and public access than the status quo scenario but less than the PUD.

The PUD scenario would result in higher density over a smaller development envelope. This would maximize the amount of contiguous open space available for habitat restoration and public access. The clustered development would preserve views around the development and would allow some views through the buildings.

Financial Analysis

The financial analysis indicates the resubdivision scenario provides the greatest financial return for property owners (111 % of the status quo value), followed by the modified zoning standards (108 %) and the PUD (95 %).

The study also includes discussion of opportunities for transfer of development credits (TDC) to preserve open space in the planning area. Development could be transferred either on-site, through lot trading, or off-site, through a TDC program. The study also discusses City efforts to secure secondary access to the Del Monte Beach subdivision. This effort is ongoing and, as with the TDC concept, requires additional analysis.



Source: EDAW, Inc. and EMC Planning Group Inc. (11/14/96)

No Scale



Del Monte Beach Tract #2 Planning Study
Status Quo Scenario

3-96-117
 Exhibit 6
 P. 5

DEL MONTE BEACH

- ASSUMPTIONS**
- LOT TRADING
 - ADDITIONAL LOT PURCHASE (4 LOTS)
 - SINGLE-STORY, ZERO LOT LINE UNITS
 - INCREASED FAR
 - PUBLIC ACCESS EASEMENT

PUBLIC PARKING (EXISTING)

TIDE

POTENTIAL SECONDARY ACCESS

(SEAFOAM AVENUE)

SEAFOAM

NAVY PROPERTY

BEACH WAY

(SPRAY AVENUE)

SPRAY

SITE

DUNECREST AVENUE

- LEGEND**
- E - EXISTING UNIT
 - A - APPROVED UNIT



No Scale

Source: EDAW, Inc. and EMC Planning Group Inc. (11/14/96)



Del Monte Beach Tract #2 Planning Study
Modified Zoning Standards
 Scenario

3-96-117
 Exhibit 6
 P. 6

DEL MONTE BEACH

10

- ASSUMPTIONS**
- LOT TRADING AND/OR PURCHASE
 - RESUBDIVISION
 - SINGLE-STORY UNITS
 - INCREASED FAR
 - PUBLIC ACCESS TRAIL

20

PUBLIC PARKING (EXISTING)

TIDE

NAVY PROPERTY

SEAFOAM

20

30

40

50

POTENTIAL SECONDARY ACCESS

BEACH WAY

30

(SPRAY AVENUE)

SPRAY

40

50

60

SITE

DUNECREST AVENUE

- LEGEND**
- E - EXISTING UNIT
 - A - APPROVED UNIT



No Scale

Source: EDAW, Inc. and EMC Planning Group Inc. (11/14/96)



A Land Use Planning and Design Firm

Del Monte Beach Tract #2 Planning Study Large Lot Scenario

3-96-117
Exhibit 6
p.7

DEL MONTE BEACH

ASSUMPTIONS

- INTERNAL TRANSFER OF DENSITY
- PLANNED COMMUNITY PERMIT
- PUBLIC ACCESS TRAILS

PUBLIC PARKING (EXISTING)

TIDE

SEAFOAM

NAVY PROPERTY

BEACH WAY

PROJECT ENTRANCE

SPRAY

20

40

50

LEGEND

- E - EXISTING UNIT
- A - APPROVED UNIT
- 1-STORY BUILDING
- 2-STORY BUILDING
- ▨ PARKING/ CIRCULATION

POTENTIAL SECONDARY ACCESS

DUNECREST AVENUE

SITE



No Scale

Source: EDAW, Inc. and EMC Planning Group Inc. (11/14/96)



A Land Use Planning and Design Firm

Del Monte Beach Tract #2 Planning Study Planned Unit Development Scenario

3-96-117
Exhibit 6
p. 8

DATE: Oct. 30, 1995

Community Development
Department

DEL MONTE BEACH ACQUISITIONS

North

Park District has option to purchase

CITY COUNCIL PRIORITY ACQUISITION AREA



Lots Acquired by City as of November, 1994

- A. \$48,000
- B. \$21,000
- C. \$21,000
- D. \$21,000
- E. \$21,000
- F. \$21,000
- G. \$48,000
- H. \$27,000
- L. \$127,000

Park District + owner negotiating Purchase Agreement

\$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. \$33,000
- 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

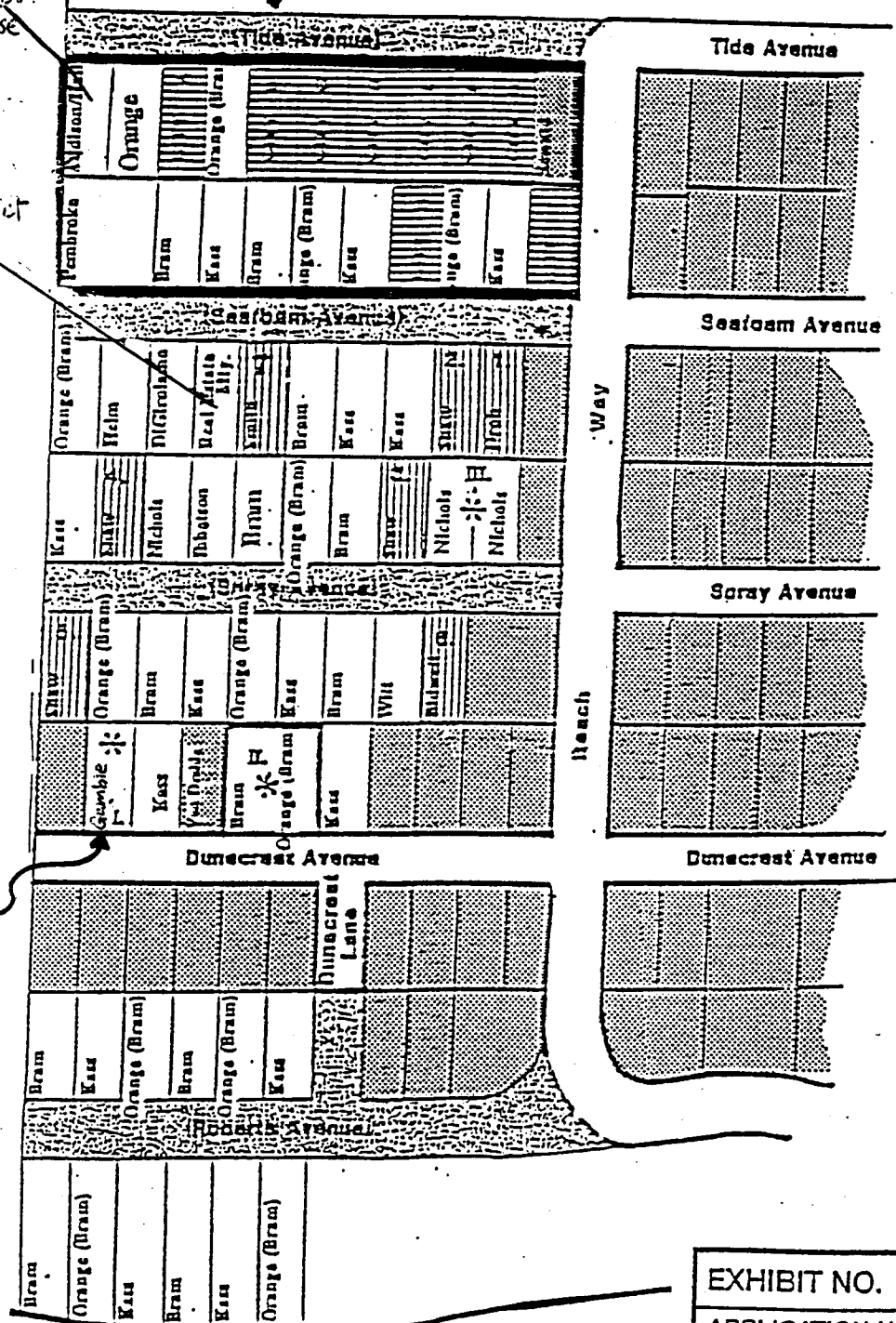
= Undeveloped Street

Projects in Progress *

I. Gramble (4 Dunecrest)

II. Bram/Orange

III. Nichols (Archer)



SITE

EXHIBIT NO. 7
APPLICATION NO. 3-96-117
Parcels in Public Ownership

Mr. Donald Gamble
1205 Shoreline Drive
Wayzata, MN 55391

Subject: **GEOTECHNICAL REVIEW OF FOUNDATION PLANS**
Gamble Residence
4 Dunecrest
Monterey, California

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

REYNOLDS ASSOCIATES
Correspondence dated 1 May 1996

PEDRO E. ROSADO, ARCHITECT
Plan Set For New Residence at #4 Dunecrest
Sheets A1 and A4, dated 14 March 1996

Dear Mr. Gamble,

As requested, we are providing the geotechnical engineering services for the subject project, and have reviewed the above referenced plan set. The plans were reviewed for conformance with our recommendations as referenced above and those of the geotechnical investigation report prepared by M. Jacobs & Associates (also referenced above).

Based upon our review of the plan set and the geotechnical conditions at the site, it is our opinion that the following modifications be incorporated into the design and construction of the project:

1. Sheet A4, Detail 1. All continuous footings should be reinforced with a minimum of four #4 bars, i.e., two near the top and two near the bottom.

All concrete slab-on-grade floors should be reinforced with a minimum of #3 bars placed in the vertical center of the slab on sixteen inch (16") centers, both directions. The steel should be supported by pre-cast concrete dobies. Where floor coverings are anticipated or vapor transmission may be a problem, a 10 mil waterproof membrane consisting of MoistStop or equivalent should be placed beneath the concrete slab. Place a two-inch (2") layer of sand on top of the membrane to protect it and to assist in equalizing the curing of the concrete.


2. Sheet A4, Detail 13 & 16. Gravel backfill should be specified as consisting of State of California Standard Specification 68-1.025, Class I Type A, or $\frac{3}{8}$ x No. 6 clean, crushed or rounded "pea sized" gravel. Please show Mirafi 140N or equivalent fabric over the top of the permeable backfill between the gravel and the native soil cover.
3. Sheet A1. A note should be added that all earthwork shall be done in accordance with the referenced geotechnical reports and under the direct observation of Reynolds Associates, the geotechnical engineer.
4. The plans should also indicate a redensification zone beneath all footing elements which consisting of a minimum of thirty inches (30") of compacted engineered fill. Beneath concrete slab-on-grade floors or paved areas, the redensification zone should be a minimum of twelve inches (12") in depth.
5. The project plans also show that a basement is to be constructed. In this type of sand, the excavation walls should be no steeper than 2½:1 horizontal to vertical and no higher than ten feet (10') in vertical height during construction; otherwise the excavation will have to be properly shored.

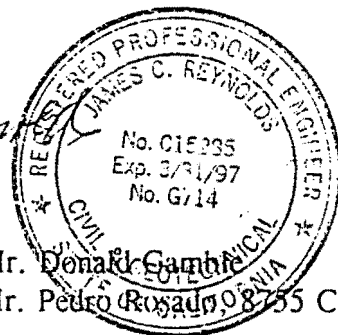
When walls are considered "fixed", as is the case for the basement walls, they should also be designed for a uniform active pressure of 22H psf (where H is the wall height in feet) with horizontal backslope, in addition to the design criteria provided in the referenced reports.

6. We request a copy of the final plan set be submitted to our office for review prior to contract bidding to ensure that our recommendations have been properly interpreted and incorporated into the design and construction of the project.

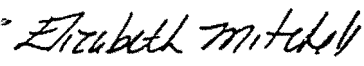
The opportunity to be of service is appreciated. If you have any questions, please contact our office.

Reviewed by,


James C. Reynolds



Very truly yours,
REYNOLDS ASSOCIATES


Elizabeth M. Mitchell
Project Engineer

Copies: (1) to Mr. Donald Gambie
(2) to Mr. Pedro Rosado 08755 Coker Road, Prunedale, CA 93907

