

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA
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 Commission Action:

**STAFF REPORT: REGULAR CALENDAR****Th6b**APPLICATION NO.: **4-96-158**APPLICANT: **S. A. M. Trust**

AGENT: Michael Rutman, Sherman Stacey and Daryl Hosta

PROJECT LOCATION: 31100 Broadbeach Road, City of Malibu, Los Angeles County

PROJECT DESCRIPTION: Remove non-native vegetation (except ice plant) and re-vegetate coastal dunes consistent with Special Condition #6 of coastal development permit 5-90-997 and develop a 2,000 sq. ft. lawn in place of other coastal dunes.

Landscape coverage: 6,200 sq. ft. (approximately)

LOCAL APPROVALS RECEIVED: N/A

SUBSTANTIVE FILE DOCUMENTS: Certified 1986 Malibu/Santa Monica Mountains Land Use Plan; City of Malibu General Plan, 11/95; The California Natural Diversity Database, California Department of Fish and Game Status, Revised 1995; Coastal Development Permits 5-90-997 (S. A. M. Trust); 4-95-002, -003, 004 and -005 (Ioki Partners and Malibu Bay Company); 4-93-20 (Lemon); 4-92-239 (Brooks); 4-92-235 (Broad Beach Partners); 4-92-129 (Smith); 4-92-118 (Slavin); 4-92-053 (Weinberger); 4-91-442 (Sheinberg), and 5-89-756 (Grossman)

SUMMARY OF STAFF RECOMMENDATION:

The proposed development area is located within the coastal dunes of Broad Beach, an Environmentally Sensitive Habitat Area (ESHA), pursuant to §30107.5 of the Coastal Act, which defines environmentally sensitive area. The Department of Fish and Game identified this plant community as a highest priority which should be protected. The coastal dunes located on Trancas Beach (Broad Beach) are one of the last remaining dune communities in Southern California and are much reduced from their historical condition due to development. In 1991 the Commission approved the applicant's coastal development permit application for the construction of a 8,949 sq. ft. house adjacent to the Broad Beach coastal dunes, subject to six special conditions. Special condition #6 required, in part, the applicant to implement a Dune Restoration Program for the purposes of revegetating the dunes with native plant species.

SUMMARY OF STAFF RECOMMENDATION CONTINUED ON PAGE 2

Special condition #1 required the applicant to revise the project plans to demonstrate that all development was set back behind a stringline drawn from the corners of the adjacent structures and their decks. The applicant did not comply with the terms of special condition #6 and instead recontoured a portion of the dunes and planted a grass lawn and also planted the other areas of the dunes with non-native vegetation. In addition, the applicant did not comply with the terms of special condition #1 in that a lawn was planted seaward of the existing deck stringline.

Staff is recommending a two part decision. First, staff recommends approval of the portion of the project that involves restoration of the dunes subject to special condition #1. Second, staff is recommending denial of the portion of the lawn that exceeds the deck stringline because such development is inconsistent with §30240 of the Coastal Act.

STAFF RECOMMENDATION:

The staff recommends that the Commission adopt both of the following resolutions. By doing so, the Commission will approve the removal of all non-native plant species (including ice plant) and the restoration of the dunes with conditions, and will deny the development of the lawn that extends seaward of a stringline between the corners of the adjacent decks:

I. Approval with Conditions and Denial

The Commission hereby **grants** a permit for that portion of the proposed development involving the restoration of the coastal dunes including ice plant removal adjacent to the applicant's single family residence, subject to the conditions below, on the grounds that, as conditioned, those portions of the development that are approved 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, are located between the sea and the first public road nearest the shoreline and are in conformance with the public access and 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.

The Commission hereby **denies** a permit for that portion of the proposed development involving the development of a grass lawn seaward of the deck stringline on the coastal dunes, which is located between the sea and the first public road nearest the shoreline, on the grounds that it would not be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976, including the public access policies; would not be in conformity with the provisions of the California Environmental Quality Act; and would prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of the Coastal Act.

II. 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 below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.
4. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
5. Inspections. The Commission staff shall be allowed to inspect the site and the development during construction, subject to 24-hour advance notice.
6. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
7. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

III. Special Conditions *(for Portion of Project Recommended for Approval)*

1. Revised Restoration and Monitoring Plan

Prior to issuance of the coastal development permit, the applicant shall submit, for the review and approval of the Executive Director, a revised Dune Restoration Program prepared by a qualified Landscape Architect and reviewed by a qualified biologist, which shall restore and revegetate the coastal dunes with native plants endemic to coastal dunes of this area. After the coastal development permit is issued, the applicant shall implement the Dune Restoration Program approved by the Executive Director.

Additionally, the restoration and revegetation program shall include: a) a provision for the removal of all invasive and non-native plant species including ice plant. The

removal shall minimize any destabilization of the dunes and may include the usage of geofabrics; b) a maintenance and monitoring program, which includes three years of monitoring reports with photo-documentation and summaries of observations of the restoration work in spring and fall; c) a provision that if restoration program has been in part, or in whole, been unsuccessful, the applicant shall submit a revised or supplemental program to compensate for those portions of the original program which were not successful. The revised or supplemental restoration program shall be processed as an amendment to this permit.

2. Implementation and Completion of the Restoration Plan

All requirements, relative to the submittal of the Dune Restoration Plan contained within Special Condition #1 (a), (b) and (c) of this permit that are required to satisfied as prerequisites to the issuance of this permit must be met within 60 days of Commission action. Said plans shall be implemented within 30 days of the beginning of the 1997/98 raining season. Failure to comply with the requirements within the time period specified, or within such additional time as may be granted by the Executive Director for good cause, will nullify this permit.

IV. Findings and Declarations.

The Commission hereby finds and declares:

A. Project Description and Background

The applicant is proposing to remove non-native and invasive vegetation consisting of pampas grass (cortaderia atacamensis), myoporum (myoporum laetum), leptosperum and osteospernum that have been planted on the dunes that are seaward of the existing residence. After removing the vegetation, the applicant is proposing to revegetate a portion of the dunes with lemonade berry (rhus integrifolia), lance live forever (duudleya lanceolata), and convolvulus solanella. In addition, the applicant is proposing to retain the non-native, invasive ice plant, which covers a portion of the dunes, and to develop a 2,000 sq. ft. lawn in place of coastal dunes, which requires re-contouring of the dunes.

Portions of the proposed project constitute what the Commission calls an "after-the-fact" coastal development permit application. This means that the work has occurred on the site without the benefit of a coastal development permit. Additionally, portions of the permit proposed are in non-compliance with the terms and conditions of coastal development permit 5-90-997. In the case of this development, the Commission considered development on the subject site in 1991 under coastal development permit 5-90-997 (S. A. M. Trust). Under this permit, the Commission approved the demolition of an existing single family residence and the construction of a 8,949 sq. ft. single family home with an attached garage and nanny's quarters with a septic system, swimming pool and 2,200 cu. yds. of fill on two lots which total 31,641 sq. ft. in size.

Coastal development permit 5-90-997 was approved subject to six special conditions which required the applicant to do the following: 1) submit revised plans that illustrated that the development conformed to a building and deck stringline; 2) submit final development plans that demonstrated the project's conformance with the recommendations contained in the applicant's geology plans; 3) record a deed restriction that indicates that the applicant assumes the risk of developing in a location that could be subject to hazard; 4) record a deed restriction that any future development on the site will require the applicant to obtain a permit; 5) submit evidence that the septic system expansion that is located seaward of the residence and adjacent to the dunes is consistent with local government engineering standards; and, 6) submit and implement a dune restoration program for the purposes of revegetating the dunes with native dune plant species.

B. Environmentally Sensitive Habitat Areas and Visual Resources

The Coastal Act defines an environmentally sensitive area in §30107.5 stating that:

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

The proposed project site is located within the Trancas Beach (Broad Beach) coastal dunes, which are considered an environmentally sensitive area because this area supports a flora and fauna restricted to coastal dunes and upper beaches. In addition, the Commission has found in certifying the Malibu Land Use Plan and in reviewing over a dozen permits for development on this beach that the dunes are an environmentally sensitive habitat area (ESHA). The Commission notes that the Trancas Beach dunes are the only extensive dunes within the 27 mile stretch of the Malibu Coastal Zone and that the Trancas dunes represent one of the last extensive dune fields existing in Southern California.

The Coastal Act mandates that ESHAs be protected against habitat disruption. Furthermore, the Coastal Act requires that development adjacent to an ESHA be sited and designed to prevent impacts that would degrade the ESHA value. Specifically, §30240 states:

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

(b) Development in areas adjacent to environmentally sensitive habitat 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.

In addition, the Coastal Act mandates that development be designed to minimize the alteration of natural landforms that are scenic to the coast. Specifically, §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 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.

1. Coastal Dunes

Coastal dunes are a limited resource of statewide significance. Oceanfront dunes, such as those located on Broad Beach, provide unique scenic and habitat value. In general, coastal sand dunes are formed from wind transport. Coastal dunes that are not vegetated are more susceptible to removal by tides or storms. In a developed dune field, the dunes closest to the beach will be rather flat and will be reformed regularly by wind and wave erosion. The foredunes protect the mid and back dunes from direct wind and wave attack. Typically the mid and back dune areas, similar to those subject of this permit application, have a vegetative cover. Coastal dunes function as a system and not as independent units. Therefore changes in either the geomorphology (contour) that result from grading or changes in vegetative cover that result from invasive plant species, have an effect on the entire system. For example, loss of dune area either close to the beach or in front of one residence can expose the back dune area landward or adjacent to the area to greater wind and wave erosion. Likewise, loss of native vegetation cover can result in isolated habitats throughout the dune field.

The Trancas Beach area is developed almost completely with residential development. Approximately 100 homes exist landward of the dune field. The Commission staff has been in conversations with members of the Trancas Beach Homeowners Association over the past year regarding one of their key concerns: the diminishing dune field and degradation of the native vegetation.

Historically, Trancas Beach has been a wide beach area due to the accumulation of sand along that stretch of the coast. The dune field has been reduced in width due, in part, to urban and other development. Additionally, a portion of the dunes have been disturbed as a result of individual footpaths across the dunes (from the homes to the beach), introduction of non-native, invasive plant species (such as ice plant) and removal of the sand dunes to improve property owner's individual views of the ocean. In spite of the disturbance that has resulted from development, the Broad Beach dune fields continue to maintain native vegetation found predominantly on dunes. However, due to the limited remaining distribution of the dune vegetation and the development pressure on areas which support the community, the southern foredunes found at

Broad Beach are considered by the Department of Fish and Game as a highest priority special plant community which should be protected (*The California Natural Diversity Database, California Department of Fish and Game Status, Revised 1995*).

2. Past Commission Action

The protection of coastal dunes has been the topic of Commission review both statewide and locally. In 1986, the Commission certified Malibu/Santa Monica Mountains Land Use Plan (LUP) with policies regarding ESHA protection and Trancas Beach dune preservation and enhancement. The policies contained in the LUP have been found consistent with the Coastal Act; and, therefore, may be looked to as guidance in reviewing coastal development permits. The LUP requires that the dunes be protected and also suggests mitigation be provided for habitat impacts that result from the residential development of the Broad Beach area. The Commission found in certifying the LUP that the restoration of damaged dune habitat is important in minimizing disruption of the this ESHA. The specific policies read as follow:

P104 When feasible, the restoration of damage to habitat(s) shall be required as a condition of permit approval.

P109 (Area-specific to Trancas Beach Southern Foredunes) For all new development, vegetation disturbance including recreation or foot traffic on vegetated dunes, should be minimized. When access through dunes is necessary, well-defined foot paths shall be developed and used.

Mitigation measures regarding coastal dune protection and enhancement have been required by the Commission in the form of conditions of approval of coastal development permits. The mandate of Coastal Act §30240 has routinely been the basis for such conditions. For example, in the City of Monterey, the Commission approved the development of a single family residence that was located within the Seaside dune system only with mitigation that included revising the project plans to reduce the size of the proposed house, implementation of a dune restoration plan and payment of a fee to the City of Monterey for purposes of providing on/off site dune restoration.

Likewise, conditions of approval have been placed on coastal development permit approvals in the Malibu area. As stated previously, Trancas Beach is the only area along the Malibu coastline that contains an extensive dune field. Since the certification of the Malibu/Santa Monica Mountains LUP, more than thirteen coastal development permits have been approved for development on Trancas Beach (see page 1, *Substantive File Documents*). In all of these permits the proposed development encroached upon the ESHA. The Commission approved these developments as consistent with §30240 of the Coastal Act only as conditioned to require the applicant to restore and enhance the vegetative cover of the dune fields (emphasis added).

For example, under coastal development permit 4-93-020 (Lemmon), the Commission approved revegetation and enhancement of the Trancas dunes that had been disturbed by unpermitted development, which included landscaping with non-native vegetation. The permit was approved with special conditions that required the implementation of the proposed revegetation of the coastal dunes and the removal of all non-native vegetation. In addition, coastal development permits 4-95-002 and 4-95-005 (Ioki Partners and Malibu Bay Co.) were each approved by the Commission for the demolition of existing single family residences and the construction of new homes. Both of the permits involved the encroachment of development onto the dunes. One of the special conditions of approvals included requiring the applicant to submit and implement a Dune Restoration Program. Similarly, under coastal development permit 4-92-053 (Weinberger), the Commission approved a remodel and 1,050 sq. ft. addition to an existing single family residence, the expansion of a leachfield and septic system with a rock blanket seaward of the residential structure. Since the expanded leachfields encroached into the dune field, one of the special conditions of approvals included requiring the applicant to submit and implement a Dune Restoration Program. Additionally, coastal development permits 4-95-004 and 4-95-005 (Ioki Partners and Malibu Bay Co.), 4-92-139 (Smith), 4-92-239 (Brooks), 4-92-235 (Broad Beach Partners); 4-92-129 (Smith), 4-92-118 (Slavin), 4-91-442 (Sheinberg), and 5-89-756 (Grossman) were all approved by the Commission for development located in Trancas Beach with a very similar Dune Restoration Program special condition.

3. Chapter 3 Analysis of Permit

In comparing the proposed permit application against the Coastal Act, the Commission must determine whether the proposal is consistent with the Chapter 3 policies of the Coastal Act. §30240(a) requires that ESHAs be protected against any significant disruption of habitat values and that only resource dependent uses be allowed within such an area. In addition, §30240(b) mandates that development in areas adjacent to environmentally sensitive habitat areas be sited and designed to prevent impacts which would significantly degrade such areas and be compatible with the continuance of such habitat areas. Furthermore, §30251 requires that the scenic and visual qualities of coastal areas be considered as a resource of public importance. §30251 charges the Commission with requiring that new development be visually compatible with the character of the surrounding area and minimizes the alteration of natural land forms.

The proposed project involves landscaping of the coastal dunes which are located seaward of the applicant's single family residence. As described in the project description above, there are two competing landscaping schemes being proposed. First, the applicant is proposing to remove some of the non-native vegetation {pampas grass (*cortaderia atacamensis*), myoporum (*myoporum laetum*), leptosperum and osteospernum} and revegetate these areas of the dunes with native plants {lemonade berry (*rhus integrifolia*), lance live forever (*duudleya lanceolata*), and convolvulus solanella}. Second, the applicant is proposing to plant a 2,000 sq. ft. lawn area, which requires minor recontouring of the back dune area and to retain the existing ice plant vegetation that covers a portion of the dunes. The lawn area exceeds a stringline

drawn between the corners of the adjacent decks. As noted previously, the applicant has already recontoured the dunes and planted the lawn. This work is inconsistent with the previous conditions required in the prior permit (5-90-997).

In order to thoroughly analyze the proposal against the above cited Chapter 3 policies of the Coastal Act, the two components will be considered individually. The restoration proposed by the applicant is illustrated on a site plan and identifies the use of native plant species in place of the vegetation that will be removed. Even though the proposed vegetation is native, it is not characteristic of the coastal dune native plants. As identified in the City of Malibu General Plan, vegetation characteristic of the southern foredunes that represent the limited remaining distribution of the dune field include the following: sand-verbena (Abronia spp.); silver beachweed (Ambrosia chamissonis); horned sea-rocket (Cakile maritime); beach morning-glory (Calystegia soldanella); and, beach evening primrose (Camissonia cheiranthifolia).

As stated above, the California Department of Fish and Game has identified the dunes as the highest priority special plant community which should be protected. As contained in the Holland Terrestrial Natural Communities of California Report prepared by the Department of Fish and Game in 1986, one of the seven major categories of terrestrial vegetation communities identified in the Malibu Coastal Zone is the coastal dune scrub. The other six communities identified include: 1) Chaparrals; 2) Coastal Sage Scrub; 3) Oak Woodland and Forest; 4) Riparian Scrubs, Woodlands and Forest; 5) Freshwater Marsh; and, 6) Coastal Brackish Marsh. The City of Malibu General Plan also cites the report and states that the "These major vegetation types have been further classified as discrete plant communities that generally share characteristic species and have similar physiographic site characteristics." (page 3-21)

The retention of non-native invasive ice plant in concert with restoration raises an inherent contradiction. By definition, invasive plant species out-compete and kill the native plant communities for water and nutrients often leading to their death. As such, any restoration proposal that does not include the removal of invasive species is unlikely to be fully successful. In order to ensure that the proposed restoration plan is performed in a manner that protects the ESHA against any significant disruption, special condition #1 has been drafted. As set forth in the condition, the applicant shall submit revised Dune Restoration Program prepared by a qualified Landscape Architect and reviewed by a qualified biologist, in order to ensure that the dunes are restored and revegetated with native plants endemic to coastal dunes of this area. Specifically, the restoration and revegetation program shall include:

a) a provision for the removal of all invasive and non-native plant species including ice plant. The removal shall minimize any destabilization of the dunes and may include the usage of geofabrics;

b) a maintenance and monitoring program, which includes three years of monitoring reports with photo-documentation and summaries of observations of the restoration work in spring and fall; and,

c) a provision that if restoration program has been in part, or in whole, been unsuccessful, the applicant shall submit a revised or supplemental program to compensate for those portions of the original program which were not successful.

Additionally, special condition #2 has been required to ensure that the submittal of the Dune Restoration Plan as contained within special condition #1 (a) of the permit occurs within 60 days of Commission action. Furthermore, the condition requires that the Dune Restoration Plan be implemented within 30 days of the beginning of the 1997/98 raining season and that the restoration work be monitored for success as provided for in special condition #1 (b) and (c). Only as conditioned, is the restoration component of the proposed project consistent with §30240 of the Coastal Act.

The second component of the proposed project involves placing a 2,000 sq. ft. lawn area, which is seaward of the deck area of the residence. In order to develop the lawn some minor land form alteration of the dune field must occur. As stated above, sand dune fields function as one system. Trancas Beach is currently developed with approximately 100 homes. The majority of these homes are landward of coastal dunes. However, the vast majority of the Trancas dunes are in private ownership by over 100 different property owners. Therefore, any maintenance or enhancement of the dune field has been subject to proliferated efforts. Likewise, any disturbance of the dunes as a result of development has also occurred on a lot by lot basis.

The benefits of the dunes from a coastal resource and from a visually aesthetic standpoint have been recognized by the Commission in the review and approval of development within the Northern, Central, and some parts of the Southern Coast. Another benefit realized by the dune fields is their ability to protect development landward of the dunes from wave erosion. The dune fields function as a natural shoreline protective device. Further, the dunes provide a visual buffer and screening between the public's use along the beach and the residential development that sited landward of the dune fields. Trancas Beach which is over 5,000 feet in length extends from Lechuza Point to the North to Zuma Creek to the south. The beach comprises one of the southern most dune fields to support endemic coastal dune habitat with the exception of El Segundo, Los Angeles County.

The City of Malibu contains one of the most extensive natural coastlines in Los Angeles County. As stated in the Malibu General Plan, "Marine resources along the Malibu coast include kelp beds, tide pools, marine fisheries, offshore reefs, sandy beaches, rocky haul outs, coastal dunes and isolated wetlands." In an effort to protect these resources the State Water Resources Control Board (SWRCB) designated the entire coastline from Point Magu to Latigo Point as an Area of Special Biological Significance (ASBS). The SWRCB defines an ASBS as an area "requiring protection of species or biological communities."

Incremental development within these dunes will result in the complete degradation of the dune ESHA. As stated previously, Trancas Beach is presently developed with approximately 100 homes. The beach front lots on Trancas Beach extend from Broad Beach Road to the Pacific Ocean ranging in length from approximately 200 to 350 ft.

The seaward half of the private lots contain the coastal dune field. Thus, the majority of the Trancas dune field is in private ownership. Presently, the some areas of the dunes are either denuded partially of vegetation or are vegetated with non-native invasive plant species. In addition, the dunes are routinely walked across by homeowners who live on the landward side of the dunes and are accessing the water.

Development ranging from the construction of a leachfield, to building a deck, to landscaping all raise the potential issue of degradation of the native vegetation endemic to coastal the dunes. For example, if every homeowner proposed to remove dune vegetation and degrade the dunes by way of recontouring the natural mound shaped sand areas in order to develop a 2,000 sq. ft. lawn approximately 5 acres of the coastal dune field and it's vegetative community would be destroyed. Likewise, if every property owner proposed to landscape the dunes with non-native vegetation, the resultant effect would be a loss of vegetation and change in the morphology of the beach. As described in the above examples, not only would the ultimate loss of dune vegetation in Southern California be lost, but the visual quality of the coastline along Trancas Beach which is scenic because of the dune field, would also be lost. It is therefore, imperative that development that occurs either adjacent to or within the dunes does not impact or disrupt the habitat values of the ESHA and visual qualities of the coast.

The Commission has routinely required special conditions of approval on any coastal development permits that are located on Broad Beach with the intent of protecting and enhancing the ESHA. Accordingly, the Commission has required as a special condition of approval in at least 13 other coastal development permits the submission and implementation of Dune Enhancement Plans to protect and restore the dunes along Trancas Beach. As cited in the preceding section, the requirement for dune enhancement and restoration has been triggered by such projects as: landscaping; remodeling an existing residence; constructing a leachfield with a rock blanket in the sand area adjacent to the dunes; and, demolishing an existing residential structure and constructing a new residence. The dune restoration effect has therefore been occurring "site by site."

The Malibu General Plan states of the southern foredunes located on Broad Beach, "This (plant) community, which typically occurs on foredunes or upper beaches, is now much reduced due to urban and other development." Commission staff has met on several occasions with members of the Trancas Beach Homeowners Association over the past year regarding one of their key concerns: the diminishing dune field and degradation of the native vegetation. In addition, the Homeowners Association has been in discussions with coastal engineers, familiar with beach nourishment and coastal dune enhancement in an effort to explore the possibility of restoring the entire dune field back to a more natural state.

In addition, the Department of Fish and Game has developed the California Natural Diversity Database which identified twenty-five plant communities in the Santa Monica Mountains/ Malibu area. The plant communities and their status were with regarded to degree of endangerment were ranked. Accordingly, the Southern Foredune plant

community located on Trancas Beach was ranked as "Very Threatened." As supplemented in the Malibu General Plan this ranking was due to the limited remaining distribution of the dune vegetation and the development pressure on areas which support the community of the southern foredunes found at Broad Beach. (*California Department of Fish and Game Status, Revised 1995*). Absent a consolidated effort to restore the dune fields and allowance of only resource dependent uses within the dunes, the ESHA will become further degraded. In this case, development of a lawn within the dune area would disrupt and disturb the habitat values of this ESHA and the lawn itself is not a resource dependent use. Therefore, the proposed lawn is not consistent with §30240 of the Coastal Act and past Commission actions on this beach.

There are feasible alternatives to this component of the project. For example, it appears that the applicant could choose to develop a small lawn landward of the house in an area that is presently landscaped. If the applicant were to apply for a small lawn landward of the house, the development would be exempt from Coastal Commission review. Another alternative would be to remove the deck area that is adjacent to the house on the seaward side of the structure in order to expand the size of the lawn area. The Commission could find the expansion of the lawn in this location – an area abutting the house and not the ESHA as consistent with the Coastal Act. The Commission acknowledges that given that the existing single family residence is close to 9,000 sq. ft. in size, the 31,641 sq. ft. lot could not accommodate a lawn that is 2,000 sq. ft. in size in a different location. A final alternative is the no project alternative which would result in the removal of the portion of the lawn that extends seaward of the deck stringline as drawn between the corners of the adjacent decks. For all the reasons stated above, the proposed lawn is inconsistent with §30240 and 30251 of the Coastal Act. Therefore, the Commission denies the lawn portion of the proposed project.

D. Public Access and Seaward Encroachment

New development on a beach or between the nearest public roadway to the shoreline and along the coast raise issue with the public access policies of the Coastal Act.

§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 resources from overuse.

§ 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.

§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 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.

All beachfront projects requiring a coastal development permit must be reviewed for their compliance with the public access provisions of Chapter 3 of the Coastal Act. The Commission has required public access to and along the shoreline in new development projects and has required design changes in other projects to reduce interference with access to and along the coast. The major access issue in such permits is the occupation of sand area by development, in contradiction of Coastal Act policies 30210, 30211 and 30212. However, a conclusion that access may be mandated does not end the Commission's inquiry. As noted, Section 30210 imposes a duty on the Commission to administer the public access policies of the Coastal Act in a manner that is "consistent with ... the need to protect ... rights of private property owners..." The need to carefully review the potential impacts of a project when considering imposition of public access conditions was emphasized by the U. S. Supreme Court's decision in the case of Nollan vs. California Coastal Commission. In that case, the court ruled that the Commission may legitimately require access easements where the proposed development has either individual or cumulative impacts which substantially impede the achievement of the State's legitimate interest in protecting access and where there is a connection, or nexus, between the impacts on access caused by the development and the easement the Commission is requiring to mitigate these impacts.

The Commission's experience in reviewing shoreline projects in Malibu indicates that individual and cumulative impacts on access of development can include among others, encroachment on lands subject to the public trusts thus physically excluding the public; interference with natural shoreline processes which are necessary to maintain publicly-owned tidelands and other public beach areas; and visual or psychological interference with the public's access to and ability to use public tidelands areas.

As a means of controlling seaward encroachment of residential structures on a beach to ensure maximum access, protect public views and minimize wave hazards as required by Coastal Act §30210, 30211, 30212, 30251 and 30253, the Commission

has developed the "stringline" policy to control the seaward extent of development the case of this project, the proposed landscaping and lawn are located seaward of buildout in past permit actions. As applied to beachfront development, the stringline limits extension of a structure or deck area to a line drawn between the nearest adjacent corners of adjacent structures and decks.

The Commission has applied this policy to numerous past permits involving infill on sandy beaches and has found it to be an effective policy tool in preventing further encroachments onto sandy beaches. In addition, the Commission has found that restricting new development to building and deck stringlines is an effective means of controlling seaward encroachment to ensure maximum public access as required by §30210 and 30211 and to protect public views and the scenic quality of the shoreline as required by §30251 of the Coastal Act.

One component of the project involves the removal and revegetation of the coastal dunes as conditioned, which will restore the area to a more natural state consistent with the applicable Chapter 3 policies of the Coastal Act. The proposed project will be performed on the applicant's property. In reviewing the previous coastal development permit on this site (5-90-997), the Commission required that the dunes be restored and enhanced and found that the subject project was landward of any public trust lands. As such, this portion of the development is consistent with the applicable seaward encroachment policies of the Coastal Act. The Commission finds that the restoration portion of the project would have no individual or cumulative adverse impact on public access. Therefore, the Commission finds that a condition to require lateral access is not appropriate.

In the case of the section of the project that involves the 2,000 sq. ft. lawn area, the development extends seaward of a stringline drawn between the nearest corners of the adjacent decks. The lawn area recontours the dune field and changes the scenic land form of the coastal dunes at Trancas Beach. As discussed in the above section regarding ESHA and Visual, the section of the lawn that exceeds the stringline is inconsistent with the applicable Chapter 3 policies of the Coastal Act. Therefore, the Commission finds that the proposed project will have an adverse impact on the public's view and the scenic quality of the coast will be adversely impacted. Therefore, the Commission finds that the portion of the project involving the lawn is inconsistent with applicable seaward encroachment policies of the Coastal and is denied.

D. Violation

The proposed landscaping within the ESHA occurred prior to the submittal of this application. Discovery of this violation, by staff occurred in July of 1996. When landscaping of non-native and invasive plant species occur within an ESHA, the habitat value of the ESHA is destroyed and, in the case of invasive vegetation, the ESHA values can be significantly degraded. This is based in part on the fact that invasive vegetation out-competes and destroys native plant communities. Changes in the configuration of coastal dunes also degrades the scenic quality of the coastal

dunes. Thus, there are on-going impacts to coastal habitat and visual resources as a result of the landscaping.

The Commission notes that although development has taken place prior to the submission of this permit application, consideration of the application by the Commission is based solely upon Chapter 3 policies of the Coastal Act. Review of this permit does not constitute a waiver of any legal action with regard to a violation of the Coastal Act that may have occurred.

E. Local Coastal Program

Section 30604 of the Coastal Act states that:

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

Section 30604(a) of the Coastal Act provides that the Commission shall issue a Coastal Permit only if the project will not prejudice the ability of the local government having jurisdiction to prepare a Local Coastal Program which conforms with Chapter 3 policies of the Coastal Act. On December 11, 1986, the Commission certified the LUP portion of the Malibu/Santa Monica Mountains Local Coastal Program. However, on March 28, 1991, the City of Malibu legally incorporated. Therefore, the previously certified County of Los Angeles Malibu/Santa Monica Mountains LUP is no longer legally binding within the City of Malibu.

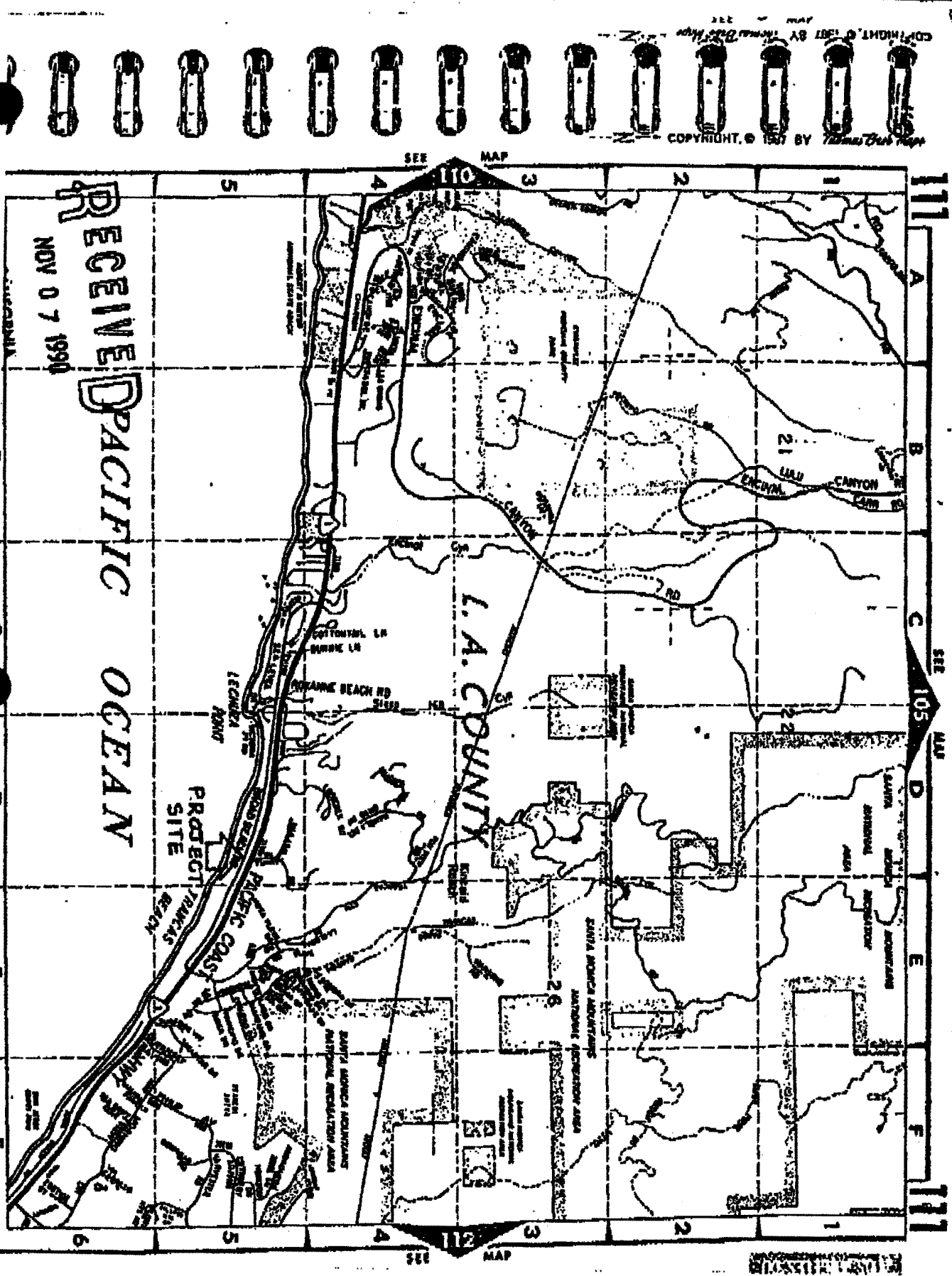
The proposed development as conditioned for approval and as modified through the denial of a portion of the development, will not create adverse impacts and is consistent with the Chapter 3 policies of the Coastal Act. The Commission finds that the portion of the project that is approved will not prejudice the ability of the City of Malibu to prepare a Local Coastal Program that is consistent with the policies of Chapter 3 of the Coastal Act. The portion of the project that is denied will prejudice the ability of the City of Malibu to prepare a Local Coastal Program that is consistent with the policies of Chapter 3 of the Coastal Act. Therefore, a portion of the development can be approved consistent with §30604(a) the Coastal Act.

F. CEQA

Section 13096(a) of the Commission's administrative regulations requires Commission approval of Coastal Development Permit application to be supported by a finding showing the application, as conditioned by any conditions of approval, 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.

There are no negative effects caused by the approval of a portion of the development which have not been adequately mitigated. Therefore, the portion of the project involving the partial removal of non-native vegetation, including the ice plant and revegetation thereof as conditioned to use only native dune vegetation, is consistent with the California Environmental Quality Act (CEQA) of 1970 and the policies of the Coastal Act.

However, the remainder of the development which consists of retaining the lawn that exceeds the deck stringline is not consistent with CEQA and the policies of the Coastal Act. There are feasible alternatives to this portion of the development that would lessen the impact on the environment. CEQA requires that the alternatives be reviewed whether or not the project has been completed. One such alternative would be to redesign the project to locate the residence further landward and away from the dunes so that a lawn could be developed seaward of the house without exceeding the stringline. Another alternative, is to not develop a lawn. Given that CEQA does allow for "no project" to be an alternative, the removal of the lawn would be the preferred alternative in order to maintain the integrity of vegetation located on the coastal dunes. The Commission finds that the proposed development, with the exception of the removal of the non-native habitat and revegetation, is inconsistent with CEQA and the policies of the Coastal Act. There are feasible alternatives which would eliminate the adverse impacts caused by this development. Therefore the lawn portion of the proposed development is denied.



SEE MAP
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RECEIVED
 PACIFIC OCEAN
 NOV 07 1990

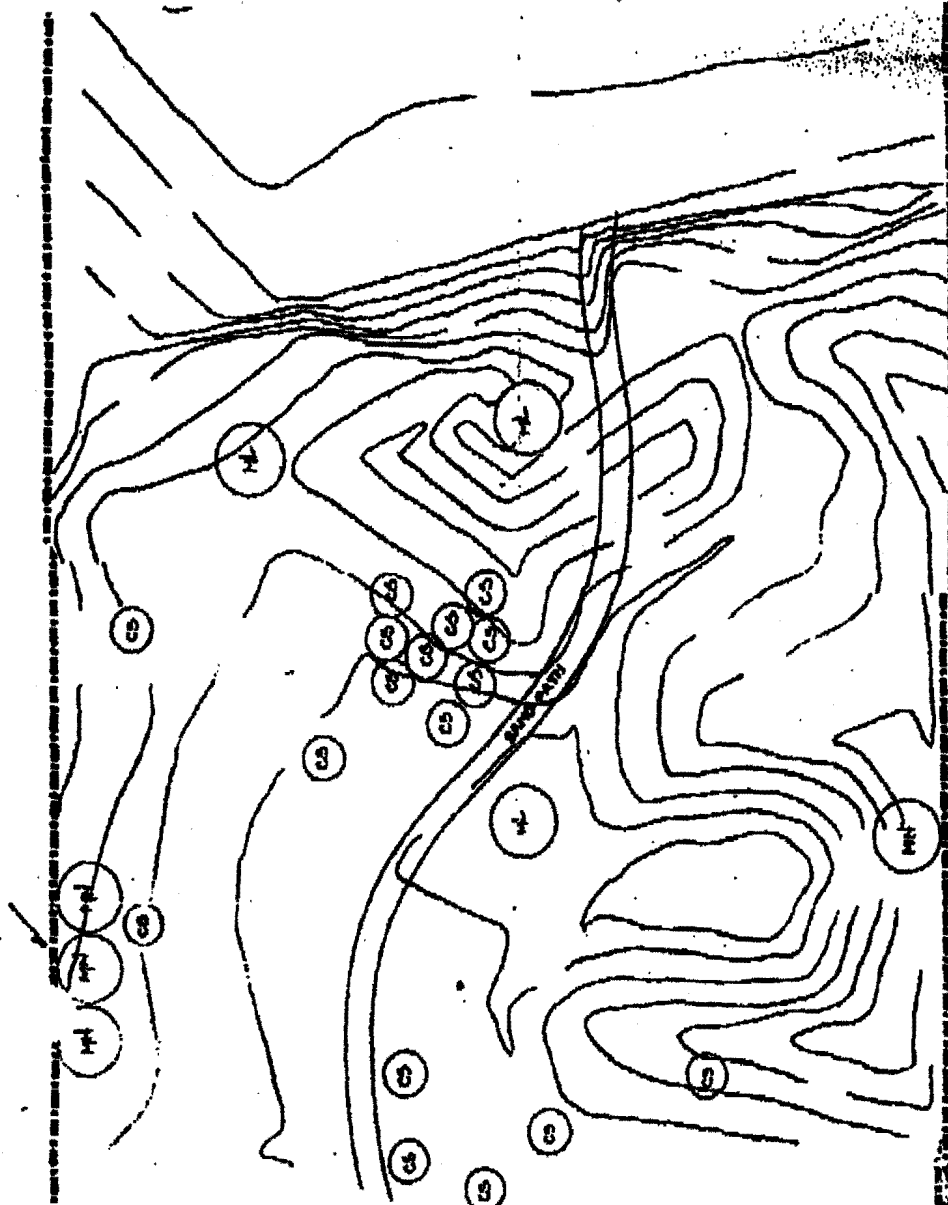
EXHIBIT 1 Item 6b
 4-96-158 (S. A. M. Trust)
 VICINITY MAP

PLANTING NOTES

GENERAL
 All plants listed under the General section are propagated from cuttings from local clones or provided by the State of California. All plants are to be planted in the same manner as provided by the State of California. All plants are to be planted in the same manner as provided by the State of California. All plants are to be planted in the same manner as provided by the State of California.

PLANTING
 The planting operation shall be performed in accordance with the following instructions:
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- 1/54 *Planting layout*
 1/54 *plants only - temporary supply*
 (in place of *Melastoma leucopetalum*)
- 1/19 *Dubautia lankesteri*
 (in place of *Crotophaga sulcirostris*)
- 1/19 *Crotalaria retusa*
 (in place of *Myoporum laetifolium*)

- (14) *removal*
- (15) *replant*
- (16) *Myoporum laetifolium*
- (19) *Crotophaga*

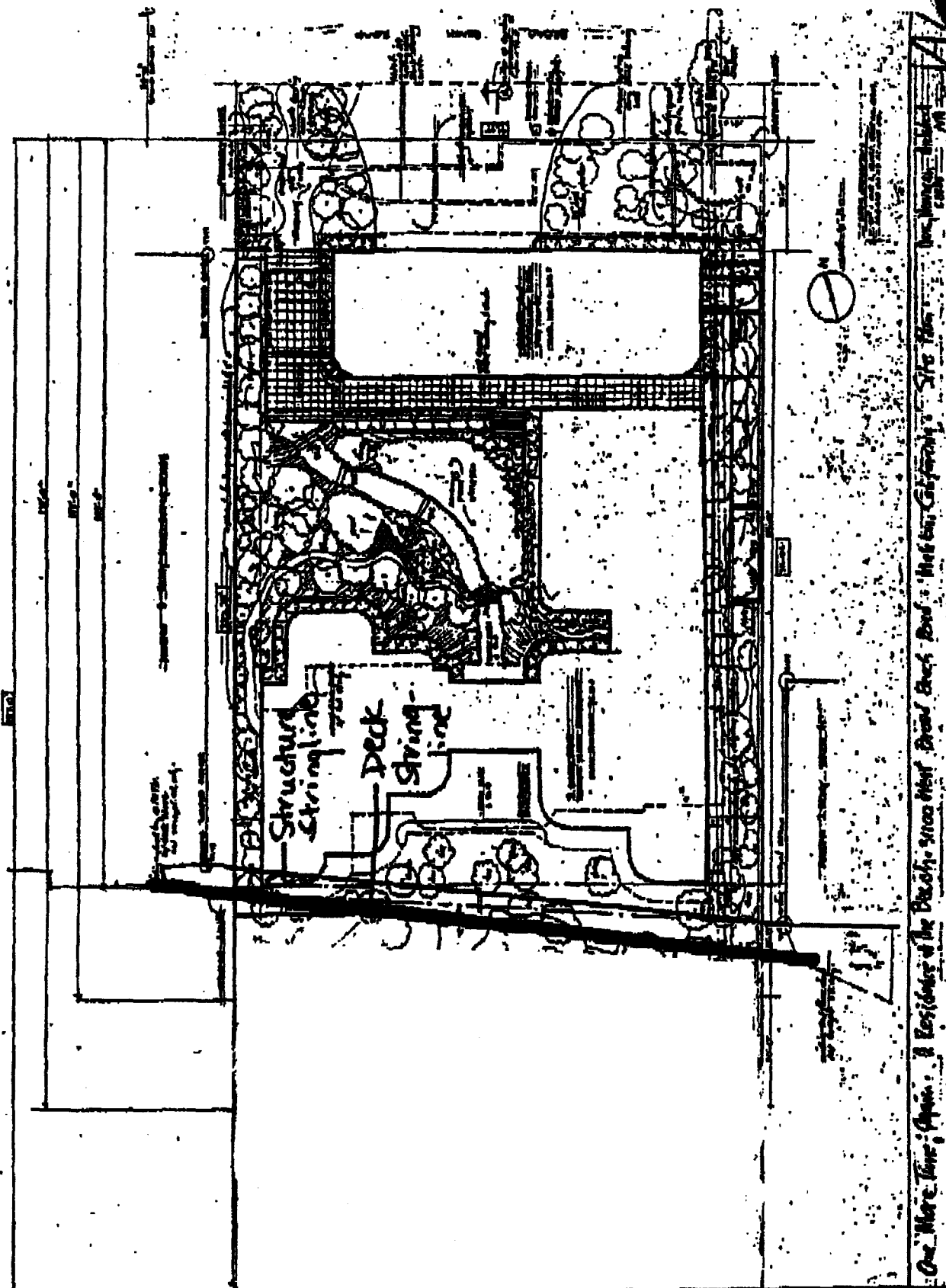


EXHIBIT 3 Item 6b
 4-96-158 (S. A. M. Trust)
 DECK STRINGLINE MAP - LAWN REMOVAL AREA

Outside - The Square - One More Time, Again - A Residence of the Pacific States Mill - Board Beach - Red - Hill Top, California - Site Plan - Inc. James - Hubert - M -

PACIFIC DECK

1940-1941

