

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA

SOUTH CALIFORNIA ST., SUITE 200

MIRAMONTE, CA 93001

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Hearing Date: August 12-15, 1997
Commission Action:

STAFF REPORT: CONSENT CALENDAR

APPLICATION NO.: 4-94-180

APPLICANT: Dr. Jay and Phyllis Schapira AGENT: G.D. Webb Construction

PROJECT LOCATION: Four lots seaward of 31709 Sea Level Drive, including Lot A (Sea Level Drive) and APNs 4470-001-030, -031, and -032.

PROJECT DESCRIPTION: Creation of a parking area seaward of Sea Level Drive, on Lot A, and restoration of a dune area with native vegetation on lots 30, 31, and 32.

Lot area:	Less than 7,000 sq. ft. for four lot
Building coverage:	0
Pavement coverage:	approximately 800 sq. ft.
Landscape coverage:	approximately 1,600 sq. ft. (restoration)
Parking spaces:	approximately 4
Project density:	N/A
Ht abv fin grade:	0

LOCAL APPROVALS RECEIVED: Approval in concept from the City of Malibu.

SUBSTANTIVE FILE DOCUMENTS: Coastal Development Permit Application 4-2-149 (Schapira).

SUMMARY OF STAFF RECOMMENDATION

This is a partial after-the-fact permit application for the creation of a parking area (After-the-fact) and restoration of the dunes seaward of this parking area. The parking area is located on Lot A which also contains Sea Level Drive. Although the lot is 40 feet wide, the actual paved road is much less, leaving an area available for parking. The dunes seaward of Lot A were disturbed during construction of the residence on the landward side of the road. The applicant is proposing to restore that portion of the dune system disturbed during construction. Staff recommends that the Commission approve the project with one special condition regarding implementation and monitoring of the restoration project.

of the issuance of the permit. The applicant may request one 60 day extension of time, for good cause. In no event, should the planting occur later than March 1, 1998. Such planting shall be adequate to provide 90 percent coverage of the site within two years and shall be repeated, if necessary, to provide such coverage.

b. The applicant shall monitor the project to ensure a successful revegetation. The applicant shall submit to the Executive Director, annual reports on the status of the revegetation program, prepared by a qualified restoration specialist or other biologist with an expertise in restoration. These reports shall be required for a period of three years, and shall be submitted to the Executive Director no later than the first of May of each year. The first report shall be required at the completion of 1997-1998 rainy season, but no later than May 1, 1998.

The annual reports shall outline the success or failure of the revegetation project and include further recommendations and requirements for additional revegetation activities should initial planting efforts fail. If at any time, in the findings of the annual reports, the consultant determines that additional or different plantings are required to restore the site to its original condition, the applicant shall be required to do additional plantings within thirty days of such a recommendation. Prior to implementing any changes, the revised planting plan must be submitted for the review and approval of the Executive Director. If at the completion of the third year of monitoring, the consultant determines that the revegetation project has in part, or in whole, been unsuccessful the applicant shall be required to submit a revised, supplemental program to compensate for those portions of the original program which were not successful. The revised or supplemental revegetation program shall be processed as an amendment to this coastal development permit.

IV. Findings and Declarations.

The Commission hereby finds and declares as follows:

A. Project Description and Background

This is a partial after-the-fact permit application for the creation of a parking area (after-the-fact) and restoration of the dunes seaward of this parking area. The paving of the parking area has already occurred; the restoration of the dunes has not occurred. Specifically, the applicant is proposing to retain an approximately 800 square foot parking area adjacent to the paved portion of Sea Level Drive, seaward of the road and the residence. The applicant is also proposing to restore approximately 1,600 square foot area of dunes disturbed during the original construction of the residence located on the landward side of Sea Level Drive. Disturbance of the area included using the area now paved for parking and storing fill and construction materials on the dunes. The original fill and construction materials placed on the dunes have been removed. The applicant has submitted detailed plans which outline the native plant and seed species to be used to restore this portion of the dune system. Some native vegetation, along with some non-native invasive iceplant is growing on the dunes. The proposed project will retain the native vegetation and remove the iceplant prior to planting and seeding with native vegetation.

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 those resources shall be allowed within those 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 those areas, and shall be compatible with the continuance of those habitat and recreation areas.

The parking area is located adjacent to the paved portion of Sea Level Drive, on the seaward side of the road. However, the parking area is not located on the sandy beach or encroach into the dunes. The parking area is consistent with other parking areas on this street, and does not encroach further seaward than other parking areas. The parking area is not located in the ESHA and does not adversely affect the ESHA.

The restoration of the dunes includes the removal of invasive plant species and the planting of native plant species endemic to coastal dunes. Prior to the disturbance of the dunes, this area was vegetated with both native and non-native vegetation. Although some non-native vegetation existed on site, the dune system was in tact and contained native vegetation. Thus, the natural processes of the dunes, including storing and supplying beach sand into the littoral cell, and providing a habitat for coastal animals for feeding, shelter, and nesting, occurred before the disturbance.

Currently, the dunes are relatively devoid of vegetation, due to the disturbance created with the placement of fill and construction materials on site. All fill material placed on the dunes has been removed. However, without vegetation, the dunes will erode from wave and wind action, and do not provide a habitat for coastal flora or fauna. The revegetation of this dune habitat will return the dunes to its natural function. Sections 30230 and 30240 of the Coastal mandate that environmentally sensitive habitat areas and marine habitats be protected from disruption of their habitat value, be enhanced, and where feasible, restored.

In past permit actions, the Commission has required property owners to restore the dune habitat, and if necessary topography, when disturbed either through a permitted or unpermitted activity. For example, coastal development permits 4-95-002 and 4-95-005 (Ioki Partners and Malibu Bay Co.) were for the construction of two residences on Trancas beach, along Broadbeach Road, which involved disturbance of the dunes. The Commission required the applicants to submit and implement a dune restoration program to restore the dunes after construction of the residences were completed. In 4-92-053 (Weinberger) the Commission required restoration of the dunes since the project included expansion of the leachfield system into the dune area and disturbance of the dunes. In 4-93-020 (Lemmon), the Commission approved a project for the restoration of the dunes after the dunes were landscaped with non-native vegetation.

The restoration of this dune habitat, if done properly, will enhance and restore this portion of the dune system. The plan submitted by the applicant has been reviewed and approved by the City of Malibu. The City of Malibu's biologist has reviewed the project and approved the project subject to minor

shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the access way.

The major access issue in such permits is the occupation of sand area by a structure, in contradiction of Coastal Act policies 30211, 30212, and 30221. 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 a lateral access easement 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 those impacts.

The Commission's experience in reviewing shoreline residential projects in Malibu indicates that individual and cumulative impacts on access of such projects 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; overcrowding or congestion of such tideland or beach areas; and visual or psychological interference with the public's access to an ability to use and cause adverse impacts on public access such as above.

In this case, there is no development proposed on any sandy area. The parking area is proposed landward of the dunes, and is not located on the sandy beach. Furthermore, the parking area is contiguous to other parking areas on neighboring lots. This parking area does not encroach seaward past other parking areas, and does not encroach onto the sandy beach. The restoration of the dunes does not involve the placement of any structures on the sandy beach. No mechanized equipment will be used for the revegetation of the dunes. Thus there is no need for a lateral access condition as the parking portion of the project does not encroach further seaward and is not located on a sandy beach.

In order to avoid negative impacts on public access, the parking portion of the project must also not be located on public lands. Pursuant to Public Resources Code Sections 30401 and 30416, the State Lands Commission is the agency entrusted with management of the State's ungranted tide and submerged lands; the project was reviewed by the State Lands Commission. The State Lands Commission states that based on their review the project does not appear to intrude into sovereign lands, and asserts no claim at this time that the project would lie in an area that is subject to the public easement in navigable waters, reserving its right to make a different assertion if circumstances change. Therefore, the Commission finds that this development is consistent with the Sections 30211, 30212, and 30251 of the Coastal Act.

D. Violation

This application includes the after-the-fact request for the construction of a parking area adjacent to a private street and beach dunes. The project also

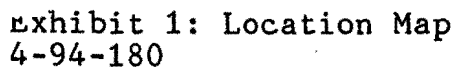
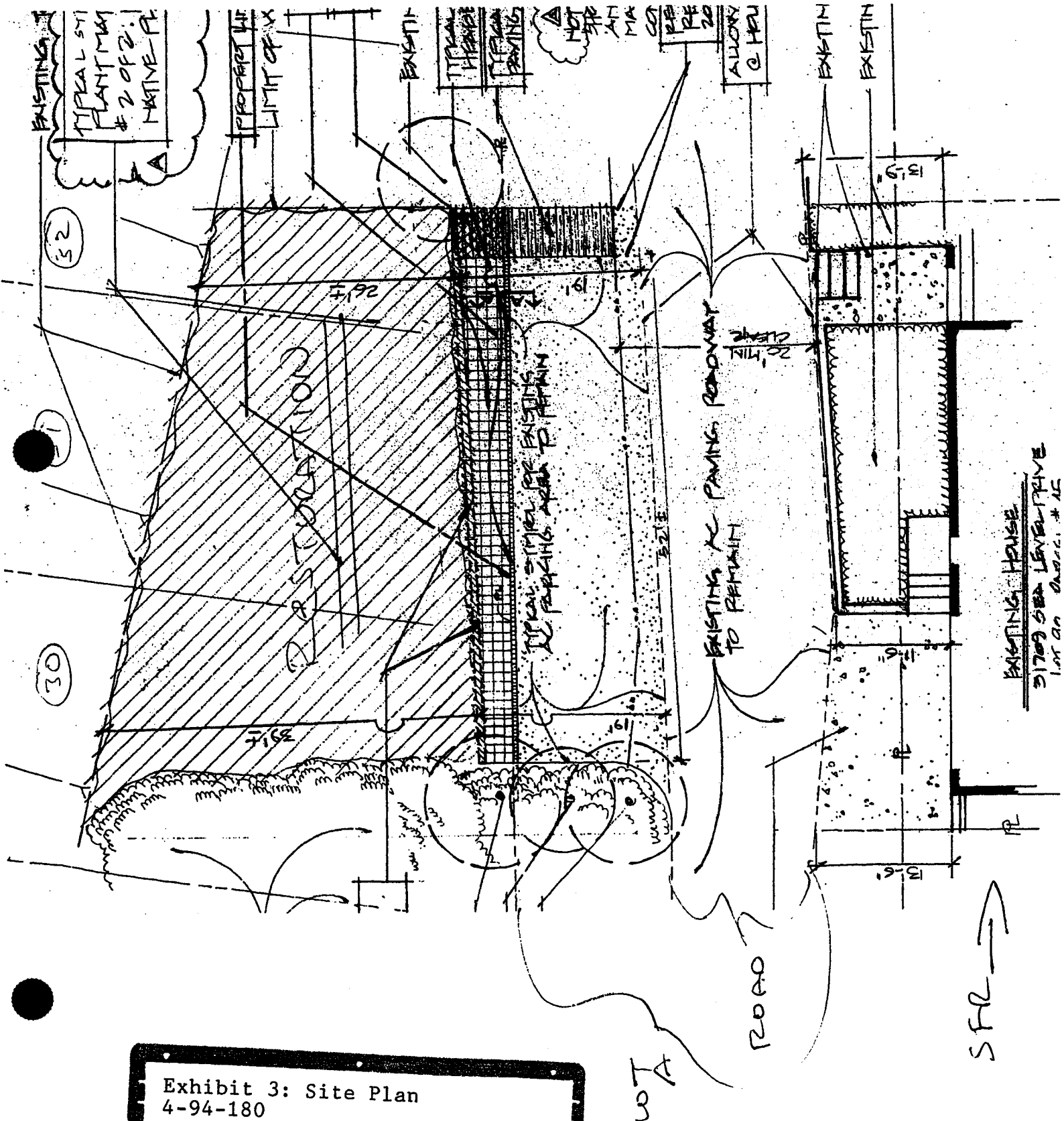
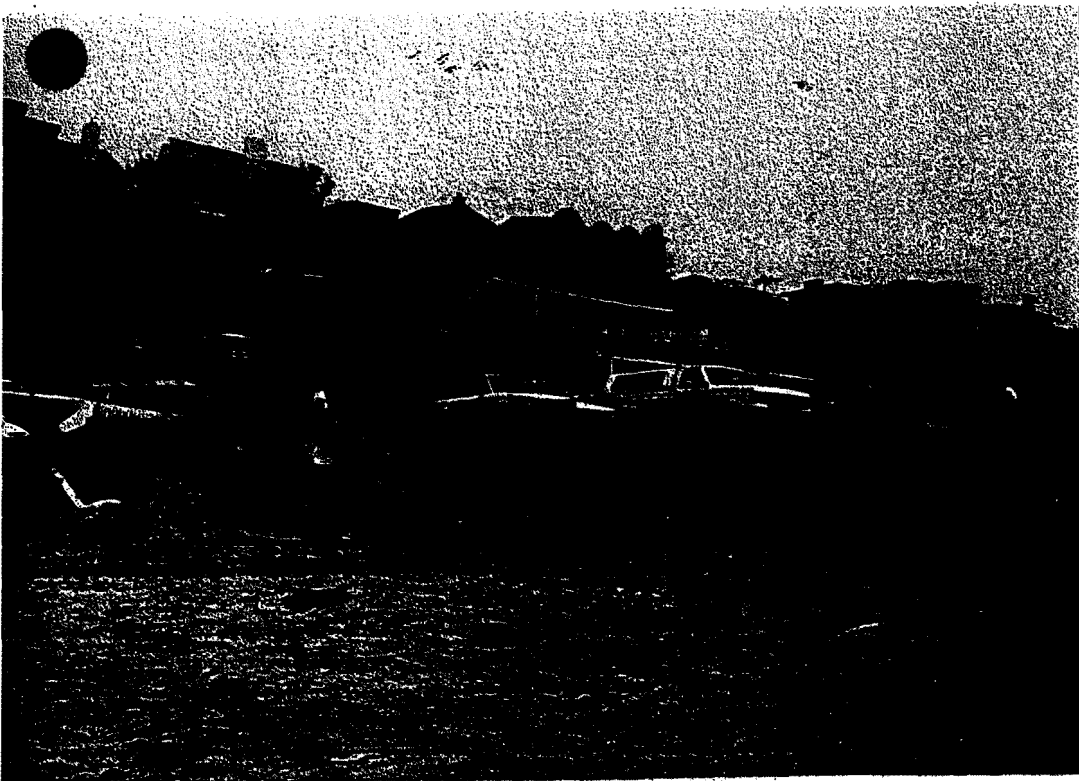


Exhibit 3: Site Plan
4-94-180





LOOKING SOUTH



LOOKING
NORTH

← PARKING

← DRIVE

← BEACH