

CALIFORNIA COASTAL COMMISSION

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**F5b**

Filed: 10/27/99  
49th day: 12/15/99  
180th day: 04/24/00  
Staff: SG  
Staff report: 11/18/99  
Hearing date: 12/10/99

**COASTAL DEVELOPMENT PERMIT APPLICATION**

Application number ..... 3-99-071

Applicant ..... Frank and Michelle Knight

Project location ..... 1691 Sunset Drive (northeast corner of Sunset Drive and Arena Avenue) in the Asilomar Dunes neighborhood of Pacific Grove, Monterey County (APN 007-041-012)

Project description ..... Construct a single-story, 4563 square foot single family dwelling with attached 812 square foot garage, driveway, and patios, on a 46,609 square foot (1.07 acres) lot.

Approvals Received ..... City of Pacific Grove: Site plan review approved 02/17/99, negative declaration granted 05/25/99, architectural review approved 09/15/99.

File documents ..... Botanical/Biological Report by Thomas Moss (01/24/99); Landscape Restoration Plan by Thomas Moss (04/27/99); Mitigation Monitoring Program by Jon Sather Erlandson (N.D.); Archaeological Investigation by Robert and Jane Stillinger (07/90); Coastal Development Permit files 3-96-81 (Miller), 3-91-94 (McAlister); City of Pacific Grove certified Land Use Plan.

Staff recommendation ... **Approval with Conditions**



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## I. Summary

The applicants propose to construct a split-level single family dwelling in the Asilomar Dunes neighborhood of the City of Pacific Grove. The City has a certified Land Use Plan (LUP), but the Implementation Plan has not yet been certified. Therefore, a coastal development permit for the project must be obtained from the Coastal Commission and the proposal is subject to the policies of Chapter 3 of the Coastal Act, as well as the policies of the LUP, although the LUP policies are advisory only. Because of the unique geological and biological features of the Asilomar Dunes, site coverage is limited to 15 percent of lot area, with an additional 5 percent of lot area allowed for use as "Immediate outdoor living area" without impervious surfaces. The remainder of the lot is to be revegetated with native dune plants and restored to native conditions. The intent of this requirement is to preserve the unique, environmentally sensitive habitat of the dunes, which are home to a number of special status species. The proposed house is slightly over the maximum allowed 15 percent coverage. As conditioned to limit coverage to no more than 15 percent, however, the project will be consistent with the policies of Chapter 3 of the Coastal Act and with

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the City's certified LUP.

## **II. Staff Recommendation on Coastal Development Permit**

The staff recommends that the Commission, after public hearing, **approve** the proposed project subject to the standard and special conditions below. Staff recommends a **YES** vote on the motion below. A yes vote results in approval of the project as modified by the conditions below. The motion passes only by affirmative vote of a majority of the Commissioners present.

*Motion: I move that the Commission approve Coastal Development Permit Number 3-99-071 subject to the conditions below and that the Commission adopt the following resolution:*

Staff recommends a **YES** vote.

*Approval with Conditions. The Commission hereby grants a permit for the proposed development on the grounds that the development as conditioned is consistent with the requirements of Chapter 3 of the California Coastal Act of 1976 (Coastal Act), will not prejudice the ability of the City of Pacific Grove to prepare a local coastal program conforming to Chapter 3 of the Coastal Act, and will not have any significant adverse effects on the environment within the meaning of the California Environmental Quality Act (CEQA).*

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## **III. Conditions of Approval**

### **A. 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.

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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.

**B. Special Conditions**

1. **Incorporation of City's Mitigation Requirements.** The Mitigations and Mitigation Monitoring Program adopted by the City of Pacific Grove for its final Negative Declaration for this project are attached as Exhibit 5 to this permit; these mitigations are hereby incorporated as conditions of this permit. This Coastal Commission action has no effect on conditions imposed by the City of Pacific Grove pursuant to an authority other than the California Coastal Act.

Any revision or amendment of these adopted conditions and mitigation measures or the project plans as approved pursuant to the City's architectural review procedures shall not be effective until reviewed by the Executive Director for determination of materiality, and if found material, approved by the Commission as an amendment to this coastal development permit.

2. **Deed Restriction.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall execute and record a deed restriction, in a form and content acceptable to the Executive Director, which shall provide:

- A. For the protection of the scenic and natural habitat values on all portions of the environmentally sensitive native dune habitat area on the site, except for a building envelope area not to exceed 15 percent of the area of the lot; and a residential driveway as shown on approved final plans, and an immediate outdoor living area left in natural condition or landscaped so as to avoid impervious surfaces (i.e., surfaces which do not allow water to penetrate into the soil) not to exceed 5 percent of the area of the lot.

Such restriction shall include provisions to prohibit development outside of the approved building envelope except for fencing and that part of the driveway that is not counted in the percent of coverage; to prevent disturbance of native groundcover and wildlife (including the permanent fencing identified in Special Condition 4); to provide for maintenance and restoration needs in accordance with approved native plant maintenance and restoration plans; to provide for approved drainage improvements; and to specify conditions under which non-native species may be planted or removed,

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trespass prevented, entry for monitoring of restored area secured, and homeowner access accommodated within the restored area. Provisions for necessary utility corridors may be included in accord with Condition No. 10.

- B. For measures to implement the approved final native plant maintenance and restoration plan prepared for the subject property.
  - C. For fencing restrictions to protect public views and allow free passage of native wildlife, as provided by Local Coastal Program Land Use Plan Policy 2.3.5.1(e).
  - D. For a monitoring program as set forth in the approved maintenance and restoration plan; provided that, following construction, annual monitoring reports shall be submitted to the Executive Director and the City of Pacific Grove for review and approval for a period of five years.
3. **Native Plant Restoration and Maintenance.** Native plant restoration and maintenance shall occur according to the Landscape Restoration Plan by Thomas Moss, Coastal Biologist, dated April 27, 1999, and received in the Commission's Central Coast District Office on September 23, 1999.
4. **Final Project Plans.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit the following for the Executive Director's review and approval:
- A. Final project plans including site plan, floor plans, elevations and grading plans. The site plan shall designate a building envelope area not to exceed 15 percent of the lot area. The building envelope shall include the approved house, decks, garage, driveway, and an immediate outdoor living area. The plans shall indicate that part of the driveway that is not counted in the 15 percent coverage. The immediate outdoor living area is that portion of the yard closest to the residence, which shall be left in a natural condition or landscaped without impervious surface, not to exceed 5 percent of the lot area. The submittal shall include evidence of review and approval by the City of Pacific Grove.
  - B. A final landscaping plan covering the building envelope area and immediate outdoor living areas. The plan shall include native plantings to the greatest extent feasible. Invasive non-native plants shall not be used. All plant materials shall be installed prior to occupancy and shall be prepared in coordination with the approved native plant maintenance and restoration plan. Evidence of review and approval by the project biologist shall accompany the submittal.

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

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

- A. Plans for temporary exclusionary fences to protect sensitive areas from disturbance during construction. Vehicle parking, storage or disposal of materials, shall not be allowed within the exclusionary fences. Fences shall be installed prior to the start of construction and shall remain in place and in good condition until construction is completed.

The exact placement of the fences shall be identified on site by the project's environmental consultant. Evidence of inspection of the installed construction fence location by the environmental consultant shall be submitted to the Executive Director prior to commencement of construction. Fences shall be 4 feet high and secured by metal T-posts, spaced 8 to 10 feet apart. Either field fence or snow-drift fence, or comparable barrier, shall be used.

- B. Plans for permanent split rail fencing or similar landscaping fence, as necessary to discourage trampling of the area to be restored and/or rehabilitated outside of the building envelope and the immediate outdoor living area. The type of fencing shall be consistent with Condition 2.C. The fence shall be installed prior to occupancy (or, prior to commencement of construction if used in lieu of temporary fencing required for habitat protection for that portion of the project site).

**6. Grading and Spoils Disposal.** PRIOR TO COMMENCEMENT OF CONSTRUCTION, the permittee shall submit to the Executive Director for review and approval two sets of grading plans that shall identify the disposal site for excess excavated spoils. Disposal site and methods employed shall be subject to review and approval by the City of Pacific Grove, the project biologist and the Executive Director. If excavated sand is to be used for building up the existing dunes between the rock outcropping near the southwest corner of the site and the drainage swale just seaward of the proposed house location, no sand shall be allowed in the drainage swale. Any additional excess excavated sand may be utilized for restoration purposes at Asilomar State Beach, as directed by the Department of Parks and Recreation. While off-site beneficial re-use of excess sand is strongly encouraged, Asilomar sand may not be exported from the Asilomar Dunes – Spanish Bay area.

**7. Archaeological Mitigation.** Should archaeological resources be discovered at the project site during any phase of construction, the permittee shall stop work until a mitigation plan, prepared by a qualified professional archaeologist and using accepted scientific techniques, is completed and implemented. Prior to implementation, the mitigation plan shall be submitted for review and approval by the State Historical Preservation Office and for review and approval by the Executive Director of the Commission. The plan shall provide for reasonable mitigation of the archaeological impacts resulting from the development of the site, and shall be fully implemented. A report verifying compliance with this condition shall be submitted to the

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Executive Director for review and approval, upon completion of the approved mitigation.

8. **Environmental Monitoring During Construction.** Permittee shall employ an environmental monitor to ensure compliance with all mitigation requirements during the construction phase. The project's environmental monitor (Thomas Moss, Consulting Coastal Biologist, or other consultant approved by the Executive Director and the City of Pacific Grove Community Development Director) or the City's Community Development Department shall monitor construction activities on a weekly basis until project completion to assure compliance with the mitigation measures adopted by the City (Exhibit 5). Evidence of compliance with this condition by the project monitor shall be submitted to the Executive Director each month while construction is proceeding and upon completion of construction. In the event of non-compliance with the adopted mitigation measures, the Executive Director shall be notified immediately. The environmental consultant or the City shall make recommendations, if necessary, for compliance with the adopted mitigation measures. These recommendations shall be carried out immediately to protect the natural habitat areas of the site.
9. **Exterior Finish.** All exterior finishes and window frames shall be of wood or earthen-tone colors as proposed by the applicant on the plans dated "SEP 21 1999" received in the Commission's Central Coast District Office on September 23, 1999. Any changes shall require prior review and approval by the Executive Director.
10. **Utility Connections.** All utility connections shall be installed underground as proposed. When installing the necessary utility connections, care shall be taken to minimize surface disturbance of the deed-restricted revegetation in accordance with Conditions 3 and 4.

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## **IV. Recommended Findings and Declarations**

The Commission finds and declares as follows:

### **A. Project Location and Description**

The site of the proposed house is a rectangular vacant lot at 1691 Sunset Drive (northeast corner of Arena and Sunset) in the Asilomar Dunes neighborhood of the City of Pacific Grove. West of the site, across Sunset Drive, is a narrow, low, ocean-fronting bluff which is part of Asilomar State Beach. (See Exhibit 1 for project location.)

The applicants propose to build a 4563 square foot single family dwelling with an 812 square foot attached garage, driveway, patios and limited landscaping, 901 square feet of elevated decks, 420 cubic yards of excavation, and split rail fencing on the north and east property lines. The applicants propose dune restoration on the remaining portion of the lot.

The lot slopes up to the east, rising to about 35 feet above Sunset Drive at the northeast corner.

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The site is composed largely of sand dunes vegetated with ice plant, although there are some areas of existing native dune vegetation, notably at the southeast corner and western third of the lot. A drainage swale runs diagonally across the lot from near the center of the southern property line along Arena Avenue to the northwest corner adjacent to Sunset Drive. Granitic rock outcroppings occur near the southwestern and northeastern corners of the lot, revealing the underlying granite of the Monterey Peninsula.

Surrounding land use is low density residential in the Asilomar Dunes neighborhood. Asilomar Conference Center is south of the subject site.

Previous owners of the property, Charles and May McAlister, were granted a coastal development permit in 1991 (3-91-94) to construct a single family dwelling in substantially the same location on the lot (see Exhibit 7), which would have had 13 percent coverage. The house approved under that permit was never built and the permit was allowed to expire.

### **B. Standard of Review**

The Asilomar Dunes portion of the City of Pacific Grove is within the coastal zone, but the City does not have a certified total LCP. The City's Land Use Plan (LUP) was certified in 1991, but the zoning, or Implementation Plan (IP) portion of the LCP has not yet been certified. The City is currently working to complete the IP with funding provided by a grant from the Coastal Commission. Because the City does not yet have a certified total LCP, coastal development permits must be issued by the Coastal Commission and the standard of review is the Coastal Act, with the LUP serving as an advisory document.

### **C. Basis of Decision**

When the City of Pacific Grove completes the implementation portion of its Local Coastal Program (LCP), the LCP will become the standard of review for coastal development permits. In the meanwhile, the standard of review is conformance with the policies of the California Coastal Act. These policies include Section 30240, which prohibits any significant disruption of environmentally sensitive habitat areas, and bans those uses which are not dependent on such resources.

In this case, the entire buildable area of the approximately one-acre parcel comprises environmentally sensitive coastal dune habitat (see finding D below for details). Accordingly, because the proposed single family residence- is not a resource-dependent use and would result in a significant habitat disruption, there is no place on this parcel where any reasonably-sized residential development could be found consistent with Section 30240. Therefore, absent other considerations, this-project would have to be recommended for denial.

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Coastal Act Section 30010, on the other hand, provides:

The Legislature hereby finds and declares that this division is not intended, and shall not be construed as authorizing the commission, port governing body, or local government acting pursuant to this division to exercise their power to grant or deny a permit in a manner which will take or damage private property for public use, without the payment of just compensation therefor. This section is not intended to increase or decrease the rights of any owner of property under the Constitution of the State of California or the United States.

The Coastal Commission is not organized or authorized to compensate landowners denied reasonable economic use of their otherwise developable residential property. Therefore, in order to preclude a claim of taking and to assure conformance with California and United States Constitutional requirements, as provided by Coastal Act Section 30010, this permit allows the development of a single family residence by way or providing for reasonable economic use of this property. This determination is based on the Commission's finding in Section D2 of this staff report, below, that the property was purchased with the expectation of residential use, that such expectation is reasonable, that the investment was substantial, and that the proposed development is commensurate with such invest-backed expectations for the site.

**D. Environmentally Sensitive Habitat Area**

The Coastal Act, in Section 30240, states:

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

The Coastal Act in Section 30107.5, defines an environmentally sensitive area as "... any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments."

**1. Description of Sensitive Habitat.**

The proposed single-family dwelling is located in the Asilomar Dunes formation at the seaward extremity of the Monterey Peninsula. The unusually pure, white silica sand in this area was formerly stabilized by a unique indigenous dune flora. However, only a few acres of the original approximately 480 acre habitat area remain in a natural state. The balance of the original habitat has been lost or severely damaged by sand mining, residential development, golf course development, trampling by pedestrians, and the encroachment of non-indigenous introduced vegetation. A number of preservation and restoration efforts have been undertaken, most notably

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at the Spanish Bay, Resort, Asilomar State Beach, and in connection with previously approved residential developments on private lots.

As a result of past development activity and displacement by invasive exotic vegetation, certain plants characteristic of this environmentally sensitive habitat have become rare or endangered. The best known of these native dune plants are the Menzies wallflower and the Tidestrom's lupine, both of which have been reduced to very low population levels through habitat loss and are now Federally-listed endangered species. In addition, the native dune vegetation also includes more common species that play a special role in the ecosystem; for example, the bush lupine provides shelter for the rare Black legless lizard, and in nearby areas the coast buckwheat hosts the endangered Smith's blue butterfly.

A Botanical/Biological Report was prepared by Bruce Cowan in 1990 for a previous application for a single family dwelling. That application, 3-91-94, was approved by the Coastal Commission but the house was never built and the permit expired. In order to provide a current understanding of the sensitive habitat on the property in support of the current application, a Botanical/Biological Report was prepared by Thomas Moss, a consulting coastal biologist, on January 24, 1999. On the subject site the population of Menzies wallflower and dune buckwheat have declined precipitously since 1984 when, according to the biological/botanical report, "Some 20 individual Menzies' wallflower plants and 15 dune buckwheat plants were identified. . . ." By 1990, according to the report, "none of the Menzies' wallflower plants and only 3 of the dune buckwheat plants remained, undoubtedly, in this case, as a result of predation by deer." The current survey (January 1999) discovered no Menzies' wallflowers but an increase in the number of buckwheat plants since 1990, from three to nine, was observed. Unlike those two plants, Tidestrom's lupine has shown a marked increase on the site. The 1990 Cowan report identified nine plants in the northwest corner and 30(+) plants in the southeast corner. The current survey identified 61 plants in the northwest corner and 30 plants in the southeast corner of the site. Additionally, the current survey found "a third population consisting of 35 plants located on the southern end of the longitudinal dune formation (adjacent to Arena Avenue) that extends across the western portion of the property." The current survey speculates that this third population "was most likely overlooked in the 1990 survey."

The report details the botanical and biological values of the site and recommends a series of mitigation measures to protect the sensitive habitat and endangered species. These measures, which are incorporated in the City's Conditions and, by reference, in this permit, provide for protection of native dune habitat. Based upon these reports, testimony received at the local hearing, prior Commission actions on other proposed development in the dunes, and on staff observations, the Commission finds that the site is on environmentally sensitive habitat consistent with the definition found in Section 30107.5 of the Coastal Act.

The Moss Botanical/Biological Survey indicates that other native dune plants are located on the site as well. These species each play an important role in the ecosystem and; while not endangered, they each contribute to the maintenance of the natural habitat and serve to stabilize the dunes. Therefore, not only the locations of the Tidestrom's lupines and Menzies wallflowers, but also

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adjacent areas that support or potentially support native dune flora must be considered environmentally sensitive habitat areas. In other words, 100% of the lot comprises environmentally sensitive habitat.

**2. Implementing Section 30010 and 30240 of the Coastal Act**

The entire area of the applicant's parcel is an environmentally sensitive dune habitat. The proposed development as submitted includes a single-family dwelling, garage, driveway, and decks. This project will require 420 cubic yards of grading and will result in a permanent loss (i.e., site coverage) of over 6600 sq. ft. of environmentally sensitive dune habitat.

Additional disruptions will result, but are amenable to native plant restoration and maintenance measures; these include: installation of storm drain system, utility trenching, and, over the long run, ordinary residential activities on the premises. None of these development activities are of a type that is dependent on a location within the sensitive resource area. And, these development activities, individually and collectively, will result in a significant disruption of this environmentally sensitive dune habitat area. Therefore, absent other considerations, this project could not be found consistent with Coastal Act Section 30240.

However, as detailed in Finding C above, Coastal Act Section 30240 must be applied in the context of the other Coastal Act requirements, particularly Section 30010. This section provides that the policies of the Coastal Act "shall not be construed as authorizing the commission . . . to exercise [its] power to grant or deny a permit in a manner which will take or damage private property for public use, without payment of just compensation." Thus, if strict construction of the restrictions in Section 30240 would cause a taking of property the section must not be so applied and instead must be implemented in a manner that will avoid this result.

Recent court decisions demonstrate that to answer the question whether implementation of a given regulation to a specific project will effect a taking requires an ad hoc factual inquiry into several factors. Specifically, the courts have consistently indicated that this inquiry must include consideration of the economic impact that application of a regulation would have on the property. A land use regulation or decision may effect a taking if it denies an owner all economically viable use of his or her land. (Lucas v. South Carolina Coastal Council- (1992) 505 U.S. 1003, 1029; also see Keystone Bituminous Coal Assn. v. DeBenedictis (1987) 480 U.S. 470, 495, citing Agins v. Tiburon (1980) 447 U.S. 255, 260.)

Another factor that must be considered is the extent to which a regulation or regulatory decision "interferes with reasonable investment backed expectations." (Keystone Bituminous Coal Assn. v. DeBenedictis, supra, 480 U.S. 470, 495, citing Kaiser Aetna v. United States (1979) 444 U.S. 164, 175.)

There are several other factors that may be reviewed in conducting a takings analysis, such as whether the land use regulation substantially advances a legitimate state interest (Nollan v. California Coastal Commission (1987) 483 U.S. 825) or whether the property is subject to an

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existing limitation on the landowner's title, such as the public trust (*Lucas v. South Carolina Coastal Council*, supra, 505 U.S.1003). These issues are not presented by this application because the government's interest in protecting habitats for endangered species is well recognized and there are no questions concerning the applicant's title to this property.

In this situation, the Asilomar Dunes area has already been subdivided into residential lots, and has over the years been partially developed. Indeed, residences are located directly east and south of the project site and other residences are in the immediate vicinity. In view of the location of the applicant's parcel and, in particular, its limited one acre+ lot size, the Commission is unaware of any use that would be both dependent on the environmentally significant resources of the site as otherwise required by Section 30240 and capable of providing an economically viable use. Residential use, on the other hand, would provide such an economic use. The Commission is unaware of any intent by any public agency to purchase this or other similarly situated and zoned lots in the Asilomar Dunes.

Additionally, it has been determined that the applicants purchased the property in January 1999. According to the applicants, at that point in time they felt it was reasonable to expect that residential use would be allowed on this property based on a number of factors. For instance, the parcel was and is designated for residential use in the City of Pacific Grove's Land Use Plan and in the City's zoning ordinances. Further, the parcel abuts two improved streets, Sunset Drive and Arena Avenue, and public utility service is currently available. As noted above, a substantial number of parcels in the Asilomar Dunes area already are developed and have been for some time. In fact, in August 1996, the Commission approved a permit for another residence in the subdivision, two lots north of the subject lot, that also provided for development in an area with environmentally sensitive habitat (Miller, Coastal Development Permit No. 3-96-81). The applicants also noted that no hazardous conditions existed on the site and that there was no evidence of any prescriptive rights or other potential clouds on legal title to the property. After reviewing these factors, the Commission agrees that when the property was purchased the applicants had a reasonable basis for expecting that residential use of the subject property would be permitted.

Finally, the applicants have submitted detailed information to demonstrate that their expectations were backed by substantial investments. The property was purchased for \$725,000, which was the fair market value for residential property in this area at the time. Since this purchase the property has generated no income but has been taxed based on its zoning as residential land. Accordingly, the Commission finds that the applicants had an investment-backed expectation that this property could be used for residential use.

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 applicants had a reasonable investment backed expectation that such use would be allowed on their 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

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Commission determines that 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 applicants in this instance may have reasonably anticipated that residential use of the subject property might be allowed, the City Land Use Plan and Coastal Act also provided notice that such residential use would be contingent on the implementation of mitigation 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.

In the present situation, there are several conditions that the Commission can adopt that implement Section 30240 without taking the applicants' property. First, the applicants currently propose to cover over 6,000 sq. ft. of the one acre plus parcel with building and paving. As a result, this area of dune habitat will be permanently lost, and additional area will also be disrupted by construction activities. However, the extent of this disruption and dune alteration can be minimized by the implementation of appropriate conditions.

Therefore, several additional conditions are necessary to offset these direct and indirect project impacts as discussed in these findings. Most importantly, Special Condition No. 6 requires that the area of the property that will not be developed shall be preserved in open space subject to a deed restriction. This recorded restriction shall prohibit uses that are inconsistent with dune habitat restoration and preservation, and is needed to ensure that future owners are aware of the constraints associated with this site.

**3. Cumulative Impacts.**

The applicant's project is located in the northern part of this dune formation, an area of about 60 acres where the dunes retain roughly their original contours. Although divided into about 95 lots and developed with some 75 existing dwellings, the area still contains some of the best remaining examples of original Asilomar Dunes flora.

The cumulative impacts of additional residential development would have a substantial adverse impact on the unique ecology of the Asilomar Dunes, as each loss of natural habitat area within the Asilomar Dunes formation contributes to the overall degradation of this extremely scarce coastal resource. The adverse effects from the sum of past development impacts have progressed to the point that on existing lots of record in the nearby unincorporated portion of the Asilomar Dunes, all remnant coastal dune areas stabilized by natural vegetation must, under the County's certified Local Coastal Program (LCP), be preserved. (A very substantial effort to restore a natural dune habitat was required as a condition of resort development at Spanish Bay, but has proven to be

much more successful on the remnants of the original dunes than on imported material). Notwithstanding the cumulative impacts of continuing residential development in the Asilomar Dunes, absent purchase of the remaining lots, some development must be allowed. The City's Land Use Plan contains rigorous policies designed to protect the native dune plant habitat area and minimize cumulative impacts.

#### **4. Land Use Plan Criteria.**

As the applicants' site lies within the northerly portion of the overall Asilomar-Fan Shell Beach dune complex, it falls within the area covered by the City of Pacific Grove's Local Coastal Program Land Use Plan (LUP). (This portion of the dune formation was annexed by the City in October 1980). The City's LUP residential development criteria include the Coastal Act requirement of "no significant disruption" of environmentally sensitive habitat-areas, as provided by Section 30240. The City's LUP was approved with modifications by the Commission on January 10, 1991, and has subsequently been revised and adopted by the City.

Although the Coastal Act policies are the standard of review for coastal development permits until the City completes its LCP, the City in the meanwhile has adopted an ordinance that requires conformance with the LUP. This may provide guidance to the Commission as it considers proposals for development in the dunes. The LUP contains policies that require the following:

- Structures shall be sited to minimize alteration of natural dune topography. Restoration of disturbed dunes is mandatory as an element in the siting, design and construction of a proposed structure.
- All new development in the Asilomar dunes area shall be controlled as necessary to ensure protection of coastal scenic values and maximum possible preservation of sand dunes and the habitat of rare and endangered plants.
- Where a botanical survey identifies populations of endangered species, all new development shall be sited and designed to cause the least possible disturbance to the endangered plants and their habitat; other stabilizing native dune plants shall also be protected.
- Site coverage proposed for new development (including driveways, accessory buildings and other paved areas) shall be reduced from the maximum coverage allowed in Chapter 3 of this plan (i.e., 15%), and by relevant zoning, to the extent necessary to ensure protection of Menzies' wallflower or Tidestrom's lupine habitat determined to be present on the site. [However, LUP Sec. 3.4.5.2 cited below, exempts that portion of the driveway within the front setback.]
- Require dedication of conservation easement or deed restriction to protect the area of the lot outside the building envelope, with provisions to restore and maintain the natural habitat, restrict fencing that would interfere with public views or wildlife, and require long-term monitoring of the protected area;

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- Sidewalks shall not be required as a condition of development permit approval in the Asilomar dunes unless the City makes a finding that sidewalks are necessary for public safety where heavy automobile traffic presents substantial hazards to pedestrians, no reasonable alternative exists and no significant loss of environmentally sensitive habitat would result.
- Require compliance inspections during the construction phase;
- Provide for preparation of a native plant landscaping plan, and limit exotic plant introductions to the area within the building envelope; and,
- Require installation of utilities in a single corridor if possible, avoiding disturbance of the protected habitat area.

Section 3.4.5.2 of the LUP's Specific Policies states:

Maximum aggregate lot coverage for new development shall be 15% of the total lot area. For purposes of calculating lot coverage under this policy, residential buildings, driveways, patios, decks (except decks designed not to interfere with passage of water and light to dune surface below) and any other features that eliminate potential native plant habitat will be counted. However, a driveway area up to 12 feet in width the length of the front setback shall not be considered as coverage if surfaced by a material approved by the Site Plan Review Committee. An additional 5% may be used for immediate outdoor living space, if left in a natural condition, or landscaped so as to avoid impervious surfaces, and need not be included in the conservation easement required by Section 2.3.5.1(e). Buried features, such as septic systems and utility connections that are consistent with the restoration and maintenance of native plant habitats, need not be counted as coverage.

### 5. Project Analysis.

The proposed development is for a single-family dwelling with an attached garage, driveway, boardwalk, patio, and grading. The proposed house and garage cover approximately 5,470 square feet of the site. The proposed driveway and decks cover 2035.5 square feet. The total site coverage figure is 7505.5 square feet or 16 percent of the 46,609 square foot lot.

The maximum site coverage allowed by the LUP is 15 percent. However, Section 3.4.5.2 of the LUP, cited above, allows that portion of additional driveway coverage that falls within the front setback to be excluded from the site coverage calculations. In this case, there is approximately 240 square feet of driveway within the front setback, which can be excluded from site coverage. This exclusion would result in 7265.5 square feet of coverage, equal to 15.6 percent coverage, still slightly over the maximum allowed. The proposed deck coverage of 901 square feet is included within the-lot coverage figure. The only type of deck that would not be included would be a second story deck designed not to interfere with the passage of water and light to the dune surface below. This project does not have this type of second story deck. The proposed decking would let

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rain through but it would effectively block sunlight because it would be at most only two feet above ground level and only fleeting sunlight would penetrate between the deck boards. The proposed decking although pervious, would effectively preclude growth of native dune vegetation.

The project is therefore inconsistent with the LUP's 15%-maximum site coverage standard and will require a small amount of redesign to reduce coverage (approximately 280 square feet less than shown) to 15 percent of the lot area.

The plans also show approximately 325 square feet, or 0.7 percent, of the lot as landscaped yard area. This is within the maximum 5 percent immediate outdoor living area allowed by the LUP. The remaining undeveloped portion of the lot, except for the "building envelope" and the "immediate outdoor living" areas will be protected by deed restriction, as a natural habitat area under private stewardship, in accord with conditions of the City's approval and conditions of this permit. See "Project Data" table on Exhibit 2, Site Plan, attached, for applicant's summary of site coverage.

Sixteen other homes have previously been approved within the same environmentally sensitive habitat area by the State or Regional Commissions. Each of these approvals was conditioned to permanently protect the sensitive dune habitat area by means of a botanical easement or equivalent deed -restrictions preserving that portion of the site not covered by development.

In accordance with Coastal Act Section 30240 and with past Commission actions, requiring the protection of environmentally sensitive habitat areas, it is appropriate to require deed restriction over that portion of the lot not counted as building envelope or immediate outdoor living area, 80 percent of the lot, to protect the environmentally sensitive native dune plant habitat areas of the property as defined by the vegetation survey submitted with the application. Only by the recordation of a deed restriction, can future property owners be adequately noticed regarding the constraints and obligations associated with this site. In order to ensure that the habitat values of the site will continue to be protected into the future, such a recorded document is necessary. The deed restrictions would allow those continued uses necessary for and consistent with its maintenance as a nature reserve under private stewardship.

A landscape restoration and management plan was submitted with the application. The plan includes provisions for replanting of native dune plants including Menzies' wallflower and Tidestrom's lupine. The plan includes criteria to carefully remove and prevent the invasion by ice plant and other non-native plant species within the native dune plant habitat areas, and includes proposed monitoring standards and schedule. Continued maintenance beyond the initial five year monitoring period is needed to ensure that ornamental plantings permitted in the "immediate outdoor living areas" are not allowed to spread into the portion of the site which will be restored to native dune vegetation. For this reason, the deed restriction requires continued maintenance of the restored area for the life of the project. It is also appropriate to require evidence of an enforceable legal agreement (deed restriction) for implementation of the final restoration and management plan and to define the maximum building envelope. Definition of a building envelope will help reduce adverse impacts to the environmentally sensitive habitat area, as well as minimize disruption to the

sand dunes, throughout the life of the development.

Temporary exclusionary fences to protect the native dune plant habitat areas during construction are a necessary mitigation measure and are proposed to assure protection of this environmentally sensitive habitat area. The site should be monitored on a weekly basis during construction, by the City or the environmental consultant, to assure compliance with the landscape restoration plan. Experience has shown that exclusionary fencing helps to assure that workpeople and materials stay outside sensitive natural habitat areas. Weekly monitoring during construction is required as a condition of this permit, consistent with LUP Policy 2.3.5.1(c) regarding compliance inspections during the construction phase.

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

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

## **E. Visual Resources**

Section 30251 of the Coastal Act requires that new development in highly scenic areas "such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation. . ." shall be subordinate to the character of its setting; the Asilomar area is one of those designated in the plan. The Coastal Act further provides that permitted development shall be sited and designed to protect views in such scenic coastal areas; and, in Section 30240(b), requires that development adjacent to parks and recreation areas shall be sited and designed to avoid degradation of those areas.

The City's certified Land Use Plan contains policies that require the following:

- New development on parcels fronting on Sunset Drive must conform to the open space character of the area.
- Design review of all new-development is required.

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- Minimum building setbacks of seventy-five feet from Sunset Drive shall be maintained. Larger setbacks are encouraged if consistent with habitat protection.
- Residential structures shall be single story in height and shall maintain a low profile complimenting natural dune topography with a maximum structure height of eighteen feet.
- Earthtone color schemes shall be utilized and other design features incorporated that assist in subordinating the structure to the natural setting.
- Landscape approval shall be required for any project affecting landforms and landscaping. A landscaping plan, which indicates locations and types of proposed plantings, shall be approved by the Architectural Review Board. Planting which would block significant public views shall not be approved.
- Utilities serving new single-family construction in scenic areas shall be placed underground.

The dwelling will be finished with cedar siding and Carmel stone and have a slate roof. The applicant proposes to underground the utilities. The applicant's property is located on the inland side of Sunset Drive, across the street from Asilomar State Beach. While previous development has already impaired many views, the overall visual character of the dunes still predominates. Therefore, views from these important public use areas along Sunset Drive and the State Beach towards the adjacent dunes and the sea are an issue of concern.

The proposed dwelling will be directly visible from Asilomar State Beach, as are other existing dwellings in the area. The house is a split-level structure that steps down the dune formation and, while it does not exceed the maximum allowed height of 18 feet, it does present a façade as viewed from Sunset Drive, of approximately 22 feet. This façade is mitigated in two respects. First, the closest part of the house to Sunset Drive, the patio, is over 175 feet back from Sunset Drive, thus reducing the apparent height by reason of distance. Second, the applicant proposes to use some of the excavated sand to build up the dune formation that runs diagonally from the south-central part of the lot to near the northwest corner. This will help somewhat to screen the view of the house from Sunset Drive

The application indicates that there will be approximately 420 cubic yards of grading, although no formal grading plans were submitted. As mentioned above, the applicants propose to use some of the excavated sand to build up the dune formation on the westerly half of the lot. A final grading plan is required prior to commencement of construction. As conditioned by this permit, no future additions are allowed, to ensure that no additional view impacts will occur. Additional required visual resource mitigation measures include the use of earthen-tone finishes and the undergrounding of utilities as proposed, and final grading plans as conditioned. Accordingly, the project can be found consistent with Section 30251 and 30240(b) of the Coastal Act and LUP visual resource policies.

## F. Archaeology

Section 30244 of the Coastal Act states:

Where development would adversely impact archaeological or paleontological resources as identified by the State Historic Preservation Officer, reasonable mitigation measures shall be required.

Land Use Plan Section 2.4 also provides guidance on this topic as follows:

### LUP Policy 2.4.5

1. Prior to the issuance of any permit for development or the commencement of any project within the areas designated on Figure 3, the Archaeological Sensitivity Map, the City in cooperation with the State Historic Preservation Office and the Archaeological Regional Research Center, shall:
  - a) Inspect the surface of the site and evaluate site records to determine the extent of the known resources.
  - b) Require that all sites with potential resources likely to be disturbed by the proposed project be analyzed by a qualified archaeologist with local expertise.
  - c) Require that a mitigation plan, adequate to protect the resource and prepared by a qualified archaeologist be submitted for review and, if approved, implemented as part of the project.

The subject site is located in a "sensitive area" according to the LUP Archaeological Sensitivity Map. An archaeological investigation was prepared for the site by Robert Stillinger and Jane Stillinger of Retrospect in July of 1990. Several recorded archaeological sites are within ¼ mile of the project location. One is located across Arena Avenue from the project location and another is located across Sunset Drive. The report concluded that the investigation did not discover

any surface evidence of prehistoric or historic archaeological resources. However, there remains a possibility that buried archaeological materials could exist within the subject parcel. If any prehistoric archaeological site indicators. . .and/or any historic artifacts. . .are discovered during construction activities, work should be halted in the vicinity of the finds. A qualified archaeologist should then be consulted to evaluate the discovery in the ground and to suggest appropriate mitigation measures for the removal and/or protection of the cultural resources.

Because the 1990 report did not identify the existence of cultural material on the site and the site has remained undeveloped and vacant since then, the potential to discover significant archaeological materials is essentially unchanged since 1990. However, because of the closeness of existing archaeological sites, it is appropriate to require archaeological mitigation should archaeological material be found during construction.

As conditioned, to require suspension of work and development of a mitigation plan if archaeological materials are found, the proposed development is consistent with Section 30244 of the Coastal Act and approved LUP archaeological resource policies.

### **G. Local Coastal Programs**

The Commission can take no action which would prejudice the options available to the City in preparing a Local Coastal Program which conforms to the provisions of Chapter 3 of the Coastal Act (Section 30604 of the 'Coastal Act). Because this neighborhood contains unique features of scientific, educational, recreational and scenic value, the City in its Local Coastal Program will need to assure long-range protection of the undisturbed Asilomar Dunes.

While the northern Asilomar Dunes area was originally included in the work program for the Del Monte Forest Area LUP (approved with suggested modifications, September 15, 1983), the area was annexed by the City of Pacific Grove in October, 1980, and therefore is subject to the City's LCP process. Exercising its option under Section 30500(a) of the Coastal Act, the City in 1979 requested the Coastal Commission to prepare its Local Coastal Program. However, the draft LCP was rejected by the City in 1981, and the City began its own coastal planning effort. The City's LUP was certified on January 10, 1991. The City is currently formulating implementing - ordinances. In the interim, the City has adopted an ordinance that requires that new projects conform to LUP policies. (Of course, the standard of review for coastal development permits, pending LCP completion, is conformance with the policies of the Coastal Act.)

The LUP contains various policies that are relevant to the resource issues raised by this permit application, particularly with respect to protection of environmentally sensitive habitat and scenic resources. Finding D above summarizes the applicable habitat protection policies; Finding E addresses the LUP's visual resource policies; and Finding F discusses archaeological resource policies. The City's action on the project has generally accounted for the proposed LUP policies. Where procedural standards are absent, the City's mitigations are augmented by the conditions of this permit, particularly with respect to native plant restoration and maintenance.

Therefore, as conditioned, the proposed development is consistent with the policies contained in Chapter 3 of the Coastal Act and will not prejudice the ability of the City of Pacific Grove to prepare and implement a complete Local Coastal Program consistent with Coastal Act policies.

### **H. California Environmental Quality Act (CEQA)**

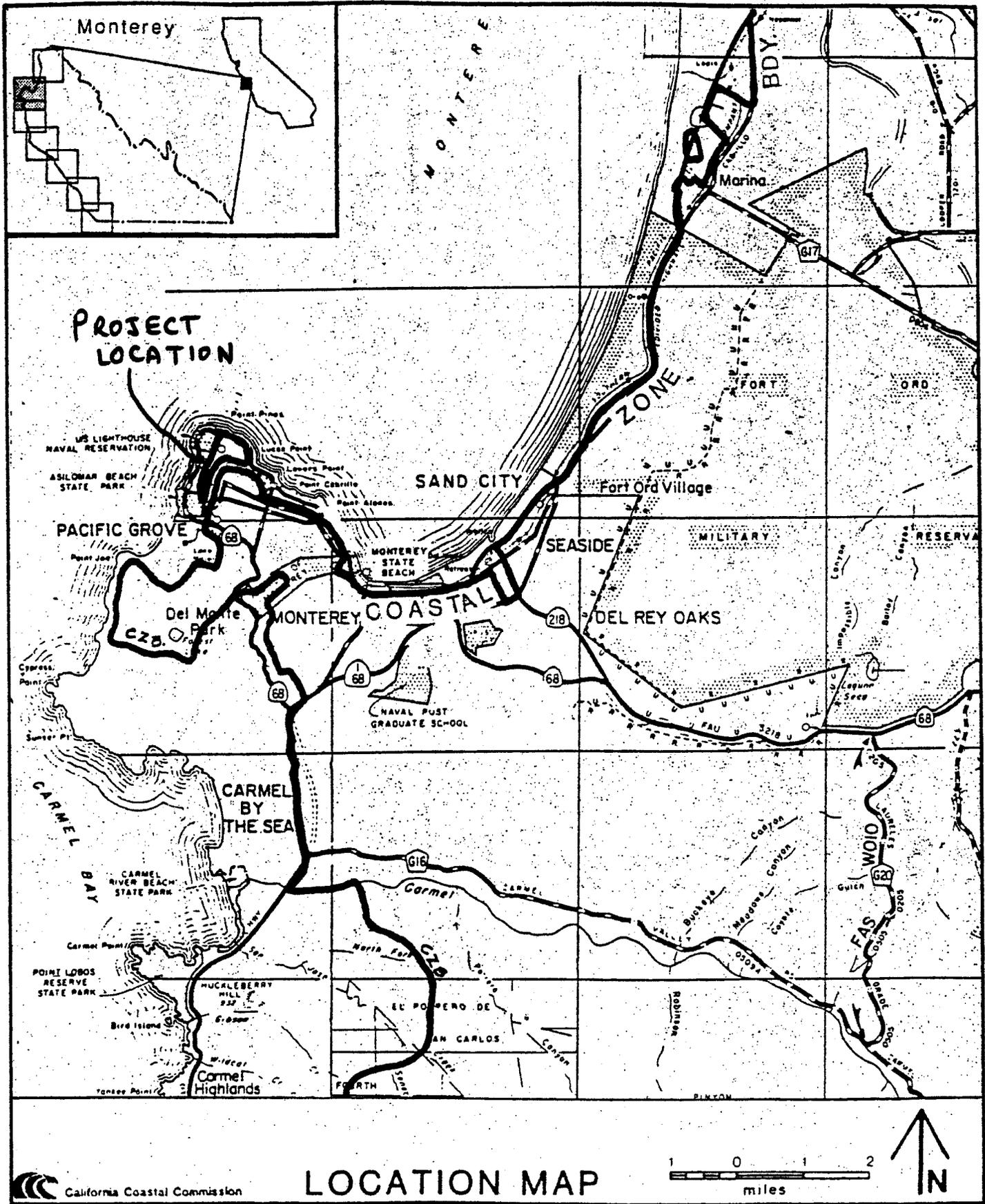
Section 13096 of the California Code of Regulations requires that a specific finding be made in conjunction with coastal development permit applications showing the application to be consistent with any applicable requirements of CEQA. Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effects which the activity may have on the environment. On May 25, 1999, the City of Pacific Grove granted a

**Application 3-99-071 Staff Report**

Knight Residence

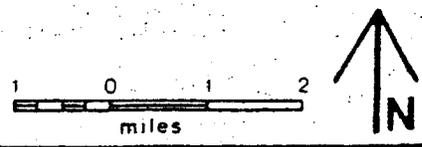
Page 21

Negative Declaration, with mitigations, for the proposed development. The Coastal Commission's review and analysis of land use proposals has been certified by the Secretary for Resources as being the functional equivalent of environmental review under CEQA. Accordingly, the Commission finds that the Botanical/Biological Report submitted by the applicant, along with the City's required conditions and the conditions attached to this permit, will together offset any adverse effects that the proposed development might have.



California Coastal Commission

LOCATION MAP



3 4 5 6 7 8 9 10



Complex See Key #25 F-9 Pacific Grove, CA 93950

**PROJECT LOCATION**

2226  
2223  
2225  
2221  
2224  
2222

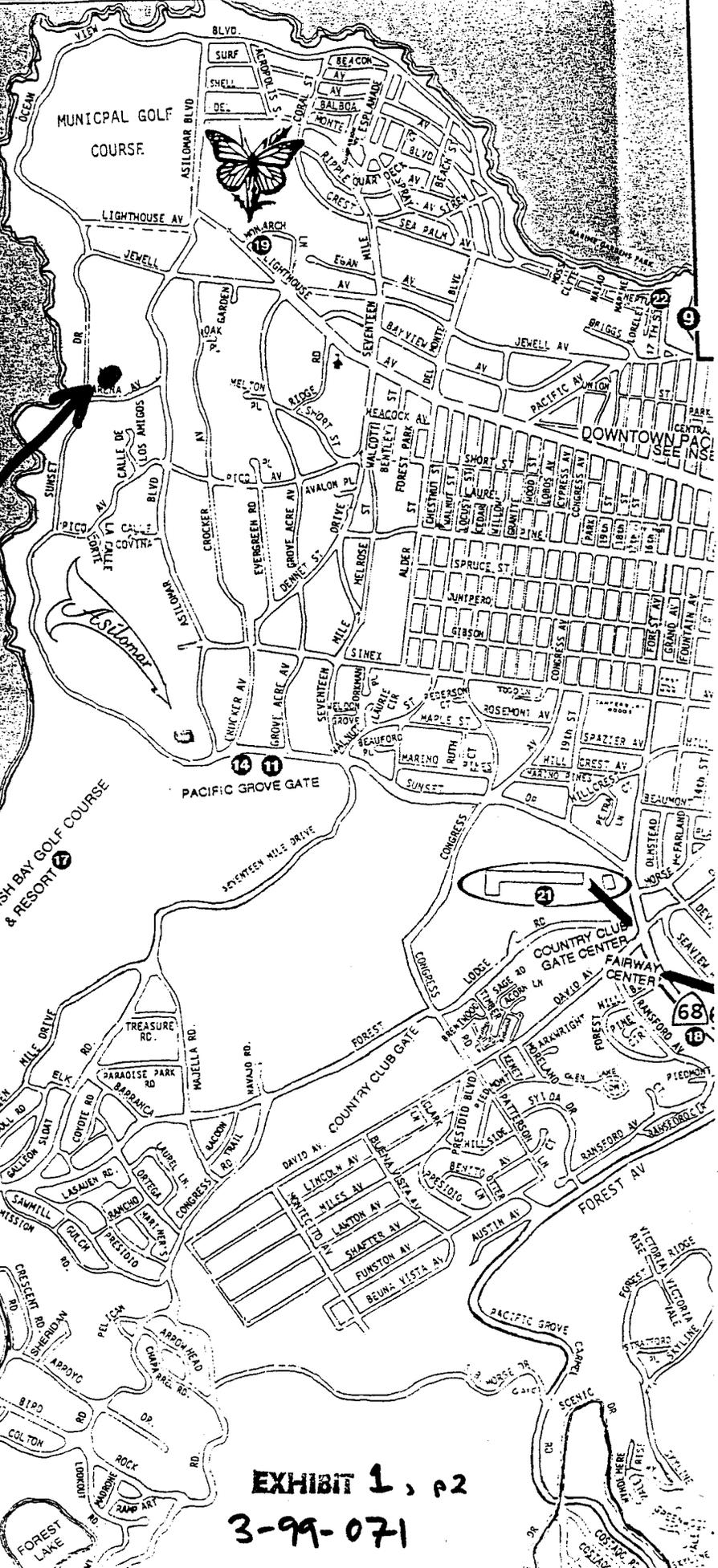


EXHIBIT 1, p2  
3-99-071

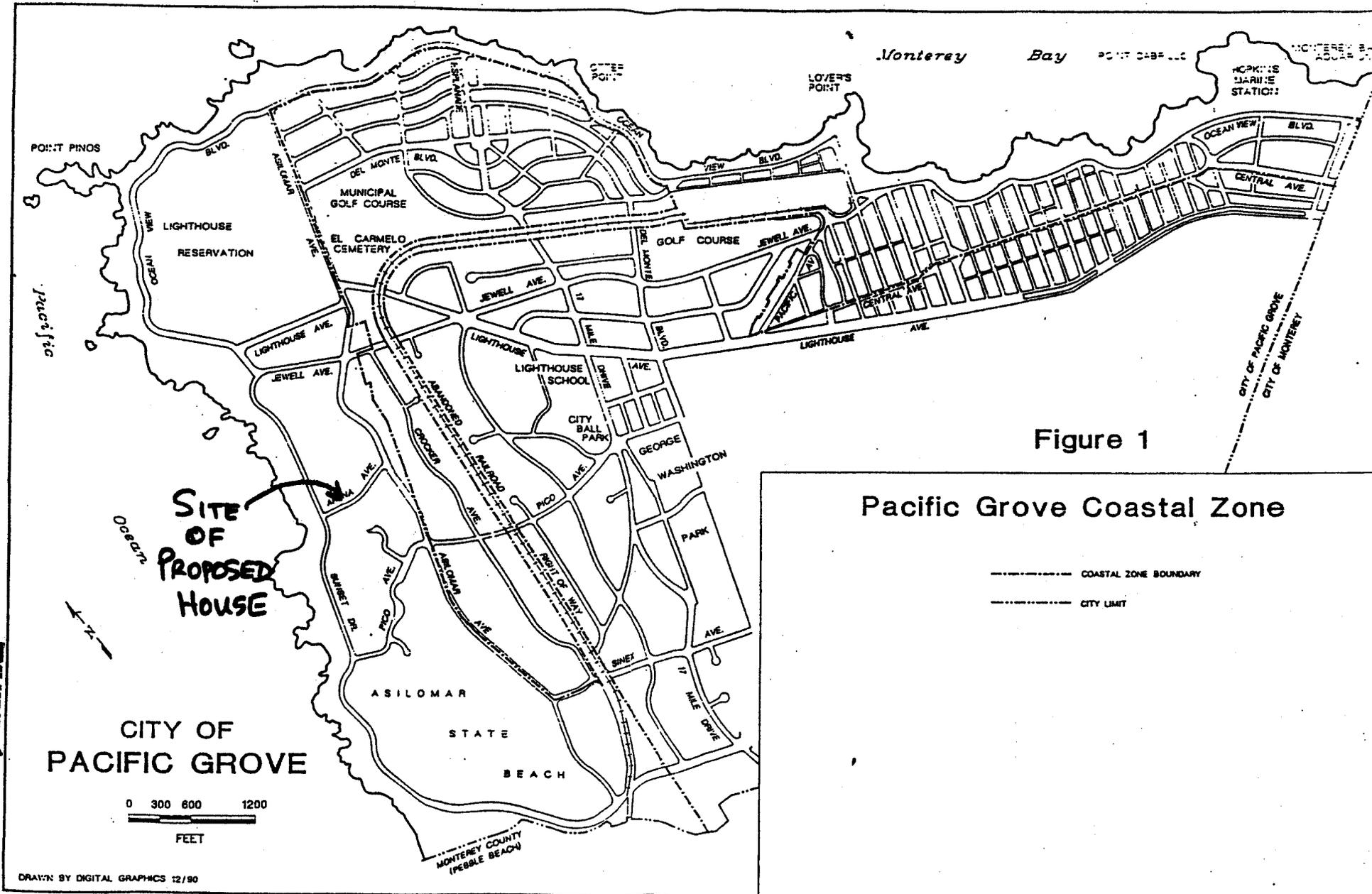


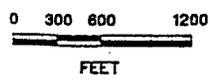
Figure 1

Pacific Grove Coastal Zone

- COASTAL ZONE BOUNDARY
- CITY LIMIT

**SITE OF PROPOSED HOUSE**

CITY OF PACIFIC GROVE



DRAWN BY DIGITAL GRAPHICS 12/80

3-99-07-1  
EXHIBIT 1, p 3

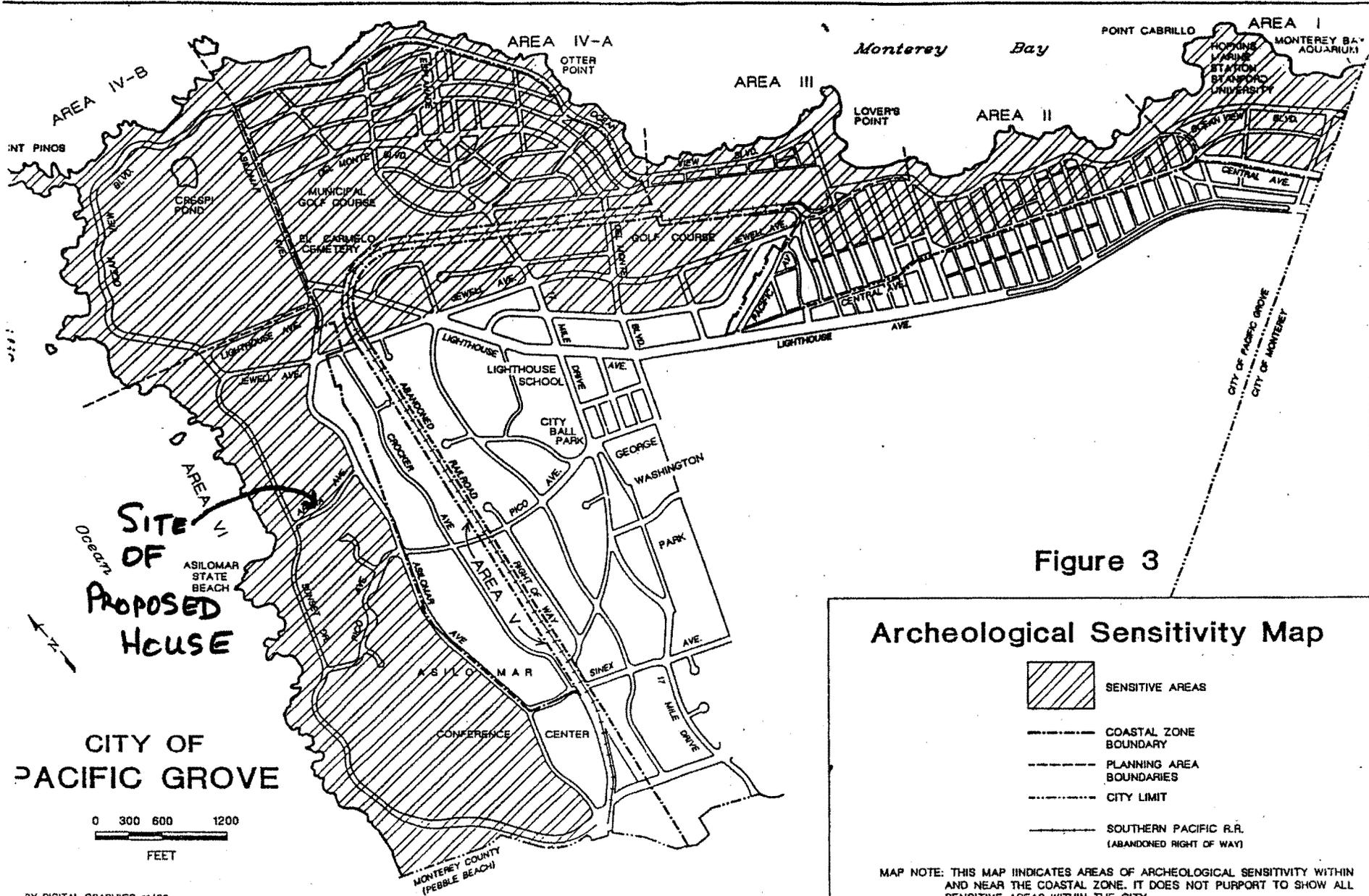
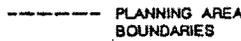
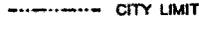
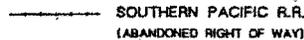


Figure 3

### Archeological Sensitivity Map

-  SENSITIVE AREAS
-  COASTAL ZONE BOUNDARY
-  PLANNING AREA BOUNDARIES
-  CITY LIMIT
-  SOUTHERN PACIFIC R.R. (ABANDONED RIGHT OF WAY)

MAP NOTE: THIS MAP INDICATES AREAS OF ARCHEOLOGICAL SENSITIVITY WITHIN AND NEAR THE COASTAL ZONE. IT DOES NOT PURPORT TO SHOW ALL SENSITIVE AREAS WITHIN THE CITY.

EXHIBIT 1, p4  
3-99-071

**SITE OF PROPOSED HOUSE**

0 300 600 1200  
FEET

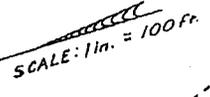


310

6-38

TAX CODE AREA

ASSESSOR'S MAP  
BOOK 7 PAGE 04



AVE.

ASILOMAR

AVE.

330

06

314 03

318

041

317

SITE  
OF  
PROPOSED  
HOUSE



ARENA

SUNSET DR.

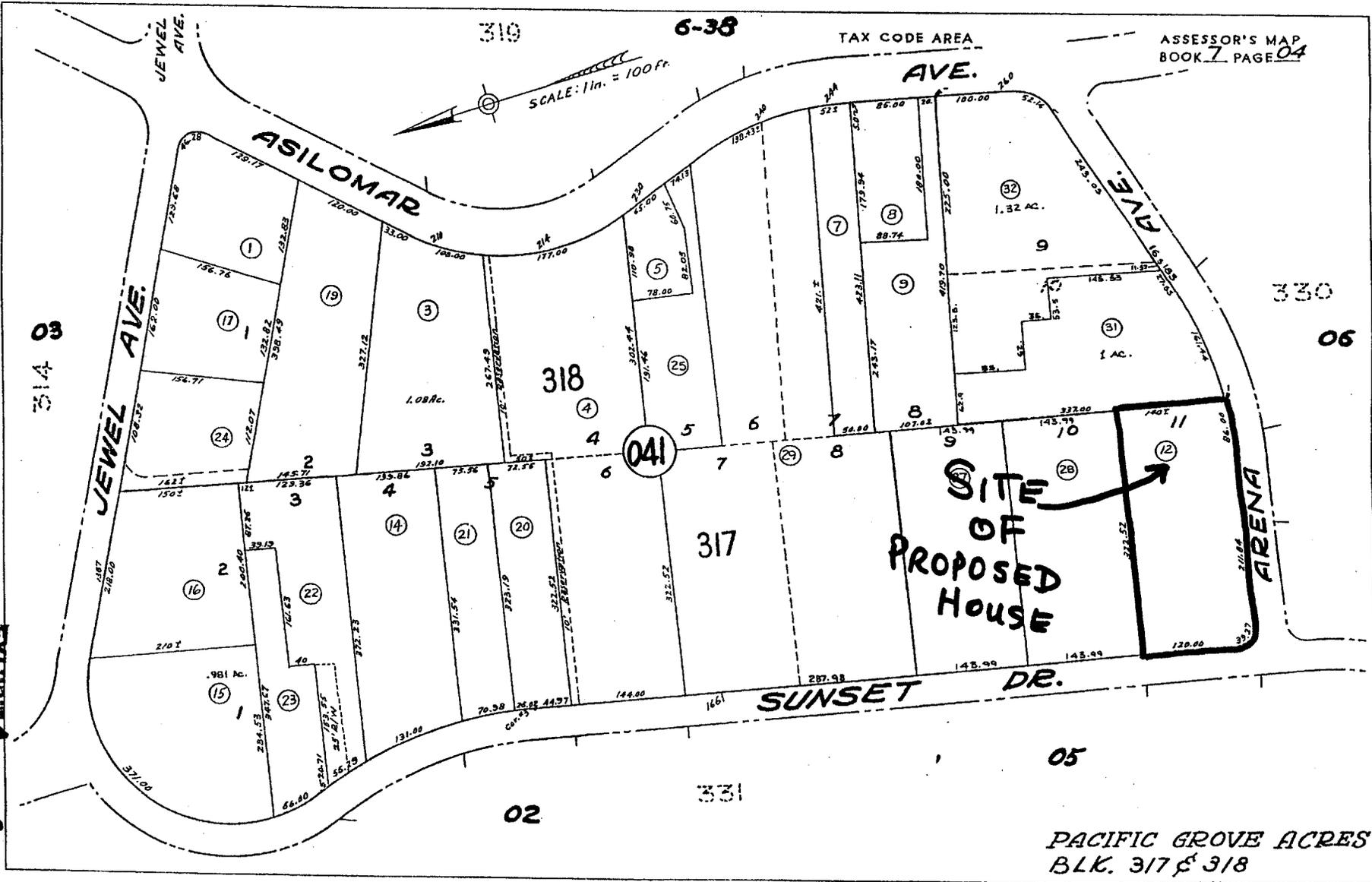
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02

331

PACIFIC GROVE ACRES  
BLK. 317 & 318

EXHIBIT 1 pg  
3-99-071



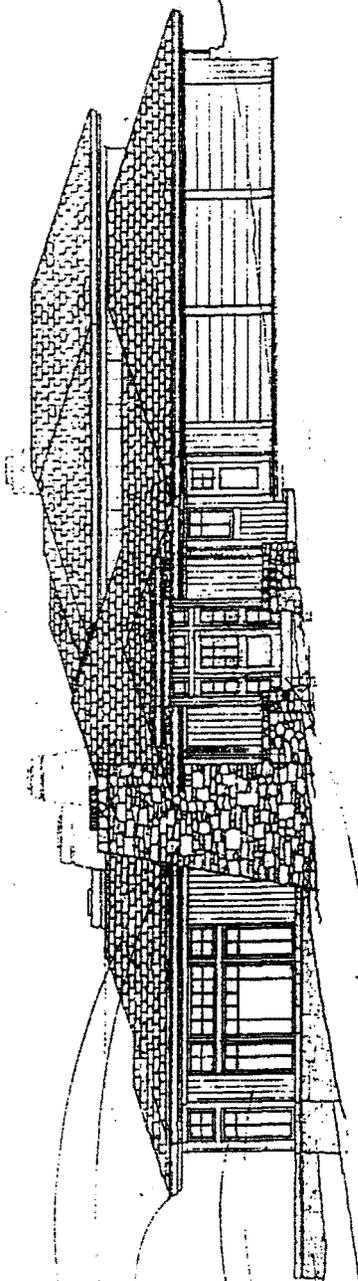


**CORNERSTONE**  
 NORMANDY INN, CARREL BY THE SEA  
 Jon Sæther Erlandson Architect  
 1200 15th Street NW  
 Seattle, WA 98104  
 Phone (206) 461-1100

**KNIGHT RESIDENCE**  
 Knight, Bruce & Bruce, Architects  
 1000 1st Avenue, Seattle, WA, 98101

Job Number  
**98-042**  
 Date  
**8-24-99**  
 Revision  
**4/1/99**  
 Sheet Number  
**A5**

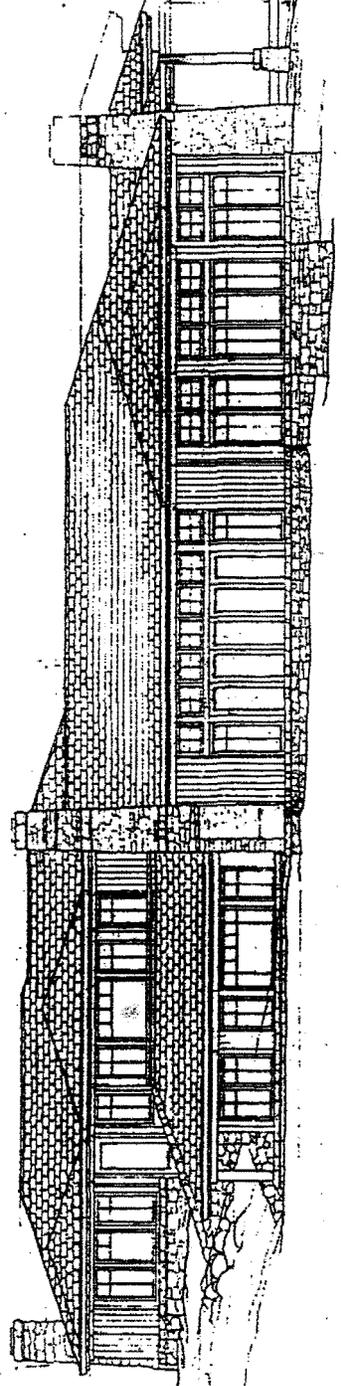
Exterior Elevations



late Roofing  
 tone Chimneys  
 copper Flashing  
 wood Frame Clad Window  
 bear Cedar Siding  
 stone Walls  
 elevated Ironwood Boardwalk

S

South



W

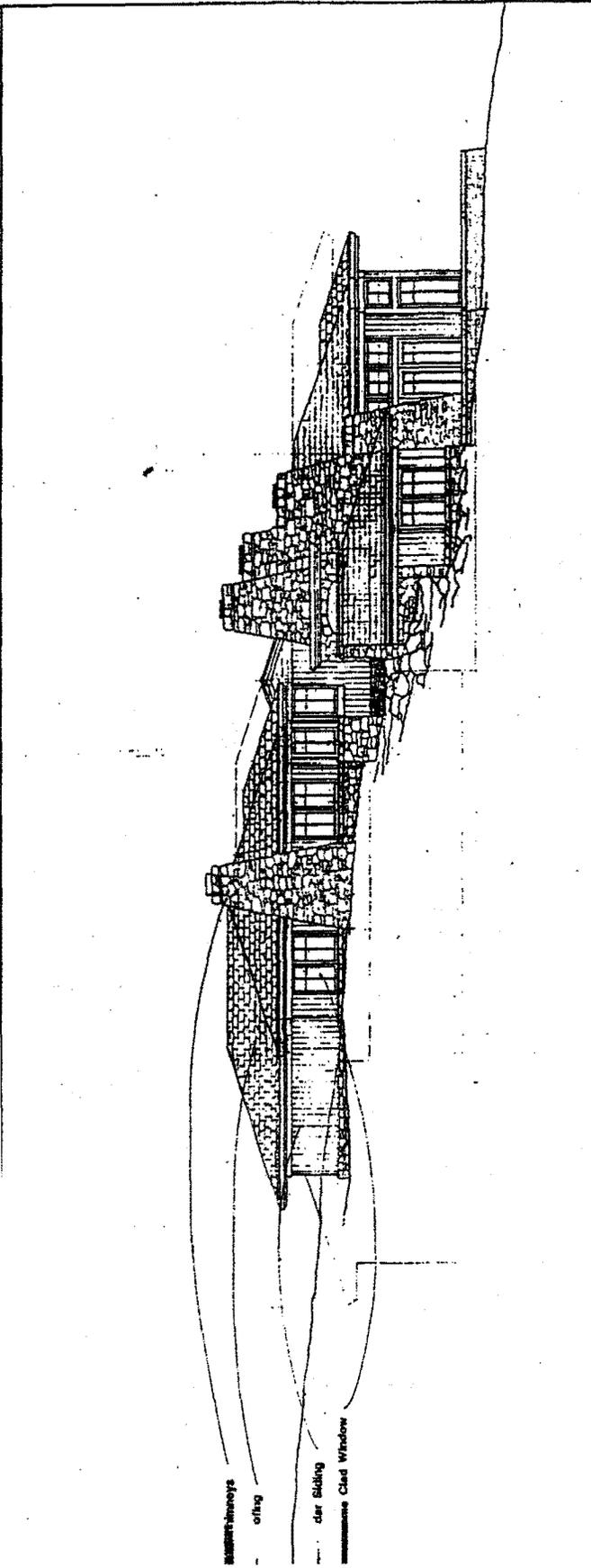
West

**EXHIBIT 2, p 2**  
**3-99-071**

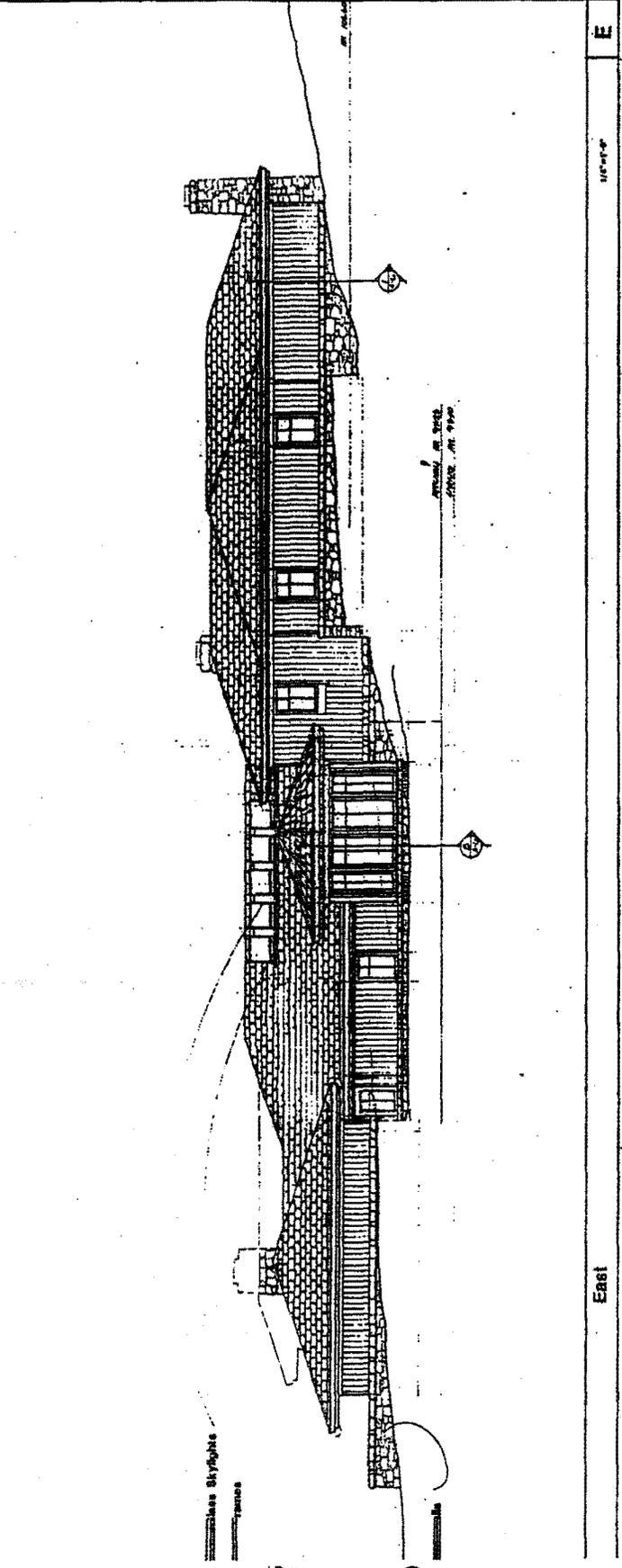
**CORNERSTONE**  
 NORMANDY INN, CARREL BY THE SEA  
 Jon Sæther Erlendson Architect  
 1000 West 10th Street  
 Anchorage, Alaska 99501  
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 Fax: 907-562-1112

**KNIGHT RESIDENCE**  
 Located on the corner of 10th Street and C Street, Anchorage, Alaska

Job Number: 98-042  
 Date: 5-24-98  
 Project: Exterior Elevations  
 Scale: A4  
 Architect: JSE  
 Exterior Elevations



North



East

Masonry  
 siding  
 der Siding  
 Masonry Clad Window

Masonry  
 Siding  
 Masonry Clad Window

**EXHIBIT 2, p 3**  
**3-99-071**

CORNERSTONE  
NORMANDY INN, CARMEL BY THE SEA

Jon Sather Erlanson Architect  
1000 10th Street, Suite 100  
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KNIGHT RESIDENCE  
Project Name & Address - 1000 10th Street, Carmel

Sheet Number: 88-012  
 Date: 8-1-10  
 Revision: 1  
 Scale: 1/4" = 1'-0"

Sheet Number: **G3**

Site Sections

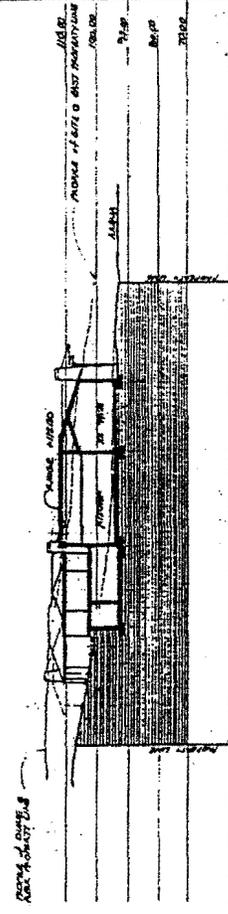
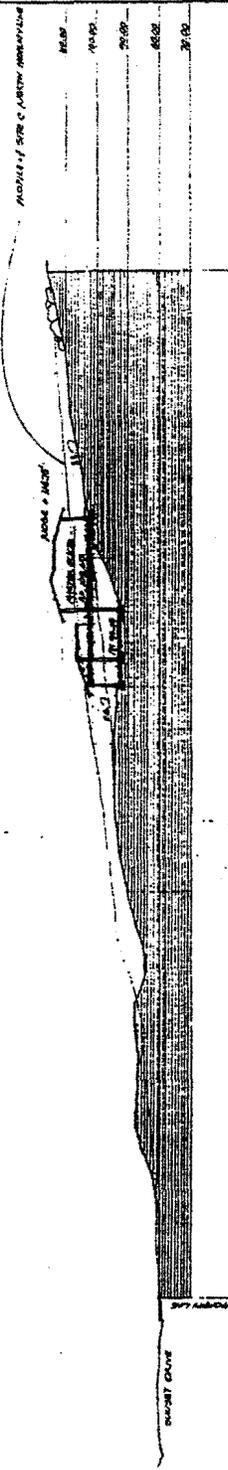
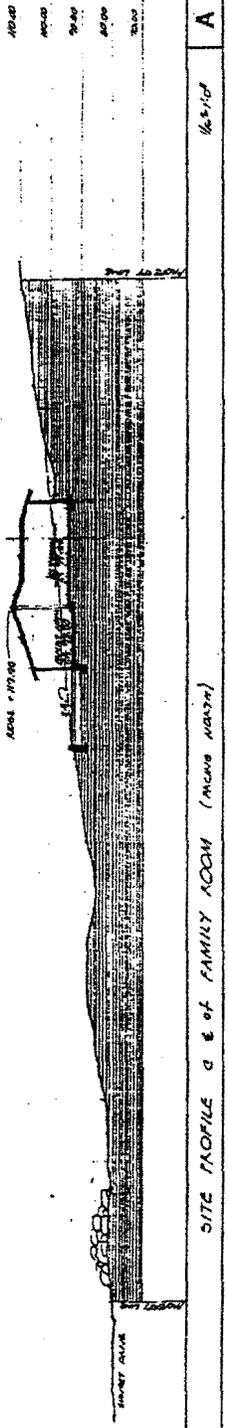


FIGURE 2. RARE PLANT AREAS

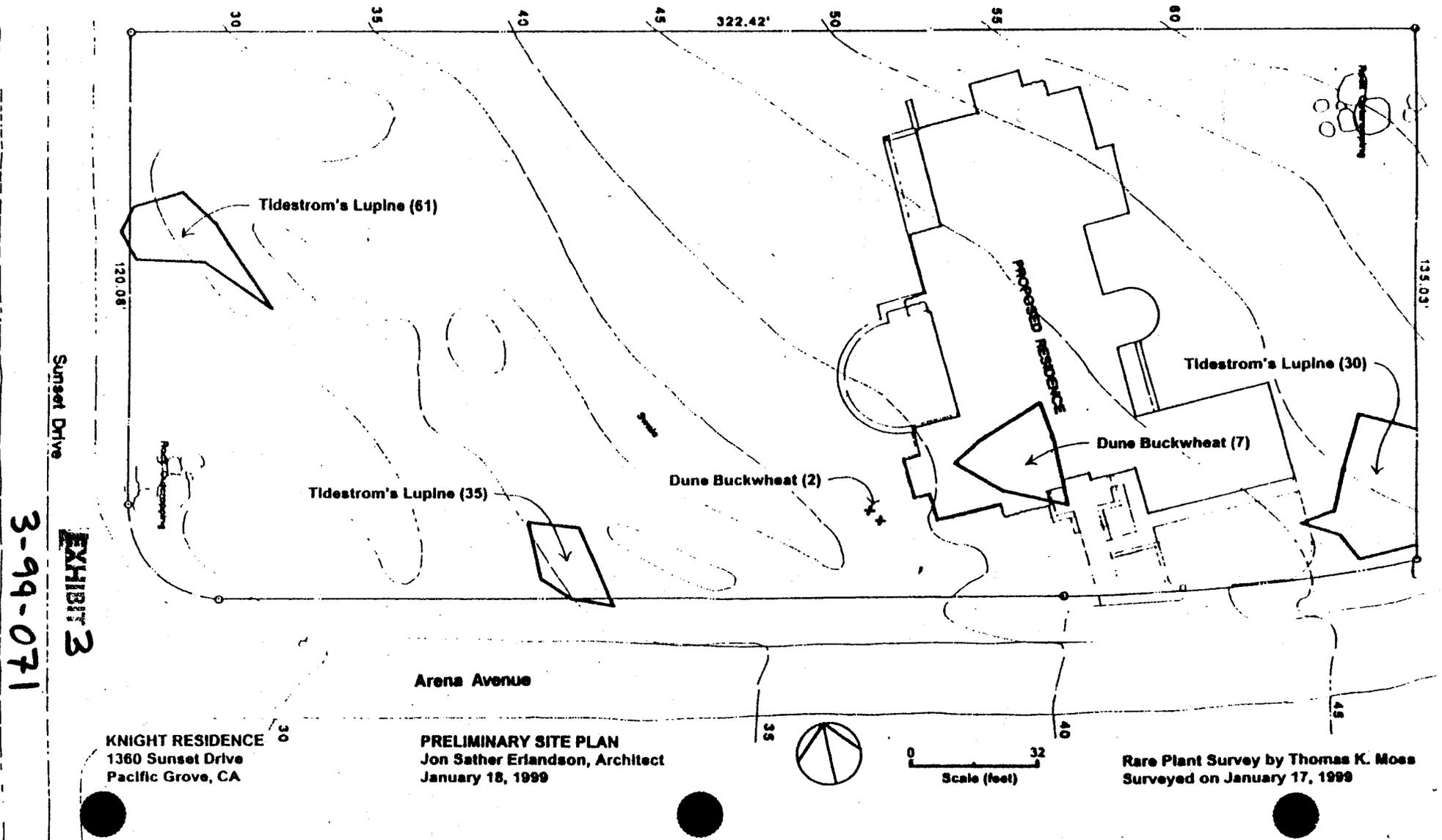


FIGURE 1. LANDSCAPE TREATMENT AREAS

See Landscape Restoration Plan (Mos... 1999)  
for project specifications.

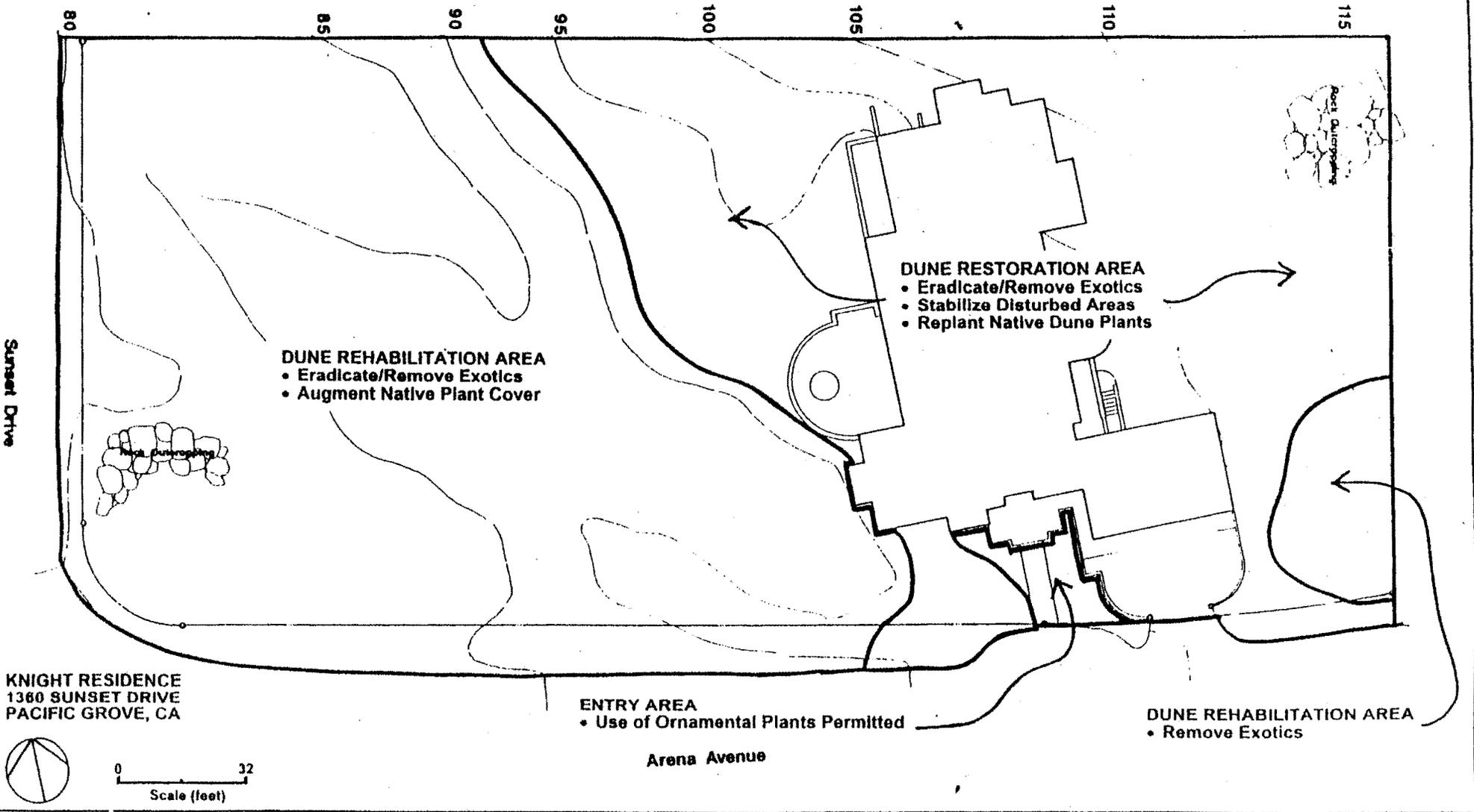


EXHIBIT 4  
3-99-071

### III. CONCLUSIONS

#### A. Impact Summary

1. Earth – Excavation and grading for the foundation and building pad will take place. However, these are not expected to be significant amounts. No mitigations are proposed. Proposed site preparation activities include the export of approximately 420 tons of sandy soils (Asilomar Sand) from the site.
2. Water – The proposed addition will reduce the amount of surface area available for percolation; however, it is not anticipated that there will be a significant increase in surface water runoff volume. No mitigations are proposed.
3. Plant Life – Areas with plants of special concern and their habitat will be protected from construction activities subject to prescribed mitigation measures.
4. Animal Life – Mitigation measures have been developed and included to search for and relocate black legless lizards prior to any construction or pre-construction activities.
5. Noise – Noise levels are expected to increase during construction. Mitigations have been prescribed to minimize impacts.
6. Light and Glare – The proposed project may produce minimal amounts of light and glare. Mitigations have been prescribed to minimize impacts.
7. Aesthetics – The proposed project will obscure a portion of the public view of the ocean; however, it is not considered significant given the relatively small view that is being obscured. Mitigation measures have been prescribed to help the project blend in with the setting.
8. Archaeological – An archaeological reconnaissance of the site found no surface evidence of cultural resources. Mitigation measures have been included to minimize potential impacts and develop additional measures should archaeological resources be found during construction.

#### B. Mitigations Summary

1. Exported soils shall contain only sand and shall not be placed in areas that contain sensitive plant or animal species that would be adversely affected by the introduction of new soils.
2. No grading or excavation shall occur outside of the designated construction boundary identified on the project plans without approval of City staff and the project biologist.
3. No soil shall be introduced to the project site.

EXHIBIT 5

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4. In addition to the mitigations outlined in Section 4b, The proposed decks shall be designed, constructed and maintained to allow the passage of light and water to the dune surface below. Structural drawings of the decks shall be submitted and approved prior to building permit issuance.
5. Excavated soils (Asilomar Sand) removed from the site shall be incorporated into dune restoration in the Asilomar Dunes area, but not in a way that negatively affects existing vegetation or animal habitat.
6. A Landscape Restoration Plan shall be prepared by a qualified biologist (approved by the Community Development Department) that defines procedures and standards for restoration, maintenance, and monitoring of the undeveloped portions of the property. The plan shall include provisions for the planting of Tidestrom's lupine, dune buckwheat, and Menzie's wallflower. Monitoring and maintenance of the plants shall be made a part of the landscape restoration maintenance and monitoring program to be approved by the Architectural Review Board. Should any dune buckwheat plants be lost as a result of transplanting or any other project-related activities on the site, they shall be replaced on the site at a ratio of 5:1.
7. The Landscape Restoration Plan requires the approval of the Architectural Review Board and shall be submitted to the Community Development Department prior to final architectural approval. Modifications to the landscape restoration plan must be reviewed and approved by Community Development Department Staff and may require approval by the Architectural Review Board.
8. A qualified biologist (project biologist) approved by the Community Development Department shall be retained by the property owner to monitor construction and provide oversight for the implementation of the approved Landscape Restoration Plan.
9. All new utilities and drainage systems shall be installed underground in a single corridor and installed under the driveway and walkways. The corridor shall be shown on the final building plans.
10. Temporary fencing shall be installed to protect the area outside of the building envelope. The project biologist shall confer with the general contractor and identify the location of the fence. Signs shall be posted on the fencing that state access to these habitat areas is prohibited unless approved by the project biologist. Three copies of a fencing location plan shall be submitted to the Pacific Grove Community Development Department and shall serve as a record of fencing locations.
11. The fence shall consist of high visibility plastic mesh at least 4' tall and secured to metal T-posts spaced no more than 8' apart.
12. All exotic plants on the project site shall be sprayed with an appropriate herbicide approved by the project biologist and Community Development Department staff, prior to the start of construction or ground excavation.
13. Fencing installed to protect sensitive species and habitat shall be maintained in good condition and remain in place until all construction activity on the site is

EXHIBIT 5, p 2

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completed. Removal or changing the location of the fence requires the approval of the project biologist and Community Development Department staff.

14. All activities associated with construction, trenching, storage of materials, and disposal of construction wastes and excavated soil shall not impact areas protected by fencing. The area protected by fencing shall remain in a trash free condition and shall not be used for material stockpiling, storage, disposal or vehicle parking. All construction personnel are prohibited from entering the fenced area.
15. No paint, cement, joint compound, cleaning solvents or residues from other chemicals or materials associated with construction will be disposed of on-site. The general contractor shall be responsible for complying with this requirement and shall clean up any spills or contaminated ground to the full satisfaction of the Project Biologist and the Community Development Department staff.
16. Excess soil (Asilomar sand) remaining from excavation will be disposed of off-site at the designated location west of Sunset Drive that is identified in the March 16, 1999 letter from the Department of Parks and Recreation. The excavated soils will be disposed of in a manner that will not adversely affect any existing vegetation in a location approved by the project biologist and City staff.
17. The project biologist shall inspect the site no less than one time each week to ensure compliance with all provisions for protection surrounding environment. Any activity or condition not in compliance with the prescribed mitigation measures will be brought to the attention of the owner or their representative, the general contractor and the Pacific Grove Community Development Department immediately.
18. The temporary fencing shall be removed only upon approval of the project biologist and Community Development Department staff.
19. Landscaping shall be installed according to the specification on the approved Landscape Restoration Plan and completed in the first planting season (fall and winter) following completion of construction.
20. A qualified biologist shall be retained to monitor and supervise implementation of the approved Landscape Restoration Plan. Monitoring of the Landscape restoration project shall occur on an annual basis for at least five years. An annual status report (letter) shall be submitted to the Pacific Grove Community Development Department and the California Coastal Commission.
21. Any exotic plants that are used for ornamental purposes within the building envelope shall not include species that are capable of naturalizing or spreading into adjacent dunes. In particular, the following invasive species shall not be used: acacias (Acacia sp.), genista (Cytisus sp.), pampas grass (Cortaderia sp.) and ice plant (Carpobrotus sp., Mesembryanthemum sp., Drosanthemum sp., Maleophora sp., etc.). Any exotic plants used will be confined to special landscape features (containers or planters) near to the house.

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3-99-071

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CALIFORNIA  
COASTAL COMMISSION  
CENTRAL COAST AREA

# MITIGATION MONITORING PROGRAM

for:

A SINGLE-FAMILY DWELLING AT 1691 SUNSET DRIVE

applicant:

JON SATHER ERLANDSON

Lead Agency:



CITY OF PACIFIC GROVE  
COMMUNITY DEVELOPMENT DEPARTMENT

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## INTRODUCTION

### BACKGROUND

Since January 1, 1989, public agencies have been required to prepare a mitigation monitoring or reporting program to assure compliance with mitigation measures adopted pursuant to the California Environmental Quality Act (CEQA). A mitigation monitoring program must be designed to ensure a project's compliance with adopted mitigation measures during project implementation. It also provides feedback to agency staff and decision makers about the effectiveness of their actions, offers learning opportunities for improving mitigation measures on future projects, and identifies when enforcement actions are necessary.

### PURPOSE

The purpose of the mitigation monitoring program for the new single-family dwelling at 1691 Sunset Drive is to ensure that all mitigation measures adopted as part of project approval are implemented and completed during and after construction. This program will be used by the City of Pacific Grove to verify that all required mitigation measures are incorporated into the project and will serve as a convenient tool for logging the progress of mitigation measure completion and for determining when required mitigation measures have been fulfilled.

### MANAGEMENT

The City of Pacific Grove Community Development Department is the lead agency for the project and will be responsible for overseeing the administration and implementation of the mitigation monitoring program.

The staff planner for the project will be responsible for managing the mitigation monitoring program. Duties of the staff planner responsible for managing the program shall include, but not be limited to, the following:

- ◆ Conduct inspections, zoning plan checks, and reporting activities as required.
- ◆ Serve as a liaison between the City and applicant regarding mitigation monitoring issues.
- ◆ Coordinate activities of consultants and contractors hired by applicant to implement and monitor mitigation measures.
- ◆ Address and provide follow-up to citizen's complaints.
- ◆ Complete and maintain documents and reports required for the mitigation monitoring program.
- ◆ Coordinate and assure enforcement measures necessary to correct actions in conflict with the mitigation monitoring program, if necessary.

### BASELINE DATA

Any baseline data for the mitigation-monitoring program are contained in the Mitigated Negative Declaration adopted by the Pacific Grove Architectural Review Board on May 25, 1999.

## DISPUTE RESOLUTION

As with any regulatory document, disputes may arise regarding the interpretation of specific language or program requirements; therefore, a procedure for conflict resolution needs to be included as part of this mitigation monitoring program. In the event of a disagreement about appropriate mitigation measure implementation, the project planner will notify the Community Development Director via a brief memo and hold a meeting with the project applicant and any other parties deemed appropriate. After assessing the information, the project planner will determine the appropriate measure for mitigation implementation and will notify the Community Development Director via memo of the decision. The project applicant or any interested party may appeal the decision of the project planner to the Planning Commission within five (5) calendar days of the decision. The Planning Commission's decision may be appealed to the City Council.

## ENFORCEMENT

All mitigation measures must be complied with in order to fulfill the conditions of approval. Some of the conditions of approval are required before the commencement of construction; therefore, they will be verified before the issuance of a building permit. Other conditions will be implemented during construction and after construction is completed. For those conditions implemented during construction, if work is performed in violation of conditions of approval, a stop work order will be issued. A performance bond or deposit of funds, at the discretion of the City of Pacific Grove in an amount necessary to complete the condition of approval, with the City of Pacific Grove is required for ongoing conditions of approval, such as the landscape restoration plan. Failure to implement these conditions of approval will result in the forfeiture of the funds for use in implementing these conditions.

## PROGRAM

This mitigation monitoring program includes a table of mitigations measures adopted for the project. This table identifies the mitigation measure and parties responsible for its monitoring and implementation. It also identifies at which project stage the mitigation measure is required and verification of the date on which the mitigations measure is completed.

## FUNDING

For the single-family dwelling at 1691 Sunset Drive, the project applicant shall be responsible for the costs of implementing and monitoring the mitigation measures.

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### Mitigation Measures for the Mitigated Negative Declaration for 1691 Sunset Drive:

MITIGATION	IMPLEMENTED BY:	WHEN IMPLEMENTED:	MONITORED BY:	VERIFICATION DATE:
1. No soil shall be introduced to the project site. Should it be necessary to remove excavated soil (Asilomar Sand) from the site, the soil shall be incorporated into dune restoration in the Asilomar Dunes area, but not in a way that negatively affects existing vegetation.	Applicant or Applicant's Representative	On-going	Community Development Department	
2. No grading or excavation shall occur outside of the designated construction boundary identified on the project plans without approval of City staff and the project biologist.	Applicant or Applicant's Representative	On-going	Community Development Department	
3. A Landscape Restoration Plan shall be prepared by a qualified biologist (approved by the Community Development Department) that defines procedures and standards for restoration, maintenance, and monitoring of the undeveloped portions of the property. The plan shall include provisions for the planting of Tidestrom's lupine, dune buckwheat, and Menzie's wallflower. Monitoring and maintenance of the plants shall be made a part of the landscape restoration maintenance and monitoring program to be approved by the Architectural Review Board. Should any dune buckwheat plants be lost as a result of transplanting or any other project-related activities on the site, they shall be replaced on the site at a ratio of 5:1.	Applicant or Applicant's Representative	Prior to final architectural approval	Community Development Department	
4. The landscape and restoration plan requires the approval of the Architectural Review Board. Modifications to the landscape restoration plan must be reviewed and approved by Community Development Department Staff and may require approval by the Architectural Review Board.	Applicant or Applicant's Representative	Prior to final architectural approval	Community Development Department	
5. A qualified biologist (Project Biologist) shall be retained by the property owner to monitor construction and restoration of the landscape and provide oversight for the implementation of the approved Landscape Restoration Plan.	Applicant or Applicant's Representative	On-going	Community Development Department	

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MITIGATION	IMPLEMENTED BY:	WHEN IMPLEMENTED:	MONITORED BY:	VERIFICATION DATE:
6. All new utilities and drainage systems shall be installed underground in a single corridor and installed under the driveway and walkways.	Applicant or Applicant's Representative	On-going	Community Development Department	
7. Temporary fencing shall be installed to protect the area outside of the building envelope. The project biologist shall confer with the general contractor and identify the location of the fence. Signs shall be posted on the fencing that state that access to these habitat areas is prohibited unless approved by the project biologist. Three copies of a fencing location plan shall be submitted to the Pacific Grove Community Development Department and shall serve as a record of fencing locations.	Applicant or Applicant's Representative	Prior to beginning any construction activities	Community Development Department & City Forester	
8. The fence shall consist of high visibility plastic mesh at least 4' tall and secured to metal T-posts spaced no more than 8' apart.	Applicant or Applicant's Representative	Prior to beginning any construction activities	Community Development Department	
9. Decks shall be designed, constructed and maintained to allow the passage of light and water to the dune surface below and require Coastal Commission approval.	Applicant or Applicant's Representative	Prior to building permit issuance	Community Development Department	
10. All exotic plants on the project site shall be sprayed with an appropriate herbicide approved by the project biologist and Community Development Department staff prior to the start of construction or ground excavation.	Applicant or Applicant's Representative	Prior to beginning any construction activities	Community Development Department	
11. Fencing installed to protect sensitive species and habitat shall be maintained in good condition and remain in place until all construction activity on the site is completed. Removal or changing the location of the fence will require the approval of the project biologist and Community Development Department staff.	Applicant or Applicant's Representative	On-going	Community Development Department	
12. All activities associated with construction, trenching, storage of materials, and disposal of construction wastes and excavated soil shall not impact areas protected by fencing. The area protected by fencing shall remain in a trash free condition and shall not be used for material stockpiling, storage, disposal or vehicle parking. All construction personnel are prohibited from entering the fenced area.	Applicant or Applicant's Representative	On-going	Community Development Department	

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 EXHIBIT 5, p 8

MITIGATION	IMPLEMENTED BY:	WHEN IMPLEMENTED:	MONITORED BY:	VERIFICATION DATE:
13. No paint, cement, joint compound, cleaning solvents or residues from other chemicals or materials associated with construction will be disposed of on-site. The General Contractor will be responsible for complying with this requirement and will clean up any spills or contaminated ground to the full satisfaction of the Project Biologist.	Applicant or Applicant's Representative	On-going	Community Development Department	
14. Excess soil (Asilomar sand) remaining from excavation will be disposed of off-site at the designated location west of Sunset Drive that is identified in the March 16, 1999 letter from the Department of Parks and Recreation. The excavated soils will be disposed of in a manner that will not adversely affect any existing vegetation in a location approved by the project biologist and City staff.	Applicant or Applicants Representative	On-going	Community Development Department	
15. The project biologist shall inspect the site no less than one time each week to ensure compliance with all provisions for protection surrounding environment. Any activity or condition not in compliance with the prescribed mitigation measures will be brought to the attention of the owner or their representative, the general contractor and, if necessary, the Pacific Grove Community Development Department.	Applicant or Applicant's Representative	On-going	Community Development Department	
16. The temporary fencing shall be removed only upon approval of the project biologist and Community Development Department staff.	Applicant or Applicant's Representative	After project completion	Community Development Department	
17. Landscaping shall be installed according to the specification on the Landscape Restoration Plan and completed in the first planting season (fall and winter) following completion of construction.	Applicant or Applicant's Representative	After project completion	Community Development Department	
18. A qualified biologist should be retained to monitor and supervise implementation of the Landscape Restoration Plan. Monitoring of the Landscape restoration project shall occur on an annual basis for at least five years. An annual status report (letter) shall be submitted to the Pacific Grove Community Development Department and the California Coastal Commission.	Applicant or Applicant's Representative	On-going, as noted	Community Development Department	

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MITIGATION	IMPLEMENTED BY:	WHEN IMPLEMENTED:	MONITORED BY:	VERIFICATION DATE:
<p>19. Any exotic plants that are used for ornamental purposes within the building envelope shall not include species that are capable of naturalizing or spreading into adjacent dunes. In particular, the following invasive species shall not be used: acacias (<u>Acacia</u> sp.), genista (<u>Cytisus</u> sp.), pampas grass (<u>Cortaderia</u> sp.) and ice plant (<u>Carpobrotus</u> sp., <u>Mesembryanthemum</u> sp., <u>Drosanthemum</u> sp., <u>Malephora</u> sp., etc.). Any exotic plants used will be confined to special landscape features (containers or planters) near to the house.</p>	Applicant or Applicant's Representative	On-going	Community Development Department	
<p>20. The landscape shall be maintained as specified in the approved Landscape Restoration Plan, including removing exotic plants and planting and caring for additional plants where deficiencies in numbers or species are identified.</p>	Applicant or Applicant's Representative	On-going	Community Development Department	
<p>21. The area outside of the approved building envelope, driveway, and an "immediate outdoor living area" left in a natural condition or landscaped to avoid impervious surfaces not to exceed 5% of the entire property, shall be protected by a deed restriction. The deed restriction shall contain the provisions found in section 2.3.5. e) of the Pacific Grove Local Coastal Program Land Use Plan. The deed restriction shall be submitted to the City of Pacific Grove for review and approval by the City Attorney prior to recording.</p>	Applicant or Applicant's Representative	Prior to final on building permit for the project	Community Development Department	
<p>22. City of Pacific Grove Community Development Department staff, the California Coastal Commission, the California Department of Fish and Game or their agents may visit the property and recommend replanting or additional planting or other work where deficiencies occur. If the property does not appear to be in compliance with the conditions of the development permit. If deficiencies do occur the applicant/owner shall replace the dead plants and remove the invasive species.</p>	Applicant or Applicant's Representative	On-going	Community Development Department	
<p>23. Immediately prior to the start of construction, the project biologist shall thoroughly search the area for black legless lizards. If any are found, they should be captured and released into nearby suitable habitat.</p>	Applicant or Applicant's Representative	Prior to beginning any construction activity	Community Development Department	

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MITIGATION	IMPLEMENTED BY:	WHEN IMPLEMENTED:	MONITORED BY:	VERIFICATION DATE:
24. To minimize inconvenience to surrounding neighbors, days and hours of demolition and construction are limited to 7:00 a.m. to 7:00 p.m. Monday through Saturday, interior work excepted.	Applicant or Applicant's Representative	On-going	Community Development Department	
25. All exterior lighting shall be approved by the architectural Review Board.	Applicant or Applicant's Representative	Prior to installation of any exterior lighting	Community Development Department	
26. At the completion of construction, the structure shall be painted using an earthtone color scheme that shall be approved by the Architectural Review Board.	Applicant or Applicant's Representative	Prior to painting the building	Community Development Department	
27. An archaeological monitor shall be present during any construction or pre-construction activities that involve ground disturbance, such as grading, excavation for foundations, slabs, or utilities, etc.	Applicant or Applicant's Representative	Prior to beginning any construction activity	Community Development Department	
28. If human remains or intact cultural features are discovered during construction, the Community Development Director shall be notified and work shall be halted within 50 meters (150 feet) of the find until it can be evaluated by the monitor, and appropriate mitigation measures formulated and implemented.	Applicant or Applicant's Representative	On-going during any on-site excavation	Community Development Department	
29. The property shall be resurveyed for species of special concern (including animal species) if development of the proposed project does not commence within one year from the date of building permit issuance.	Applicant or Applicant's Representative	One year from the date of building permit issuance	Community Development Department	

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EXHIBIT 5, p 11

**TABLE 2. IMPLEMENTATION SCHEDULE**

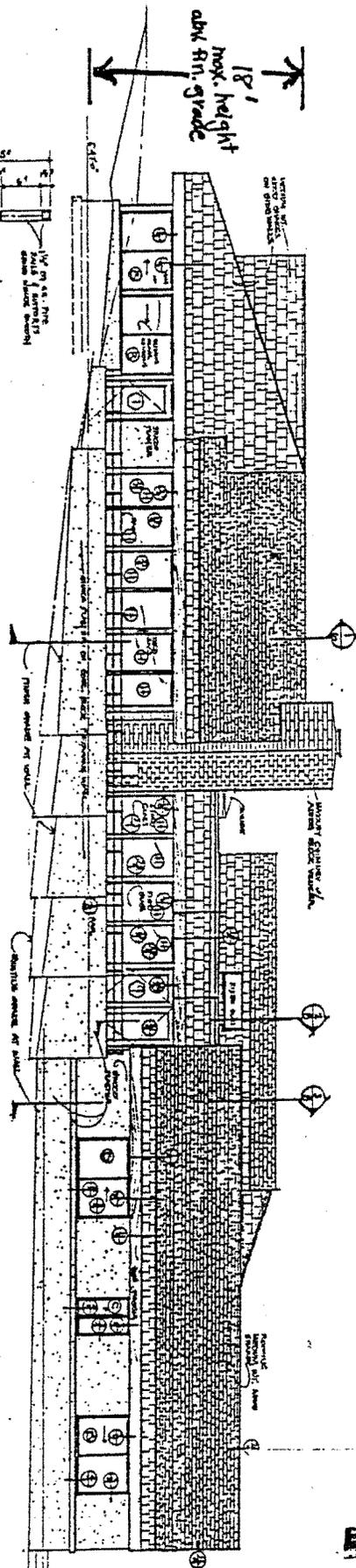
TASKS	TIMING
Collect native plant seeds	April through November
Grow native plants in nursery	October to February
Establish photo sites and collect existing baseline comparative data	Prior to any manipulation of the landscape and construction
Eradicate exotics	Prior to start of construction
Install temporary fencing	Prior to start of construction
Survey for black legless lizards	Immediately prior to start of construction
Monitor construction	Weekly until construction completed
Stabilize bare areas	Following completion of construction on the exterior of the building and clean-up of the site
Broadcast seeds and install nursery plants	Immediately following stabilization, preferably from December to April
Monitor implementation of Landscape Restoration Plan	Daily until installation of plants completed
Monitor new plants	Weekly for first month
Begin five-year monitoring program and notify the PGCD Director	Upon satisfactory completion of installation of the landscape
Maintain initial plants	Weekly for first three months, then monthly for two years, then annually for remainder of the project period
Control exotics	Annually, as needed throughout the year
Augment initial plants	Second and third years
Monitor restored landscape	Annually for five years in May
Prepare Annual Monitoring Report	Annually for five years in June
Submit Annual Monitoring Report	Annually for five years on July 1

Prepared By: *Thomas E. M...* Date: 4-27-99

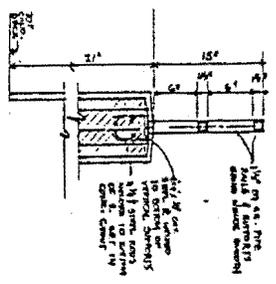
**EXHIBIT 6**

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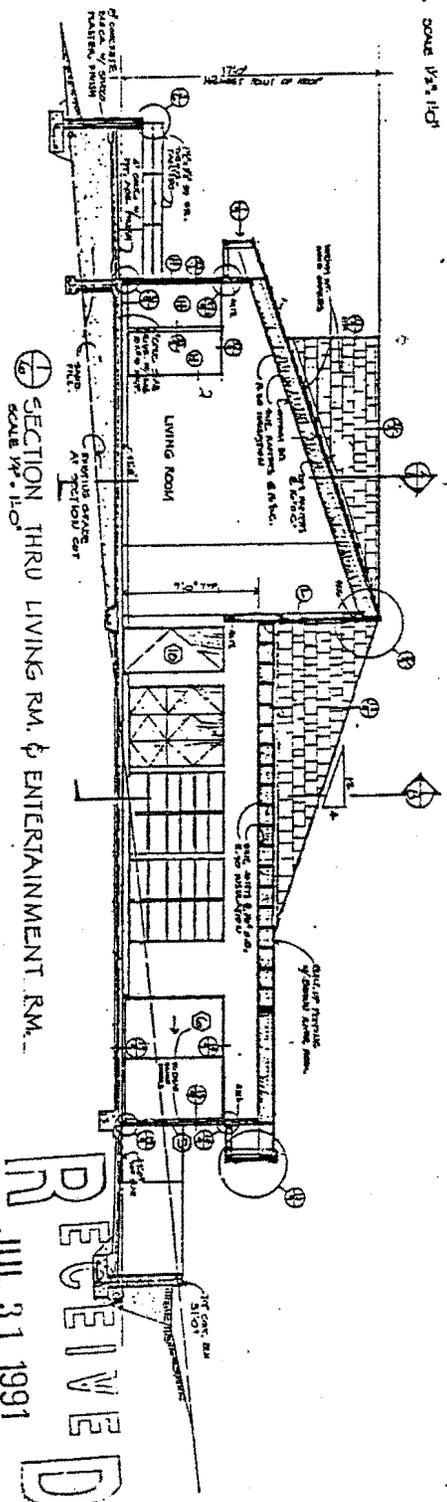




② WEST ELEVATION scale 1/4" = 1'-0"  
 (West elevation faces Sunset Drive)



③ RAIL DETAIL scale 1/8" = 1'-0"



④ SECTION THRU LIVING RM. & ENTERTAINMENT RM.  
 scale 1/4" = 1'-0"

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