

CALIFORNIA COASTAL COMMISSION

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Commission Action:

STAFF REPORT: REGULAR CALENDAR

APPLICATION NO.: 3-99-010

APPLICANT: JOEL KASS

AGENT: Pedro Rosado

PROJECT LOCATION: 14 Dunecrest Avenue, Del Monte Beach Tract #2, City of Monterey, APN 011-064-016

PROJECT DESCRIPTION: Construct two-story single-family dwelling with attached two-car garage, driveway, patio, and retaining wall (max height 4 feet) on a vacant 40 x 90 foot lot. The portion of the lot outside of the development footprint (1,811 square feet) will be landscaped and maintained with native dune plants.

Lot Area: 3,600 square feet
Building Coverage: 1,333 square feet
Pavement Coverage: 456 square feet
Zoning: R-1-6-D-1
Density: 12 units/acre
Ht. above Fin. Grade: 20.5 feet

SUBSTANTIVE FILE DOCUMENTS: Landscape Restoration Plan for the Kass Residence, Thomas K. Moss, January 30, 1999; Addendum to Geotechnical Investigation Report, Reynolds & Associates, June 2, 1998; Coastal Development Permit Files 3-96-117 (Gamble); 3-96-112 (Archer & Nichols); 3-96-73 (Bram); 3-96-34 (Archer); 3-89-112 (Vargas); P-79-34, 3-89-250 and 3-93-62 (Sewald); P-79-338 and 3-93-63 (Boyden); 3-93-28 (Bram); Del Monte Beach Land Use Plan Resubmittal 1992 and Commissions adopted LUP Findings for Approval 6/9/93; Del Monte Beach Land Use Plan Draft EIR, Jan. 1992 and Final EIR, April 1992; Geotechnical Investigation, M. Jacobs and Associates, 9/11/91.

SUMMARY OF STAFF RECOMMENDATION

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

This project is located on Dunecrest Avenue, an existing roadway within Del Monte Beach Tract 2, an antiquated subdivision in the Del Monte Dunes area of the City of Monterey. This is where the majority of the existing homes within this largely undeveloped tract are located. The project is on one of the two remaining vacant lots along this street that currently does not have a coastal development permit for a single-family residence. Since the project represents infill of existing development along this roadway, it will not prejudice the planning effort currently underway that is intended to consolidate development and open space areas within this tract to maximize sensitive habitat protection consistent with private property rights.

Staff recommends that the Commission **approve** the proposed residence, with the same conditions that have been applied by the Commission to similar projects within this tract in order to achieve Coastal Act consistency. These conditions include the following requirements:

- restoration and preservation of at least 50% of the lot as natural dune habitat. This area must be placed under a conservation deed restriction, and periodically monitored and maintained pursuant to the approved landscape restoration plan (Exhibit 2);
- contribution to the City of Monterey dune restoration fund proportional to the cost of restoring an area of dune equivalent to the footprint of the development, as mitigation for the habitat loss attributable to project construction;
- acknowledgement that this permit, and construction of the permitted development, shall not interfere with any prescriptive or public trust rights that may exist on the property;
- identification and utilization of a sand disposal site within the Monterey Dunes system approved by the City of Monterey, the project biologist, and the Executive Director;
- compliance with geotechnical recommendations; and,
- implementation of specific measures to minimize construction impacts on rare dune plants and animals.

I. STAFF RECOMMENDATION

Staff recommends that the Commission adopt the following resolution:

Approval with Conditions

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

II. STANDARD CONDITIONS

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

III. SPECIAL CONDITIONS

1. FINAL SITE PLAN. PRIOR TO TRANSMITTAL OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for Executive Director for review and approval, a final site plan that identifies the natural habitat conservation area (minimum size of 1,800 square feet) required by Special Condition 4, below.
2. COMPLIANCE WITH RESTORATION PLAN. All aspects of project construction and use of the site shall conform with the recommendations contained in the Landscape Restoration Plan prepared by Thomas K. Moss, dated January 30, 1999 (Exhibit 2).
3. DUNE RESTORATION FUND. PRIOR TO THE TRANSMITTAL OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall provide evidence, in a form and content acceptable to the Executive Director, that a fee has been deposited into the City of Monterey's Del Monte Beach Dune Restoration Fund (or equivalent interest-bearing account managed by the City of Monterey) in an amount of \$616 (the cost of restoring an area of dune equivalent to the 1,789 square feet covered by the development, at a restoration cost of \$15,000 per acre), to mitigate for the loss of dune habitat caused by the development. The purpose of the account shall be to provide a dune restoration fund for the protection and restoration of the Monterey Bay dunes within the City of Monterey. The funds shall be solely used to acquire restoration sites and to implement projects that restore native dune plant habitats (including installation of boardwalks to reduce public access impacts), not to fund operations, maintenance or planning studies. The funds in the account shall be released as provided for in a memorandum of agreement between the City of Monterey and the Commission, setting forth terms and conditions to assure that the in-lieu fee will be expended in the manner intended by the Commission.
4. CONSERVATION DEED RESTRICTION. PRIOR TO THE TRANSMITTAL OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall execute and record a deed restriction, in a form and content acceptable to the Executive Director, for the purpose of environmentally sensitive habitat protection on the undeveloped remainder of parcel APN 011-646-016 (minimum 1,800 square feet). The terms of the deed restriction shall specifically prohibit structures, uses and activities that would degrade natural habitat values, while allowing fencing, boardwalks, and other structures needed to accommodate habitat conservation/restoration. Any such fencing shall be designed to avoid substantial impairment of light, wind and rain. Landscaping which would block public views or introduce invasive non-native species shall be prohibited. The document shall be recorded free of prior liens and any other encumbrances which the Executive Director determines may affect said interest. The restriction shall run with the land in favor of the People of the State of California, binding all successors and assignees. This deed restriction shall not be removed or changed without a Coastal Commission amendment to this permit unless the Executive Director determines that no amendment is required.
5. PUBLIC RIGHTS. By acceptance of this permit, the applicant acknowledges, on behalf of him/herself and his/her successors in interest, that issuance of the permit shall not constitute a waiver of any public rights that may exist on the property. The applicant also acknowledges that issuance of the permit and construction of the permitted development

shall not be used or construed to interfere with any public prescriptive or public trust rights that may exist on the property.

6. SAND DISPOSAL. PRIOR TO THE COMMENCEMENT OF CONSTRUCTION, the permittee shall identify a disposal site for excavated sand within the Monterey Dunes. The disposal site and proposed method of sand disposal shall be subject to the review and approval of the City of Monterey, the project biologist, and the Executive Director.
7. COMPLIANCE WITH GEOTECHNICAL RECOMMENDATIONS. PRIOR TO THE COMMENCEMENT OF CONSTRUCTION, permittee shall submit to the Executive Director, written evidence of compliance with the recommendations contained in the June 2, 1998 letter from Reynolds Associates (attached as Exhibit 7).
8. BIOLOGICAL MITIGATION. PRIOR TO THE COMMENCEMENT OF CONSTRUCTION, AND ON A DAILY BASIS PRIOR TO THE COMPLETION OF GRADING, the project biologist shall conduct a survey for Black legless lizard in the construction area utilizing raking, coverboards, or other biologically acceptable method. Surveys should be done in the mornings and evenings, when black legless lizards are most likely to be found. If found, the lizards should be captured and immediately placed into containers with moist paper towels, and released in similar habitat on undisturbed portions of the site at the same depth in the soil as when found. Evidence of compliance with this condition shall be prepared by the project biologist and submitted for confirmation by the Executive Director PRIOR TO THE COMMENCEMENT OF CONSTRUCTION AND AT THE CONCLUSION OF GRADING ACTIVITIES.

IV. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares:

1. PROJECT AND LOCAL AREA DESCRIPTION

In the Del Monte Dunes area of Monterey City the Coastal Zone boundary follows Del Monte Boulevard which is the first public road paralleling the sea, creating a narrow, approximately one-half mile wide linear strip of land under Coastal Act protection (see Exhibit 1 attached). Seaward of the boulevard are the high oceanfront Flandrian dunes. The applicants' parcel is located on the crest of a legally subdivided but largely unimproved 7 1/2 acre sand dune area of approximately 85 parcels in the Del Monte Dunes area of Monterey City; the area is referred to as Del Monte Beach Tract #2. Of the 85 lots, 64 are undeveloped. Beach Way running perpendicular to the ocean and Dunecrest Avenue, a cross street at the top of the dune, are improved. Seafoam, Spray and Roberts Avenues are not improved (within Tract #2), with exception to the small portion of Spray Avenue that has been partially improved (half-width) in order to provide access to the residences approved and constructed at 21 and 23 Spray Avenue in 1996.

Eighteen lots on the periphery of the undeveloped area and having access and utilities from the existing streets contain residences which were constructed prior to the Coastal Act of 1976. One of the eighteen houses destroyed by fire was reconstructed. In 1990 the Commission approved 3-89-210 Maria Vargas for a residence on an improved street with utilities,

Dunecrest, the highest and most distant street from the ocean. In March 1994, two additional houses were approved on the Beach Way frontage (3-93-62 Sewald and 3-93-63 Boyden). In June 1994, a third house (3-93-28 Bram) was approved at 4 Dunecrest Avenue, one of the five remaining "perimeter" lots. This permit expired, and a new permit (3-96-117 Gamble) was approved for a similar house on the same lot. The Commission also approved a permit for a house on a double (7,200 square foot) lot at 12 Dunecrest (2-96-073 Bram) in December 1996, which was recently extended.

In October, 1996, the Commission approved a permit (3-96-34 Archer) for a single family residence on an interior lot, but adjacent to a developed lot fronting Beach Way, which involves an 80 foot extension of Spray Avenue into previously undeveloped portions of Tract 2. Subsequently, in January 1997, the Commission approved an additional home, adjacent to the one approved in October 1996, which involves the extension of Spray Avenue by an additional 40 feet (3-96-112 Archer/Nichols). Currently, the Vargas, Archer, Archer/Nichols, and Gamble homes have been constructed, the Sewald and Gamble homes are under construction, the Boyden lot has been purchased by the City for open space, and the permit for the development of #12 Dunecrest has not yet been issued as prior to transmittal conditions have not yet been satisfied. (See Exhibit 5 for a graphic description of the subdivision development). All of the permits approved by the Commission in Tract #2 have been conditioned with a requirement to retain 50% of the lot as undeveloped open space (including 50% of the 7,200sq.ft. lot), for the reasons discussed in the findings regarding Environmentally Sensitive Habitats beginning on page 11 of this report.

Upcoast (east) of the "paper" subdivision is the almost fully developed residential subdivision of approximately 25 acres known as the Del Monte Beach Tract #1. To the west of the subdivision are the Monterey Water Pollution Control District facilities on the Naval Postgraduate School property. The City's Del Monte Public Beach lies seaward of the subdivisions. The site looks downslope towards Monterey Bay, across the dune field to the City Beach about 700 ft. to the north. The applicant proposes to construct a two-story, single-family dwelling on this vacant 40 x 90 ft. lot (see Exhibit 3) which is between an existing residence at 16 Dunecrest and the residence approved at 12 Dunecrest.

2. BACKGROUND INFORMATION

Coastal dunes are a limited resource of statewide significance. Oceanfront dunes provide unique scenic, recreational and habitat values. At 40 square miles, the Monterey Bay dunes are one of the largest coastal dune fields in California; however, less than 10% of the dune field (including the subject lot) has survived urbanization, conversion to military or agricultural uses, sand mining, and shoreline erosion. (See Finding 3 of this staff report). The dunes begin at the Salinas River and extend south along the shoreline for approximately 15 miles across several governmental jurisdictions to the Monterey City Harbor. The Coastal Zone boundary through this region primarily follows Highway 1 which, north of Monterey, is typically the first public road paralleling the sea. The dunes seaward of Highway 1 are largely undeveloped.

Status of Development in the Monterey City dunes: In Monterey City, the dunes begin at Laguna Grande at the City's boundary to the north and continue to the City's harbor. The City's land use policy direction in the past several years has been to retain in, or convert back to, open space the beach front areas between Del Monte Boulevard and the sea for recreational

and dune restoration purposes. Specific efforts have been directed to removing most of the commercial/residential development between Del Monte Boulevard and the Monterey City/State Beach from Wharf #2 to the U.S. Naval Postgraduate School property for "Monterey Bay Park" (also known as "Window to the Bay"). Several commercial parcels have been purchased, buildings demolished and visual and physical access opened to the beach.

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

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

Since the passage of Proposition 20 (Coastal Act of 1972), development in the dune area of Monterey City has been limited to the construction of the regional recreational trail along the abandoned Southern Pacific right-of-way and other public access improvements, other public works facilities (e.g., regional wastewater pipeline), and infilling of houses in the Del Monte Beach Tract #1 subdivision and along already-developed street frontages in Tract #2. (With exception of the Archer and Archer/Nichols residences constructed pursuant to CDP's 3-96-34 and 3-96-112.)

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

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

In 1979 and 1980 the Commission denied two requests to construct single family dwellings on vacant sand dune lots within Del Monte Beach Tract #2 (Boyden A-19-80; Sewald A-134-79). The Commission found that among other reasons, potential prescriptive rights existed and must be protected, and open space and habitat resource values must be preserved. In 1989 the Commission denied a request for a perimeter fence on the Sewald lot (Sewald 3-89-250) and a similar request by Manfred Droh (3-89-251). An exception in 1990 was the Vargas residence (3-89-210) on Dunecrest Avenue, which was approved by the Commission because it could be distinguished by its location on an improved street, most distant from the beachfront, with no native plant habitat, and no evidence of public use. The permit history for Tract #2 after 1990 is detailed in Finding 1 above.

Commission Local Coastal Program Actions in Del Monte Beach Tract #2: The Del Monte Beach Land Use Plan (LUP) was approved with modifications by the Commission in 1984. At

that time the Commission found that the 7-acre undeveloped portion of the Tract #2 subdivision had the potential for prescriptive rights which were inadequately protected in the LUP, which allowed residential buildout. The LUP policies would have eliminated the ability of the City to consider any alternatives for access and would not provide any protection for dune habitat values.

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

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

Actions Undertaken to Resolve Issue:

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

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

The possible acquisition and preservation of the dunes habitat comprising the vacant lots in the Del Monte Beach subdivision under multiple ownership has been an issue of concern to the City and State since the 1970s. Past efforts have been attempted to consolidate private ownership in this area or to acquire the land publicly, but they were unsuccessful. The land was once identified for acquisition by the State for expanding beach park land in the vicinity. Funds for the State acquisition were to be provided by proposition 2, passed in 1976, and administered by the Department of Parks and Recreation. The State did not purchase the undeveloped subdivision land because the land was found to lack suitability as a State recreation area and funding was limited. The State consequently withdrew plans to acquire the property. The City of Monterey later explored possible California Coastal Conservancy programs that might be used to acquire the property...

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

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

Current Purchase Efforts: As of 1994, the City Neighborhood Improvement Program (NIP) Committee had set aside \$840,000 of this neighborhood's allocations toward purchase of vacant lots west of Beach Way. A total of \$932,000 had been allocated toward acquisitions. Expenditures had totaled \$312,439 for eight lots (includes negotiation costs). The remaining balance available was \$619,561, a substantial portion of which has since been used to purchase the Boyden lot. (Exhibit 5 attached to this report contains a map illustrating lots currently in public ownership).

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

The issue has been raised in City public meetings as to whether the City (or Regional Park District) could exert its eminent domain powers over the private lots in condemnation proceedings. Although both the City and Park District possess eminent domain powers, the City Council or Park District Board of Directors would need to resolve to use them to acquire the land. Use of eminent domain for this purpose has not been approved by the City Council.

Section 30604 (e) of the Coastal Act states:

No coastal development permit may be denied under this division on the grounds that a public agency is planning or contemplating to acquire the property on, or property adjacent to the property, on which the proposed development is to be located, unless the public agency has been specifically authorized to acquire such property and there are funds available, or funds which could reasonably be expected to be made available within one year, for such acquisition. If a permit has been denied for such reasons and the

property has not been acquired by a public agency within a reasonable period of time, a permit may not be denied for such development on grounds that such property, or adjacent property, is to be acquired by a public agency when the application for such a development is resubmitted.

Both public agencies, the City of Monterey and the Monterey Peninsula Regional Park District (MPRPD) are currently buying lots from willing sellers in the Del Monte Beach Tract II on an opportunity basis. The City previously focused their acquisition efforts on the 22 lots closest to the sea (the block between Seafoam and Tide Avenues). To date, a total of more than 9 lots have been purchased by the City in this block. Currently, the City Council has now authorized acquisition over a broader area, specifically a block of vacant lots between Dunecrest Ave. and the beach. The Park District has acquired eight lots in the two-block area between Seafoam and Dunecrest.

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

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

Efforts to develop a comprehensive plan have continued and progressed since that time. In 1996 the City contracted with the EMC Planning Group to conduct an opportunities and constraints analysis. Various planning and implementation options, including further purchases, transfer of development credits, and Planned Unit Development were considered, and the sensitive plant species and dune plant cover types of the area have been mapped and updated as part of this effort. Recently, in close coordination with the City, Regional Park District, neighborhood committee, and Coastal Commission staff, the property owners have developed a plan that will consolidate development into a smaller number of larger lots, and retain a large area as open space habitat that may also include boardwalks and other public access improvements. The draft plan, as of March, 1999, is attached to this report as Exhibit 6. Based upon the fact that the proposed residence which is the subject of this permit will be located between an existing and an approved residence, it will not prejudice the consideration the full range of alternatives during further review and development of this plan.

3. ENVIRONMENTALLY SENSITIVE HABITAT

Section 30240 of the Coastal Act states:

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

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

Section 30250 of the Coastal Act states:

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

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

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

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

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

Another sand-stabilizing species, the Monterey spineflower (Chorizanthe pungens var. pungens), is also found in the Del Monte Beach area and has now been listed in the Federal Register as an endangered species (U.S. Fish & Wildlife Service notice of February 14, 1994). The spineflower has been observed on the subject property, and the coast wallflower and sand gilia have both been observed within the adjacent dune area.

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

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

The Naval Post Graduate School (NPGS) property to the west and contiguous to Del Monte Beach Tract #2 is one of 18 Smith's blue butterfly colony sites identified in the U. S. Fish and Wildlife's Smith's Blue Butterfly Recovery Plan (11/84). The former Phillips Petroleum site east of the developed subdivision (Del Monte Beach Tract #1) is another. Host buckwheat plants (Eriogonum parvifolium and latifolium) were identified by U.S.F.W.S. staff in 1979 extending into the undeveloped lots within Tract #2 inland of Dunecrest Ave. This was confirmed in spring 1993 by a State Park botanist. Another animal species, the black legless lizard (Anniella pulchra nigra) has been sighted in the area and has previously been a candidate for federal listing as endangered. The species is of concern to the California Department of Fish & Game because of its limited distribution.

b. Restoration Programs on Surrounding Dune Areas:

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

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

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

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

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

Del Monte Beach Tract #2: A vegetation map was done for the Del Monte Beach Land Use Plan in the early 1980's. The map identified several areas of "dune habitat" as opposed to open sand in the Tract #2 area. The current habitat values for all of the undeveloped parcels in the Tract #2 subdivision have been recently surveyed as part of the planning effort discussed above.

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

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

parvifolium) is also given special consideration because it provides critical habitat for Smith's blue butterfly.

Mr. Moss conducted a botanic survey of this site in the early spring of 1998. As reported and mapped in his Botanic Survey Report dated March 15, 1998 (attached as Exhibit 2), the lot was found to support 41 specimens of the rare Monterey spineflower. The presence of this dune species confirms the importance of the site as environmentally sensitive habitat.

d. Potential Impacts and Mitigation: The submitted application proposes to cover 1,789 square feet, on dune habitat area, which is expected to result in the loss of most, if not all of the Monterey spineflower contained on the site. Because the large majority of these plants are located in the center of the lot, avoidance is not possible. In addition, impacts from construction activity, from shadows cast by the residence and trampling incident to residential use, and (potentially) from the introduction of plant species not native to these dunes, could permanently impact or eliminate environmentally sensitive habitat over the entire 3600 sq. ft. lot. Without containment measures, the remaining 1811 sq. ft. dune area would likely also be degraded by construction activities.

ANALYSIS: The applicant's site currently supports at least one rare species, the Monterey spineflower, and represents potential habitat for several others (upon restoration), including the endangered Smith's blue butterfly and the Black legless lizard. The applicant's biotic survey reports that the subject site has been degraded by introduced ice plant growth. However, the parcel is part of the natural dune formation and it is clearly evident from the restoration success at the adjacent U.S. Naval Postgraduate School dunes that the Del Monte Beach Tract #2 dunes retain important potential natural habitat values. In the context of the natural resources of the area this parcel could be an important component of an area-wide dune restoration program (including a public access/recreation impact management plan). Therefore, applicant's parcel represents both existing and potentially restorable environmentally sensitive habitat.

Because the proposed development plan as currently submitted will permanently prevent revegetation on approximately 50% of the lot, approval as submitted represents a significant disruption of habitat values. Combined with the potential for similar development on the remaining undeveloped lots in the subdivision, the development could seriously impede future planning efforts to successfully restore, through a comprehensive planning approach, this area of the environmentally sensitive dune habitat of the Monterey Bay dune system. Additionally, as submitted the project will result in adverse cumulative impacts on this diminishing fragile resource and at the same time it will directly conflict with the natural resource restoration goals in Section 30001.5 of the Coastal Act.

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

Section 30240 does not exist in isolation, however, and must be read along with other provisions of the Act, particularly Section 30010. This section provides that the policies of the

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

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

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

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

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

ALTERNATIVES: In this situation, the Del Monte Beach Tract was initially subdivided into very small lots for residential purposes. Alternatives to development of the site with a modest home do not appear feasible. More intensive use would not be viable on the parcel due to the need to accommodate parking, which would destroy more of the environmentally sensitive habitat. The potential of the site for resource dependent uses -- interpretive trail, etc., has also been reviewed, but it was determined that the economic return for this alternative would be nil.

Therefore, in view of the location of the applicant's parcel, the limited 3600 sq. ft. lot size, and the other residential uses in the immediate vicinity of the lot, the Commission finds that no other use of the property would provide an economic use except residential use.

Additionally, in contrast to many of the other parcels in Del Monte Beach Tract #2, the applicants' parcel is on an improved street, Dunecrest Avenue, and public utility service is

currently available. Many of the other lots on Dunecrest Avenue are developed, including the lot immediately south of the subject parcel. Moreover, a substantial number of the other parcels on the improved streets in Del Monte Beach Tract #'s 1 and 2 are also developed, and have been for a considerable amount of time. In addition to these observations, the applicant has submitted information that states that the purchase price of this parcel in 1978 was \$10,000, the fair market value for this and similar parcels at that time. In addition, the applicant has stated that he has paid \$2,200 in taxes over the last five years (thus, it is estimated that he has paid approximately \$8,800 in taxes since the property was acquired), and has paid a \$4,450 assessment for the undergrounding of utilities. (A detailed description of all of the expenditures to date associated with the parcel is available in the Commission file for this project).

At the time the applicant purchased this lot, it and the other lots in the Tract 2 subdivision were designated in the General Plan and zoned for single family residential use. The General Plan and Zoning designations have not changed over the twenty years that the applicant has owned the property. Also at the time the lot was purchased, a portion of the infrastructure to support development of the subdivision was in place and several homes had already been constructed along this section of Dunecrest Avenue. There were no physical anomalies associated with the applicant's parcel that posed particular constraints or distinguished it from other vacant and developed lots in the subdivision. Thus, when the parcel was purchased in 1978, the applicant, upon determining the zoning and observing both the site's specific characteristics and the partially developed nature of the subdivision, could have legitimately assumed that development of a modest single family home on the lot was a reasonable expectation. Continued development within the subdivision over the intervening twenty years lends further credence to that expectation.

These factors, combined with the fact that the small size of the site (+3,600 sq. ft.) makes opportunities for other economic but non-residential uses infeasible, lead the Commission to conclude that the applicant could have reasonably expected that residential use of the subject property would be permitted when the property was purchased.

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

Having reached this conclusion, however, the Commission also finds that Section 30010 only instructs the Commission to construe the policies of the Coastal Act, including Section 30240, in a manner that will avoid a taking of property. It does not authorize the Commission to otherwise suspend the operation of or ignore these policies in acting on permit applications.

Moreover, while the applicant in this instance may have reasonably anticipated that residential use of the subject property might be allowed, the Coastal Act and recent Coastal Commission actions on similarly situated lots in the Del Monte Beach Tract No. 2 (Boyden, Bram, Seawald, Archer, Archer/Nichols, and Gamble) provided notice that such residential use would be

contingent on the implementation of measures necessary to minimize the impacts of development on environmentally sensitive habitat. Thus, the Commission must still comply with the requirements of Section 30240 by protecting against the significant disruption of habitat values at the site, and avoiding impacts that would degrade these values, to the extent that this can be done consistent with the direction to avoid a taking of property. Mitigations must also be generally proportionate to the adverse impacts caused by development of the house and associated infrastructure.

MITIGATION: In situations such as these, there are several conditions that the Commission can adopt that implement Section 30240 without taking the applicant's property. Appropriate measures include: concentrating residential site coverage so that development covers no more than one-half (1800 sq. ft.) of the parcel; and, requiring that the area of the parcel that will not be developed (1800 sq. ft. minimum) shall be preserved in open space, subject to a conservation deed restriction. Such measures are required by Special Conditions 1 and 4 of this permit.

Even with these conditions, development on the parcel will permanently displace dune habitat and prevent revegetation on up to 50% of the lot. There also will be indirect impacts on the undeveloped portions of the lot through construction activity, shadowing and other activities associated with adjacent residential use. Moreover, although the actual square footages at issue in this permit are relatively small (up to 1800 sq. ft. developed and at least 1800 sq. ft. of adjacent open area), these impacts are significant given the importance of the Monterey Bay Dune system as a whole and the potential for cumulative impacts if the remainder of the 53 undeveloped lots in the area are similarly developed. In fact, on a cumulative basis, a development of the kind proposed by the applicant, would result in the loss of approximately 4.7 acres of additional environmentally sensitive coastal dune habitat in the Del Monte Beach Tract #2 area alone. Therefore, several additional conditions are necessary to offset these direct, indirect, and cumulative project impacts.

The applicant has submitted a landscape restoration plan containing a number of impact assessment and mitigation measures designed to protect existing dune resources. (See Exhibit 2, attached.) Special Condition No. 2 requires that project construction activities, and future use of the site, comply with these recommendations.

In addition, because the developed half of the lot represents a permanent loss of environmentally sensitive habitat, the permit also has been conditioned in Special Condition No. 3 to require project mitigation through an in-lieu fee. The purpose of the in-lieu fee is to provide for off-site restoration of degraded environmentally sensitive habitat, to mitigate on-site loss of environmentally sensitive habitat (the lot is too small for substantive on-site restoration). More specifically, the in-lieu fee will provide funds to pay for the cost of restoring an area exactly proportionate to the area of environmentally sensitive habitat that will be destroyed due to construction of the house. The in-lieu fee will be used for future native plant habitat preservation and restoration in nearby dune areas through the acquisition of restoration sites, eradication of invasive exotic vegetation, installation of boardwalks, and other dune restoration measures identified in the planning or LCP process.

The amount of the in-lieu fee is based on an estimate made in December 1993 by dune restoration botanist Thomas Moss, a local expert in preparing and implementing dune

restoration. His figures showed that for similarly situated projects the cost of restoration for an acre is \$13,500. If adjusted for inflation to estimated construction date, this cost can be projected to be \$15,000 per acre. For the 1,789 square foot area to be covered by the proposed residential development, the proportional cost is \$616. The City of Monterey, which has already established a fund for the protection of the Monterey Dunes, would be the recipient of these funds. As conditioned, the expenditure of such funds would be subject to review by the Executive Director to insure conformance with the intended habitat protection and restoration purposes of this condition.

To address the potential taking of the Black legless lizard, a rare and sensitive dune animal that is considered a species of special concern by the California Department of Fish and Game (and previously a candidate for listing as endangered by the U.S. Fish and Wildlife service), Special Condition 8 requires the project site to be surveyed for these lizards by the project biologist prior to the commencement of construction, and on a daily basis until grading is completed. If found, the lizards must be captured and immediately placed into containers with moist paper towels, and released in similar habitat on undisturbed portions of the site at the same depth in the soil as when found.

Finally, in order to protect the unique sands of the Monterey Dunes, on which sensitive native habitats depend, as well as to prevent spoils disposal from adversely impacting other sensitive habitat areas, Special Condition 6 requires the permittee to identify a disposal site for excavated sand within the Monterey Dunes system, as well as a disposal method, subject to the review and approval of the City of Monterey, the project biologist, and the Executive Director.

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

4. PUBLIC ACCESS AND RECREATION

The applicant's sand dune site lies between the first public road and the sea. It is contiguous with and indistinguishable from the adjacent dune field, which extends seaward about 700 ft. to the City beach.

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

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

Section 30211 of the Coastal Act states:

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

Section 30210 of the Coastal Act states:

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

Section 30221 of the Coastal Act states:

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

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

The Commission has had a long history of grappling with the issue of public access in the Del Monte Beach Tract #2. An excerpt from the findings adopted by the Commission for a 1992 LUP submittal for this area describes the most recent position on this subject. (This LUP was not, however, certified.) The Commission found that the seven and one-half acre Del Monte Beach Tract #2, which includes the subject site, has been subject to public use for many years. In order to finally resolve the question of the extent of potential prescriptive rights¹ existing in this area, the LUP modifications adopted by the Commission required the City to prepare such a study. Adopted Modification No. 14 reads:

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

¹ Prescriptive rights may only be determined by a court decision on the issue. To date, no court cases have been brought to make this determination in this area.

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

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

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

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

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

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

Coastal Commission adoption of the LUP resubmitted in 1992 also included findings which adopted the previous evidence collected regarding historic public use, including fifteen letters from the 1979 Sewald file stating that the authors had used and had seen many people using the Sewald lot for picnicking, sunbathing, hiking, dog-walking, kite flying, and nature study.

The period of public use was as early as 1922 with most of the use occurring from 1958 to 1979 (1979 is the date that the letters were written). As evidence that the public use continued to be substantial, Mr. Sewald applied for a permit to fence his vacant property in 1990 (3-89-250). Among the reasons cited by the applicant as to why the fence was needed included that "people have driven on to his property", he "has found people letting their animals loose on the property", and, the "No Trespassing signs have been torn down by drunken beachgoers." The Commission denied the fence permit, substantially for the same reasons that the earlier residential development had been denied, most significantly the presence of historic public use.

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

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

Conclusion

There is a long documented history of public use throughout the undeveloped portion of Del Monte Beach Tract #2, confirmed by previous Commission action. While the Commission has consistently deferred to the City's LCP process to complete the detailed analysis which would answer the questions about whether this area has been impliedly dedicated for public use, the City has declined to conduct such a study. Accordingly, it is concluded that the evidence for the subject parcel is indeterminate. Lacking the necessary information, the Commission is unable to find unequivocally that this property has been dedicated entirely or partly for public use.

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

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

5. SCENIC RESOURCES

Section 30251 of the Coastal Act states:

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

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

The site is located on Dunecrest Avenue, separated from the City's Del Monte Beach by the vacant intervening dune field extending to the beach. The undeveloped Del Monte Beach Tract #2 north of the site is an open dunes, beach and ocean environment. Views north and west from Dunecrest Avenue are partially restricted by existing development and vegetation, but some views to the Naval Postgraduate School dunes and beach and the City of Monterey shoreline are available. The proposed development will slightly encroach into these views and may (distantly) impact the views from the public beach to the north.

The parcel is 3,600 sq. ft. in area. The structure proposed is a two-story, threebedroom, two bath residence. A two car garage is accessed from Dunecrest Avenue. As approved by the City, the house will be a maximum height of 20.5 feet.

As submitted, the building's proposed design, scale, and siting on the parcel are consistent with the residential development in the almost fully built out Del Monte Beach Tract #1 to the east. The building would also be consistent with the existing residences in Tract # 2.

The conditions attached to this permit require that any permanent fencing not substantially impair public views. Therefore, as conditioned to restrict fences which would block or damage public views of the scenic dunescape, the proposed development is consistent with the scenic resource policies of the Coastal Act.

6. GEOLOGIC HAZARDS

Section 30253 of the Coastal Act states:

New development shall:

(l) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.

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

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

Because of its distance from the shoreline (approximately 700 ft.), no shoreline erosion rate study was done. However, the potential for wind erosion and sand dune movement in the area was considered by a geotechnical analysis completed by M. Jacobs in 1991. One of the recommended stabilization measures calls for the finished ground surface to be planted and maintained with groundcover. This measure will be implemented incidental to the habitat restoration plan required by the conditions of this permit.

A supplemental geotechnical analysis specific to the project site has been completed, and is attached to this report as Exhibit 7. Special Condition 7 requires compliance with the recommendations contained in this report

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

7. PUBLIC SERVICES

Section 30250 of the Coastal Act states in part:

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

Section 30254 provides in part:

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

The subject parcel is located on Dunecrest Avenue, a developed street with utilities. The Del Monte Beach vehicular access for both subdivisions and for public beach use is impeded by a single entrance off Del Monte Avenue and a narrow loop road system. However, the

development of this residence by itself will have an insignificant impact on traffic volume. As discussed in the preceding findings this development site can be distinguished from the interior Tract #2 dune parcels because of the availability of existing street access and utilities. Hence, only two other privately owned vacant parcels are so situated (one is a double lot with an approved coastal permit) and no precedent is established in this respect for the remaining vacant lots.

Water for the site will be provided by Cal Am Water Company. A water connection moratorium imposed by the Monterey Peninsula Water Management District was repealed on August 19, 1993. The Water District allocates existing water supplies, and establishes conservation measures and new sources, including the Peralta well in Seaside approved for construction in 1994. The project will obtain water from the allocation granted to the City of Monterey by the Water Management District, of which there is adequate supply. And, the Regional Water Pollution Control Agency Treatment Plant has sufficient sewage treatment capacity for this development.

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

8. LOCAL COASTAL PROGRAM

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

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

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

In this case, the Commission has found that it is not authorized to deny residential development of the applicant's parcel because this would lead to a taking of property in violation of Coastal Act Section 30010. As conditioned, one-half of the lot will be preserved as scenic open space through a recorded deed restriction, and additional measures will be applied to mitigate impacts on scenic resources and dune habitat that would result from the

construction of the proposed residence. The Commission therefore finds that approval of this project will not prejudice the ability of the City to prepare a Local Coastal Program in conformance with the policies of Chapter 3 of the Coastal Act, as further detailed in previous findings. The project as conditioned is therefore consistent with the requirements of Coastal Act Section 30604(a).

10. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

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

In response to the environmental review requirements of CEQA, the City certified a Negative Declaration for this project on July 28, 1998. Additional impacts were discovered during the course of this permit review. In response, additional mitigation measures are incorporated as conditions. Accordingly, as so conditioned and modified, the Commission finds that the proposed project is consistent with CEQA, as all of its significant environmental impacts will be reduced to a level of insignificance.

EXHIBITS

1. location map
2. landscape restoration plan and botanical survey
3. project plans
4. City's conditions of approval
5. property ownership map/development pattern
6. draft re-subdivision
7. geotechnical report

LOCATION AND VICINITY MAP

MONTEREY BAY

MONTEREY

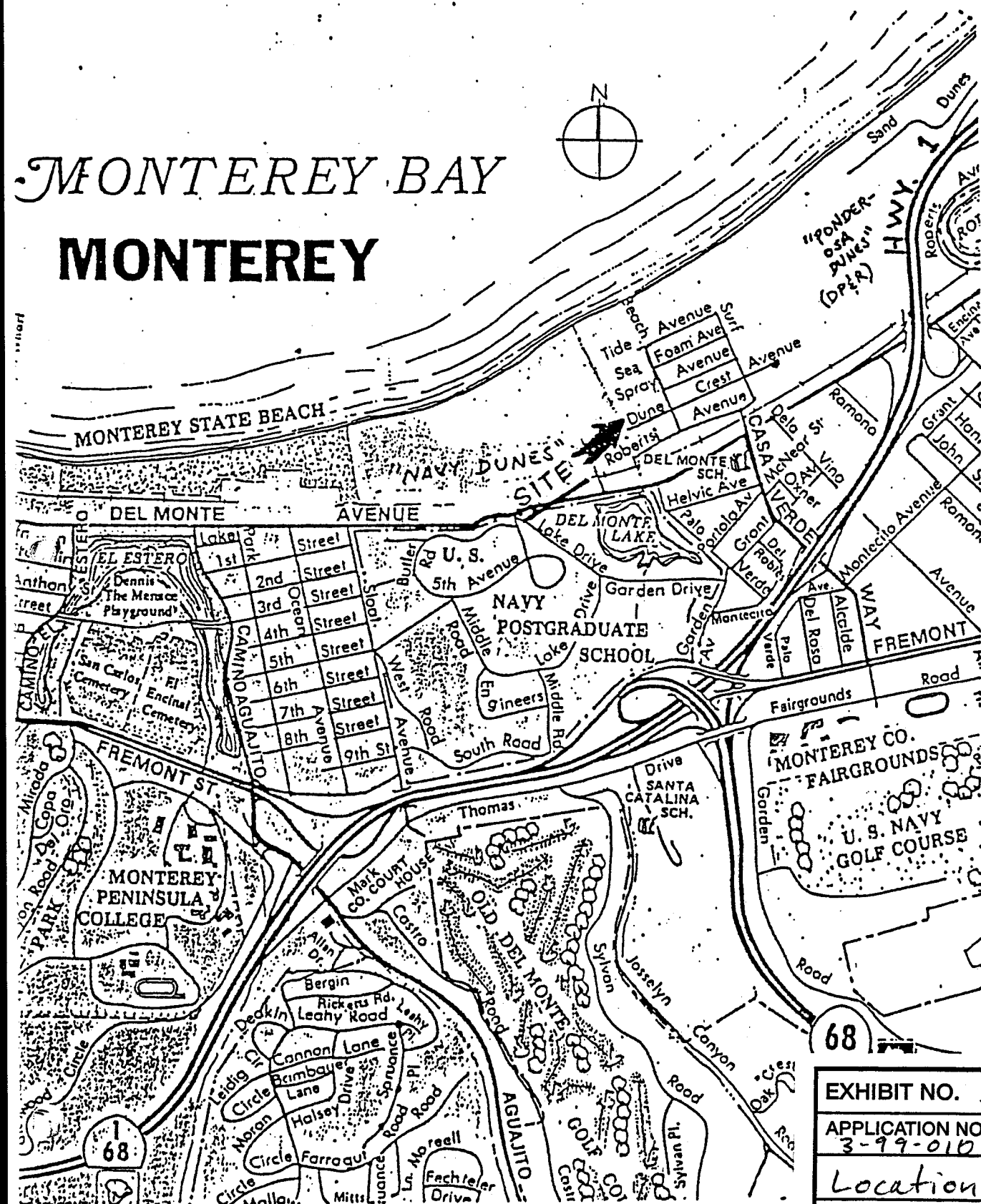


EXHIBIT NO. 1

APPLICATION NO.
3-99-010

Location
Map

THOMAS K. MOSS
Coastal Biologist

RECEIVED

FEB 05 1999

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

LANDSCAPE RESTORATION PLAN

KASS RESIDENCE
14 DUNECREST AVENUE, MONTEREY, CA
(APN 11-464-015)

Owner:

Joel and Debra Kass
227 Jones Road
Los Gatos, CA 95032

January 30, 1999

508 Crocker Avenue
Pacific Grove, CA 93950

EXHIBIT NO. <i>2, p.1</i>
APPLICATION NO. <i>3-99-010</i>
<i>Landscape</i>
<i>Restoration Plan</i>

TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION	2
II. RESTORATION GOAL AND OBJECTIVES	2
III. RESTORATION PROCEDURE	3
1. Native Seed Collection	3
2. Exotic Species Eradication	3
3. Sand Stabilization	5
4. Revegetation	5
5. Landscape Protection	6
6. Maintenance	6
7. Monitoring	7
IV. MONITORING STANDARDS	7
V. PROJECT IMPLEMENTATION AND MONITORING SCHEDULE	8
FIGURE 1. SELECTED PLANT SPECIES FOR REVEGETATION	4
FIGURE 2. IMPLEMENTATION SCHEDULE	9

APPENDIX 1. Botanical Survey Report

LANDSCAPE RESTORATION PLAN 14 DUNECREST AVENUE, MONTEREY, CA

Prepared By Thomas K. Moss, Coastal Biologist

I. INTRODUCTION

This Landscape Restoration Plan has been prepared in conjunction with a proposal to construct a single-family dwelling located in the Del Monte Beach Tract #2 at 14 Dunecrest Avenue, Monterey, California. As a condition of approval of the proposed development, both the City of Monterey and the California Coastal Commission required the preparation of a dune stabilization and restoration plan. This plan satisfies that requirement.

The proposed project consists of the construction of a two-story house on a vacant 40 x 90-foot lot. Total coverage of house, garage, patio, decks (first story) and walkway is required not to exceed 50 percent of the property.

A Botanical Survey report was prepared for the project site on March 15, 1998 (Appendix 1). The report provides a description of the existing vegetation on the property contrasted with a description of the original, undisturbed native plant community that once thrived in the area. The report also provided a list of special conditions adopted by the City of Monterey and the California Coastal Commission requiring protection, restoration, maintenance and monitoring of the dunes on the undeveloped portion of the project site.

II. RESTORATION GOAL AND OBJECTIVES

The goal of this Landscape Restoration Plan is to provide procedures and standards for successfully reestablishing and maintaining a native coastal dune landscape on the property. A relatively pristine example of the indigenous plant community that once covered the project site occurs just to the west on the property of the U.S. Naval Post Graduate School, called the "Navy Dunes." The natural landscape in the "Navy Dunes" will serve as the restoration model for this project.

Specific objectives to accomplish the project goal are as follows:

- Revegetate with an array of local native species, establishing a native landscape that is representative in terms of species composition, percent relative cover and total percent cover of the local Coastal Strand Plant Community.
- Eradicate and control exotic vegetation.
- Stabilize dunes and prevent erosion caused by the wind.
- Prevent damage to the dunes and the native landscape resulting from human activity.
- Maintain and enhance species of special concern (Monterey spineflower).
- Perform a five-year monitoring program based on quantitative and qualitative standards.
- Establish a long-term management program for maintaining and preserving the dunes in a natural state.

III. RESTORATION PROCEDURE

Restoration will be accomplished in seven steps. Each step is described below and includes the following:

1. Native Seed Collection
2. Exotic Species Eradication
3. Sand Stabilization
4. Revegetation
5. Landscape Protection
6. Maintenance
7. Monitoring

1. Native Seed Collection

Plants of the same species can vary in color and form from one area to another, even over relatively short distances. Genetic variations occur in response to long-term adaptive changes by a species to the conditions of its immediate environment. Utilizing seeds from plants collected as near as possible to a restoration site is a wise revegetation strategy, since these plants possess the unique traits needed to ensure the long-term survival of their kind on the site.

In order to preserve the genetic integrity of the local flora, all seed for growing plants selected for use in this restoration project will be collected from areas as close as possible to the project site. The seed collection area may range from the "Navy Dunes" (south) to Moss Landing (north). Permission to collect on private or public property will need to be obtained from the respective property owners. A total of approximately 10 pounds of seeds will be collected from 16 species, as listed in Figure 1.

2. Exotic Species Eradication

Several invasive, exotic species have been identified on the property, including ice plant, European beach grass, ripgut brome, and sow thistle. Eradicating the exotics and maintaining the landscape in a weed-free condition are primary objectives of this landscape restoration project. If not controlled, these particular species are capable of crowding out other plants and eventually displacing much of the native plant community. The success of this landscape restoration project will require a long-term commitment by the property owner to eradicate and control exotic plants whenever they appear on the property.

Several methods are available for eradicating ice plant, European beach grass, ripgut brome and sow thistle. For this particular project, the most efficient method is to initially treat the target species with a suitable herbicide and then remove new seedlings by hand. Exotic seedlings need to be pulled and removed before they flower and start to produce seeds.

The herbicide "Roundup Pro" has proven to be very effective in eradicating ice plant, European beach grass, ripgut brome and sow thistle. "Roundup Pro" is water-soluble, non-selective, and non-persistent in the environment. Application should be made according to the label directions and only if the wind speed is less than 5 mph, so as to decrease the possibility of unwanted drift of the herbicide. An herbicide mix of two percent "Roundup Pro" should be applied to all exotic plants within the project area prior to the start of grading and construction.

FIGURE 1. SELECTED PLANT SPECIES FOR REVEGETATION

BOTANICAL NAME	NURSERY STOCK		SEEDS
	(%)	(#)	(lbs.)
Yellow sand verbena (<i>Abronia latifolia</i>)	0	0	1.00
Pink sand verbena (<i>Abronia umbellata</i>)	0	0	3.00
Beach bur (<i>Ambrosia chamissonis</i>)	0	0	3.00
Thrift (<i>Armeria maritima</i>)	3	17	0
Beach sagewort (<i>Artemisia pycnocephala</i>)	30	165	1.00
Beach primrose (<i>Camissonia cheiranthifolia</i>)	0	0	0.25
Beach aster (<i>Corethrogyne californica</i>)	30	165	0
Live-for-ever (<i>Dudleya caespitosa</i>)	3	17	0
Seaside daisy (<i>Erigeron glaucus</i>)	2	11	0
Coast wallflower (<i>Erysimum ammodophilum</i>)	7	38	0
Beach poppy (<i>Eschscholzia californica maritima</i>)	6	33	0
Coyote bush (<i>Baccharis pilularis pilularis</i>)	1	6	0
Dune buckwheat (<i>Eriogonum parvifolium</i>)	10	55	0
Lizard tail (<i>Eriophyllum staechadifolium</i>)	2	11	0
Mock heather (<i>Ericameria ericoides</i>)	3	16	0
Silver bush lupine (<i>Lupinus chamissonis</i>)	3	16	0
TOTALS	100	550	8.25

Prior to spraying, the site should be carefully inspected for the presence of any Monterey spineflower plants, which have been identified in several places on the property. If Monterey spineflower plants are found on-site, exotic target species will be cleared away by hand from around any Monterey spineflower plants prior to spraying. In addition, all Monterey spineflower plants will be temporarily covered with plastic sheeting or one gallon plant containers while spraying is done.

3. Sand Stabilization

The project site is presently deficient in plant cover and is, therefore, subject to erosion caused by wind. Preventing soil erosion is critical during the establishment period of seedlings or planted nursery stock. Temporary soil stabilization for this project will be achieved by spreading strands of dead ice plant over the ground and/or plugging clumps of straw vertically into the sand. Both of these sand stabilization methods are effective for providing at least two years of erosion control. Plant cover should be adequate by the second year to prevent dune erosion, provided that the vegetation is not damaged by trampling or any other significant disturbance.

Ice plant mulch or straw-plugs will be installed as soon as is reasonably practical after completion of construction on the building exterior and clean-up of the site. Straw-plugs will be installed by placing large handfuls of straw into the bare sand. Straw will be buried approximately one-third of its length in the sand and at approximately 2-ft intervals (2-ft centers). Revegetation through seeding and planting of nursery stock will immediately follow stabilization work.

4. Revegetation

Only plant species indigenous to the Del Monte Beach area will be used for revegetation of the project site. The kind and amount of plants selected for this project were determined from observations of an undisturbed dune area west of the project site, called the "Navy Dunes." By listing the species present and estimating their relative abundance in the undisturbed dunes, planting prescriptions and monitoring standards have been devised for this project. Species composition and percent relative cover of each species will not be manipulated to achieve a preconceived or "unnatural" appearance to the landscape.

Several revegetation methods are available for establishing new populations and enhancing existing populations of native dune vegetation. Based on the relatively small size of the project area and its susceptibility to wind erosion, broadcasting of seeds and planting of nursery stock (container grown plants) are the revegetation methods recommended for this project. The combination of these two methods will result in the rapid establishment of a dense plant cover that should provide adequate stabilization of the sand by the time the ice plant mulch and straw plugs disappear.

All dune area outside of the building footprint that is disturbed during construction will be restored according to the specifications and standards defined in this Landscape Restoration Plan.

Nursery stock will be planted on 2-ft centers at a rate of about 13,500 plants per acre. Based on a project area of approximately 1,800 square feet, a minimum of 550 plants will be planted. The different plant species will be planted in a mixed, random pattern over the project site.

Seeding will include the hand-broadcast of a specific seed mix directly onto areas of barren or disturbed soil. Nursery stock will be planted immediately following seeding. Activity associated with planting will aid in working the applied seeds into the soil, thereby improving seed germination.

Container grown plants will be obtained from local nurseries that specialize in the growing of native sand dune species. The plants will be grown from locally collected seeds in 7 cubic inch containers, specifically, Ray Leach "cone-tainers" (super "stubby" cells). Seeds of selected species will be provided to the nursery at least four months in advance of the scheduled planting date.

The seed and planting mixes will be prepared and applied according to the amounts indicated in Figure 1.

Supplemental water should be applied immediately following planting, using a hand-held hose with a spray nozzle attachment. No additional watering should be done unless weather conditions occur that are unfavorable for the establishment of new seedlings. Following the first rainy season, irrigation should be discontinued and plants allowed to wither and die-back during the summer.

Although planting can be done at any time of the year, ideally, it should be initiated in the fall following rainfall that is sufficient to wet the soil. When planting occurs at other times of the year, supplemental watering will be necessary to ensure seed germination and plant establishment. If planting occurs between May and November, the plants may need to be watered several times per week until winter rains begin, depending on the weather and the condition of the plants.

5. Landscape Protection

The native dune landscape is very fragile and is easily damaged by people and their pets. Indiscriminate walking in the restored landscape area should be limited and discouraged by the property owner.

Specific measures for protecting the landscape during and after construction of the proposed project were adopted by the Monterey City Council and the California Coastal Commission as conditions of approval for the project. Included were instructions to the owner concerning the placement of temporary dune protection fencing, pre-construction searching for black legless lizards, proper storage and disposal of construction materials, and regular compliance inspections by a designated project environmental monitor.

Temporary fencing will be installed prior to the start of construction to protect the dunes outside of the project site.

The use of walkways and fencing is recommended on the property to provide protection to the restored landscape. Although not anticipated at this time, if any additional walkways, fencing or other structures are deemed necessary and appropriate in the future, such plans will require review by a qualified biologist and the approval of the Executive Director of the California Coastal Commission.

6. Maintenance

Maintenance refers to those activities which are necessary to ensure that the project objectives are achieved, including: 1) periodic removal of invasive, exotic

plants; 2) revegetation of areas where damage has occurred or plant cover deficiencies are identified, and; 3) prevention of damage to plants from trampling.

Removal of exotic plants is essential for successful restoration of the native landscape. Of principal concern are ice plant seedlings, European beach grass and fast growing annual weeds that are common throughout the Del Monte Beach Dunes residential area, including ripgut brome, sow thistle, foxtail grass, cranesbill geranium, pigweed and bur clover. If not initially controlled, these weeds will greatly retard the growth and coverage of the native seedlings. Removal of weeds should be done by hand and before they start to produce seeds. Pulled weeds should be placed in plastic bags or directly into a trash can, not on the ground.

During the first year after plants are installed, maintenance will need to be performed on a relatively frequent basis to ensure maximum success of the restoration effort. As the landscape becomes established, maintenance needs will diminish. During the second and third years, it is anticipated that maintenance will entail minor weed control and possibly a small amount of additional planting. After the third year, the landscape should require minimal care and will be essentially self-sustaining and self-maintaining, although removing weeds will likely continue to need some periodic attention.

7. Monitoring

A qualified coastal biologist will be retained by the property owner to monitor and, if desired by the property owner, to guide or supervise implementation of this landscape restoration plan for at least five years, as required by the project Coastal Development Permit. The five-year monitoring period will begin after installation of the landscape is satisfactorily completed.

A brief, annual monitoring report (letter) will be prepared by the project monitor in June of each year during the five-year monitoring period, documenting progress on achieving the project's goal and objectives. The project monitor will notify the property owner in writing prior to inspecting the landscape and preparing the report. The completed report will be submitted to the property owner, the Monterey Planning Department and the California Coastal Commission. If the monitor finds any conditions which vary from the agreed upon plan, these will be identified in the report.

During inspections, the monitor will assess such elements as: 1) plant composition, density and percent cover; 2) the condition of the plants, paying particular attention to plant mortality or any deficiency in the quality and quantity of the landscape; 3) signs of damage to the plants from natural or human-related causes, and; 4) the status of exotic vegetation.

IV. MONITORING STANDARDS

Monitoring standards provide a means for assessing the relative success of the restoration project and identifying maintenance needs over time. For this project, monitoring will include only qualitative evaluations. Measurements, including plant density and percent coverage, will be done by estimation only. Qualitative evaluations should also assess health and vigor of the vegetation. Photographs of the project site will provide additional documentation of progress toward accomplishing the project's objectives.

The restored landscape will meet the following criteria (minimum performance standards):

- Density (Perennial native species only): Average 1 plant per 4 square feet
- Percent total cover (Perennial native species only):
 - 1 year: 10%
 - 2 years: 25%
 - 3 to 5 years: 35%
- Percent relative cover: All species are within normal range.
- Composition: 14 native species.
- Health and vigor: Plants are in good health and exhibit normal flowering.
- Exotic species: Non-indigenous plants are few in numbers or not evident.
- Monterey spineflower: No less than 48 plants or two times the number of plants "taken" as a result of construction, whichever is the greater number.
- Erosion: Not evident.

If an area fails to meet the above stated revegetation standards, corrective actions will be identified in the annual report and enacted prior to the start of field surveys for the next annual report.

V. PROJECT IMPLEMENTATION AND MONITORING SCHEDULE

Landscape restoration activities on the property will be carried out in accordance with this Landscape Restoration Plan and will be monitored and guided or supervised by a qualified biologist.

Implementation of this landscape restoration project, including exotic species eradication, stabilization and landscape installation, will be completed within one year after construction is completed. The project monitor will notify the Director of the Monterey Planning Department in writing when installation of the landscape has been satisfactorily completed.

Monitoring and maintenance of the landscape for the purpose of ensuring compliance with all conditions and requirements of the Coastal Development Permit will be the responsibility of the property owner. If the property should change ownership, future owners of the property will have the same obligation for preserving, maintaining and perpetuating the native landscape on the site.

Implementation of this Landscape Restoration Plan and other related environmental mitigation measures listed in the permit conditions adopted by the City of Monterey and the California Coastal Commission will be accomplished according to the schedule shown in Figure 2.

Modification of the provisions of this landscape restoration plan will be allowed only with written approval from the City of Monterey and the California Coastal Commission.

FIGURE 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	December to February
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 May
Begin five-year monitoring program and notify the Monterey Planning 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 S. Miller

Date:

1-30-99

3-99-010

Exhibit 2, p. 10

APPENDIX 1. BOTANICAL SURVEY REPORT

THOMAS K. MOSS
Coastal Biologist

BOTANICAL SURVEY REPORT

**KASS RESIDENCE
14 DUNECREST AVENUE, MONTEREY, CA
(APN 11-464-015)**

Applicant:

**Pedro Rosado, Architect
8755 Coker Road
Prunedale, CA 93907**

Owner:

**Joel and Debra Kass
227 Jones Road
Los Gatos, CA 95032**

March 15, 1998

TABLE OF CONTENTS

	<u>Page</u>
INTRODUCTION	2
SUMMARY RESULTS	2
PROJECT LOCATION	2
SITE CONDITIONS	4
MAJOR PLANT COMMUNITIES	4
SPECIES OF SPECIAL CONCERN	5
BOTANICAL SURVEY	6
A. Methodology	6
B. Description of Vegetation	6
C. Survey Results – Protected Species and Sensitive Habitat	6
IMPACT ASSESSMENT AND MITIGATION MEASURES	6
A. Site Coverage	6
B. Identified Impacts and Mitigation	6
C. Guidelines for Development	10
1. Pre-construction Period	10
2. Construction Period	11
3. Post-construction Period	11
REFERENCES	14
FIGURE 1. PROJECT LOCATION	3
FIGURE 2. RARE PLANT MAP FOR 14 DUNECREST AVE.	8
TABLE 1. PLANT SPECIES ENCOUNTERED	7

3-99-010
Exhibit 2, p. 13

**BOTANICAL SURVEY REPORT
KASS RESIDENCE
14 DUNECREST AVENUE, MONTEREY, CA**

INTRODUCTION

This botanical survey report was authorized by Pedro Rosado, project architect, and has been prepared in conjunction with a proposal to develop a new single-family residence on a vacant lot located at 14 Dunecrest Avenue in the City of Monterey. This report describes existing vegetation on the project site, evaluates potential environmental impacts, and recommends various measures to mitigate any identified impacts.

The proposed project is located in the Del Monte Dunes, an area that contains environmentally sensitive habitat and/or endangered species. As such, the Planning Department of the City of Monterey requires that a botanical survey report be prepared for new development that may affect the dunes environment. This report satisfies that requirement.

SUMMARY RESULTS

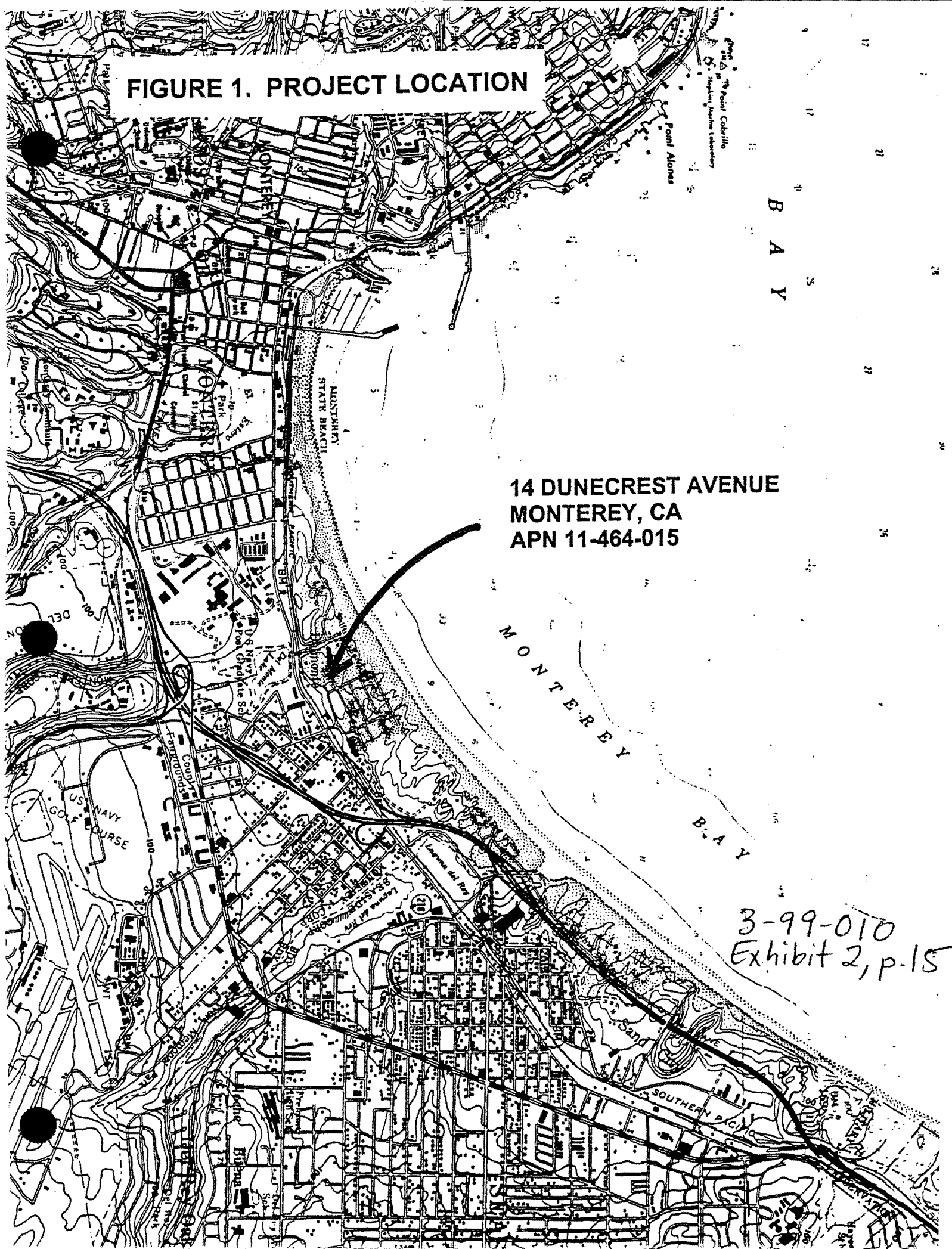
Monterey spineflower is a species of special concern (federally-listed Threatened Species) that occurs on the proposed project site. The proposed project will result in an unavoidable "taking" of at least 41 Monterey spineflower plants, as well as a loss of environmentally sensitive habitat commensurate to the total amount of coverage by new construction. Given the relatively small size of the subject property, no reasonable alternative project designs are possible to avoid impacting Monterey spineflower plants. Implementation of the measures provided in this report will help reduce potential environmental effects of the proposed project to the maximum extent possible.

PROJECT LOCATION

The project site consists of a 40X90 foot vacant lot located on an existing street in Del Monte Beach Tract #2 in the City of Monterey (Figure 1). The project site is bordered by Dunecrest Ave. to the south, residences to the east, a vacant lot to the west, and open dunes to the north. The project site is approximately 650 ft. from the beach.

3-99-010
Exhibit 2, p.14

FIGURE 1. PROJECT LOCATION



14 DUNECREST AVENUE
MONTEREY, CA
APN 11-464-015

3-99-010
Exhibit 2, p-15

SITE CONDITIONS

The proposed building site is situated in a bowl-shaped area on the leeward side of a large backdune. The site has been severely disturbed by foot-traffic. As a result, exotic plant species are common while native vegetation is nearly absent. The building site is not exposed to the prevailing winds and is therefore not subject to active erosion.

MAJOR PLANT COMMUNITIES

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

The dunes and the associated native plant community of the Del Monte Beach Tract #2 have been severely degraded as a result of years of unconstrained human activity. The dunes are predominantly barren and native vegetation is scarce. Exotic ice plant is the most common plant. In the absence of sufficient plant cover, much of the dune area is continuing to actively erode and move inland. Although the dunes and its potential native habitat could be restored and preserved, this goal is not possible so long as human use of the area continues in its present manner.

The project site is located on the leeward side of a relatively large backdune near the center of the Del Monte Beach Tract #2. The top and windward sides of this dune are covered by European beach grass. The European beach grass has effectively trapped the sand blowing inland, thereby creating an unnaturally high and steep dune. This plant is an aggressive exotic invader of coastal sand dunes. With its seemingly unlimited capacity to trap sand, European beach grass is used in many coastal countries throughout the world to stabilize barren sand dunes.

The most inland parcels of Del Monte Beach Tract #2 (Block 468) are still relatively pristine and contain a remnant example of the area's unique, original native plant cover, including several endangered plant and animal species. This area provides a model for planning landscape restoration in conjunction with development or conservation of the vacant lots seaward of Dunecrest Ave.

3-99-010
Exhibit 2, p. 16

SPECIES OF SPECIAL CONCERN

Species of special concern are those listed by the U.S. Fish and Wildlife Service or the California Department of Fish and Game (CDFG) as rare, threatened or endangered (CDFG, 1997). In addition, the CDFG recognizes plants designated by the California Native Plant Society (CNPS) as either meeting the criteria for listing or as being potentially threatened.

The CNPS has developed an inventory with four categories in which plants of concern are listed according to degree of rarity with List 1 plants being already extinct or rare and endangered (CNPS, 1994). List 1 is classified as Plants of Highest Priority for protection. All of the plants constituting List 1 and List 2 meet the definitions of Section 1901, Chapter 10 (Native Plant Protection Act) or Secs. 2062 and 2067 (California Endangered Species Act) of the California Department of Fish and Game Code, and are eligible for state listing. Accordingly, plants listed by the CNPS must be addressed under the California Environmental Quality Act (CEQA) guidelines as if they were state listed.

The Del Monte Dunes is home to four plant and two animal species of special concern, including sand gilia (Gilia tenuiflora ssp. arenaria), Monterey spineflower (Chorizanthe pungens var. pungens), coast wallflower (Erysimum ammophilum), Monterey paintbrush (Castilleja latifolia), black legless lizard (Anniella pulchra nigra) and Smith's blue butterfly (Euphilotes enoptes smithii). Dune buckwheat (Eriogonum parvifolium) also occurs in the Del Monte Dunes, and though it is not listed as a protected species, it is also given special consideration because it provides critical habitat for Smith's blue butterfly.

The protection status of the species described above is as follows:

- Sand gilia; Federal Endangered Species, California Threatened Species, and California Native Plant Society List 1B - Rare or Endangered.
- Monterey spineflower; Federal Threatened Species and California Native Plant Society List 1B - Rare or Endangered.
- Coast wallflower; Federal Category 2 Candidate Species and California Native Plant Society List 4 - Plants of Limited Distribution.
- Monterey paintbrush; California Native Plant Society List 4 - Plants of Limited Distribution.
- Smith's blue butterfly; Federal Endangered Species.
- Black legless lizard; Federal proposed Threatened Species and California Protected Species.

3-99-010
Exhibit 2, p. 17

BOTANICAL SURVEY

A. Methodology

A botanical survey was conducted on March 1, 1998. The entire project site was visually inspected and all plants were identified and recorded. A complete list of plant species encountered is provided in Table 1. The project site was not searched for black legless lizards, though they may be present.

B. Description of Vegetation

Because of the severely degraded condition of the project site, most of the remaining plant life is comprised of various exotic species, particularly ripgut (Bromus diandrus) and common groundsel (Senecio vulgaris). Beach primrose, beach sagewort (Artemisia pycnocephala) and Monterey spineflower represent the few native plants that remain on the site. The lower limbs of a row of Monterey cypresses extend up to 15 ft. into the project site from the neighboring property to the east.

C. Survey Results - Protected Species and Sensitive Habitat

One protected plant species - Monterey spineflower - was found on the project site. A total of 48 individual Monterey spineflower plants were identified. The distribution of the Monterey spineflower plants is shown in Figures 2. No other plants of special concern were observed.

Smith's blue butterfly is dependent on the presence of dune buckwheat, which does not occur on the project site.

No effort was made to confirm the presence of black legless lizards on the project site.

IMPACT ASSESSMENT AND MITIGATION MEASURES

A. Site Coverage

Project plans were not available for review as part of this botanical survey report.

B. Identified Impacts and Mitigation

The proposed project will result in the unavoidable "taking" of at least 41 Monterey spineflower plants. This assessment is based on the assumption that

3-99-010
Exhibit 2, p. 18

TABLE 1. PLANT SPECIES ENCOUNTERED

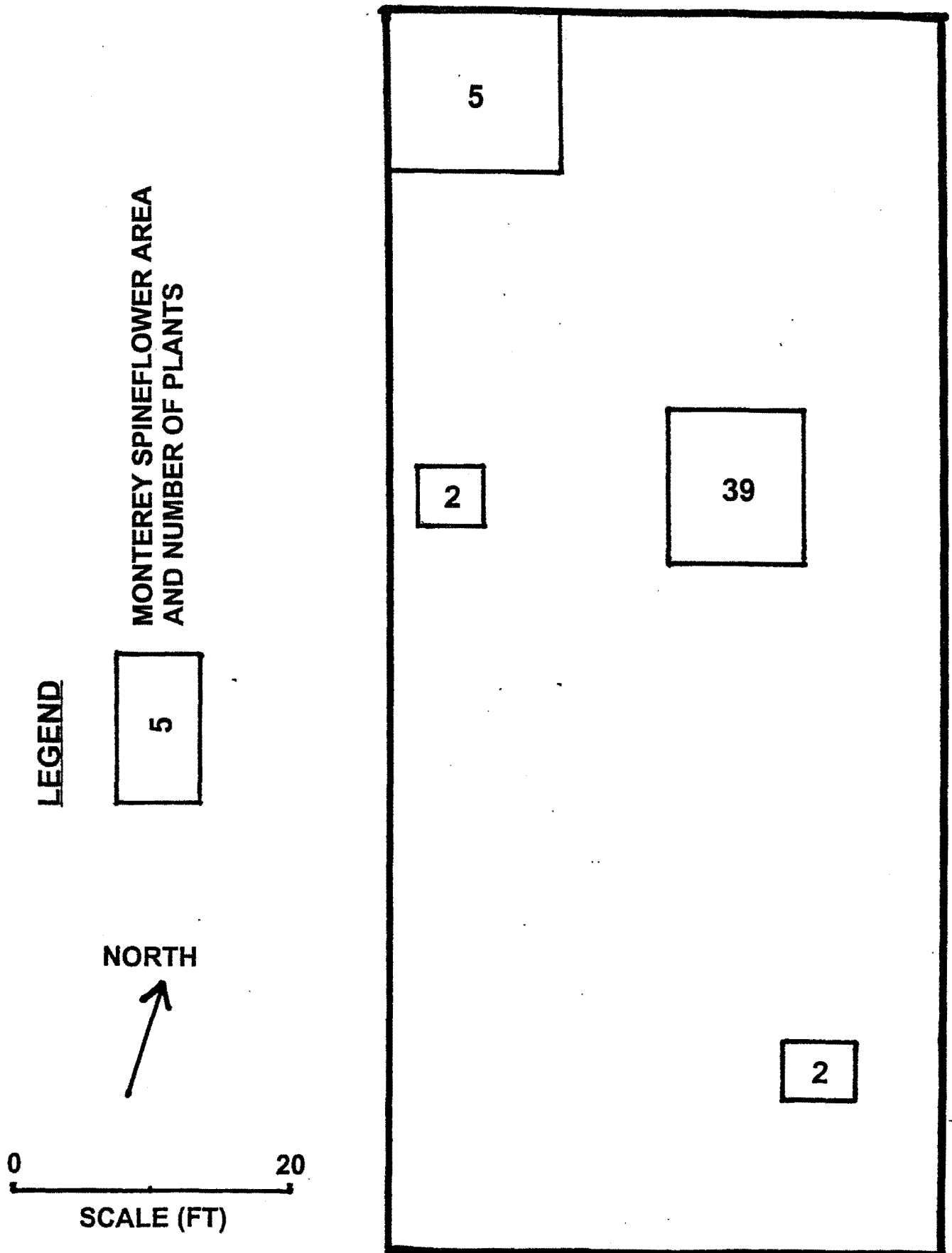
<u>SCIENTIFIC NAME</u>	<u>COMMON NAME</u>
* <u>Acacia longifolia</u>	Sydney golden wattle
* <u>Anagallis arvensis</u>	Scarlet pimpernel
<u>Artemisia pycnocephala</u>	Beach sagewort
<u>Abronia umbellata</u>	Pink sand verbena
* <u>Ammophila arenaria</u>	European beach grass
* <u>Bromus diandrus</u>	Ripgut
* <u>Cakile maritima</u>	Sea rocket
<u>Camissonia cheiranthifolia</u>	Beach primrose
* <u>Carpobrotus edulis</u>	Hottentot fig ice plant
** <u>Chorizanthe pungens</u> var. <u>pungens</u>	Monterey spineflower
<u>Cupressus macrocarpa</u>	Monterey cypress
* <u>Erodium botrys</u>	Long-beaked filaree
<u>Lessingia filaginifolia</u>	Beach aster
* <u>Leptospermum laevigatum</u>	Australian tea tree
<u>Marah fabaceus</u>	California manroot
* <u>Oxalis pes-caprae</u>	Bermuda buttercup
* <u>Senecio vulgaris</u>	Common groundsel
* <u>Sonchus oleraceus</u>	Common sow thistle

* Exotic species

** Protected species

3-99-010
Exhibit 2, p.19

FIGURE 2. RARE PLANT MAP FOR 14 DUNECREST AVE.



all plants within 10 ft. of the building footprint and paved surfaces will be eliminated during construction. Experience has shown that in general it is not possible to protect areas of special concern that are less than 10 ft. from a residential development. When extensive grading or excavation is required, the area impacted is likely to be even greater.

The proposed project will also result in a net reduction of environmentally sensitive habitat area, totaling approximately 1,800 sq. ft., which represents 50 percent of the property.

Other potential impacts to species of special concern and their habitat resulting from the proposed project include shading cast by the proposed residence, trampling incidental to residential use, and the introduction of plant species not native to these dunes. If not controlled, these potential impacts could affect or eliminate environmentally sensitive habitat over a significant portion of the project site and adjacent areas.

To limit and mitigate these impacts, the City of Monterey and the Coastal Commission when approving other residential projects in the Del Monte Beach Tract #2 (Boyden, Bram, Sewald and Vargas) have consistently imposed the following conditions:

- Reduction of site coverage so that the residence, paving and private yard area together do not exceed more than 50 percent of total lot coverage.
- Shifting the proposed house to one side of the lot as far as the City's minimum permissible setback distance will allow when necessary to preserve sensitive habitat, scenic views or public access.
- Recording a deed restriction or dedicating the undeveloped area of the lot as a permanent Conservation Easement for the purpose of native habitat restoration and protection.
- Preparation of a vegetation restoration and dune stabilization plan (Landscape Restoration Plan) by a qualified biologist.
- Contributing a fee to provide for restoration of off-site dunes.
- Installation of temporary fencing during construction to protect adjacent dunes and sensitive plants.
- Installation of the approved landscape prior to granting of occupancy.
- Environmental monitoring of the site by a qualified biologist during construction and for a period of five years following installation of the landscape.

3-99-010
Exhibit 2, p. 21

C. Guidelines for Development

The following guidelines are recommended for mitigating identified environmental impacts resulting from the project:

1. Pre-construction Period

a. Prepare a Landscape Restoration Plan that defines procedures and standards for restoration, maintenance and monitoring of the undeveloped portions of the subject property. The plan should provide for a minimum replacement of two Monterey spineflower plants for every plant removed during construction. The area subject to restoration should include, at a minimum, the undeveloped portion of the subject property and any additional area disturbed as a result of the project.

b. A qualified biologist should be retained by the owner to serve as the Environmental Monitor during construction and restoration of the landscape.

c. All new utilities and drainage systems should be shown on the site plan. If feasible, all underground utilities should be installed in a single corridor and situated under the proposed road, driveway and walkways.

d. All walkways, patios, decks should be shown on the site plan and included in determination of total lot coverage. To minimize disturbance to adjacent sensitive areas from foot-traffic, walkways (i.e., boardwalk, sidewalk, or stepping-stones) should be extended from all exterior doors.

e. Temporary fencing should be installed to protect the dunes outside of the building envelope. The Environmental Monitor will confer with the General Contractor and identify the location of the fence. The fence will consist of high-visibility, 4-ft plastic mesh or snow fence. The fence will be securely fastened to metal T-posts, spaced no more than 8-ft apart.

f. All exotic plants in the project site should be killed with an appropriate herbicide prior to the start of construction or ground excavation.

g. Immediately prior to the start of construction, the project area should be searched for black legless lizards. If any are found, they should be captured and released into the adjacent dunes to the west, which are owned by the Navy and were restored a few years ago.

3-99-010
Exhibit 2, p. 22

2. Construction Period

a. Fencing installed to protect sensitive species and habitat should be maintained in good condition and remain in place until all construction on the site is completed. Removal or changing the location of the fence will require the concurrence of the Environmental Monitor.

b. All activities associated with construction, trenching, storage of materials, and disposal of construction wastes and excavated soil should not impact areas protected by fencing. The area protected by the fence should remain in a trash free condition and not used for material stockpiling, storage or disposal, or vehicle parking. All construction personnel should be prohibited from entering the area protected by fencing.

c. No paint, cement, joint compound, cleaning solvents or residues from other chemicals or materials associated with construction will be disposed of on-site. The General Contractor will be responsible for complying with this requirement and will clean up any spills or contaminated ground to the full satisfaction of the Environmental Monitor.

d. Excess soil remaining from excavation will be disposed of off-site, preferably within the Del Monte Dunes, but not in a way that will negatively affect any existing native vegetation.

e. The Environmental Monitor should inspect the site no less than one time each week to ensure compliance with all provisions for protecting the surrounding environment. Any activity or condition not in accord with the provisions of this report will be brought to the attention of the owner or their representative, the General Contractor and, if necessary, the City of Monterey Planning Department.

f. Installation of landscaping identified in the Landscape Restoration Plan should be completed prior to final inspection and granting of occupancy. A qualified biologist should be retained to install or provide oversight for installation of the landscape.

3. Post-construction Period

a. Remove the temporary fence.

b. A qualified biologist should be retained to monitor the landscape restoration project on an annual basis for at least five years and provide an annual status report to the City of Monterey Planning Department and the Coastal Commission.

3-99-010
Exhibit 2, p. 23

c. Any exotic plants that are used for ornamental purposes within the building envelope should not include species that are capable of naturalizing or spreading into the adjacent dunes. In particular, the following invasive species should 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.

d. The landscape should be maintained as specified in the Landscape Restoration Plan, including removing exotic plants, planting and caring for additional plants where deficiencies in numbers or species are identified, and maintaining any fencing.

e. If deemed appropriate by the Coastal Commission, the property owner should perform or provide funding for off-site mitigation to compensate for the loss of environmentally sensitive habitat.

f. If the property should change ownership, future owners of the property should have the same obligation for preserving, maintaining and perpetuating the native landscape on the site. To ensure that this objective is achieved over the long term, the property owner should record an agreement as a deed restriction that all the provisions for restoring and maintaining the native landscape on the site will run with and burden title to the property in perpetuity and will bind the property owner and their successors.

REFERENCES

California Department of Fish and Game, Natural Diversity Data Base. Special Plants List. August 1997. Quarterly publication, Mimeo.

California Native Plant Society, Inventory of Rare and Endangered Vascular Plants of California, 1994 edition. CNPS Special Publication No. 1 (5th Edition).

Hickman, James C., 1993. The Jepson Manual - Higher Plants of California. University of California Press, Berkeley.

Holland, Robert F., 1986. Preliminary Descriptions of the Terrestrial Natural Communities of California. California Department of Fish and Game.

Prepared By: Thomas K. Moss Date: 3-15-98

3-99-010
Exhibit 2, p. 24

ATTACHMENT 4

A Residence For
14 Dunecrest Ave.
Monterey, CA

Pedro E. Rosado, Architect

8755 Coker Road
Prunedale, CA 93907

(408) 663-0666

5/18/48

6/9/78

6/29/78

7/14/78

A.P. 11-464-016

BOUNDARY & TOPOGRAPHIC SURVEY
IN LOT 14, BLOCK "M" DEL MONTE BEACH NO. 2
MONTEREY, CALIFORNIA

FOR: JOEL KASS

BY: LEO F. WOODS, L.S.
PHONE: 646-0635



SINGLE STORY
FRAME HOUSE

MARCH, '98

1" = 8'

9221

EXHIBIT NO. 3, p. 1
APPLICATION NO. 3-99-010
Project Plans

PROJECT DATA

OWNER: Mr. Joel Kass
227 Jones Road
Los Gatos, CA 95032
(408) 395-5331

APN (Assessor's Parcel No.) 11-464-016

PROPERTY LOCATION: 14 Dunecrest
Monterey, CA 93940

RESIDENTIAL DISTRICT: R-1-6-D

SUBSTANDARD LOT:

LOT SIZE: 3600 s.f. (40 ft. x 90 ft.)

LOT COVERAGE: 40% = 1440 s.f.

ACTUAL: 1333 s.f. = 37%

MAX. FLOOR AREA RATIO: 40% = 1440 S.F.

ACTUAL: 1440 s.f. = 40%

MAX. GARAGE AREA: 500 s.f. allow.

ACTUAL: 480 s.f.

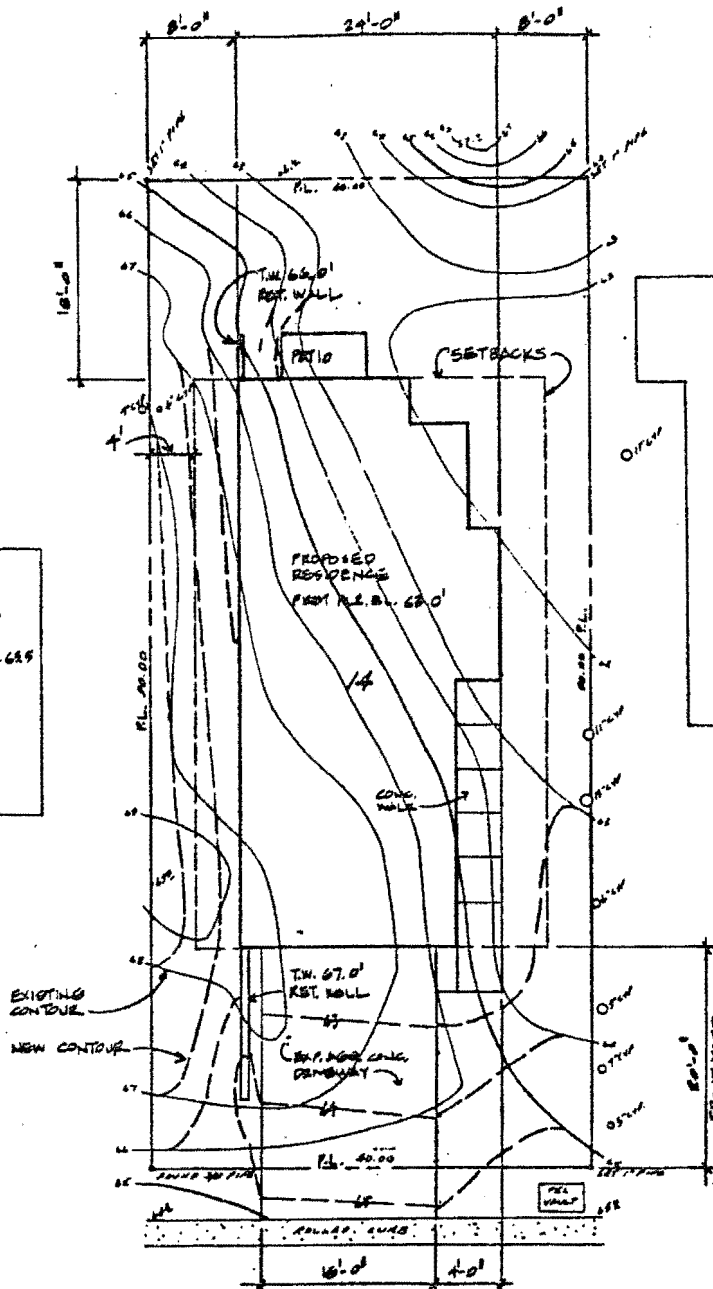
MAX. HEIGHT: 25 ft. (See Exterior Elev.)

YARDS: See Site Plan

PARKING: 1 covered & 1 uncovered on site

OPEN SPACE: 3600 s.f. Lot
- 1797 s.f. House, walks, decks & driveway

1803 s.f. = 50.3%



FUTURE 2 STORY
RESIDENCE
GARAGE P.L.R. SL. 685

EXISTING
CONTOUR
NEW CONTOUR

IN. 67.0'
KST. HALL
CONC. WALK
CONC. WALK
CONC. WALK

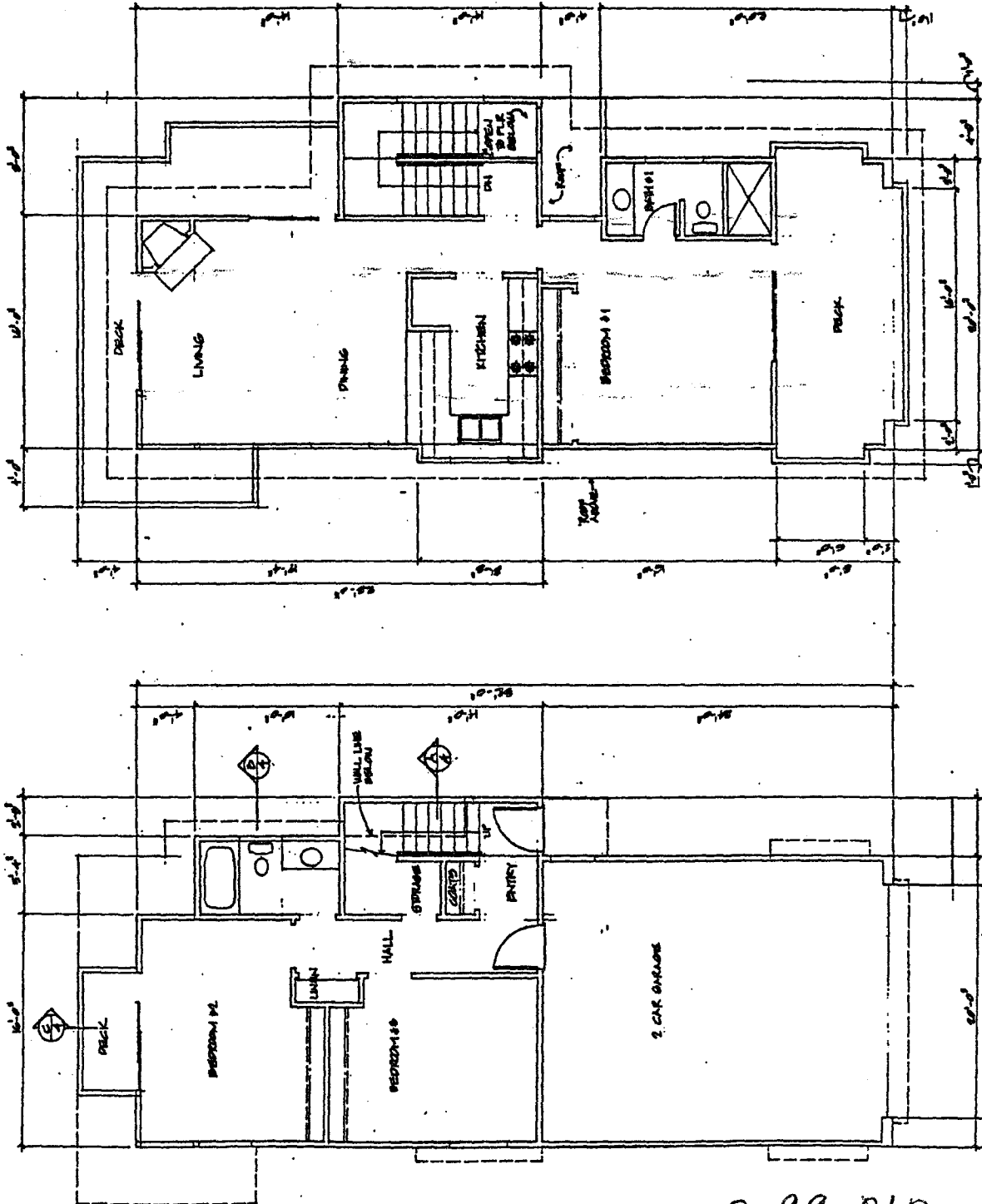
SANITARY
TOWER

DUNECREST AVE.

SITE PLAN @ 1/8" = 1'-0"



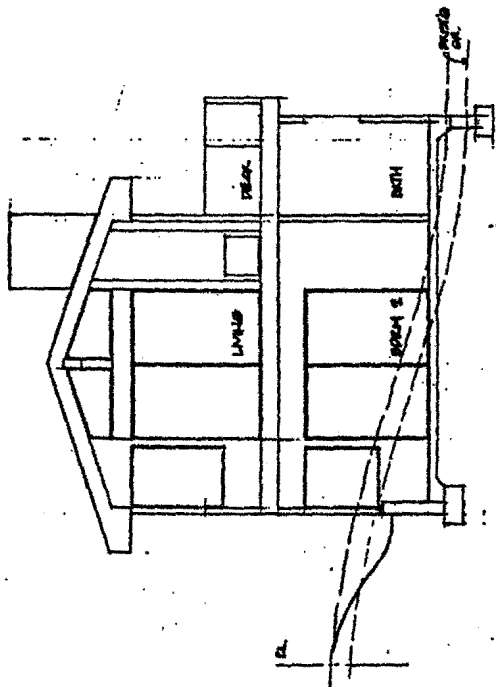
DUNECREST
LANE



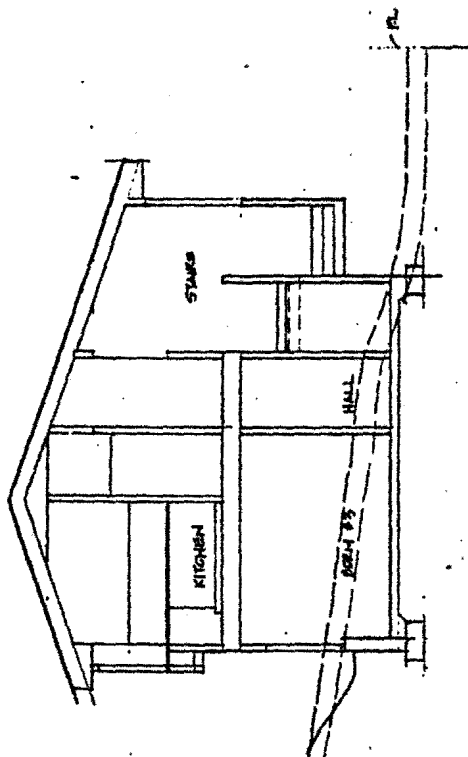
SECOND FLOOR PLAN

FIRST FLOOR PLAN

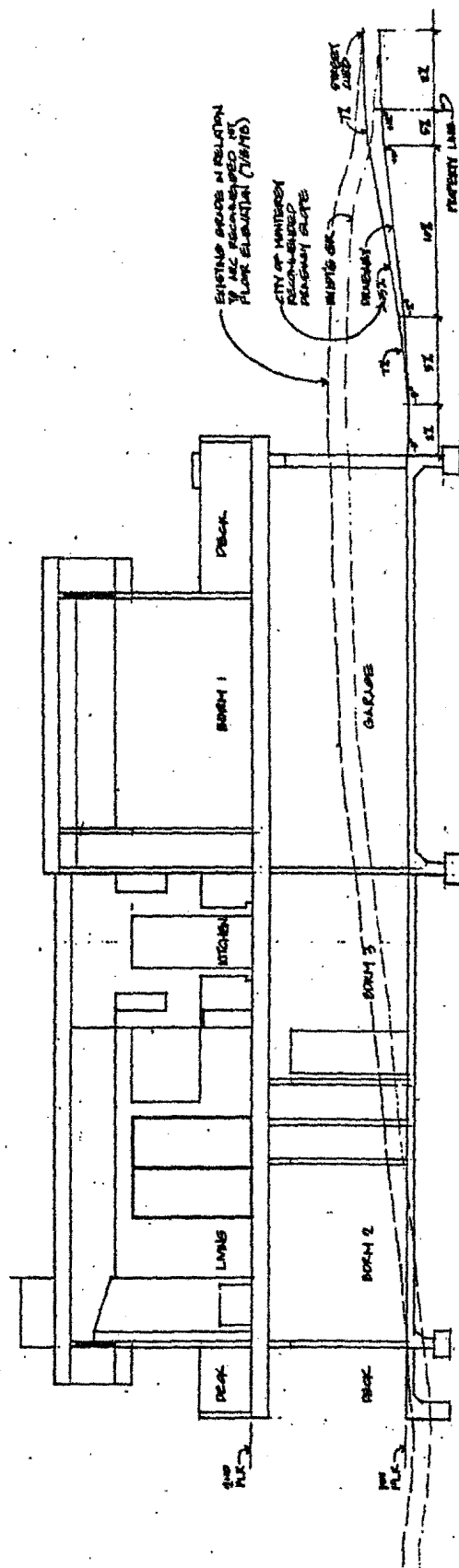
3-99-010
Exhibit 3, p. 2



SECTION B 1/4" = 1'-0"



SECTION A 1/4" = 1'-0"



SECTION C 1/4" = 1'-0"

TMM:MS
4/15/70

3-99-010
Exhibit 3, p. 4

CITY OF MONTEREY
PLANNING COMMISSION MINUTES
JULY 28, 1998

since they concern themselves with design. He noted that this particular house would not impact the views of the homes situated across the street, but other homes of a similar design and height they may impact them on a cumulative basis. He stated that the decision should be made on the policies that are currently in place and the applicant has met the letter and spirit of the City of Monterey Design Guidelines. Commissioner McCrone stated that he would support the motion. He indicated that this is not precedent setting, which would preclude further discussion, since four homes out of seven have a pitched roof and the others have a flat roof. He stated that this particular home because of its depth and narrowness is one on which a flat roof would look particularly boxy. Commissioner Bryant stated she will support the motion given the guidelines before the Commission, the work done by the Architectural Review Committee, and the work done on Del Monte Beach in general. Mr. Fell suggested a change due to a typo on Condition 4. The change was acceptable to the motion maker and seconder.

The motion passed by the following vote:

AYES:	4	COMMISSIONERS:	Bryant, Della Sala, Kracht, McCrone
NOES:	2	COMMISSIONERS:	Erickson, Larson
ABSENT:	0	COMMISSIONERS:	
DISQUALIFIED:	1	COMMISSIONERS:	Keintzel

CONDITIONS OF APPROVAL:

1. The project shall be required to conform to the recommended grading specifications prepared by Reynolds Associates in an Addendum to Geotechnical Investigation Report dated June 2, 1998.
2. A sand stabilization report program during construction and permanent landscaping and stabilization program approved by the ARC shall be required.
3. The house shall be designed with interior noise insulation to 45 dBA.
4. The applicant shall be required to submit the proposed project to the Airport Land Use Commission for review.
5. The recommendations contained in the Botanical Survey Report prepared by Thomas Moss on March 15, 1998 shall be imposed on the project as follows:
 - a. Pre-construction
 - 1) Prepare a Landscape Restoration Plan that defines procedures and standards for restoration, maintenance and monitoring of the undeveloped portions of the subject property. The plan should provide for a minimum replacement of two Monterey spineflower plants for every plant removed during construction. The area subject to restoration should include, at a minimum, the undeveloped portion of the subject property and any additional area disturbed as a result of the project.
 - 2) A qualified biologist should be retained by the owner to serve as the Environmental Monitor during construction and restoration of the landscape.
 - 3) All new utilities and drainage systems should be shown on the site plan. If feasible, all underground utilities should be installed in a single corridor and situated under the proposed road, driveway and walkways.
 - 4) All walkways, patios, decks should be shown on the site plan and included in determination of total lot coverage. To minimize disturbance to adjacent sensitive areas from foot-traffic, walkways (i.e., boardwalk, sidewalk, or stepping-stones) should be extended from all exterior

CITY OF MONTEREY
PLANNING COMMISSION MINUTES
JULY 28, 1998

doors.

- 5) Temporary fencing should be installed to protect the dunes outside of the building envelope. The Environmental Monitor will confer with the General Contractor and identify the location of the fence. The fence will consist of high-visibility, 4-ft. plastic mesh or snow fence. The fence will be securely fastened to metal T-posts, spaced no more than 8-ft. apart.
- 6) All exotic plants in the project site should be killed with an appropriate herbicide prior to the start of construction or ground excavation.
- 7) Immediately prior to the start of construction, the project area should be searched for black legless lizards. If any are found, they should be captured and released into the adjacent dunes to the west which are owned by the Navy and were restored a few years ago..

b. Construction Period

- 1) Fencing installed to protect sensitive species and habitat should be maintained in good condition and remain in place until all construction on the site is completed. Removal or changing the location of the fence will require the concurrence of the Environmental Monitor.
- 2) All activities associated with construction, trenching, storage of materials, and disposal of construction wastes and excavated soil should not impact areas protected by fencing. The area protected by the fence should remain in a trash-free condition and not used for material stockpiling, storage or disposal, or vehicle parking. All construction personnel should be prohibited from entering the area protected by fencing.
- 3) No paint, cement, joint compound, cleaning solvents or residues from other chemicals or materials associated with construction will be disposed of on-site. The General Contractor will be responsible for complying with this requirement and will clean up any spills or contaminated ground to the full satisfaction of the Environmental Monitor.
- 4) Excess soil remaining from excavation will be disposed of off-site, preferably within the Del Monte Dunes, but not in a way that will negatively affect any existing native vegetation.
- 5) The Environmental Monitor should inspect the site no less than one time each week to ensure compliance with all provisions for protecting the surrounding environment. Any activity or condition not in accord with the provisions of this report will be brought to the attention of the owner or their representative, the General Contractor and, if necessary, the City of Monterey Planning Department.
- 6) Installation of landscaping identified in the Landscape Restoration Plan should be completed prior to final inspection and granting of occupancy. A qualified biologist should be retained to install or provide oversight for installation of the landscape.

c. Post-construction Period

- 1) Remove the temporary fence.
- 2) A qualified biologist should be retained to monitor the landscape restoration project on an annual basis for at least five years and provide an annual status report to the City of Monterey Planning Department and the Coastal Commission.
- 3) Any exotic plants that are used for ornamental purposes within the building envelope should not include species that are capable of naturalizing or spreading into the adjacent dunes. In particular, the following invasive species should 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.
- 4) The landscape should be maintained as specified in the Landscape Restoration Plan, including removing exotic plants, planting and caring for additional plants where deficiencies in numbers or species are identified, and maintaining any fencing.
- 5) If deemed appropriate by the Coastal Commission, the property owner should perform or

**CITY OF MONTEREY
PLANNING COMMISSION MINUTES
JULY 28, 1998**

provide funding for off-site mitigation to compensate for the loss of environmentally sensitive habitat.

- 6) If the property should change ownership, future owners of the property should have the same obligation for preserving, maintaining and perpetuating the native landscape on the site. To ensure that this objective is achieved over the long term, the property owner should record an agreement as a deed restriction that all the provisions for restoring and maintaining the native landscape on the site will run with and burden title to the property in perpetuity and will bind the property owner and their successors.
 6. Construction shall be substantially consistent with the site plan and architecture shown on the concept plan dated 7/14/98 including the garage/first floor elevation of 63' (2' lower than the street curb elevation).
 7. The concept plan dated 7/14/98 shall be revised with the roof pitch lowered to 3 : 12 and the building mass at the stairs on the east elevation extended down to ground level.
 8. A detailed landscape and dune restoration plan shall be prepared and submitted for ARC review and approval prior to completion of the project and issuance of final occupancy.
 9. Preliminary architectural and detailed site and grading plans shall be prepared and submitted for Architectural Review Committee review and approval prior to the issuance of a building permit.
-
2. R.HAUSWIRTH, APPLICANT; VARIANCE 98-259; 2150 Garden Road; I-R-130 Zoning District; exempt from CEQA requirements.

Variance to waive three parking spaces required for proposed storage addition.

Continued to 8/11/98 at applicant's request by a previous vote.

The Commission took a break at 8:37 p.m. and returned at 8:45 p.m.

G. RECOMMENDATION TO CITY COUNCIL

1. Recommendation to City Council on proposed Zoning Ordinance amendment prohibiting medical marijuana facility use in all zones within the City of Monterey. (Exempt from CEQA requirements)

Staff Presentation:

Mr. Norton reviewed the staff report and the history of marijuana dispensary uses. He noted that the proposed wording prohibits marijuana facilities in all zones of the City. In response to Commission questions, Ms. Rice stated that Proposition 215 was not found to be unconstitutional, but that the only question is how the patients will get the marijuana if they do not grow it or their caregivers do not grow it. She noted there is no legal statute for distribution or possession of marijuana for distribution. Mr. Norton noted that the proposed ordinance is similar to the City of Palo Alto. Ms. Rice noted that clearly stating in the City Code that marijuana is a prohibited use will clarify the issue for the public.

Public Comments:

Mr. Stan Perryman stated that he is a legal user of marijuana due to injuries and that he is using marijuana at his doctor's recommendation. He noted that if there is not a place for people to obtain marijuana legally, they will be forced to go to the criminal element to obtain it.

DEL MONTE BEACH PARCEL OWNERSHIP MAP

undeveloped

TIDE AVENUE

Addison/Hall City	Kaas	City	Orange (Bram)	City	City	City	City	City	City	B
Pembroke		Bram	Kaas	Bram	Orange (Bram)	Kaas	City	Orange (Bram)	Kaas	C City

SEAFOAM AVENUE (undeveloped)

Orange (Bram)	Helm	DiGirolamo	City (Schrock)	Park District	Bram	Kaas (Rajacher)	Kaas	Park District	Park District	
Kaas	Park District	City (Odegard)	Ibbotson	Bram	Orange (Bram)	Bram	Park District	Archer	Archer	

SPRAY AVENUE

undeveloped

existing driveway

Park District	Orange (Bram)	Bram	Kaas	Orange (Bram)	Kaas	Bram	Witt	Park District	
	Bram *	Smith	A	Bram *	Orange (Bram)	Kaas *			

DUNECREST AVENUE

Prior Coastal
Permits:

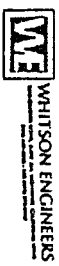
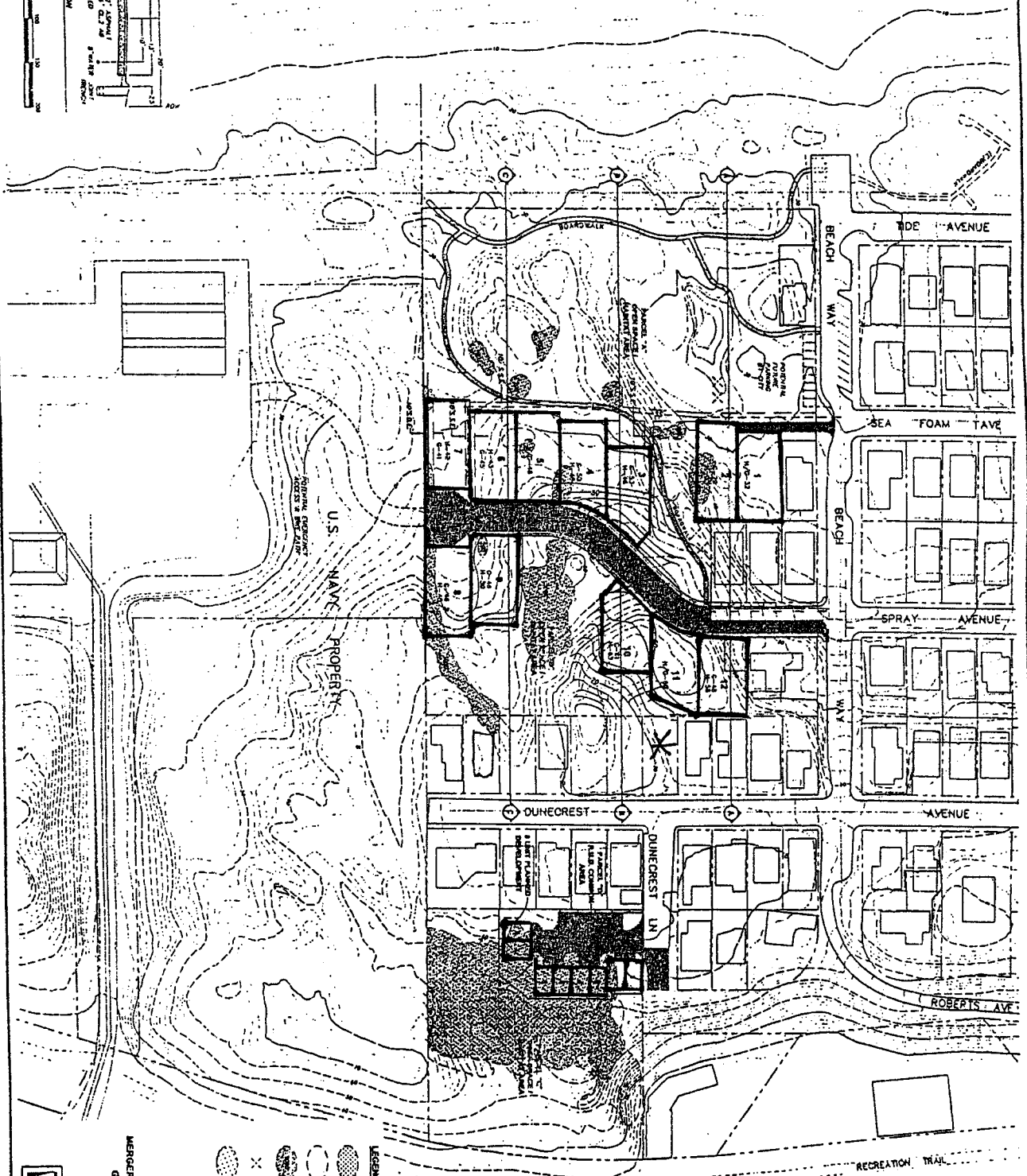
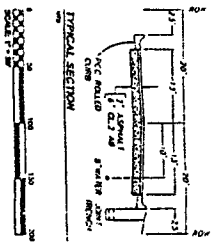
- A-Varga (constructed)
- B-Sewald (under construction)
- C-Boyden (purchased for open space)
- D-Archer (constructed)
- E-Archer/Nichols (constructed)
- F-Gamble (constructed)
- G-Bram (permit approved but not yet issued)

* City Approved Development

□ Existing Homes

EXHIBIT NO. 5
APPLICATION NO. 3-99-010
ownership map /
development pattern

PACIFIC OCEAN



PRELIMINARY MAP
DEL MONTE BEACH
 MERGER & RE-SUBDIVISION OF PORTIONS OF BLOCKS
 6, 7 & 8, DEL MONTE BEACH MAP #2
 MARCH 1989 SCALE: 1" = 50'

EXHIBIT NO. 6
APPLICATION NO.
3-99-010
Draft
re-subdivision

* project site (14 Dunecrest)



Geotechnical &
Civil Engineers

RECEIVED

FEB 05 1999

982842-M241-F4
2 June 1998

Mr. Joel Kass
227 Jones Road
Los Gatos, CA 95032

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

Subject: **ADDENDUM TO GEOTECHNICAL INVESTIGATION REPORT**
14 Dunecrest
A.P.N. 11-464-16
Monterey, California

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

Dear Mr. Kass,

Pursuant to your request, we have completed our geotechnical review for the proposed residence at 14 Dunecrest in Monterey, California. The purpose of our review was to determine the applicability of the above referenced soil report to the subject property, and provide additional recommendations, if required, specific to the development of this property. Our report is based on a visit to the site, a review of the referenced soil report by M. Jacobs & Associates, and soil borings performed by our firm on nearby Dunecrest Lane.

PROJECT DESCRIPTION

The project site is located adjacent to the north side of Dunecrest Avenue, west of Beach Way in the City of Monterey, California. The site is comprised of sand dune topography vegetated with ice plant and several young to mature trees. Based on a review of the preliminary site plan and our discussions with your architect Mr. Pedro Rosado, it is our understanding that the site will be developed to include a one and/or two-story, single family residence, with attached garage and basement level. The structure will be of wood frame and masonry construction, combined with some concrete slab-on-grade floors. Exact wall and column loads are not known at this time but are expected to be typical of such construction.

CONCLUSIONS AND RECOMMENDATIONS

General

1. In accordance with Section 7014, Paragraph (h) of the 1994 edition of the Uniform Building Code, I.C.B.O, our firm will assume responsibility for the geotechnical engineering for this property as you have requested. Based on the results of our

EXHIBIT NO. 7, p.1
APPLICATION NO. 3-99-010
Geotechnical Report

2 June 1998

observations it is our opinion that the proposed development is feasible from a geotechnical standpoint, and that the referenced geotechnical report is generally applicable for this site, provided the recommendations of the referenced soil report and those outlined below are incorporated into the design and construction phase of the project.

2. The site should be considered to eventually experience a peak average ground acceleration (PAGA) of .40g, and a repeatable high ground acceleration (RHGA) of .26g.

Geotechnical Hazards

3. It is our opinion that the geotechnical hazards which are of concern for this site are seismic shaking, liquefaction/lateral spreading, and dynamic compaction.
4. Structures built on unconsolidated material generally experience movements of higher amplitude and lower acceleration. It is anticipated that peak horizontal and average repeatable ground accelerations of .40g and .26g, respectively, could occur at this property due to a seismic event. In the event of an earthquake, frame and semi-rigid structures with proper seismic parameters incorporated into their design and construction should display only minimal damage. Significant shear walls, seismic tie-downs, anchor bolts, gusset plates, etc. should be adequately provided.
5. Liquefaction and lateral spreading tends to occur in loose, unconsolidated soil lying beneath a relatively shallow groundwater table. Based upon the information provided in nearby borings the sand stratum is loose to very loose, however we did not encounter groundwater within the upper thirty feet (30') during our investigation on Dunecrest Lane. As the site is approximately sixty feet (60') above mean sea level it is our opinion that the presence of a relatively shallow groundwater table is not likely for this site. Therefore, provided that our recommendations are incorporated into the design and construction of the project, it is our opinion that there is a low potential for liquefaction to occur and cause damage to structures on this site.
6. Another consideration is dynamic compaction, which could cause differential settlement of the residence during a seismic event. Due to the loose nature of the sand underlying this site, dynamic compaction could be of concern in a seismic event. Therefore, proper foundation design and construction is essential for this site, in order to reduce the effects of dynamic compaction and to minimize damage over the anticipated lifetime of the structure.

2 June 1998

Earthwork RecommendationsGeneral

7. All grading and earthwork should be accomplished in accordance with these recommendations and the grading requirements of the regulating agency. These specifications set forth the minimum standards necessary to satisfy the other requirements of this report and without compliance with these standards, the design criteria in this report will not be valid.
8. As the grading plans and foundation details have not been finalized, some of the recommendations must be general in nature. These items should be reviewed by **Reynolds Associates**, the Geotechnical Engineer, prior to the contract bidding to ensure that the provisions of this report have been included in the design. At that time, additional recommendations will be provided if necessary.
9. The Geotechnical Engineer should be notified at least four (4) working days prior to any site clearing and grading operations on the property in order to observe the stripping and disposal of contaminated materials, and to coordinate this work with the grading contractor. This time period will allow for any necessary laboratory testing (compaction curves) that should be completed prior to the grading operations. During this period, a pre-construction conference should be held on the site with at least the owner, the grading contractor and one of our engineers present. At this time, the project specifications and the testing and inspection responsibilities will be outlined and discussed.
10. Field observation and testing must be provided by a representative of **Reynolds Associates**, the Geotechnical Engineer, to enable them to form an opinion regarding the adequacy of the site preparation, the acceptability of fill materials, and the extent to which the earthwork construction and the degree of compaction comply with the specification requirements. If work related to grading is performed without the full knowledge and direct observation of **Reynolds Associates**, the design criteria presented in this report will not be valid.
11. General geotechnical considerations applicable to site grading and recommendations for the design and construction of the project are discussed below.

Site Preparation

12. Prior to grading, the area to be developed for structures, pavements and other improvements should be stripped of any vegetation and cleared of surface and subsurface obstructions. Debris and rubble from clearing operations should be removed from the site.
13. The area should then be stripped of all organics and detrimental topsoil, i.e., about the top two to four inches (2" to 4"). This material may be deposited on-site as directed by the Geotechnical Engineer.
14. Any voids created by the removal of buried obstructions must be backfilled, as needed, with properly compacted native soil that is free of organics and other deleterious materials or with approved import fill.
15. Following the stripping, the area should be excavated to the required overexcavation depths as delineated below. Any loose soil in the building and paving areas should be scarified, moisture conditioned and compacted as engineered fill except for any deleterious material noted by the Geotechnical Engineer in the field.
16. Any surface or subsurface obstructions, or questionable material encountered during grading, should be brought immediately to the attention of the Geotechnical Engineer for proper exposure, removal and processing as directed.

Fill Placement and Compaction

17. All fill soil should be placed in uniform lifts not exceeding eight inches (8") in loose thickness, and six inches (6") in compacted thickness, moisture conditioned and compacted to a minimum relative compactive effort. The minimum relative compactive effort of should be 95%. All native and import fill soil should be moisture conditioned such that the moisture content is within two percent (2%) of optimum moisture content at the time of compaction.
18. The relative compaction will be based on the maximum dry density obtained from a laboratory compaction curve run in accordance with ASTM Procedure #D1557-78. This test will also establish the optimum moisture content of the material.
19. Samples of any proposed fill, imported or native, for use on this project should be submitted to the Geotechnical Engineer for approval and appropriate testing not less than four working days prior to the anticipated job site delivery.

2 June 1998

Utility Trenches

20. Utility trenches that are parallel to the sides of buildings should be placed so that they do not extend below an imaginary line sloping down and away at a 2:1 (horizontal to vertical) slope from the bottom outside edge of all footings. The structural design professional should coordinate this requirement with the utility layout plans for the project.
21. Trenches should be backfilled with granular-type material and uniformly compacted by mechanical means to the relative compaction as required by the "City Specifications", but not less than 95%. The relative compaction will be based on the maximum dry density obtained from a laboratory compaction curve run in accordance with ASTM Procedure #D1557-78. This test will also establish the optimum moisture content of the material
22. Native sand may be used, therefore place a three feet (3') long concrete plug in each trench where it passes under the exterior foundations. Care should be taken not to damage utility lines.
23. Trenches should be capped with one and one-half feet (1½') of relatively impermeable soil.
24. Trenches must be shored as required by the local agency, the State of California Division of Industrial Safety Construction Safety Orders, and Federal OSHA requirements.

Redensification Zone

25. Due to the loose condition of the native sands assumed to underlie this site, it is recommended that a zone of this soil within the zone of influence for load carrying elements be redensified to the level of quality as delineated in the Fill Placement and Compaction section of this report.
26. The redensification process should include overexcavation to within six inches (6") of the required redensified depth. The overexcavated material should be stockpiled on site. The next six inches (6") of subgrade should be scarified, moisture conditioned, and compacted as engineered fill to a minimum compactive effort of 95%. The required grade should then be established by placing the excavated soil in compacted lifts, moisture conditioned, and compacted as delineated above.

2 June 1998

27. The depth of the redensification zone under concrete slab-on-grade construction and pavement sections should be as follows:
- a. Fifteen inches (15") under the pavement areas, extending a minimum of two feet beyond the edges of the pavement.
 - b. Twelve to eighteen inches (12" to 18") under concrete slab-on-grade area, depending upon the soil conditions observed in the field at the time of construction. This zone should also extend a minimum of two feet (2') beyond the slab edge.
28. Where spread footing foundation systems are to be used a redensification zone should be provided under the footing elements. The depth of redensification should be equal to the embedment of the foundation plus twice the width of the footing, and extend a minimum of two footing widths beyond the outside edges of the footing. Please refer to Figure No. 1, "Subexcavation Detail" enclosed with this report.

Retaining Walls

29. Retaining walls should be designed as recommended in the M. Jacobs Report, however as an alternative to the specified backfill the wall backfill may also consist of crushed or rounded "pea" sized gravel $\frac{3}{8}$ " by No. 6. A layer of Mirafi 140N or equivalent filter fabric should be placed over the permeable material in lieu of wrapping it around the backfill. Compacted native soil should then be placed to the ground surface.

Conventional Foundation System

30. We recommend that all structures on this site be founded upon a shallow, conventional foundation system consisting of continuous exterior and interior footings founded into a zone of redensified fill as delineated above. We do not recommend the use of isolated spread footings for this project.
31. All footings should be reinforced in accordance with applicable UBC and/or ACI standards, however we recommend that the continuous footings contain a minimum steel reinforcement of four #4 bars; i.e., two near the top and two near the bottom.
32. All footing excavations must be observed by the Geotechnical Engineer. Any footings constructed without the full knowledge and continuous observation of Reynolds Associates will render the recommendations of this report invalid.

2 June 1998

Concrete Slab-On-Grade

33. Paragraph 32, Page 11 of the referenced soil report should be amended to recommend a minimum reinforcing of #3 steel bars placed sixteen (16) inches on center in both directions. The reinforcing must be firmly held in the vertical center of the slabs during placement and finishing of the concrete with pre-cast concrete dobies.

Pavement Design

34. Please refer to the referenced soil report for recommendations concerning pavement design for this project.

Plan Review

35. We respectfully request an opportunity to review the plans during preparation and before bidding to insure that the recommendations of this report have been included and to provide additional recommendations, if needed. If not afforded this opportunity, we cannot be responsible for misinterpretation of our recommendations.

LIMITATIONS OF INVESTIGATION

1. The recommendations of this report are based upon the assumption that the soil conditions do not deviate from those observed at the site. If any variations or undesirable conditions are encountered during construction, or if the proposed construction will differ from that planned at the time, our firm should be notified so that supplemental recommendations can be made.
2. This report is issued with the understanding that it is the responsibility of the Owner, or of his Representative, to ensure that the information and recommendations contained herein are brought to the attention of the Architect and Engineer for the project and incorporated into the plans, and that it is ensured that the Contractor and Subcontractors implement such recommendations in the field.
3. The findings of this report are considered valid as of the present date. However, changes in the conditions of the property can occur with the passage of time, whether they be due to natural processes or to the work of man, on this or adjacent properties. In addition, changes in applicable or appropriate standards may occur, whether they result from legislation or the broadening of knowledge. Accordingly, the findings of this report may become invalidated wholly or partially by changes outside our control.

2 June 1998

4. This firm does not practice in the field of safety engineering. We do not direct the Contractor's operations, and we are not responsible for other than our own personnel on the site; therefore, the safety of others is the responsibility of the Contractor. The Contractor should notify the Owner if he considers any of the recommended actions presented herein to be unsafe.
5. **EXCLUSIONS OF WARRANTIES:** Our services are to consist of professional opinion only. NO WARRANTY, EXPRESSED OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OF FITNESS FOR THE PURPOSE is made or intended in connection with our work or by the proposal for consulting or other services or by the furnishing of oral or written report or findings. If the owner (client) desires assurances against project failure, owner agrees to obtain the appropriate insurance through his own insurance broker, which insurance shall include a waiver of subrogation clause as to **Reynolds Associates**.

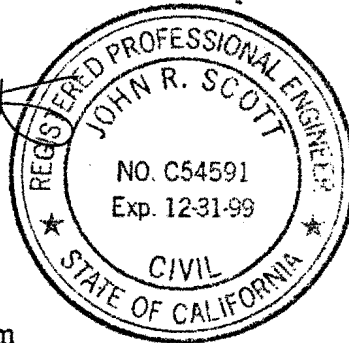
All documents produced by **Reynolds Associates** under this agreement shall remain the property **Reynolds Associates** and may not be used by the Client for any other endeavor without the written consent of **Reynolds Associates**.

The opportunity to be of service is appreciated. If you have any questions or if we may be of further service, please do not hesitate to call our office.

Reviewed by,

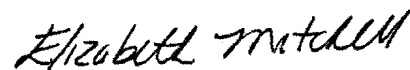


John R. Scott



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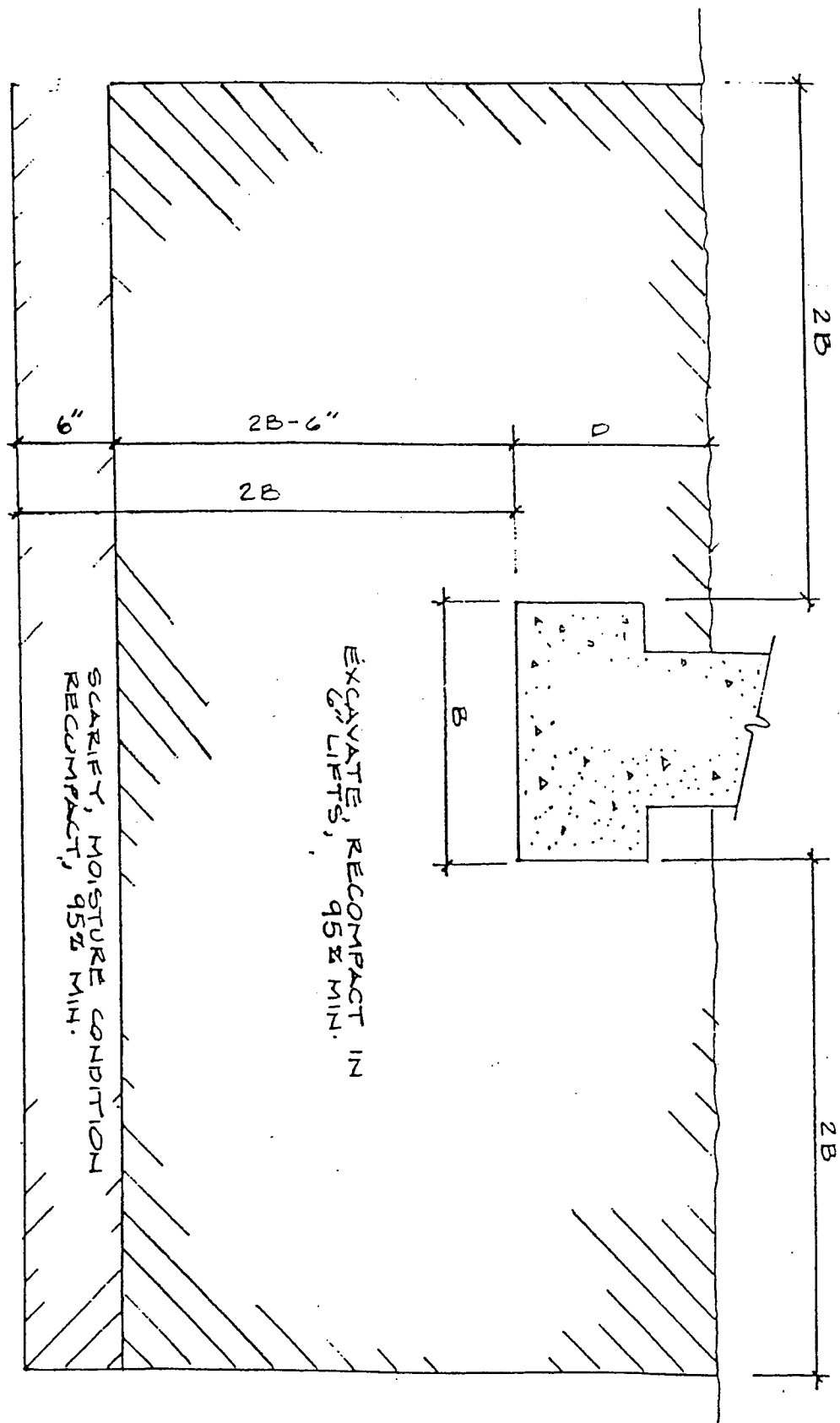
Very truly yours,
REYNOLDS ASSOCIATES



Elizabeth M. Mitchell
Project Engineer

Copies: (2) to Mr. Joel Kass
(2) to Mr. Pedro Rosado, 8755 Coker Road, Prunedale, CA 93907

Enclosure



Reynolds Associates

FIGURE NO. - Excavation Detail

3-99-010
Exhibit 7, p. 9

