

**CALIFORNIA COASTAL COMMISSION**

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# Wed 16

Staff: RS - SF  
Staff Report: June 30, 1999  
Hearing Date: July 14, 1999

**STAFF RECOMMENDATION FOR THE ISSUANCE OF CEASE AND DESIST ORDER**

**CEASE AND DESIST ORDER:** CCC-99-CD-05 ("Order")

**RELATED VIOLATION FILE:** V-3-97-020

**PROPERTY LOCATION:** 1400 (previously 1450) Sunset Drive,  
Pacific Grove, CA 93950, Monterey County  
APN 007-021-005-000 (**Exhibit # 1**)

and

Miller/Wilde property, 1500 Sunset Drive,  
Pacific Grove, CA 93950, Monterey County,  
APN 007-021-006-000

**DESCRIPTION OF PROPERTY  
AND LOCATION:**

The property is a 0.694-acre residential lot located on the seaward side of Sunset Drive. The subject property shares its northern boundary with the Marine Refuge located on the Point Piños Lighthouse Reservation<sup>1</sup>. West of the subject property is the Asilomar State Beach/Park consisting of cobbles and tidepools along the Pacific Ocean. The tidepools and ocean are part of the Monterey Bay National Marine Sanctuary. South of the property is the only existing developed residential lot along this stretch of the shoreline of the City of Pacific Grove.

**PROPERTY OWNER:** Stephen Page<sup>2</sup> (**Exhibit #1**)

**VIOLATION DESCRIPTION<sup>3</sup>:** Development activities in violation of the terms and conditions of coastal development permit No. 3-96-102 ("Permit") (**Exhibit #2**) as follows:

- a) Construction activities and use of staging areas that

<sup>1</sup> Managed by the City of Pacific Grove under lease from the U.S. Coast Guard.

<sup>2</sup> Owner only of 1400 Sunset Drive.

<sup>3</sup> A detailed description of each activity and the respective condition of the Permit violated by the activity are listed in Table 1 on pages 6 and 7 of this report.

include grading and excavation outside the authorized areas and placement of grading materials on unauthorized areas and sensitive habitats located on the Page property and on the adjacent parcel, in violation of the requirements of standard condition 3 and special conditions 29 and 37 of the Permit.

b) Failure to 1) employ protective fencing as per approved project plans, and 2) provide to the Executive Director evidence of the inspection by an environmental consultant of such fencing, in violation of the requirements of standard condition 3 and special conditions 24 and 29 of the Permit.

c) Failure to obtain and to submit, immediately prior to grading operations, evidence of a determination by a coastal biologist of the presence or absence of the black legless lizard, as required by special condition 37 of the Permit.

#### SUBSTANTIVE FILE DOCUMENTS:

Coastal development permit file No. 3-96-102  
Records of court cases: *Stephen Page vs. City of Pacific Grove*, (No. M26049), Monterey County Superior Court  
*Mapstead vs. Coastal Commission, Stephen Page, et al*, (No. M 31220), Monterey County Superior Court  
*Stephen Page vs. City of Pacific Grove, Coastal Commission, Monterey Peninsula Regional Park District, et al*, (No. C-95-20821 EAI), U.S. District Court for the Northern District of California, San Jose Division.  
*Stephen Page vs. City of Pacific Grove, Coastal Commission, et al*, (No. M 41852), Monterey County Superior Court

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#### I. SUMMARY

The subject violation consists of development activities which were carried out in a manner that is inconsistent with the terms and conditions of coastal development permit (CDP) 3-96-102. Among other things, the property owner Stephen J. L. Page, graded areas beyond those authorized and placed or stockpiled sand he had graded in unauthorized and environmentally sensitive areas. In addition, he failed to comply with the conditions of CDP 3-96-102 which pertain to protective fencing and protection of the black legless lizard.

Page has been unwilling to undertake the measures proposed by Commission staff prior to this to resolve this Coastal Act violation and restore the property consistent with CDP 3-96-102 and with the Coastal Act. As a result, following stay by the court of his pending litigation<sup>4</sup> against the Commission (and the City of Pacific Grove), staff sent a letter notifying him of staff's intent to commence a proceeding for the Commission to issue a Cease and Desist Order pursuant to section 30810 of the Coastal Act to resolve the

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<sup>4</sup> *Stephen Page vs. City of Pacific Grove, Coastal Commission, et al*, (No. M 41852), Monterey County Superior Court.

subject violation.

The proposed order would, among other things, require Page to: (1) cease and desist from engaging in any further development at the property in violation of the issued Permit; and (2) apply to the Commission for a coastal development permit authorizing restoration of the property as required in the proposed Order.

## II. HEARING PROCEDURES

The procedure for a hearing on a proposed Cease and Desist Order is outlined in Section 13185 of the California Code of Regulations (CCR), Title 14, Division 5.5, Chapter 5, Subchapter 8. The Cease and Desist hearing procedure is similar in most respects to the procedures that the Commission utilizes for permit and LCP matters.

For a Cease and Desist hearing the Chair shall announce the matter and request that all parties or their representatives identify themselves for the record, indicate what matters are already part of the record, and announce the rules of the proceeding including time limits for presentations. The Chair shall also announce the right of any speaker to propose to the Commission, at any time before the close of the hearing, any question(s) for any Commissioner, in his or her discretion, to ask of any other speaker. The Commission staff shall then present the report and recommendation to the Commission, after which the alleged violator(s) or their representative(s) may present their position(s) with particular attention to those areas where an actual controversy exists. The Chair may then recognize other interested persons, after which staff shall respond to the testimony and to any new evidence introduced.

The Commission should receive, consider, and evaluate evidence according to the same standards it uses in its other quasi-judicial proceedings, as specified in CCR section 13186, incorporating by reference section 13065. After the Chair closes the hearing, the Commission may ask questions as part of its deliberations on the matter, including, if any Commissioner chooses, any question proposed by any speaker in the manner noted above. Finally, the Commission shall determine, by a majority vote of those present and voting, whether to issue the Cease and Desist order, either in the form recommended by staff or as amended by the Commission. The motion, per staff recommendation or as amended by the Commission, as the case may be, if approved by a majority of the Commission, would result in issuance of the order.

## III. MOTION

Staff recommends adoption of the following motion:

*I move that the Commission issue Cease and Desist Order No. CCC-99-CD-05 as proposed by staff.*

Staff recommends a YES vote. An affirmative vote by a majority of the Commissioners present will result in issuance of the order set forth in section IV of this report.

#### **IV. PROPOSED FINDINGS**

Staff recommends that the Commission adopt the following findings in support of its action:

The subject property is 0.694-acre residential lot located at the northern seaward edge of the Monterey Peninsula at 1400 Sunset Drive in the Asilomar Dunes area of City of Pacific Grove. The 17-mile scenic drive, which runs along this stretch of the coast, encompasses Sunset Drive and the coastal vistas. These vistas area are expansive and consist of coastal dunes, occasional cobbled beaches, irregular rocky shoreline and the Pacific Ocean.

##### **A. Site Description**

The property (**Exhibit #1**) slopes gently from east to west and drops suddenly at the western end towards the ocean bluffs. The substratum consists of granite rock or decomposed granite with sandy soil on top which forms several dune systems. The property is considered as potential habitat for the Monterey spineflower (federally threatened), Menzies' wallflower (federal and state endangered), Tidestrom's lupine (federal and state endangered) and the California black legless lizard (federally endangered until August 12, 1998) (**Exhibit #3**).

The property is one of seven lots on the seaward side of Sunset Drive. Collectively, these lots are known as "Rocky Shores." The subject property is the northern most lot in this group and shares its northern boundary with the Marine Refuge located on the Point Piños Lighthouse Reservation. The southernmost five of these lots are publicly owned and are managed as part of Asilomar State Beach. The seventh lot, 1500 Sunset Drive, lies immediately to the south of the subject property and is developed with a residence built prior to 1972. The area to the west along the Pacific Ocean consists of cobbles and tidepools which lie within Asilomar State Beach/Park or are part of the Monterey Bay National Marine Sanctuary.

##### **B. Background**

Page received architectural approval from the City of Pacific Grove ("City")<sup>5</sup> to construct a single family dwelling on the subject property in January of 1993. The City gave its approval subject to conditions to which Page objected. He sued and the matter was resolved pursuant to a Stipulated Judgment filed in December of 1993 (*Stephen Page vs. City of Pacific Grove*, (No. M26049), Monterey County Superior Court), which modified some of the terms and conditions of the City's approval.

Page then twice applied for and twice received a coastal development permit from the Commission conditionally approving his residential project. On September 30, 1994, he applied for his first coastal development permit No. 3-94-32. On November 17, 1994, the Commission approved it and then successfully defended its action in a suit brought by a project opponent<sup>6</sup>. In the months that followed, Page became dissatisfied with a number of conditions included in this permit. In August of 1995, he

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<sup>5</sup> On January 10, 1991 the Commission certified the City's LUP without modifications. The LCP certification and transfer of permitting authority remains to be accomplished.

<sup>6</sup> See *Mapstead vs. Coastal Commission, Stephen Page, et al*, (No. M 31220), Monterey County Superior Court. Mapstead's suit contended, among other things, that in granting CDP 3-94-32 the Commission allowed inappropriate development in an environmentally sensitive habitat area in violation of section 30240(a) of the Coastal Act. The trial court upheld the Commission's action, however, finding that CDP 3-94-32 as conditioned constituted an appropriate balancing of this mandate and the Legislature's further mandate pursuant to Coastal Act section 30010, that the Commission not exercise its permit powers in a manner which will take or damage private property for public use without just compensation.



requested an amendment to CDP 3-94-32 to delete one such condition (Application No. 3-94-32A1), but the Commission denied his request on September 13, 1995.

Then, on December 1, 1995, he sued the Commission, the City, and several local officials in federal court, alleging, among other things, that defendants were engaged in a conspiracy to deprive him of a variety of his constitutional rights, including his Fifth Amendment right not to have his property taken for public use without payment of just compensation<sup>7</sup>. On April 30, 1996, the district court dismissed his action for failure to state a claim. Page appealed, but on March 17, 1998, in an unpublished opinion, the Ninth Circuit Court of Appeals affirmed the dismissal.

On September 30, 1996, Page submitted an application to the Commission for a new coastal development permit for the same project approved pursuant to CDP 3-94-32. On November 14, 1996, the Commission conditionally approved the project as CDP 3-96-102, subject to revised findings. On January 9, 1997, the Commission adopted the revised findings and the new permit took effect on February 4, 1997, after Page signed and returned a copy to the Commission acknowledging that he had received the permit and agreeing "to abide by all [its] terms and conditions," as required by the Commission's regulations (14 Cal. Code Regulations §13158(a)).

The terms and conditions of CDP 3-96-102, Page's current permit, mirror the terms and conditions of the City's approval as modified by the Stipulated Judgment filed in *Page v. City of Pacific Grove et al.*, Monterey County Superior Court (Case No. M 26049). Both the Stipulated Judgment and CDP 3-96-102 authorize the construction of a 3,680 square foot single-family dwelling and certain associated structures including a driveway (2300 sq. ft.), storm drain system, paved terrace and courtyards (570 sq. ft.), and retaining walls, and the berming and grading of dunes. Moreover, both are subject to identical special conditions.

With CDP 3-96-102 (Exhibit #2) in hand, Page returned to the City; applied for and received a building permit; and on November 15, 1997, personally commenced the grading of his property.

### C. Violation History

On November 17, 1997, Commission staff from the Santa Cruz office received a report from Tom Moss, a State Parks ecologist, that on November 15 and 16, 1997, Page had undertaken grading activities on his property in a manner inconsistent with the terms and conditions of CDP 3-96-102. On November 17, 1997, Commission staff member Lee Otter went to Page's property with a first preliminary notice of violation (Exhibit #4) in hand. On his arrival, he found Page atop a bulldozer and engaged in grading his property. Otter observed those areas within and bordering the location of the approved driveway and building pad had been graded. Further, those graded materials had been placed in the following unauthorized locations: (1) west of the fork in the authorized driveway; (2) to north and south of the driveway as it extends westerly from Sunset Drive; and (3) seaward of the western limit of the authorized building pad. One of the unauthorized areas where Otter observed that Page had stockpiled sand, i.e., the area north of the driveway as it enters the property from Sunset Drive, was specifically identified by Page's environmental landscape consultant, Bruce Cowan, in reports dated September 27, 1993 and April 6, 1994, and on the approved project plans as one that should be protected from development activities because it contained Monterey Spineflower and Tidestrom's Lupine habitat<sup>8</sup>. The approximate locations

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<sup>7</sup> *Stephen Page vs. City of Pacific Grove, Coastal Commission, Monterey Peninsula Regional Park District, et al.*, (Complaint No. C-95-20821 EAI) in the U.S. District Court for the Northern District of California, San Jose Division.

<sup>8</sup> Both of these plants are protected under the federal Endangered Species Act of 1973 (16 U.S.C. §§1531 et seq.): Tidestrom's lupine (*Lupinus tidestromii*) is federally listed as endangered and Monterey spineflower (*Chorizanthe pungens* var. *pungens*) as threatened (50 Code Fed. Regs. § 17.12). Tidestrom's Lupine is also listed as endangered

of the unauthorized areas that were graded and where sand was stockpiled are shown in **Exhibit #5**. While at the site Otter also observed that the temporary fencing required prior to construction for the several sensitive habitat areas along the property's northern boundary were not in place. Accordingly, Otter handed the preliminary "Notice of Violation" (**Exhibit #4**) to Page and advised him that he should cease grading, as his activities appeared to be in violation of his permit. Page, however, declined to do so immediately, though he did stop work on the site sometime thereafter. A copy of the notice was also sent by certified mail to Page at his Texas address. A return receipt (**Exhibit #4**) confirms Page's receipt of this copy. A copy was also sent to Page's attorney, Mary Margaret O'Connell.

In a follow-up notice of violation (**Exhibit #6**) dated November 20, 1997, Otter further detailed the factual and legal basis for Commission staff's conclusion that Page's activities were inconsistent with the terms of his Permit (**Exhibit #2**). In addition to the inconsistencies noted above, the violation notices address Page's failure to provide "prior to commencement of grading or construction," evidence of inspection of the required temporary fencing, once installed, by an environmental consultant; and his failure to utilize the services of a coastal biologist to determine, "immediately prior to grading operations," by such means as the biologist "deems appropriate," the presence of the California Black legless lizard and to relocate all such lizards to some suitable habitat<sup>9</sup>.

The specific conditions of CDP 3-96-102, and of the approved Grading and Erosion Control plan incorporated pursuant to standard condition 3 thereof, which Page violated are set forth in Table 1 below.

**TABLE 1**

No.	Page's unauthorized activities	Violations of terms and conditions of CDP 3-96-102
1.	Failed to provide temporary exclusionary fences to protect sensitive areas from disturbance, prior to the commencement of grading or construction.	Grading and Erosion control Plan Note No. 10 requires that prior to commencement of grading or construction temporary exclusionary fences to protect sensitive areas from disturbance should be in place. The project's environmental consultant shall identify exact fence locations. Fences shall be four feet high and secured by metal T-posts, spaced eight to ten feet apart. The fence locations so identified are shown in <b>Exhibit #5</b> .
2.	Failed to submit, prior to commencement of construction, evidence of inspection of the installed fence by an environmental consultant to the Executive Director.	Grading and Erosion control Plan Note No. 10 required that evidence of inspection of the installed fence by the environmental consultant should be submitted to the Executive Director prior to commencement of construction.
3.	Graded, excavated and stockpiled sand on unauthorized and environmentally sensitive habitat areas. Page graded areas outside the limits of the proposed driveway located within his parcel and stockpiled sand outside permitted areas.	Special Condition 29 requires, among other things, that construction activities shall not take place on lands or sensitive habitats adjacent to the project parcel and no dirt or sand shall be removed from sensitive habitats during construction or grading. Special Condition 37 also states, "Leave natural vegetation intact in all portions of the property, except as required for the normal construction of buildings, utility infrastructure, roadways, driveways, parking, and to comply with fire safety specifications and recommendations."

under the California Endangered Species Act (Fish & Game Code, §§ 2050 et seq.). (See 14 Cal. Code Regulations, § 670.2)

<sup>9</sup> When the Commission approved CDP 3-96-102, the black legless lizard had been proposed for listing as endangered under the federal ESA. This proposal was withdrawn on August 12, 1998. (See 63 Fed.Reg. (Aug. 12, 1998) at pages 43129-43135, copy attached as **Exhibit #3**.)

4.	Placed sand on environmentally sensitive habitat areas of the adjacent parcel.	Special Condition 37 also states, "Leave natural vegetation intact in all portions of the property, except as required for the normal construction of buildings, utility infrastructure, roadways, driveways, parking, and to comply with fire safety specifications and recommendations."
5.	Failed to utilize the services of a coastal biologist to determine, immediately prior to grading operations, the presence of the California Black Legless lizard and to relocate all such lizards found to some suitable habitat.	Special Condition 37 requires the presence of California black legless lizard to be determined by trapping, combing or other measures deemed appropriate by the coastal biologist within all areas to be disturbed by construction activity immediately prior to grading operations. The determination of the presence of black legless lizard shall be made by a qualified coastal biologist. All individuals of the reptile found during the reconnaissance shall be relocated to suitable habitat.
6.	<p>Page did not obtain approval from Commission staff or the Commission for his activities and deviations from approved plans.</p> <p>Page did not obtain any such approval in advance of his activities from the City of Pacific Grove staff or the City Council, as required.</p>	<p>Standard condition 3 requires that all development must occur in strict compliance with the proposal as set forth in the application for the permit, subject to any special conditions set forth. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.</p> <p>Special condition 5 requires that all construction and other work on the property shall be in strict compliance with the terms and conditions of approval, including those specified in the Stipulated Judgment entered in Case No. M 26049, <i>Stephen Page v. City of Pacific Grove et al.</i>, Superior Court, Monterey County. Any deviation from any term or condition must be approved by the City in advance, and may require City Council approval.</p>

#### **D. Attempts at Administrative Resolution and Pending Legal Action**

There have been numerous discussions, correspondence and telephone calls by and between Page and Mary-Margaret O'Connell, Commission staff, the Department of Fish and Game, the U.S. Fish and Wildlife Service and the City of Pacific Grove regarding the measures necessary to resolve this violation. These are reviewed in some detail in a subsequent section of this report.

In his pending suit, Page characterizes these discussions as "a protracted struggle" and alleges that Commission staff and the City "demanded" that he agree to an unreasonable "restoration and mitigation plan" in violation of assorted constitutional and statutory provisions. The City and Page met to discuss the plan (hereafter the "Kephart Plan" (**Exhibit #7**)) on December 2, 1997. He found it acceptable and asked to start the work called for in the plan. However, the City refused to lift the stop work order until the Commission had approved the plan.

The trial court recently stayed all proceedings in this litigation in order to afford the Commission an opportunity to hear and decide the violation.

#### **E. Resource Impacts**

The coastal environment in and around the Asilomar dunes is very sensitive and prone to permanent damage or loss. Hence it is imperative to examine the impact of Page's unauthorized activities on the dune system and on the adjoining inter-tidal zone.

Tidepools, the rocky inter-tidal zone of the ocean's ecosystem, are critical to the survival of flowery anemones, elusive octopai, spongy deadman's fingers, and a myriad of other creatures. Waves wash the

area during low tides and form pools in rocky depressions. Changes in temperature occur due to the periodic wave action. Page's stockpiling of large quantities of sand near the ocean side of the property can reasonably be expected to lead to increased runoffs and sedimentation of the tidepools westerly of his property. Sedimentation of tidepools leads to the loss of supply of oxygen and distortion in temperature changes and thereby a loss of habitat for marine and aquatic life.

As regards to impacts to the subject property itself, the Department of Fish and Game considers the entire property as potential habitat for many flora and fauna, in particular, the California and Federally Endangered Tidestrom's lupine, California and Federally Endangered Menzies' wallflower, Federally Threatened Monterey Spineflower and the Black legless lizard (no longer a Federal Candidate Species but still scarce), based on reports prepared by Bruce Cowan, Environmental Landscape Consultant; testimony of Tom Moss when Page's project was before the City; and reports by Vern Yadon, Director of the Pacific Grove Museum of Natural History (**Exhibit #8**). Relevant statements from these sources confirm that the activities complained of in this report have significantly adversely impacted the Page property and that the property is an Environmentally Sensitive Habitat Area.

On November 23, 1997, Paul Kephart conducted a site survey to determine the impacts due to Page's activities. The results of this survey are described in the Kephart plan (**Exhibit #7**). The following statements of Kephart reflect both the nature and the extent of these impacts as well as the inconsistency between Page's activities and the conditions of CDP 3-96-102:

1. *Fencing: During the site visit it was found that exclusionary fencing, identification, and protection of sensitive habitat areas was inadequate. Fencing was not correctly installed to adequately demarcate habitat and grading zones. No identifying signs were present to demarcate sensitive habitat areas as shown on the Grading and Erosion Control Plan (1995). No grade stakes were present to adequately define areas, boundaries, and elevations of grading.*
2. *Habitat Impacts: The owner is in violation of coastal development permit 3-96-102 (Page). Special Condition 29. Sand was placed in sensitive habitat areas where depicted on the approved Grading and Erosion Control Plan (1995). Excavated sand was placed on habitat areas throughout the project site. Considerable volumes of sand impact areas on the ocean side of the project site. The sand completely covers native plants and shrubs. The areas contain native species such as salt grass (*Distichlis spicata*), sand sedge (*Carex pansa*), coyote bush (*Baccharis pilularis* var. *pilularis*), and mock heather (*Haploppapus cricoides*). None of the aforementioned species are listed as State and/or Federally listed species.*
3. *Stockpiling Sand: Stockpiling of sand and grading encroached onto sensitive habitat areas throughout the project site. The sensitive habitat depicted on the Erosion Control and Grading Plan historically contained Tidestrom's lupine and Monterey spine flower. Lupine and spine flower both germinate indeterminately, often lying dormant in the soils for many years. While shallow and infrequent levels of disturbance may benefit germination of these species, piling sands and grading below soil surface will cause irreparable injury.*

*... Sands piled on the ocean side of the house excavation and the north side of the driveway are not in compliance with protection measures stated in the plan.*

*... some grading activities encroached on the root zones of adjacent habitat[along the northerly property line], impacting several plants. No buffer between [these] habitat*

*areas and grading were identified. ...*

*No determination of impacts to habitat regarding potentially occurring legless lizard have been made. No determination of presence or absence, or suitability of said habitat has been assessed by a qualified herpetologist. Grading occurred without required surveys.*

In addition to Kephart's observations, on January 23, 1998, Diane Noda of U.S. Fish and Wildlife Service sent a letter (**Exhibit #9**) to Lee Otter confirming observations similar to Kephart's. She stated in relevant part:

*In an investigation of the site by Amelia Orton-Palmer of my staff and Deborah Hillyard of the California Department of Fish and Game on January 13, 1998, the stockpiled sand was observed to completely cover areas where the Tidestrom's lupine Monterey spineflower and probably the federally endangered Menzies' wallflower (*Erysimum menziesii*) had occurred. Other alleged non-compliance of the terms and conditions of the permit (3-96-102) includes placing grading materials on an adjacent parcel containing mapped sensitive habitat, neglecting to provide adequate exclusionary fencing and demarcation of sensitive areas, neglecting to have a qualified biologist present during grading activities, neglecting to conduct surveys for the black legless lizard (*Anniella pulchra nigra*), a species proposed for listing by the Service, and failing to submit a monitoring report of project activities.*

Table 2 outlines the various impacts to coastal resources due to Page's activities.

**TABLE 2**

No.	Page's unauthorized activities	Impacts due to Page's activities
1.	Failed to provide temporary exclusionary fences to protect sensitive areas from disturbance, prior to the commencement of grading or construction.	Temporary exclusionary fences are necessary to buffer and protect sensitive areas from disturbance. Without the fences construction crew and other personnel are not aware of the boundaries of construction and damage sensitive habitats of the subject endangered or threatened species as the case may be.
2.	Failed to submit, prior to commencement of construction, evidence of inspection of the installed fence by an environmental consultant to the Executive Director.	Failure to submit the required evidence indicated to Commission staff that the necessary precautions to protect sensitive habitats were not taken by Page. Therefore, the protection envisaged/required by the condition of the permit was not implemented.
3.	Graded and excavated unauthorized and environmentally sensitive habitat areas of the property. Graded areas outside the limits of the proposed driveway located within his parcel.	Degradation and possible irreparable damage of sensitive habitat. Transport and dislodgment of seeds and dormant endangered/threatened plants. Erosion and sediment transport of dunes.
4.	Construction equipment and vehicles traversed areas of the property that were prohibited/unauthorized by said permit.	Degradation and possible irreparable damage of sensitive habitat. Transport and dislodgment of seeds and dormant endangered/threatened plants. Erosion and sediment transport of dunes.
5.	Stockpiled sand in unauthorized and environmentally sensitive habitat areas of the property.	Degradation and possible irreparable damage of sensitive habitat. Suffocation, transport and dislodgment of seeds and dormant endangered/threatened plants. Erosion and sediment transport of dunes. Artificial co-mingling of invasive and

		endangered/threatened species. Sedimentation of tidepools leading to the loss of supply of oxygen and distortion in temperature changes and thereby a loss of habitat for marine and aquatic life.
6.	Placed sand on environmentally sensitive habitat areas of the adjacent parcel.	Suffocation and dislodgment of seeds and dormant endangered/threatened plants. Introduction of seeds of weeds or other undesirable species capable of overrunning the habitat and out-competing the endangered/threatened species. Erosion and sediment transport of dunes. Artificial co-mingling of invasive and endangered/threatened species. Sedimentation of tidepools and thereby a loss of habitat for marine and aquatic life.
7.	Failed to utilize the services of a coastal biologist to determine, immediately prior to grading operations, the presence of the California Black Legless lizard and to relocate all such lizards found to some suitable habitat.	Possible loss of individuals and therefore a reduction in the overall population. Commission staff have no confirmation of "take" of any individual black legless lizard.

The above mentioned evidence clearly demonstrates that the impacts to environmentally sensitive habitat coastal resources due to Page's activities are significant and ongoing.

#### F. Status of Site as of May 26, 1999

On May 26, 1999 Lee Otter, Ravi Subramanian, Marjorie Cox, John Biggs, Deborah Hillyard and Mary-Margaret O'Connell (see footnote <sup>10</sup> below for the specific identification of personnel) visited the site and made the following observations<sup>11</sup>. Exhibit #10 shows the condition of the site on May 26, 1999. Briefly, no change was observed in the location of the graded material or fill since November 1997 when Page performed the activities complained of (Exhibit #5). Two of the three endangered/threatened plants historically found on the property were in bloom and identifiable. Exhibit #10 and the following Table 3 show the locations where these plants were observed:

**TABLE 3**

No.	Endangered/Threatened Species of Plants	Count as of May 26, 1999
1.	Tidestrom's Lupine ( <i>Lupinus tidestromii</i> )	2 (at edge of disturbed area on the adjacent property (Miller/Wilde) and near the proposed driveway)
2.	Monterey Spineflower ( <i>Chorizanthe pungens</i> var. <i>pungens</i> )	40 (at edge of undisturbed area on the adjacent property towards the eastern boundary) 5 (south of proposed driveway near eastern boundary of adjacent property) 11 (at various locations on and at the edge of stockpiled sand and graded areas on the eastern third (approx. 200 ft.

<sup>10</sup> Lee Otter – Permit Chief Santa Cruz office of the Coastal Commission; Ravi Subramanian – Coastal Program Analyst, Statewide Enforcement, Coastal Commission; Marjorie Cox – Deputy Attorney General representing the Commission, John Biggs – Dept. of Planning and Zoning, City of Pacific Grove; Deborah Hillyard – Plant Ecologist, Department of Fish and Game; and Mary-Margaret O'Connell – Page's Counsel

<sup>11</sup> Documented by Lee Otter, Ravi Subramanian and Deborah Hillyard.

		seaward of eastern boundary) of Page's property.
3.	Menzies' Wallflower ( <i>Erysimum Menziesii</i> )	0 (In bloom around February)

### **G. Staff Allegations**

The staff alleges the following:

- 1) Stephen Page is the owner of the property located at 1400 (previously 1450) Sunset Drive, Pacific Grove, CA 93950, Monterey County APN 007-021-005-000.
- 2) Page has undertaken development, as defined by Coastal Act §30106, at the property, which includes grading, excavating and stockpiling of sand.
- 3) Page failed to provide temporary exclusionary fences to protect sensitive areas from disturbance, prior to the commencement of grading or construction.
- 4) Page failed to submit, prior to commencement of construction, evidence of inspection of the installed fence by an environmental consultant to the Executive Director.
- 5) Page graded and excavated unauthorized and environmentally sensitive habitat areas on his property.
- 6) Page stockpiled sand in unauthorized and environmentally sensitive habitat areas of the property.
- 7) Page placed imported sand on unauthorized and environmentally sensitive habitat areas on the adjacent parcel.
- 8) Page failed to utilize the services of a coastal biologist to determine, immediately prior to grading operations, the presence of the California Black Legless lizard and to relocate all such lizards found to some suitable habitat.
- 9) Page's development activities constitute an ongoing violation of the terms and conditions of a Commission issued permit (CDP 3-96-102) and thereby the Coastal Act. In order to resolve this Coastal Act violation, Page must: 1) comply with terms and conditions of CDP 3-96-102; 2) refrain from engaging in any development activity in violation of CDP 3-96-102; and 3) restore the property as set forth in the proposed Order, including removal of all development inconsistent with CDP 3-96-102.

### **H. Alleged Violator's Statement of Defense Form**

As pertinent here, the Statement of Defense Form, which is sent to the alleged violator with the Notice of Intent to Commence Cease and Desist Order proceedings, has six sections of information that the alleged violator should provide to the Coastal Commission: 1) Facts or allegations contained in the notice of intent that are admitted by respondent; 2) Facts or allegations contained in the notice of intent that are denied by the respondent; 3) Facts or allegations contained in the notice of intent of which the respondent has no personal knowledge; 4) Other facts which may exonerate or mitigate the respondent's possible responsibility or otherwise explain the respondent's relationship to the possible violation; 5) Any other information, statement, etc. that respondent desires to offer or make; and 6) Documents, exhibits, declarations under penalty of perjury or other materials that the respondent wants to have attached to the form.

## **I. Alleged Violator's Defense and Commission Response**

On April 26, 1999, Commission staff sent Page a Notice of Intent to commence Cease and Desist Order proceedings (**Exhibit #11**). On May 21, 1999, Page sent Commission staff his Statement of Defense (**Exhibit #12**). The following section sets forth Page's responses to the questions in the Statement of Defense Form. The Commission's response follows each defense asserted.

- 1) Facts or allegations contained in the notice of intent that you admit (with specific reference to the paragraph number in such document):**

**Page's Defense:**            *None.*

**Commission's response:**        Page offers no admissions that the activities carried out by him were in violation of CDP 3-96-102. Page is fully aware of the facts and allegations contained in the Notice of Intent (**Exhibit #11**). The Commission has repeatedly notified him of the violations and has had numerous conversations with his counsel regarding the matter. The following chronology of Commission staff's communication with Page and/or his agent demonstrates Page's involvement and his continual refusal to admit the facts and Commission allegations. On November 17, 1997, Lee Otter hand-delivered to Page a Notice of violation and a request to stop work after having personally witnessed some of Page's development activities and told him they were in violation of CDP 3-96-102. Page denied this and refused to promptly stop work until the dispute between Page and the Coastal Commission could be resolved. Further, on November 20, 1997 Otter sent a follow-up letter to Page further elucidating the violations of CDP 3-96-102. On May 12, 1998, Page met with Nancy Cave and Ravi Subramanian, Commission staff of the Statewide Enforcement unit, in spite of Page's assertions that he had done nothing to violate the terms and conditions of his Permit.

- 2) Facts or allegations contained in the notice of intent that you deny (with specific reference to paragraph number in such document):**

**Page's Defense:**            *All.*

**Commission's response:**        See Commission's response to Question 1 above.

The Commission's allegations are based on activities performed by Page between November 15-17, 1997. On these days Page drove a bulldozer on his property, graded certain areas, excavated sand and stockpiled the sand in environmentally sensitive areas. These activities are inconsistent with the specific terms and special conditions of approval for CDP 3-96-102. On November 17, 1997, Lee Otter, after receiving reports of the grading from a member of the public, visited the site. After verifying that the construction activity was in violation of the terms and conditions of CDP 3-96-102, Otter hand-delivered a "Notice of Violation" to Page and asked him to stop all work on the property. In spite of Otter's notice to Page to stop all work, Page intentionally proceeded to grade the property using the bulldozer. Additionally, in the presence of Otter, Page and a helper/assistant piled sand, from the excavation, on his property and the adjoining property. Further, while Otter was in conversation with Page, approximately a truckload of sand was delivered to Page and piled on the adjacent property. Additionally, in a follow-up letter (**Exhibit #6**) dated November 20, 1997 to O'Connell, Otter clarified and elucidated the various violations of the terms and conditions of the CDP 3-96-102. Finally, Page has also acknowledged grading the property between November 15-17, 1997, in his letter to Peter Douglas dated October 16, 1998 (**Exhibit #13**).

Prior to implementing his project on February 4, 1997, Page had agreed "to abide by all [its] terms and conditions," as required by the Commission's regulations (14 Cal. Code Regulations §13158(a)), after he signed and returned a copy to the Commission acknowledging that he had received CDP 3-96-102.



Finally, Page has contradicted himself through his response to question 4 below, by acknowledging his involvement and performance of the various activities. These facts and observations noted through the May 26, 1999 site visit confirm with certainty that Page violated the terms and conditions of CDP 3-96-102 as outlined in the section titled "Violations" when he performed development activities between November 15 and 17, 1997. Therefore, in spite of Page's denial and refusal to acknowledge the facts and allegations, outlined in the Notice of Intent and further detailed in this report are fully supported by the evidence.

**3) Facts or allegations contained in the notice of intent of which you have no personal knowledge (with specific reference to paragraph number in such document):**

Page's Defense:        *None.*

**4) Other facts which may exonerate or mitigate your possible responsibility or otherwise explain your relationship to the possible violation:**

Page's Defense: *There have been significant changes in applicable law. There have been significant changes in site conditions. As a result, numerous conditions of the original permits are unnecessary and mute (sic). Therefore, the need to mitigate, punish or rectify have been eliminated.*

*As indicated by the attached exhibits and other reports, there has never been sighted, seen or observed on my property, any endangered or protected plants in recent applicable time. While there may have been the potential for possible development of these plants, no one was able to positively identify any protected or endangered plants, and no one has ever said that they have observed any legless lizards. Never the less (sic), as stated in paragraph one, the changed conditions and circumstances in law mitigate against punitive action.*

*None of the government representatives have identified any actual harm to any species, future species or future activities. No harm has been identified by government agents.*

*Prior to grading, and as required by my permit, we retained the services of Bruce Cowan (Project Environmental Consultant and author of California Coastal Commission Approved Landscape Restoration Plan) to perform a site analysis. Mr. Cowan stated that there were no endangered plants present on the site. I specifically drew Mr. Cowan's attention to the area that was suppose (sic) to be fenced off during construction activities.*

*Since the initial site plan documents were drawn, (approximately five years previously) the "protected area" had become completely overgrown by ice plant and was no longer viable habitat for endangered species. Since the area was no longer viable habitat for endangered species, and none were present on the site, we did not needlessly fence the "protected area." (Emphasis added) While conducting the on-site inspection with Mr. Cowan, I asked about the presence of black legless lizards. He opined that the site contained largely unsuitable terrain for black legless lizards, but that if any occurred on the site, they would occur against the northern most boundary of the property, under some small hedge (sic) bushes growing against the fence. During grading, these hedges were flagged and protected.*

*Since our alleged violation, we have learned that the black legless lizard is no longer an endangered species. It is beyond comprehension that the California Coastal Commission is still trying to extract punishment for an alleged violation against a non-endangered species.*

*A condition of our permit was that all graded materials be kept on site. Prior to grading, I discussed our soil excavation plan with Mr. Tony Lobay, then Community Development Director for the City of Pacific Grove. During a personal meeting with Mr. Lobay, I discussed and thought I had obtained his approval on two key matters within our Grading Plan. First, Mr. Lobay verbally approved the placement of sands on the adjacent Miller property and on the area, now overgrown with ice plant, that was suppose (sic) to be the "protected area." Second, I discussed the fact that no endangered species had been found on site and that because of the unusual configuration of our lot, the only place to store the volume of sand on-site created by our grading activities, was the finger of the property that contained the "protected area."*

**Commission's Response:** Page, in his answer to this question asserts that there have been significant changes in the applicable law. However, he has failed to identify any such changes and Commission staff is aware of none.

Giving Page the benefit of the doubt, what he is probably referring to is the U.S. Fish and Wildlife Service's withdrawal on August 12, 1998 (**Exhibit #3**), of the proposal to list the black legless lizard as endangered. When the Commission approved CDP 3-96-102, the black legless lizard (*Anniela Pulchra Nigra*) had been proposed for listing as endangered under the federal Endangered Species Act (ESA). This proposal was withdrawn on August 12, 1998. (63 Fed.Reg. (Aug. 12, 1998) at pages 43129-43135 (**Exhibit #3**)). Special condition 37 of CDP 3-96-102 required Page to utilize the services of a coastal biologist to determine, "immediately prior to grading operations," by such means as "trapping, combing or by other means deemed appropriate by the coastal biologist within all areas to be disturbed by construction activity immediately prior to grading operations," the presence of the California Black Legless lizard and to relocate all such lizards found to some suitable habitat. As of the date of this report Commission staff has received no evidence of compliance with the subject condition. When Page undertook the grading and stockpiling activities complained of without the presence of a qualified coastal biologist, between November 15 and 17 of 1997, this species was still on the U.S. Fish and Wildlife Service endangered list proposal.

Furthermore, the Commission has processes and procedures in place to address permittee concerns pertaining to changed laws or conditions on site. Page has availed himself of one of these processes in the past, i.e., the procedure for amendment of an approved permit. Page however failed to obtain any such amendment to CDP 3-96-102. He simply ignored the permit condition regarding the Black Legless Lizard. The purported "change in the law" on which he relies on to excuse his violation of this condition is no excuse at all.

A permit is a license or a warrant issued by a person(s) in authority, that empowers the grantee to do some act that is not allowable without such authority. A governmental permit is further distinguished by the fact that the exclusive manner by which a term or condition of a permit may be changed is specified in the law that requires the permit to be obtained. Under the Commission's permit amendment procedures set forth in section 13166 of the Commission's regulations, a permittee may not unilaterally change the terms of a previously issued permit. The permittee must first request Commission approval of an amendment to the permit. Further, as a condition to granting CDP 3-96-102, pursuant to standard condition 3, the Commission required Page's strict compliance with the proposal as set forth in the application for the permit, subject to any special conditions set forth. Page further understood that any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval before implementation. Page chose to disregard these requirements.

Page next alleges that there have been significant changes in site conditions over time. Presumably the period he means is, as he later states, the years following preparation of his initial project plans and the "changes" to which he refers are those he recites. These "changes" in site conditions are by and large or entirely illusory, as is demonstrated below. Moreover, they cannot serve to excuse his permit violations for the reasons set forth above.

The illusory nature of Page's changed conditions defense is revealed by Cowan's September 27, 1993 document (**Exhibit #14**) titled, "Basic Landscape and Restoration Plan, Landscaping/Revegetation Recommendations," and Cowan's April 6, 1994 "Addendum to Botanical/Biological Report (**Exhibit #15**). The statements in Cowan's documents clearly refute Page's assertions that "there has never been sighted, seen or observed on my property, any endangered or protected plants in recent applicable time ... no one was able to positively identify any protected or endangered plants."

In his September 27, 1993, "Basic Landscape and Restoration Plan, Landscaping/Revegetation Recommendations" Cowan states that "Endangered Tidestrom's lupines (*Lupinus tidestromii*) were found" during the initial botanical survey (1989 survey done for Miller). Cowan also foresaw the likelihood of the continuing occurrence of lupines, "presently dormant under the sand until next spring" stated that the open sandy area between the proposed house and Sunset Drive is considered to be Tidestrom's lupine habitat and should be left undisturbed. Similarly, in his April 6, 1994, "Addendum to Botanical/Biological Report"<sup>12</sup>, Cowan found "a dozen very small plants" of the Monterey spineflower "in an open sandy area near the northeast corner" of Page's property and stated that "the portion of the Page property on which this species occurs" should "remain undisturbed." Thus Page's own consultant has twice documented the presence of endangered species on his property.

It is true that in a biological assessment conducted for Page in September of 1997 Cowan found no such species anywhere on Page's property (**Exhibit #16**). This however is the dormant season for Tidestrom's Lupine. Further, as Cowan recognizes in his December 5, 1997 report (**Exhibit #17**) the fact that a species is not present in an area one year does not mean it won't be found the next. Thus, for example, Monterey Spineflower have been observed on Page's property as recently as this year (See Table 3 above).

Although Page's next argument is not entirely clear, he appears to suggest that his failure to fence the northeastern portion of his lot where Monterey Spineflower had been observed, but which is now buried in stockpiled sand, is somehow justified because this area had become "completely overgrown with iceplant and was no longer a viable habitat" for any endangered species. According to Cowan, however, this area had merely "shrunk in size ... due to encroachment of iceplant" (**Exhibit #17**).

Finally, Page's partial understanding of the permit condition that required graded materials to be kept on site reflects his selective implementation of the required terms and conditions of the Permit. There are many alternatives to placing grading materials in unauthorized and sensitive habitat areas. Page could have phased the grading and excavation based on the amount of land available to place them on. Similarly, he could have applied for an amendment to the CDP 3-96-102 and sought the review and approval of the Commission if he or his contractors realized that the project as approved was not feasible due to site constraints. Special Condition 29 required construction activities and staging areas not to take place on lands or sensitive habitats adjacent to the project parcel and that no dirt or sand be removed from sensitive habitats during construction or grading. In the last paragraph of his defense, Page effectively acknowledges that he violated this condition. The areas approved for storage of sand are depicted as "Temporary spoils storage site" on the approved Grading and Erosion Control Plan (**Exhibit #5**). Page or

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<sup>12</sup> The original report dated July 20, 1989 was for Paul Miller, owner of the pre-Coastal Act residence located at 1500 Sunset Dr., Pacific Grove. The addendum was for Page's property located immediately north of Miller's property.

his agents did not consult the subject Plan or chose to ignore it.

Compliance with the terms and conditions for the project authorized by CDP 3-96-102 is required to make the project consistent with the Coastal Act, thereby protecting the habitat of environmentally sensitive species. Page's activities did not comply with the conditions of the said permit and adversely impacted the habitat for the subject species. Therefore, due to the impacts to the resources Page must rectify or remedy those impacts by removing and restoring the site as required in the subject Order.

**5) Any other information, statement, etc. that you want to offer or make.**

*Page's Defense:* *During our alleged grading impropriety (November 15-17, 1999<sup>13</sup>), the California Coastal Commission moved with an (sic) alacrity not seen before or since. It took the California Coastal Commission (Lee Otter) less than one day to produce and the "Notice of Violation."*

*At great personal expense, we ceased all construction activities by the end of November 17, 1997 (the date of Notice of Violation delivery) and, at great personal expense, we have not resumed construction on our property under threat of California Coastal Commission fines of \$10,000 per day and/or imprisonment.*

*It would seem totally mute (sic) to provide monthly written reports on the construction status of our project, when there has been no construction since November 17, 1997 to present.*

*Upon learning of our alleged permit violations, at great personal expense, we completed two "Landscape Mitigation Plans," authored by Paul Kephart (Coastal Biologist). Mr. Kephart was selected by the City of Pacific Grove as their expert to resolve this matter. Mr. Kephart's first Landscape Mitigation Plan was approved for implementation by the City of Pacific Grove on December 2, 1997. The California Coastal Commission referred the report for review by its sister agencies and yet to render an opinion regarding its admissibility and/or provide implementation approval. Many of the initial Mitigation Plan's recommendations were time sensitive. The California Coastal Commission's lack of decision action rendered the Plan's recommendations obsolete.*

*A second Mitigation Plan was authored by Paul Kephart at the California Coastal Commission's request (and my expense). The Revised Plan was submitted for implementation approval during July 1998. Approval to implement the plan has never been received by (sic) the California Coastal Commission.*

*In contrast to the California Coastal Commission's immediate ability to produce a Notice of Violation, the California Coastal Commission has taken my property during the previous six years as a consequence of permit processing and alleged violation processing procedures.*

*It took four years from 1994 to 1997 to obtain a California Coastal Commission Development Permit to develop our property. It took one work (sic) day for the California Coastal Commission to stop work on our project. Our property has been taken for yet another two years (1997 to Present) as the California Coastal Commission continues to enforce actions regarding alleged violations against non-listed species.*

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<sup>13</sup> The date should be 1997. It is a typographical error in Page's document.

**Commission's Response:** Since November 17, 1997, Page has not been prevented from rectifying the violation and continuing with his project. Rather, he has refused to acknowledge that his activities constitute violations of the subject permit, which require rectification. The City's stop work order, while temporarily stopping development, specifically left the door open for Page to continue with the construction of his home pursuant to his City and Commission approved permits once the violations were resolved. Moreover, the violations remain unresolved to this date, not because of any delay by Commission's staff in responding to Page's proposals but rather because of his intransigent refusal to accept as necessary, the restoration measures requested by staff on the advice of Department of Fish and Game and U.S. Fish and Wildlife Service. His refusal to resolve this violation has precluded continued development of the site.

Further, though Page attempts to paint himself as the victim of Commission delay, the parties' voluminous correspondence establishes that Commission staff were quite responsive to his concerns. The true course of staff's discussions with Page may be summarized as follows:

Soon after first receiving notice of the alleged violations, Page retained restoration ecologist Paul Kephart to prepare a plan to identify the impacts of the unauthorized grading and stockpiling of sand and recommend measures to mitigate them. Kephart completed this first plan on November 24, 1997 (Exhibit #7). A copy was faxed to the Commission's Santa Cruz office a week later. The next day (December 2, 1997) O'Connell faxed staff (Lee Otter) a letter (Exhibit #18) stating that although the City had approved the plan, it would be "appropriate" for Page to refrain from any attempt to implement it until the plan had been approved not just by the Commission, but by the Department of Fish and Game, and U.S. Fish and Wildlife Service as well.

On December 15, 1997, Commission staff called Department of Fish and Game (i.e., plant ecologist Deb Hillyard) to obtain its evaluation of the plan, only to learn that the Department had not yet been provided a copy. On December 19<sup>th</sup>, Otter advised O'Connell that he was still awaiting the expert advice of these agencies. On January 23, 1998, he sent her a letter confirming their agreement by telephone that staff should continue to await this advice before providing its response (Exhibit #19).

Staff finally received the requested advice on January 27, 1998 (U.S. Fish and Wildlife Service) and January 28, 1998 (Department of Fish and Game), (Exhibit #8 & 9). The very next day (January 29, 1998), Otter faxed O'Connell a copy of the letter addressed to the City stating that in light of the advice received, staff could not agree to the first Kephart Plan unless it was amended to include certain additional measures, which he then proceeded to explain in some detail (Exhibit #20).

A further series of letters ensued in which staff and O'Connell discussed Page's questions about and objections to staff's proposed modifications. Then, on March 30, 1998, O'Connell offered to have Kephart provide staff with a revised version of the plan (Exhibit #21).

Over three months elapsed before Kephart did so, however. His revised plan (Exhibit #22), which is dated July 30, 1998, was not submitted to Commission staff until August 10, 1998. In September and October of 1998, O'Connell, Page and Commission staff exchanged much correspondence regarding Commission staff resources to analyze and respond to the revised plan. Staff faxed O'Connell a detailed written response to the revised plan on November 13, 1998 (Exhibit #23). By return fax, O'Connell notified staff that Page had filed suit against the City and the Commission (Exhibit #24). As a consequence, staff referred the violation file to the Attorney General's office.

- 6) Documents, exhibits, declarations under penalty of perjury or other materials that you have attached to this form to support your answers or that you want to be made part of the administrative record for this enforcement proceeding (Please list in chronological order by date, author, and title, and enclose a copy with this completed form):

Page's Defense:

- *Botanical/Biological Report, July 20, 1989, Page 5, APN 007-021-05. "No endangered species found on this parcel."*
- *Excerpt from Environmental Impact Report, Page 4.3-7, "Little or no habitat suitable for this species (California black legless lizard) on site."*
- *Bruce Cowan initial Site Inspection Report dated August 26, 1997. "No endangered plants found on your property."*
- *Bruce Cowan Affidavit dated November 21, 1997.*
- *Landscape Mitigation Plan I, authored by Paul Kephart, dated November 24, 1997.*
- *Revised Landscape Restoration Plan, authored by Paul Kephart, dated July 30, 1998.*
- *California Department of Fish and Game Mitigation Agreement, revised at California Coastal Commission's request July 20, 1995.*

**Commission's Response:** All these documents listed by Page are either part of the permit files listed in the section titled "Substantive File Documents" or included in this report as exhibits. However, the Commission notes that Page has not included several pertinent documents. Page has omitted documents that lead to evidence contrary to his assertions that no violation has occurred. The last document mentioned in Page's defense is incorrectly named as a Mitigation Agreement. There has been no agreement in this matter, especially a Mitigation Agreement from the Department of Fish and Game. It is a revised Survey, Restoration, Monitoring, Mitigation and Maintenance Plan submitted by Bruce Cowan during the CDP application processing stage.

Page has included these documents to support his incorrect assertions that: 1) no violations occurred on the site, 2) he has no knowledge of the facts and allegations, 3) he does not admit to any of the facts and allegations, 4) he denies all facts and allegations and 5) exonerate his responsibility to the violations. Additionally, he has asserted that there are no environmentally sensitive habitat on site and his activities of November 15-17, 1997 caused no adverse impacts to coastal resources. Earlier sections of this report have outlined and explained the documented evidence of the presence of the Monterey Spineflower, Menzies' Wallflower and Tidestrom's Lupine. Cowan's reports of September 27, 1993 and April 6, 1994 clearly document the evidence of specimens on the site. Cowan's and Kephart's reports of visits/surveys also acknowledge the potential for the presence of the subject species given the nature of the habitat. The site visit of May 26, 1999 also demonstrated the existence of two of the three species of plants Page contends never existed on his property. Lee Otter's presence on site on November 17, 1997, Page's own acknowledgement and numerous Commission letters have documented Page's activities on site which are knowing and intentional violation of terms and conditions of CDP 3-96-102. Page's participation, involvement and refusal to cooperate have demonstrated his personal knowledge of the facts and allegations. Page has also demonstrated his knowledge through his contradictory statements in his letters and his statement of defense. Earlier sections of this report clearly demonstrate that Page has complete knowledge of the activities undertaken by him, the impacts due to his actions and the Commission's response to his actions. His activities on site have caused adverse impacts to the sensitive habitats of plant species as demonstrated in previous sections of this report. Page's lack of willingness to cooperate to resolve the violation has resulted in continual detriment of protected and significant coastal resources.

## **V. CEASE AND DESIST ORDER**

Staff recommends that the Commission issue the following Cease and Desist Order:

Pursuant to its authority under Pub. Res. Code §30810, the California Coastal Commission hereby orders Stephen J. L. Page, all his agents and any persons acting in concert with any of the foregoing to cease and desist from: 1) engaging in any further development activity at the subject property and adjacent parcel in violation of CDP 3-96-102; and 2) continuing to maintain any development on the property that violates CDP 3-96-102. Accordingly, all persons subject to this order shall fully comply with paragraphs A, B and C as follows:

- A. Refrain from engaging in any development activity in violation of CDP 3-96-102.
- B. Comply with terms and conditions of CDP 3-96-102.
- C. Within 90 days of the date of the Commission action on this Order, submit to the Commission for its review and approval a complete coastal development permit application for the restoration of the property in accordance with the section titled "Restoration" set forth below. The application shall comply with all other applicable filing requirements, including, but not limited to the following: 1) a vegetation plan, 2) performance standards and success criteria, and 3) monitoring and reporting parameters, all as set forth and in accordance with the Commission revisions to the Kephart Plan and letter to O'Connell dated November 13, 1998 (**Exhibit #23**).

## **RESTORATION**

Federally Threatened/Endangered species of plants now exist on portions of the project previously approved by CDP 3-96-102. To protect these plants the application for restoration should contain proposals for: a) relocation of the approved driveway, or b) transplantation of the respective species for their continued survival in compliance with all applicable law or c) both a) and b).

The amendment request should also include all the restoration measures set forth below:

### **1. Removal of Stockpiled Sand and Grading Materials:**

Stockpiled sand currently occupying (a) the eastern 100 feet of the Page parcel extending towards Sunset Drive (excluding the 6 foot by 100 foot area to be used for the common driveway with the adjacent Miller residence); and (b) currently occupying the 150 foot by 5 foot strip adjacent to the northern property line (extending eastward from the location of the future garage site to the area described by (a) above) will be removed to a depth within three (3) inches of the original grade (i.e., the grade prior to the November 1997 grading activities).

### **2. Fencing and identification of habitat areas:**

After the sand has been removed as described above, exclusionary fences shall be installed in the locations shown on the approved Grading and Erosion Control Plan for CDP 3-96-102 demarcating the extent and boundaries of all (including new plants) habitat areas.

### **3. Restoration:**

Three (3) different areas shall be restored pursuant to this plan: (1) the area on the Page parcel located within the area approved for exclusionary fencing in CDP 3-96-102; (2) the area on the Page parcel not contained by exclusionary fencing and outside of the building envelope and (3) the area on the Miller/Wilde parcel where sand has been stockpiled.

**Restoration of area one (1)** shall involve the planting of a mosaic of Tidestrom's lupine, dune bluegrass, mock heather, and Monterey spineflower in order to restore these defined habitat areas as described in the Basic Landscape and Restoration Plan for the site (Cowan, September 27, 1993) and as shown on the approved Grading and Erosion Control Plan for CDP 3-96-102.

**Restoration of area two (2)** shall be according to the general parameters of the Basic Landscape and Restoration Plan for the site (Cowan, September 27, 1993) with one modification: the planting of Menzies' wallflower and Tidestrom's lupine heretofore described by Cowan as optional, shall be required in order to restore the documented habitat on the site.

**Restoration of area three (3)** shall involve the eradication of exotic species and the planting of Menzies' wallflower, Tidestrom's lupine, and Monterey spineflower along with a mix of suitable native vegetation as selected from the Basic Landscape and Restoration Plan Plant List (Cowan, September 27, 1993).

Plant collection, propagation, exotic eradication, and planting shall be in accordance with the Planting Instructions of the Basic Landscape and Restoration Plan (Cowan, September 27, 1993). Plant materials for the listed species must be from the same biological population or as nearby as practicable, as the Page property (e.g., the adjacent Lighthouse Reservation or the State Park property south of the Page property). A qualified coastal dune restoration expert shall carry out all restoration activities.

#### **4. Implementation of Restoration Measures:**

Within 1 year of Commission action on the application for restoration implement all measures as determined by the Commission through its action.

Fully comply with terms and conditions of the above-required coastal development permit.

#### **IDENTIFICATION OF THE PROPERTY**

The properties that are the subject of this cease and desist order are described as follows:

1) 1400 (previously 1450) Sunset Drive, Pacific Grove, CA 93950, Monterey County  
APN 007-021-005-000

2) Miller and Wilde, 1500 Sunset Drive, Pacific Grove, CA 93950, Monterey County  
APN 007-021-006-000

#### **DESCRIPTION OF INCONSISTENT DEVELOPMENT**

Failed to provide temporary exclusionary fences to protect sensitive areas from disturbance, prior to the commencement of grading or construction. Failed to submit evidence of inspection of the installed fence by an environmental consultant to the Executive Director prior to commencement of construction. Graded and excavated environmentally sensitive habitat areas of the property that were unauthorized by said permit. Construction equipment and vehicles traversed areas of the property that were unauthorized



by said permit. Stockpiled sand in environmentally sensitive habitat areas of the property that were unauthorized by said permit. Failed to utilize the services of a coastal biologist to determine, immediately prior to grading operations, the presence of the California Black Legless lizard and to relocate all such lizards found to some suitable habitat.

#### **TERM OF THE ORDER**

This order shall remain in effect permanently unless and until modified or rescinded by the Commission.

#### **FINDINGS**

This order is issued on the basis of the findings adopted by the Commission between July 13 and 16, 1999, as set forth in the document entitled "Adopted findings for Cease and Desist Order No. CCC-99-CD-05".

#### **COMPLIANCE OBLIGATION**

Strict compliance with this order by all parties subject thereto is required. Failure to comply strictly with any term or condition of this order including any deadline contained in this order or in the above required coastal development permit(s) as approved by the Commission will constitute a violation of this order and may result in the imposition of civil penalties of up to SIX THOUSAND DOLLARS (\$6,000) per day for each day in which such compliance failure persists. The Executive Director may extend deadlines for good cause. Any extension request must be made in writing to the Executive Director and received by Commission staff at least 10 days prior to expiration of the subject deadline.

#### **APPEAL**

Pursuant to Pub. Res. Code §30803(b), any person or entity against whom this order is issued may file a petition with the Superior Court for a stay of this order.

## EXHIBITS

1. Location of the property and pre-violation photographs.
2. Photocopy of permit and signed acknowledgement of receipt of permit.
3. Department of Fish and Game list of Federal and State Threatened and Endangered plant list.
4. Notice of Violation dated November 17, 1997.
5. Photographs, approved base map (Grading and Erosion control plan) & locations of graded and sand stockpiled areas.
6. Follow-up notice of violation dated November 20, 1997.
7. Kephart Plan dated November 24, 1997.
8. Letter dated January 23, 1998 from Hunter of Department of Fish and Game plus relevant attachments.
9. Letter dated January 23, 1998 from Noda of U.S. Fish and Wildlife Service.
10. Locations of Threatened and Endangered plants and graded and sand stockpiled areas.
11. Notice of Intent to commence Cease and Desist Order dated April 26, 1999.
12. Page's Statement of Defense dated May 21, 1999.
13. Letter dated October 16, 1998 from Page to Peter Douglas.
14. Cowan's September 27, 1993 document titled, "Basic Landscape and Restoration Plan, Landscaping/Revegetation Recommendations."
15. Cowan's April 6, 1994 "Addendum to Botanical/Biological Report."
16. Letter dated September 26, 1997 from Cowan to Page.
17. Affidavit from Cowan dated December 5, 1997.
18. Letter dated December 2, 1997 from O'Connell to Otter.
19. Letter dated January 23, 1998 from Otter to O'Connell.
20. Letter dated January 29, 1998 from Otter to the City.
21. Letter dated March 30, 1998 from O'Connell to Rance.
22. Kephart's Revised Mitigation Plan dated July 30, 1998.
23. Letter dated November 13, 1998 from Otter and Cave to O'Connell.
24. Letter dated November 13, 1998 from O'Connell to Douglas.

## SUBJECT PROPERTY INFORMATION

1) Property: **SUNSET DR, PACIFIC GROVE CA 93950**

APN: **007-021-005-000**

Use: **RESIDENTIAL LOT**

County: **MONTEREY, CA**

Tax Rate Area: **4-006**

Total Value: **\$500,000**

Census: **122.00**

Prop Tax: **\$5,080.94**

Land Value: **\$500,000**

Map Pg:

Delinq Tax Yr:

Imprv Value:

New Pg:

Exemptions:

Assd Yr: **1998**

Phone:

% Improved:

Owner: **PAGE STEPHEN JEFFREY LAWRENCE T**

Mail: **5852 GLENDORA AVE; DALLAS TX 75230-5050**

### SALES INFORMATION

### IMPROVEMENTS

#### LAST SALE:

#### PRIOR SALE:

Transfer Date: **02/04/91**

**09/11/89**

Sale Price/Type: **\$750,000 FULL**

Document #: **2603-771**

**2408-1167**

Document Type: **GRANT DEED**

**INDIVIDUAL GRANT DEED**

1st TD/Type: **\$500,000 SELLER FIN \$700,000 VARIABLE**

Finance:

Junior TD's:

Lender:

Bldg/Liv Area:

# Units:

# Bldgs:

# Stories:

\$/SF:

Yrblt/Eff:

Total Rms:

Bedrms:

Baths(F/H):

Fireplace:

Pool:

Bsmt Area:

Construct:

Flooring:

Air Cond:

Heat Type:

Quality:

Condition:

Style:

Other Rooms:

Seller: **MILLER PAUL**

Title Company: **FOUNDERS TITLE CO.**

Transfer Info:

### SITE INFORMATION

Improve Type:

Lot Size: **A0.69**

Zoning:

Lot Area: **30,056**

County Use: **1A**

Parking:

Bldg Class:

Park Spaces:

Flood Panel:

Site Influence:

Flood Zone:

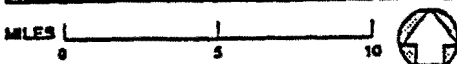
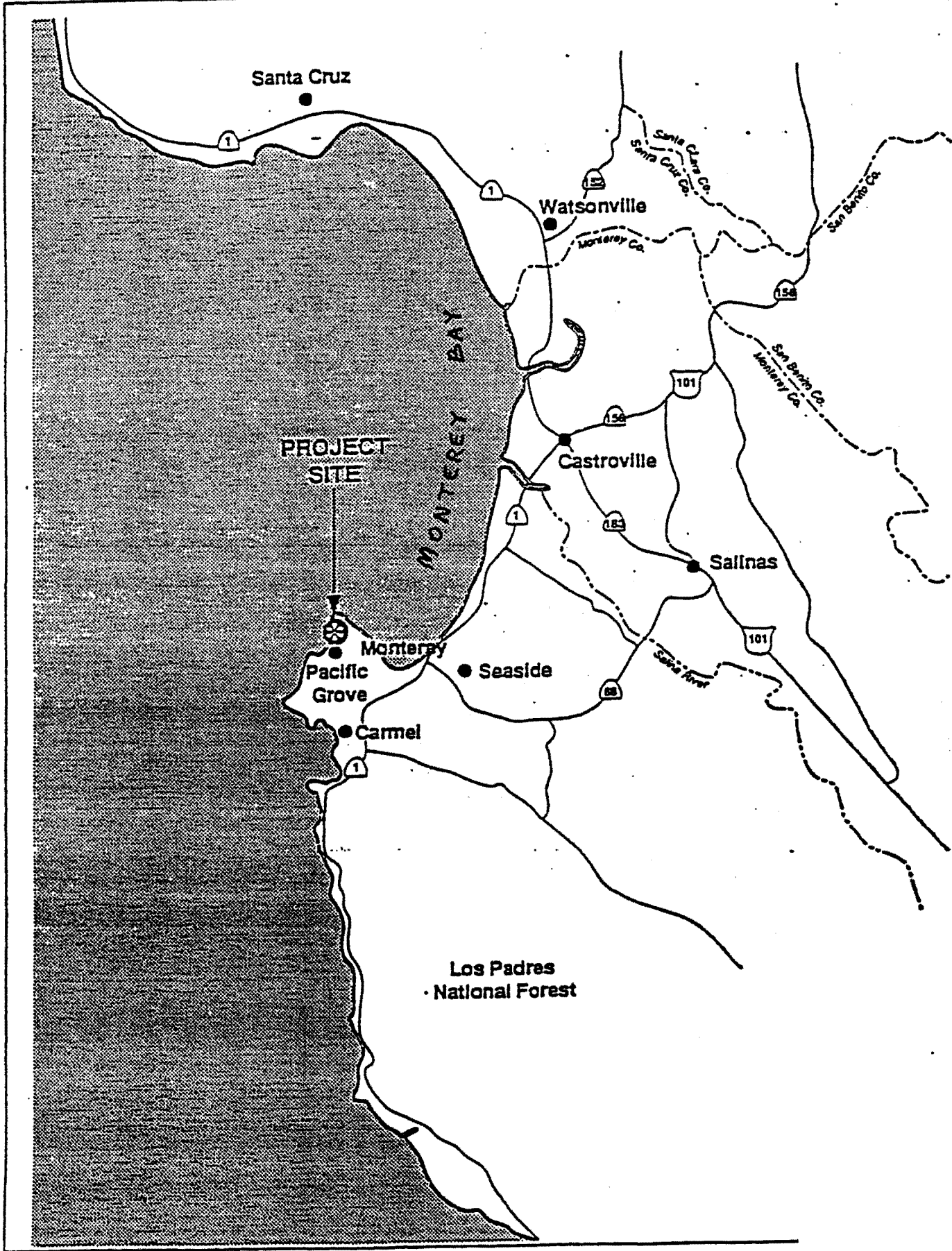
Ground Lease:

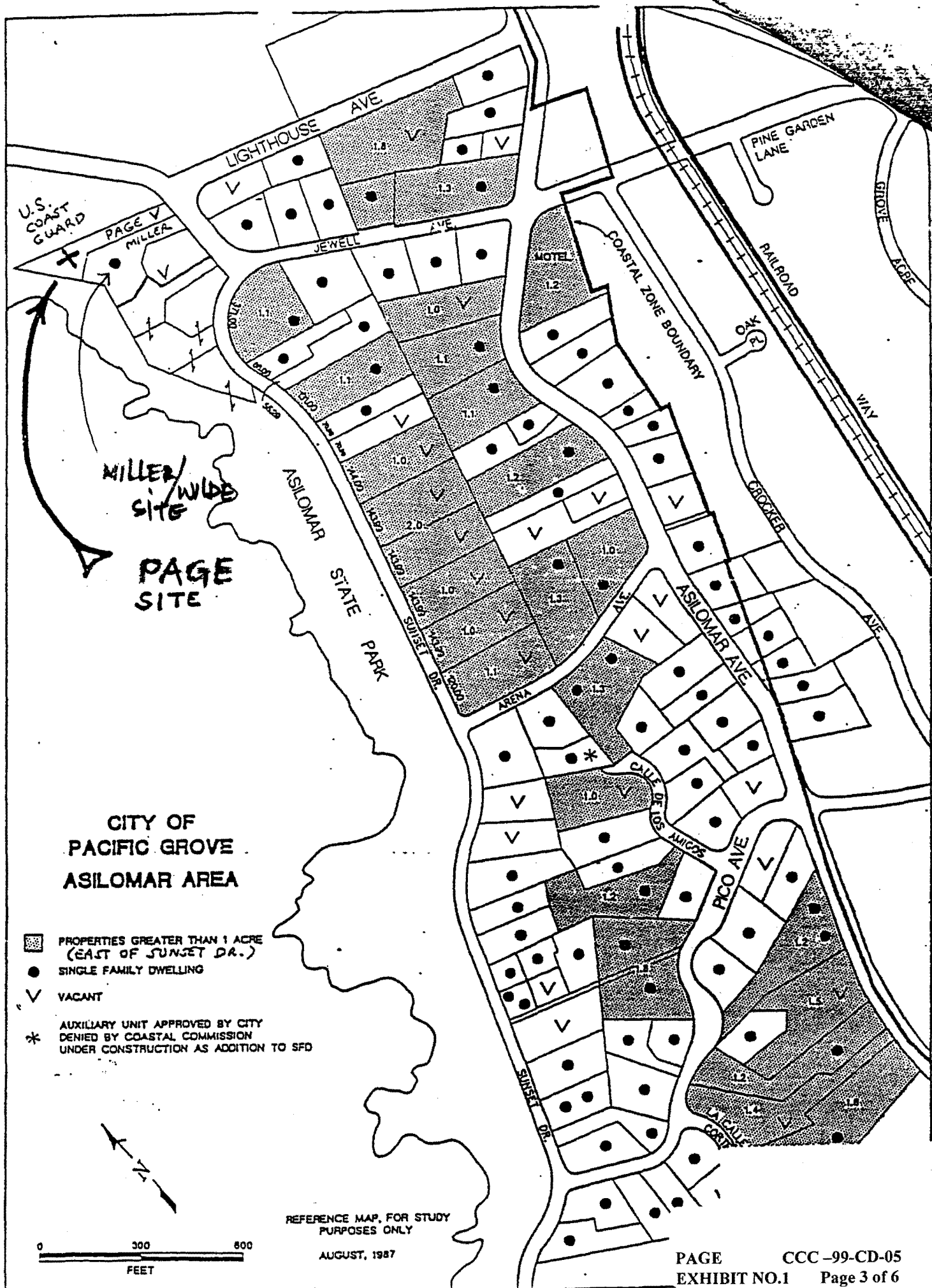
Phys Chars:

Legal: **1/ASSRS MP OF P.G. ACRES POR OF L 9 BLK31**

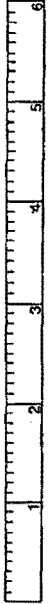
Comments:

# REGIONAL LOCATION MAP





**SCALE IN 1/10 OF AN INCH**



ASSESSOR'S MAP  
BOOK 7 PAGE 02

TAX CODE AREA 102-01

30

10 HIGH COLS E LIGHTHOUSE  
DIVD:

$$\frac{d}{N}$$

SUNSET DR.

3

5

五

10

22

SCALE: 1 in. = 100 ft.

SUBJECT  
PROPERTY

**PACIFIC**

**OCEAN**

50

State of  
California

PACIFIC GROVE ACRES  
LOT 9 BLK. 314  
LOTS 1, 2, & 3 BLK. 331

MILLER/WILDE

PAGE

LIGHTHOUSE  
RESERVATION  
U.S. COAST GUARD



Looking West from Sunset Drive

PAGE

LOOKING EAST & SOUTH EAST FROM THE BEACH



## CALIFORNIA COASTAL COMMISSION

CENTRAL COAST AREA OFFICE

25 FRONT STREET, STE. 300

SANTA CRUZ, CA 95060

(408) 427-4863

TELEPHONE IMPAIRED: (415) 904-5200

Page 1 of 2

Date: February 4, 1997

Permit No. 3-96-102



## COASTAL DEVELOPMENT PERMIT

COPY

On November 14, 1996, the California Coastal Commission granted to

STEPHEN PAGE

this permit subject to the attached Standard and Special conditions, for development consisting of:

Construction of a single-family dwelling, driveway, storm drain system, paved terrace and courtyards, retaining walls; berming and grading of dunes; more specifically described in the application file in the Commission offices.

The development is within the coastal zone in Monterey County at 1450 Sunset Drive, Asilomar Dunes area, City of Pacific Grove, APN 007-021-89

Issued on behalf of the California Coastal Commission by

PETER DOUGLAS  
Executive DirectorCALIFORNIA  
COASTAL COMMISSION

By:

*Lee Otter my son*  
 Lee Otter  
 Chief Planner  
 Central District

CENTRAL  
COAST AREA

## ACKNOWLEDGMENT

The undersigned permittee acknowledges receipt of this permit and agrees to abide by all terms and conditions thereof.

The undersigned permittee acknowledges that Government Code Section 818.4 which states in pertinent part, that: "A public entity is not liable for injury caused by the issuance. . . of any permit. . ." applies to the issuance of this permit.

IMPORTANT: THIS PERMIT IS NOT VALID UNLESS AND UNTIL A COPY OF THE PERMIT WITH THE SIGNED ACKNOWLEDGEMENT HAS BEEN RETURNED TO THE COMMISSION OFFICE. 14 Cal. Admin. Code Section 13158(a).

Date

4/14/97.

Signature of Permittee

*[Signature]*  
 original copy signed, dated & returned 2/4/97.  
 This second original copy signed and returned @ CCC signed  
 4/14/97.

A6: 4/88 0694C

COASTAL DEVELOPMENT PERMIT

Page 2 of 2  
Permit No. 3-96-102

STANDARD CONDITIONS:

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

SPECIAL CONDITIONS: 1-56 -- please see on the attached adopted Staff Report. [The Staff Report with Revised Findings heard at the January 9, 1997 Commission Meeting, and which includes the changes described in Memo from Diane Landry to Tamí Grove/Ralph Faust dated January 7, 1997.]

0694C

## CALIFORNIA COASTAL COMMISSION

CENTRAL COAST AREA OFFICE  
725 FRONT STREET, STE. 300  
SANTA CRUZ, CA 95060  
27-4863  
HEARING IMPAIRED: (415) 904-5200

Filed: 09/30/96  
49th Day: 11/18/96  
180th Day: 03/29/97  
Staff: DSL/cm  
Staff Report: 10/21/96 1834P  
Hearing Date: 11/14/96  
Comm. Action: Approval 11/14/96  
Revised Findings: 1/9/97



ADOPTED

ADOPTED  
REVISED FINDINGS\*

DSL  
1/9/97

APPLICATION NO.: 3-96-102

APPLICANT: STEPHEN PAGE Agent: John Matthams, Int. Design Group

PROJECT LOCATION: 1450 Sunset Drive, Asilomar Dunes area, City of Pacific Grove, Monterey County, APN 007-021-05

PROJECT DESCRIPTION: Construction of a single-family dwelling, driveway, storm drain system, paved terrace and courtyards, retaining walls; berming and grading of dunes.

Lot area: 30,232 sq. ft.

Building coverage: 3,680 sq. ft.

Pavement coverage: 2,870 sq. ft. (driveway 2,300 sq. ft., patios 570 sq. ft.)

Grading: 1,391 cu. yds. (983 cu. yds. cut, 408 cu. yds. fill)

Parking spaces: 2 spaces

Zoning: Residential (R-1-8-4)

Plan designation: Low Density Residential, 1-2 units acre

Project density: 1 unit/30,232 sq. ft.

Ht abv fin grade: 18 feet max.

PREVAILING COMMISSIONERS ELIGIBLE TO VOTE: Calcagno, Flemming, Staffel

LOCAL APPROVALS RECEIVED: Architectural Approval; CEQA - Final Environmental Impact Report certified 1/6/93.

\* Includes changes described in Memo from Diane Landry to Tami Grove/Ralph Faust dated January 7, 1997.

## SUBSTANTIVE FILE DOCUMENTS:

- Page v. City of Pacific Grove, Stipulated Judgement, No. M26049, filed Dec. 2, 1993
- Pacific Grove Local Coastal Program Land Use Plan
- Final EIR, Page Residential Development, EIP Associates, Feb. 1992
- Correspondence from Mary-Margaret O'Connell (Nov. 4, 1996)
- Correspondence from Stephen Page (Nov. 5, 1996)

STAFF NOTE: The Commission heard this application on November 14, 1996 at the meeting in San Diego. Based on written information from the applicant and on oral testimony at the hearing, the Commission determined that the terms and conditions of the Stipulated Judgement between the Applicant and the City of Pacific Grove, by and large adequately modified the project to meet Coastal Act resource protection standards. The conditions of this agreement were substituted for all of those recommended by staff in the November staff report. These conditions, taken verbatim from the Stipulated Judgement are found on pages 3 through 13 of the Revised Findings for the project. The complete text of the Stipulated Judgement is attached as Exhibit B.

In addition to adopting the city conditions, the Commission also retained a revised portion of Condition 3 originally proposed by staff. This revised condition is found on page 13 of the Revised Findings. Finally, the applicant offered to indemnify the Commission for any damage which may occur to the approved structure as a result of storm waves. The indemnification agreement is attached as Exhibit C.

The project was approved by a six-four vote. Commissioners on the prevailing side were Chairman Calcagno, Flemming, Staffel, Randa, Belgard and Steinberg. Commissioners Randa, Belgard and Steinberg are no longer seated on the Commission, therefore, only Commissioners Calcagno, Flemming and Staffel are eligible to vote on the Revised Findings. A majority of these Commissioners (2) is necessary to approve the Findings. A copy of the transcript of the hearing and relevant supporting materials are included with the proposed Revised Findings. (Exhibits D and E)

I. Staff Recommendation: Staff recommends that the eligible Commissioners adopt the following revised findings and conditions:

II. Standard Conditions.

See Exhibit A (attached).

III. Special Conditions. Text, except for Condition 56, has been taken verbatim from the Stipulated Judgement (Page v. City of Pacific Grove) dated December 12, 1993, re-numbered only for the Commission convenience.

1. The maximum height of the residence shall be 15 feet above grade, with the sole exception of the mezzanine roof which shall not exceed 18 feet above grade. The mezzanine is approximately 12 feet by 12 feet and is shown on Exhibit 2. The 20 foot sightline for the project and all setbacks and other size and siting requirements imposed by Exhibit 1 shall be in effect, except as specifically amended in Paragraph 4 below. Exhibit 2, showing dimensions and location on the lot of the proposed project improvements, including footprint, roof line, lengths, and widths, is incorporated as an illustrative exhibit to this Judgment.
2. Siding and roofing materials for the proposed single family dwelling shall be as specified in Exhibit 3. Qualities and color of the materials shall be substantially identical to the samples lodged with the City on November 9, 1993. The architectural detail relating to the aforesaid materials, as shown on Exhibit 2, shall be deemed to satisfy the Conditions of Approval, Condition No. 3, previously adopted by the City Council.
3. The total covered footprint for the house and garage shall not exceed 3,680 square feet (as generally shown in Exhibit 2), and Conditions of Approval, Condition No. 4, previously adopted by the City Council, is modified accordingly. The covered parking requirement of the City for parking for two vehicles may be satisfied, at Petitioner's request, with the construction of under grade parking to be located as shown on Exhibit 2. The plan for the driveway for the parking area shall contain appropriate measures to screen (by landscaping, by berm, or otherwise) the driveway and garage entrance from public view. The City's Director of Planning shall determine the appropriate method of screening and the sufficiency of such screening prior to the City's issuance of a building permit. The area of underground construction shall not exceed 650 square feet, of which no more than 100 square feet may be devoted to storage space. The entrance to the garage area shall not be more than 20 feet wide. Under no circumstances shall any of the underground area be habitable or converted to habitable uses. Petitioner agrees to hold harmless the City in regard to all costs and claims, if any, arising out of or related to the under grade construction.

NOTE: Exhibit references in these conditions are to those items included in the Stipulated Judgement attached to these Revised Findings as Exhibit B.

III. Special Conditions. (continued)

4. This approval shall be deemed effective on December 1, 1993. This approval shall be valid for two years, said term to commence upon obtaining a coastal development permit for the project from the California Coastal Commission, and Conditions of Approval, Condition No. 13, previously adopted by the City Council, is modified accordingly.
5. All construction and other work on the property shall be in strict compliance with the terms and conditions of approval, including those specified in this Judgment. Any deviation from any term or condition must be approved by the City in advance, and may require City Council approval.
6. The landscape plan required by Resolution No. 6322 for the architectural approval shall be prepared by Petitioner and shall be submitted to the City for approval and approved by the City prior to the building permit being issued. Petitioner and City shall review the plan one year after work is completed, and annually for the next two years in order to assess the success of Petitioner's good faith efforts to restore native vegetation. The landscape plan will be phased or staged so as to plant the dune and the area of ice plant removed for construction, the second stage one year later, and the third stage one year after the second stage. Petitioner and the City shall make a good faith review of the landscaping efforts one year after issuance of the occupancy permit for the residence, and again one year after the first review in order to determine the success of landscaping already in place, and, based thereon, the feasibility and timing of continued revegetation.

Because of the danger of erosion, and in order to maintain stability on the westerly portion of the site, Petitioner is not required as a condition of approval to remove the existing vegetation to the west of the proposed residence. The landscape plan shall require, however, that as to existing vegetation to the west of the residence which is disturbed or damaged during construction or other site work, Petitioner shall restore or replace said vegetation in accordance with the landscaping plan.

9. Upon the granting to Petitioner of a Coastal Development Permit by the California Coastal Commission for the single family residence approved by the City, all causes of action against all respondents and defendants other than City of Pacific Grove shall be dismissed with prejudice. The City shall register with the California Coastal Commission the City's support of the project approved pursuant to this Judgment.
10. The precise dimensions and location on the lot of the proposed project improvements, including footprint, roof line, lengths, and widths, shall be as approved by the council following submittal pursuant to Section III.K. of the resolution.

III. Special Conditions. (continued)

11. The height of the structure shall not exceed 15 feet.
12. Siding and roofing materials shall be wood; the roof shall be shingles. Native stone materials shall also be utilized to assist in blending and harmonizing the structures with the natural elements of the site. Remaining architectural details shall be as approved by the council following submittal pursuant to Section III.K. of the resolution. Provided, that (a) roof lines shall have a slight pitch to harmonize with dune slope and shape, and (b) the design should consist of straight lines to further harmonize the structure with the adjoining dwelling.
13. Total area of the house and garage shall not exceed 2,680 square feet.
14. No structure shall be located westerly of the line labeled "building limit line" as delineated on Exhibit D of Planning Commission Resolution No. 92-32.
15. No structure shall be located easterly of a line parallel to and 245 feet westerly of the west side of Sunset Drive as it abuts the site.
16. All water collected in the gutting system shall be collected and directed, by means subject to approval of the city engineer, to the storm drain system main adjacent to the project site or outfall to the ocean as approved by the Coastal Commission.
17. Connection shall be made to the regional sewer system prior to any approval for occupancy being issued by the community development department.
18. Owner shall secure a coastal development permit from the Coastal Commission prior to issuance of a building permit.
19. Owner shall secure a water permit from the Monterey Peninsula Water Management District prior to issuance of a building permit.
20. A domestic sprinkler system shall be installed, subject to approval of the fire chief.
21. A turn around area shall be provided, to permit head-out exiting onto Sunset Drive. Prior to issuance of the building permit, owner is requested to make a good faith effort to reach agreement with the owner of 1500 Sunset Drive for a shared driveway in order to reduce driveway coverage and contain construction related traffic within a single access route. Driveway design and turn around shall be approved by the site plan review committee.

III. Special Conditions. (continued)

22. Architectural approval shall be valid for one year, said year to commence upon obtaining of a coastal development permit for the project.
23. Construction shall not commence until a copy of this resolution is signed by the owner, acknowledging receipt of the permit and acceptance of its terms and conditions, and is returned to the community development department.
24. All construction and improvement must occur in strict compliance with the proposal as set forth in the application for permit, as modified by this resolution. Any deviation from the approved plans must be reviewed and approved by staff and may require city council approval.
25. These terms and conditions shall be perpetual, and it is the intention of the city council and owner to bind all future owners and successors in interest of the property to the terms and conditions of the resolution, all its attachments, and all documents, plans and other items referenced herein.
26. Owner shall defend and save harmless the City of Pacific Grove against and from any claims, suits, judgments, costs and attorney fees arising out of this approval, or assertions that this approval is invalid, illegal, unconstitutional or otherwise contrary to law
27. Should any inconsistencies arise in the items listed in these conditions or should any condition of this resolution require interpretation, the Community Development Director shall interpret the requirements of this resolution consistent with the Environmental Impact Report.
28. The boundary fence along the north side of the site shall be retained; when replacement becomes necessary it shall be replaced in kind.
29. Mitigation measures. The footprint, height, and size of the building as initially proposed have been, respectively, lowered and reduced by this council to levels so as to reduce the visual obstruction and interference with public views to a less than significant impact. Further, construction activities and staging areas shall not take place on lands or sensitive habitats adjacent to the project parcel. No dirt or sand shall be removed from sensitive habitats during construction or grading. The area upon which all construction shall take place shall be fenced and all construction equipment and vehicle storage will be confined within the fenced area. No travel or other use of the surrounding area will be permitted.



III. Soecial Conditions. (continued)

30. Mitigation measures. Incorporated here by reference are the mitigation measures set out at section 4.4-1(f) of the FEIR, with additional reduction of structure (house and garage) to a maximum of 3680 square feet. Further incorporated here by reference is the "suggested additional mitigation measure" set out in section 6.3 related to the blending of sand dune topography with the dwelling. The actual extend of the proposed sand dune screening is similar in concept to the "suggested mitigation measure" and is a variation of the description in section 6.3.

31. Mitigation measures. To the maximum extent possible the existing ground cover that protects the sand dunes shall not be disturbed. If such area is disturbed it shall be replanted immediately or as soon as feasible.

The proposed residential structure shall be supported with deep-seated pier or pole foundation systems. Conventional spread foundations shall not be used because the near-surface sand dunes are too loose to support such foundations, and in order to redensify the soils to bear the weight of the structure, the dunes would have to be graded. This grading action could strip large portions of the existing vegetation from the dunes, which would then exacerbate wind erosion. The drilled pier foundations will disturb less of the ground cover compared to conventional spread foundation. The concrete pier or wood pole foundations shall penetrate all sand dune and terrace deposits and shall be embedded four feet or more into the underlying bedrock. (Piers along the seaward side of the coastline house would be expected to be 12 to 20 feet deep.)

Areas used to store construction materials and house the construction shed shall be restricted and construction vehicle access to driveways or designated pathways shall be limited as much as possible.

32. Mitigation measure. Drilled holes shall be bolstered and supported by shielding three drilled hole sides as required by site conditions.

33. Mitigation measure. Full roof gutters and downspouts shall be placed on all eaves of all structures proposed for development on the site. All roof and driveway runoff as well as surface drainage shall be directed away from building site and into storm drain systems that carry the accumulated water in a closed conduit to the storm sewer system. Alternatively, drainage may also be directed to outfall into the ocean and shall be designed to have no impact upon marine or intertidal biota. Drainage into the ocean shall be designed in conjunction with a coastal biologist and approved by the Coastal Commission. Non-corrosive segmented drain pipe shall be used where coastal erosion may take place. (As the coastline erodes, the segments could be removed easily.)

III. Special Conditions. (continued)

34. Mitigation measure. Foxx, Nielsen and Associates, geotechnical consultants, recommend the use of concrete pier and grade beam foundations and such shall be employed on the project. This construction strategy will prevent major damage to the structures should surficial materials fail. Also incorporated here by reference are the mitigation measures set out above at sections C.1.b. and C.2.b.

All construction, including the infrastructure, shall comply with the most recent edition of the Uniform Building Code Seismic Zone 4 Standards, or local seismic requirements, whichever are most stringent.

35. Mitigation measure. Incorporated here by reference are the mitigation measures set out above at section C.4.b.
36. Mitigation measures. The foundation of the home shall be set back landward of the recommended setback line as indicated on approved architectural plans. The floor system of all living spaces must be elevated or protected from hazardous conditions to a height at least one foot above the 50-year wave runup level. The proposed residence shall comply with recommended elevations for finished floors and the bottom of the horizontal structural elements of the foundations as listed in Table 4.2-1 of the Final EIR.
37. Mitigation measures. Leave natural vegetation intact in all portions of the property, except as required for the normal construction of buildings, utility infrastructure, roadways, driveways, parking, and to comply with fire safety specifications and recommendations.

Do not introduce fill or soil from outside the property. (These could contain seeds of weeds, genista or other undesirable species capable of overrunning the habitat and outcompeting native species.)

One or more new dune restoration sites must be located on the property, preferably in one of the setback areas, and excess sand from grading used to form new dunes. A revegetation or landscaping plan shall be adopted for the restoration sites using only native dune species. (A list of approved plants and possible sources is included in Appendix B of the Final EIR.) The following measures shall be included in the restoration plan:

- (a) Use none of the following invasive non-native species in landscaping: Blue gum Eucalyptus globulus; Acacias (Acacia spp.); Genista (Cytisus spp.); Pampas grass (Cortaderia spp.); Hottentot fig ice plant (Carpobrotus edulis); Cape weed (Arctotheca calendula); Dune grass (Ammophila arenaria); Pennisetum and all of its species such as fountain grass (Pennisetum setaceum).

III. Special Conditions. (continued)

- (b) Plant only drought tolerant vegetation in the general landscapes. Plants requiring frequent irrigation must be confined to special landscape features or planters near the homes. Topsoil may be imported only for these specific confined and high maintenance areas. In dune habitat or easements, only native dune species shall be used, and no imported soil may be spread.
- (c) All plants used for dune or swale revegetation must be approved by the Director of the Pacific Grove Museum of Natural History or selected from Appendix B. Plants must come from local vegetation (i.e. grown by contract from seeds and/or cuttings collected from the general Asilomar dunes area, rather than from the general commercial trade) to maintain genetic purity in the local native vegetation. Sources which may be able to provide native plants grown by contract are listed in Appendix B. It is suggested that the majority of the plants be grown in Supercells, as these generally adapt to the habitat more quickly than plants of 1-gallon-size or larger, and can be produced in larger quantities more economically.
- (d) To monitor the success of the Restoration Plan, a botanist approved by the City of Pacific Grove shall be hired by the applicant/owner to visit the site to oversee or supervise the planting, and thereafter at least once a year for five years to ensure that the restoration or revegetation is succeeding. A report or letter shall be sent to the City following each visit, with a copy sent to the applicant/owner. If deficiencies occur (such as dead plants and shrubs, or presence of pampas grass, weeds or ice plant), the applicant/owner shall replace the dead plants and remove the invasive species. Staff of the City of Pacific Grove, the California Department of Fish and Game, and the U.S. Fish and Wildlife Service, or the Coastal Commission may inspect the property at any time indefinitely and recommend additional studies if the property does not appear to be in compliance with the intent of this mitigation measure.
- (e) The areas containing sensitive habitat/endangered species that remain following construction of the proposed project (including the dune restoration area) shall be dedicated as scenic easements. Site specific populations of Menzies' wallflower (Erysimum menziesii) and Tidestrom's lupine (Lupinus tidestromii) shall be retained.
- (f) Native dune building grasses and forbs shall be retained.
- (g) The owner shall provide sufficient funding to properly manage and maintain the preserved area over time.

III. Special Conditions. (continued)

All ice plant now occurring on the property shall be removed to enhance the habitat according to the following instructions: Ice plant shall be removed by spraying with a non-persistent systemic herbicide such as Roundup, as recommended by a licensed Pest Control Advisor. Ice plant should only be pulled by hand, and not sprayed, within 20 feet of any Tidestrom's lupines, or where significant native vegetation occurs with the ice plant.

All dune restoration shall be accomplished per a landscaping plan prepared by a qualified coastal biologist and implemented under the direction of the coastal biologist as required per LUP provisions 2.3.5.1.e and f. Eradication of ice plant shall be by herbicide only and the dead vegetation shall remain and decay in place. This method will provide erosion protection until the native species become established and a source of nourishment for the new plantings. Dune restoration measures shall be implemented in a manner that avoids increasing erosion by being accomplished in phases or some other method deemed appropriate by the coastal biologist. Snow fencing shall be utilized to control blowing sand until sand is stabilized by restoration planting.

Dune restoration of areas "beyond the approved building site and outdoor living space" and protecting the restored areas shall conform with a written agreement, deed restrictions or conservation easement granted to an appropriate public agency or conservation foundation as contained in LUP section 2.3.5.1.e. Where large areas are involved, such is the case in this proposal, the conservation easement is the instrument required by the City.

The presence of California black legless lizard shall be determined by trapping, combing, or other means deemed appropriate by the coastal biologist within all areas to be disturbed by construction activity immediately prior to grading operations. The determination of the presence of black legless lizard shall be made by a qualified coastal biologist. All individuals of the reptile found during the reconnaissance shall be relocated to suitable habitat.

A detailed grading plan indicating grading proposals in all areas to be disturbed is required to be submitted to the City prior to approval of the Coastal Permit per LUP section 2.3.5.1.d.

38. Mitigation measures. The height of the buildings as initially proposed has been lowered as set out in Exhibit C of this resolution. The overall size of the buildings as initially proposed has been reduced as set out in Exhibit C of this resolution.

III. Special Conditions. (continued)

39. Mitigation measures. All light sources emanating from the project site shall be directed onto the site and/or screened to prevent overflow illumination of adjoining areas. The use of exterior lights shall be kept to a minimum. Exterior spot or flood lighting shall be directional to avoid impacts to marine life and local marine activity. Lighting shall be designed and aimed in such a way that it does not conflict with lighthouse and security operations.

40. Mitigation measures. The project shall incorporate to the maximum extent feasible design standards noted in the scenic resources policy statements outlined in the City of Pacific Grove's LUP (Scenic Resources 2.5.5-1, 2.5.5-4, and 2.5.5-5).

The following mitigation measures shall also be required to ensure that potential aesthetic impacts are lessened to an insignificant level:

1. All uncovered portions of the site shall be maintained in their natural condition, and planted only with native vegetation.
2. The proposed driveway shall be constructed of a material that is similar in color to the surrounding terrain, and located within the site topography, to visually blend into the surroundings to the greatest extent feasible.

The overall height of the proposed structure shall be lowered as noted in subsections E.1.b. and B.1.b., above, and in the body of this resolution.

41. Mitigation measures. If archaeological resources or human remains are discovered during construction, all work shall be halted immediately within 50 meters (150 feet) of the find until it can be evaluated. An archaeological consultant shall be retained to evaluate findings in accordance with standard practice and applicable regulations. Date/artifact recovery, if deemed appropriate, would be conducted during the period when construction activities are on hold. If human remains are discovered, an appropriate representative of Native American Indian Groups and the County Coroner would be informed and consulted, as required by State law.

III. Special Conditions. (continued)

42. Mitigation measure. To the extent feasible, construction shall be scheduled during the dry season. An erosion and sediment-transport control plan shall be in place prior to the commencement of earthmoving activities.
43. Mitigation measure. Drainage plans and erosion, sediment and pollution control measures shall be prepared as conditions of approval for development in accordance with LUP policy 2.2.5-2.
44. A landscape plan shall be submitted to the city council at the final design stage, for approval.
45. All utility lines shall be constructed underground, in accord with LUP policy 2.5.5.
46. Because the City of Pacific Grove does not yet have in place ordinances implementing the LUP, the decision whether to require shoreline access easement rests with the coastal commission at such time as it considers an application. Project design could accommodate such easement.
47. The police and fire departments shall review final site plans for the development to ensure adequate access for emergency equipment, and to confirm that all structures are built to meet applicable fire and safety codes.
48. The owner shall be required to obtain a water permit. The proposed project shall be equipped with low flow fixtures and drought tolerant landscaping.
49. All trenches for underground utility lines shall avoid sensitive plant and animal species that are identified in section 4.3 of the Final EIR, and archaeological resources listed in section 4.5 of the Final EIR.
50. The Community Development Director shall develop a master checklist from the findings and conditions of approval related to this project, identifying each mitigation measure together with the person, department or agency responsible for overseeing the implementation of such measures. The master checklist shall be recorded in the office of the County Recorder. The master checklist shall include a fee schedule for payment to City by owner of all costs of preparation of the checklist and monitoring the implementation of the mitigation measures.
51. The owner shall file a written report with the Community Development Director every three (3) months, or more frequently if directed by the Community Development Director, stating the status of implementation of

III. Soecial Conditions. (continued)

the measures. Once construction is complete, the Community Development Director may establish a less frequent reporting schedule. In the event of sale of the property, subsequent purchasers shall be responsible for all monitoring requirements.

52. The Community Development Director shall review the written reports and determine whether the mitigation measures are being implemented in a proper and timely manner. The Community Development Director may conduct on site inspections to monitor mitigation implementation and to verify the written report.
53. The result of the Community Development Director's review will be provided to the owner in writing. If a measure is not being properly implemented or maintained, the Director and owner shall consult and, if possible, agree to additional actions to be taken to implement the measure. If they are unable to agree, the Director shall impose reasonable action as permitted by law. Such decision of the Community Development Director may be appealed to this council.
54. The Community Development Director shall monitor the implementation of the required mitigation measures and shall report to the city council periodically regarding compliance.
55. Owner shall pay City fees equal to the actual cost of performing required monitoring. Actual costs shall include, without limitation, City personnel costs and consultation fees and costs.
56. Revised Development Plans. PRIOR TO TRANSMITTAL OF THE COASTAL DEVELOPMENT PERMIT, permittee shall submit, for review and approval by the Executive Director, revised project plans which meet the following criteria:
  - a. Total site coverage (building, patios, driveway and turn-around area) not to exceed 6,550 sq. ft.; this limitation on coverage shall not apply to any portion of the shared driveway located on permittee's parcel pursuant to Coastal Development Permit No. 3-94-33 (Miller), nor shall any portion of the driveway located in the 75-ft. minimum front setback area adjacent to Sunset Drive be counted;
  - b. Perimeter of all exterior walls of the residence to be located above the 50-year probability line for storm wave run-up and flooding (elevation 23 ft. above MSL based on existing surveyed ground contours);
  - c. A finished floor elevation of at least 25 feet above mean sea level (MSL).



◀ **RESOURCES AGENCY**  
 ▶ **DEPARTMENT OF FISH AND GAME**  
**CALIFORNIA STATE LISTED ANIMALS AND PLANTS**

State of California  
 The Resources Agency  
**DEPARTMENT OF FISH AND GAME**  
 Habitat Conservation Division  
 Wildlife & Habitat Data Analysis Branch  
**STATE AND FEDERALLY LISTED**  
**ENDANGERED, THREATENED, AND RARE PLANTS OF CALIFORNIA**  
 April 1999; revised April 23, 1999

Designations and Subtotals for each Designation:

Designations: Subtotals:

SE State-listed endangered 128

ST State-listed threatened 20

SR State-listed rare 68

SCE State candidate for listing, endangered 1

SCT State candidate for listing, threatened 0

FE Federally listed endangered 125

FT Federally listed threatened 42

FPE Federally proposed endangered 11

FPT Federally proposed threatened 3

State listing is pursuant to 1904 (Native Plant Protection Act of 1977) and 2074.2 and 2075.5 (California Endangered Species Act of 1984) of the Fish and Game Code, relating to listing of Endangered, Threatened and Rare species of plants and animals. Federal listing is pursuant with the Federal Endangered Species Act of 1973, as amended. For information regarding plant conservation, contact the Habitat Conservation Planning Branch, 1416 Ninth Street, Sacramento, CA 95814, phone (916) 657-9767, or the nearest Department of Fish and Game office. For information on this list, contact Information Services at (916) 324-3812. Scientific and common names for State-listed plants are listed in Title 14, 670.2. Scientific or common names in parentheses are the most scientifically accepted nomenclature but have yet to be officially adopted into the California Code of Regulations, Title 14, Division 1, 670.2.

<b>State Designated Plants</b>	<b>Classifications:</b>	
	<b>State (date):</b>	<b>Federal (date):</b>
<i>Acanthomintha duttonii</i>		
San Mateo thorn mint (= thorn-mint)	SE (Jul 1979)	FE (Oct 1985)
<i>Acanthomintha ilicifolia</i>		



California jewelflower (=jewel-flower)		
<i>Caulanthus stenocarpus</i> slenderpod squaw cabbage (=slender-pod jewel-flower)	SR (Nov 1979)	
<i>Ceanothus ferrissae</i> coyote ceanothus		FE (Mar 1995)
<i>Ceanothus hearstiorum</i> Hearst Ranch buckbrush (=Hearst's ceanothus)	SR (Aug 1981)	
<i>Ceanothus maritimus</i> maritime ceanothus	SR (Nov 1978)	
<i>Ceanothus masonii</i> Mason's ceanothus	SR (Nov 1978)	
<i>Ceanothus ophiophilus</i> Vail Lake ceanothus	SE (Jan 1994)	FT (Nov 1998)
<i>Ceanothus roderickii</i> Roderick's buckbrush (=Pine Hill ceanothus)	SR (Jul 1982)	FE (Nov 1996)
<i>Cercocarpus traskiae</i> Santa Catalina Island mahogany (=Catalina Island mountain-mahogany)	SE (Apr 1982)	FE (Sep 1997)
<i>Chamaesyce hooveri</i> Hoover's spurge		FT (Apr 1997)
<i>Chlorogalum purpureum</i> var. <i>purpureum</i> purple amole		FPT (Mar 1998)
<i>Chlorogalum purpureum</i> var. <i>reductum</i> Camatta Canyon amole	SR (Nov 1978)	FPT (Mar 1998)
<i>Chorizanthe howellii</i> Howell's spineflower	ST (Jan 1987)	FE (Jun 1992)
<i>Chorizanthe orcuttiana</i> Orcutt's spineflower	SE (Nov 1979)	FE (Nov 1996)
<i>Chorizanthe pungens</i> var. <i>hartwegiana</i> Ben Lomond spineflower		FE (Feb 1994)
<i>Chorizanthe pungens</i> var. <i>pungens</i> Monterey spineflower		FT (Feb 1994)
<i>Chorizanthe robusta</i> (includes vars. <i>hartwegii</i> and <i>robusta</i> ) robust spineflower		FE (Feb 1994)

Butterworth's buckwheat	SR (Nov 1979)	
<i>Eriogonum crocatum</i>	SR (Sep 1979)	
Ventura (=Conejo) buckwheat		
<i>Eriogonum ericifolium</i> var. <i>thornei</i>	SE (Nov 1979)	
Thorne's buckwheat		
<i>Eriogonum giganteum</i> var. <i>compactum</i>	SR (Nov 1979)	
St. Catherine's lace (=Santa Barbara Island buckwheat)		
<i>Eriogonum grande</i> ssp. <i>timorum</i>	SE (Nov 1979)	
San Nicholas (=Nicolas) Island buckwheat		
<i>Eriogonum kelloggii</i>	SE (Apr 1982)	
Kellogg's buckwheat		
<i>Eriogonum kennedyi</i> var. <i>austromontanum</i>		FT (Oct 1998)
southern mountain buckwheat		
<i>Eriogonum ovalifolium</i> var. <i>vineum</i>		FE (Aug 1994)
Cushenbury buckwheat		
<i>Eriogonum twisselmannii</i>	SR (Jul 1982)	
Twisselmann's buckwheat		
<i>Eriophyllum congdonii</i>	SR (Jul 1982)	
Congdon's woolly sunflower		
<i>Eriophyllum latilobum</i>	SE (Jun 1992)	FE (Mar 1995)
San Mateo woolly sunflower		
<i>Eryngium aristulatum</i> var. <i>parishii</i>	SE (Jul 1979)	FE (Aug 1993)
San Diego coyote-thistle (=button-celery)		
<i>Eryngium constancei</i>	SE (Jan 1987)	FE (Dec 1986)
Loch Lomond coyote-thistle (=button-celery)		
<i>Eryngium racemosum</i>	SE (Aug 1981)	
Delta coyote-thistle (=button-celery)		
<i>Erysimum capitatum</i> var. <i>angustatum</i>	SE (Nov 1978)	FE (Apr 1978)
Contra Costa wallflower		
<i>Erysimum menziesii</i>	SE (Sep 1984)	FE (Jun 1992)
Menzies' (=Menzies's) wallflower		
<i>Erysimum teretifolium</i>	SE (Aug 1981)	FE (Feb 1994)
Santa Cruz wallflower		

<i>Lilium pardalinum</i> ssp. <i>pitkinense</i> Pitkin Marsh lily	SE (Nov 1978)	FE (Nov 1997)
<i>Limnanthes bakeri</i> Baker's meadowfoam	SR (Nov 1978)	
<i>Limnanthes douglasii</i> var. <i>sulphurea</i> Point Reyes meadowfoam	SE (Apr 1982)	
<i>Limnanthes floccosa</i> ssp. <i>californica</i> Butte County meadowfoam	SE (Feb 1982)	FE (Jun 1992)
<i>Limnanthes gracilis</i> var. <i>parishii</i> Parish's slender meadowfoam (=Parish's meadowfoam)	SE (Jul 1979)	
<i>Limnanthes vinculans</i> Sebastopol meadowfoam	SE (Nov 1979)	FE (Jan 1992)
<i>Lithophragma maximum</i> San Clemente Island woodland star	SE (Feb 1982)	FE (Sep 1997)
<i>Lotus argophyllus</i> var. <i>adsurgens</i> San Clemente Island silver hosakia (=San Clemente Island bird's-foot trefoil)	SE (Nov 1979)	
<i>Lotus argophyllus</i> var. <i>niveus</i> Santa Cruz Island silver hosakia (= Santa Cruz Island bird's-foot trefoil)	SE (Aug 1981)	
<i>Lotus dendroideus</i> var. <i>traskiae</i> San Clemente Island broom (=lotus)	SE (Apr 1982)	FE (Aug 1977)
<i>Lupinus citrinus</i> var. <i>deflexus</i> Mariposa lupine	ST (Jan 1990)	
<i>Lupinus milo-bakeri</i> Milo Baker's lupine	SR-Nov 1978; ST-Jan 1987	
<i>Lupinus nipomensis</i> Nipomo Mesa lupine	SE (Jan 1987)	FPE (Mar 1998)
<i>Lupinus padre-crowleyi</i> Father Crowley's lupine	SR (Aug 1981)	
<i>Lupinus tidestromii</i> Tidestrom's lupine	SE (Jan 1987)	FE (Jun 1992)
<i>Machaeranthera asteroides</i> var. <i>lagunensis</i> Laguna Mountains (=Mount Laguna) aster	SR (Sep 1979)	

[Federal Register: August 12, 1998 (Volume 63, Number 155)]

[Proposed Rules]

[Page 43129-43135]

From the Federal Register Online via GPO Access [wais.access.gpo.gov]

[DOCID:fr12au98-24]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AD09

Endangered and Threatened Wildlife and Plants; Withdrawal of  
Proposed Rule to List the **Black Legless Lizard** as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; withdrawal.

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SUMMARY: The U.S. Fish and Wildlife Service (Service) withdraws the proposed rule, published in the Federal Register on August 2, 1995 (60 FR 39326), to list the **black legless lizard** (*Anniella pulchra nigra*) as an endangered species under the Endangered Species Act of 1973, as amended (Act). The **black legless lizard** is now known to occur in a much wider variety of habitat than previously thought, and the threats to its survival have decreased since the proposed rule was published. The Installation-Wide Multispecies Habitat Management Plan (HMP) for Former Fort Ord, now provides preservation and habitat management on 546 hectares (ha) (1,366 acres (ac)) of coastal and interior dune sheets occupied by the **black legless lizard**. Elsewhere, a large proportion of the remaining habitat of the **black legless lizard** is already protected from urbanization and commercial development on public lands, and widespread losses of habitat are unlikely to continue in the foreseeable future. Recent and ongoing restoration efforts on dunes colonized by alien vegetation are likely to benefit the **black legless lizard**. Furthermore, extensive new invasion of existing **black legless lizard** habitat by alien plants is unlikely to occur. Based on this information the Service concludes that listing of the **black legless lizard** is not warranted.

ADDRESSES: The complete file for this action is available for inspection, by appointment, during normal business hours at the Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura California 93003.

FOR FURTHER INFORMATION CONTACT: Mr. Carl T. Benz, Assistant Field Supervisor, Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, at the above address (805/644-1766).

SUPPLEMENTARY INFORMATION:

Background

On August 2, 1995, the Service published a proposal to list five plant species and the **black legless lizard** from Monterey County, California as endangered or threatened in the Federal Register (60 FR

## CALIFORNIA COASTAL COMMISSION

CENTRAL COAST AREA OFFICE  
ENFORCEMENT DIVISION  
5 FRONT STREET, SUITE 300  
MARTINEZ, CA 94560



CERTIFIED MAIL (RECEIPT P 563 517 226)

November 17, 1997

Stephen Page  
5852 Glendora Avenue  
Dallas, TX 75230-5050

Property Location: 1450 Sunset Drive, Asilomar Dunes area, City of Pacific Grove,  
Monterey County (APN 007-021-05)

Subject Activity: Grading of dunes inconsistent with approved conditions of  
approval of coastal development permit 3-96-102 (PAGE)

Violation File: V-3-97-020

Dear Mr. Page,

Staff of the California Coastal Commission have received reports of the above referenced activity conducted on your coastal zone property. This grading undertaken on your property over the past weekend (November 15 and 16, 1997) is inconsistent with the approved conditions of approved coastal development permit 3-96-102. You are hereby notified to **stop immediately all work** on the property that is inconsistent with previously issued coastal development permit 3-96-102.

The Coastal Commission issued coastal development permit 3-96-102 to you on February 4, 1997 for the construction of a single-family dwelling, driveway, storm drain system, paved terrace and courtyards, retaining walls, berming and grading of dunes. However, the placement of grading materials on the adjacent parcel (which includes environmentally sensitive habitat) is inconsistent with the conditions of approval of your permit. Also, we have no confirmation that the required black legless lizard reconnaissance and relocation effort was carried out by a qualified coastal biologist immediately prior to grading as required by your permit.

Special Condition 29 of your permit states, in part:

*Further, construction activities and staging areas shall not take place on lands or sensitive habitats adjacent to the project parcel. No dirt or sand shall be removed from sensitive habitats during construction or grading. The area upon which all construction shall take place shall be fenced and all construction equipment and vehicle storage will be confined within the fenced area. No travel or other use of the surrounding area will be permitted.*

Special Condition 37 of your permit states, in part:

*The presence of California black legless lizard shall be determined by trapping, combing, or other means deemed appropriate by the coastal biologist within all areas to be disturbed by construction activity immediately prior to grading operations. The determination of the presence of black legless lizard shall be made by a qualified coastal biologist. All individuals of the reptile found during the reconnaissance shall be relocated to suitable habitat.*

Standard Condition 3 of your permit states:

*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.*

We are in the process of reviewing the other conditions of the permit as well; we will advise if other discrepancies are noted. In the meanwhile, please be advised that non-compliance with the terms and conditions of an approved permit constitutes a violation of the Coastal Act.

**If the development activity that is inconsistent with the approved permit action is not immediately stopped, you may be served a cease and desist order or sued in court.**

Coastal Act Section 30809 states that if the Executive Director determines that any person has undertaken, or is threatening to undertake, any activity that may be inconsistent with any permit previously issued by the Commission, the Executive Director may issue an order directing that person to cease and desist. Coastal Act Section 30810 states that the Coastal Commission may also issue a cease and desist order. A cease and desist order may be subject to terms and conditions that are necessary to avoid irreparable injury to the area or to ensure compliance with the Coastal Act. A violation of a cease and desist order can result in civil fines of up to \$6,000 for each day in which the violation persists.

Sections 30803 and 30805 of the Coastal Act authorize the Commission to initiate litigation to seek injunctive relief and an award of civil fines in response to any violation of the Coastal Act. Section 30820(a) of the Coastal Act provides that any person who violates any provision of the Coastal Act may be subject to a penalty amount not to exceed \$30,000. Coastal Act Section 30820(b) states that, in addition to any other penalties, any person who "intentionally and knowingly" performs any development in violation of the Coastal Act can be subject to a civil penalty of not less than \$1,000 nor more than \$15,000 for each day in which the violation persists.

Please contact me, or Dan Carl in the Central Coast Office Enforcement Division, immediately at (408) 427-4863 to discuss resolution of the matter.

Sincerely,



Lee Otter  
District Chief Planner  
Central Coast Area Office

cc: 1450 Sunset Drive job site (hand delivered)  
Mary-Margaret O'Connell, Attorney for Stephen Page (by fax and mail)  
Jon Biggs, City of Pacific Grove  
Diane Landry, Legal Counsel, California Coastal Commission Central Coast Area Office  
Nancy Cave, Manager, California Coastal Commission Enforcement Program

P 563 517 226

US Postal Service  
**Receipt for Certified Mail**

No Insurance Coverage Provided.

Do not use for International Mail (See reverse)

Sent to		STEPHEN PAGE	
Street & Number		5852 GLENDORA AVENUE	
Post Office, State, & ZIP Code		DALLAS, TEXAS 75230-5050	
Postage	\$	.32	
Certified Fee		1.35	
Special Delivery Fee			
Restricted Delivery Fee			
Return Receipt Showing to Whom & Date Delivered			
Return Receipt Showing to Whom, Date, & Addressee's Address		1.10	
TOTAL Postage & Fees	\$	2.77	
Postmark or Date			

PS Form 3800, April 1995

1. our RETURN ADDRESS completed on the reverse side?

**SENDER:**

- Complete items 1 and/or 2 for additional services.
- Complete items 3, 4a, and 4b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "Return Receipt Requested" on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for an extra fee):

- ☐ Addressee's Address
- ☐ Restricted Delivery

Consult postmaster for fee.

**3. Article Addressed to:**

STEPHEN PAGE  
5852 GLENDORA AVENUE  
DALLAS, TX 75230-5050

**4a. Article Number**

P 563 517 226

**4b. Service Type**

- |   |   |
|---|---|
| <input type="checkbox"/> Registered                     | <input checked="" type="checkbox"/> Certified |
| <input type="checkbox"/> Express Mail                   | <input type="checkbox"/> Insured              |
| <input type="checkbox"/> Return Receipt for Merchandise | <input type="checkbox"/> COD                  |

**7. Date of Delivery**

11/21/97

**5. Received By: (Print Name)**

**6. Signature (Addressee or Agent)**

*[Signature]*

**8. Addressee's Address (Only if requested and fee is paid)**

Thank you for using Return Receipt Service.

PS Form 3811, December 1994

Domestic Return Receipt



LOOKING WEST FROM SUNSET DRIVE

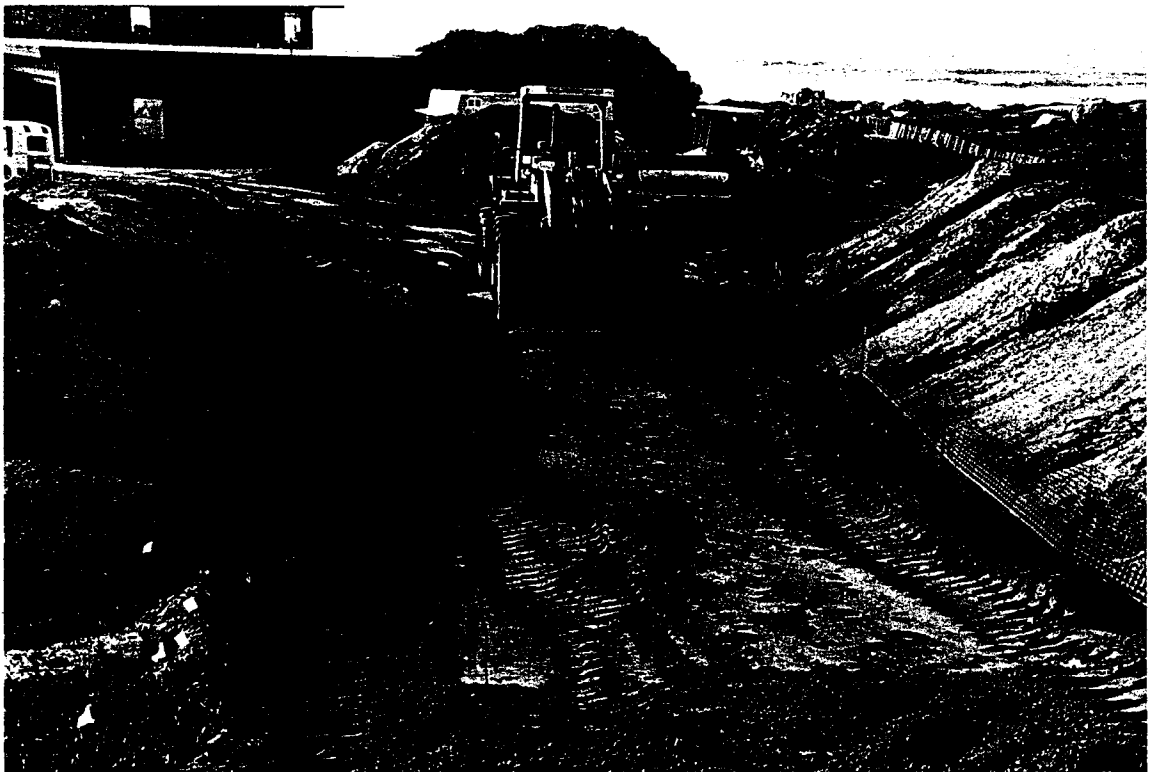


LOOKING WEST FROM U.S. COAST GUARD PROPERTY





LOOKING WEST FROM SUNSET DRIVE ALONG PAGE'S PROPERTY



LOOKING WEST FROM SUNSET DRIVE ALONG DRIVEWAY



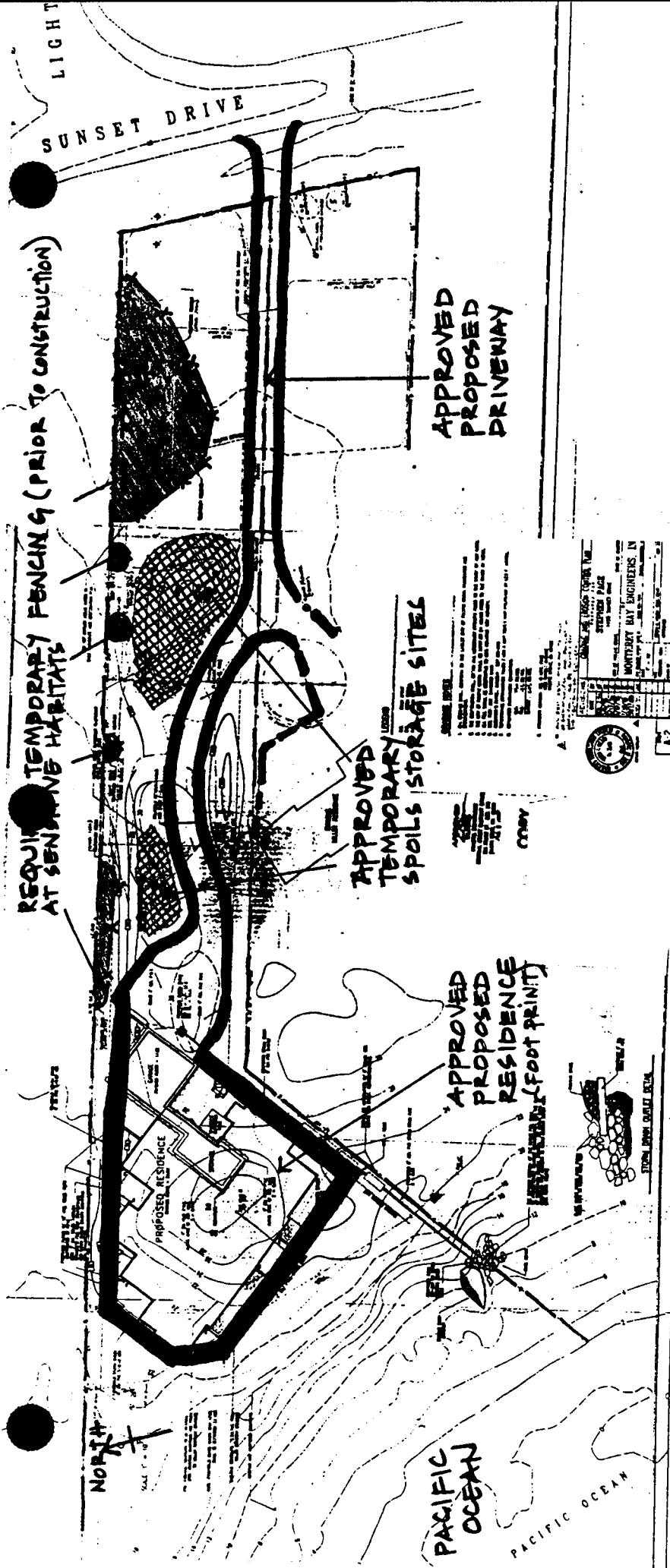
LOOKING SOUTH ONTO MILLER'S PROPERTY FROM SUNSET DRIVE



LOOKING SOUTHWEST AND WEST FROM SUNSET DRIVE







LOCATION OF APPROVED (PER CDP 3-96-102)  
FOOTPRINT, DRIVEWAY AND TEMPORARY  
SPOILS STORAGE SITES; REQUIRED  
TEMPORARY FENCING

SOURCE: CDP 3-96-102  
BASE MAP, EXHIBITS,  
Pgs 4-25

PERFORMED  
NOVEMBER  
15-17, 1997

SUNSET  
4,500 sq ft

UNAPPROVED AREAS OF GRADING & EXCAVATION  
100 sq ft

1938 sq ft

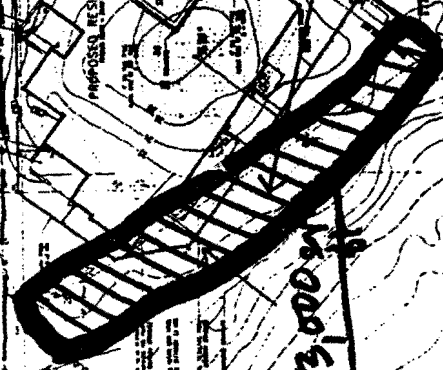
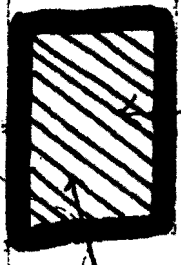
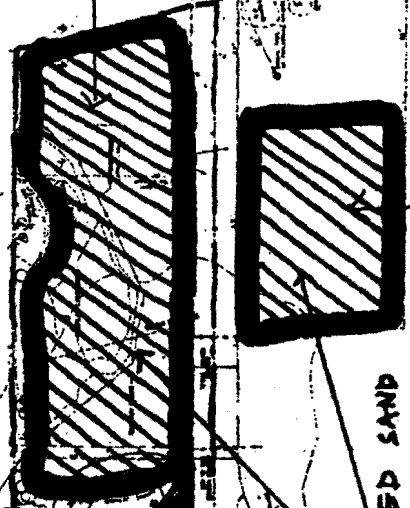
615 sq ft

2,296 sq ft

UNAPPROVED AREAS OF STOCKPILED SAND  
& SPOILS STORAGE SITES  
NOVEMBER 15-17, 1997  
(PERFORMED)



COPY



PACIFIC OCEAN

PACIFIC OCEAN

LOCATION OF GRADED AREAS AND  
AREAS OF STOCKPILED SAND  
AS OF NOV. 17, 1997

\* ALL CALCULATIONS  
ARE APPROXIMATE.

SOURCE:

- BASE MAP, EXHIBIT 5, Pgs 425
- OBSERVATIONS OF LEE OTTER
- RAVI SUBRAMANIAN, DEBORAH HULLYARD,

**CALIFORNIA COASTAL COMMISSION**CENTRAL COAST AREA OFFICE  
ENFORCEMENT DIVISION

725 FRONT STREET, SUITE 300

SANTA CRUZ, CA 95060

427-4863



BY FAX AND CERTIFIED MAIL (RECEIPT P 563 521 044)

November 20, 1997

Mary-Margaret O'Connell, Esq.  
Attorney for Stephen Page  
550 Hartnell Street, Suite J  
Monterey, CA 93940

Property Location: **1450 Sunset Drive, Asilomar Dunes area, City of Pacific Grove,  
Monterey County (APN 007-021-05)**

Subject Activity: **Grading of dunes inconsistent with approved conditions of  
coastal development permit 3-96-102 (PAGE)**

Violation File: **V-3-97-020**

Dear Ms. O'Connell,

We are in receipt of your faxed letter dated November 17, 1997. Your assertion that the "current activity on the property is not inconsistent with the approved conditions of the approved coastal development permit" is incorrect. Coastal Commission staff visited the above-referenced site on November 17, 1997 and confirmed that the recent grading undertaken on your client, Stephen Page's property is inconsistent with the requirements of the approved coastal development permit 3-96-102. If Mr. Page has not done so already, he is hereby notified to **stop immediately all work** on the property that is inconsistent with previously issued coastal development permit 3-96-102.

On November 17, 1997, Coastal Commission staff observed that grading materials had been placed on the adjacent parcel as well as on portions of the Page parcel which contain mapped environmentally sensitive habitat. These actions are inconsistent with the requirements of special condition 29 which states, in part:

*Further, construction activities and staging areas shall not take place on lands or sensitive habitats adjacent to the project parcel. No dirt or sand shall be removed from sensitive habitats during construction or grading. The area upon which all construction shall take place shall be fenced and all construction equipment and vehicle storage will be confined within the fenced area. No travel or other use of the surrounding area will be permitted.*

Furthermore, the standard conditions of the permit require compliance with the approved project plans. These plans, which Mr. Page submitted on January 21, 1997 (and which were approved on February 4, 1997), include the approved grading and erosion control plan. The "Erosion Control Notes" on the submitted, approved grading and erosion control plan state, in part:

2. All work shall comply with all recommendations contained in the basic landscape and restoration plan by Bruce Cowan, Environmental Landscape Consultant dated September 27, 1993

- 3. Disturbance of surface vegetation during construction shall be kept to a minimum and shall comply with landscape and restoration plan by Bruce Cowan.*

However, nearly all of the surface vegetation on the site was observed to be disturbed by grading activity as of November 17, 1997. In particular, a large mound of sand has been placed in the area shown on the grading plan as "Tidestruns [sic] lupine" and "Monterey spine flower" habitat. Certainly, by using an arm excavator and end-hauling of spoils, the allowed house site excavations could have been carried out with no disturbance of this sensitive area; accordingly, we must conclude that disturbance has not been "kept to a minimum" as stated on the approved plan. Likewise, this grading activity is inconsistent with the Cowan restoration plan, which in the Addendum of April 6, 1994, recommends that the "open sandy area where Monterey spineflower occurs should be left undisturbed..." Also, despite your assertions, we have no evidence of compliance with his recommendation that a "herpetologist should be consulted" regarding impacts to black legless lizards.

Another mitigation measure listed in the "Erosion Control Notes" on the approved grading and erosion control plan requires the protection of sensitive areas through the use of fencing erected prior to grading or construction:

- 10. Prior to commencement of grading or construction temporary exclusionary fences to protect sensitive areas from disturbance shall be in place. Exact fence locations shall be identified by the project's environmental consultant. Evidence of inspection of the installed fence by the environmental consultant shall be submitted to the Executive Director prior to commencement of construction. Fences shall be four feet high and secured by metal T-posts, spaced eight to ten feet apart.*

The required protective fencing was not evident during Coastal Commission staff's November 17, 1997 site visit. In addition, evidence of inspection of any fencing by the environmental consultant was not submitted to the Coastal Commission's Central Coast Area office prior to the commencement of construction as required by the approved grading and erosion control plan for coastal development permit number 3-96-102. Additionally, the "Erosion Control Notes" on the approved grading and erosion control plan of coastal development permit 3-96-102 state that all work is to be in conformance with the permit requirements of previously approved coastal development permit 3-94-32. Note 11 of the approved grading and erosion control plan states:

- 11. All work shall conform to coastal permit requirements contained in application No. 3-94-32 filed 9/30/94 with special attention to special conditions No. 11, archaeologic monitoring and No. 12, environmental monitoring.*

Condition 11 of previously approved coastal development permit 3-94-32 requires review and approval by the Executive Director of a monitoring program for archaeological resources prior to the commencement of grading or construction. We have no indication that this was done. Condition 11 of 3-94-32 also requires Executive Director review and approval of a mitigation plan should archaeological resources be encountered during construction. Condition 12 of 3-94-32 requires the weekly monitoring of the site during construction to assure compliance with the City of Pacific Grove's adopted mitigation measures. Again, we have no indication that such measures are being taken. Attached is a complete copy of the "Erosion Control Notes" from the



approved grading and erosion control plan of Mr. Page's approved coastal development permit 3-96-102.

**Please be advised that non-compliance with the terms and conditions of an approved permit constitutes a violation of the Coastal Act. We consider the recent work that took place on your client's property to be in knowing and intentional violation of the Coastal Act.**

In our first letter to Mr. Page, dated November 17, 1997, we requested that he immediately stop all work on the property that is inconsistent with previously issued coastal development permit 3-96-102. This letter was hand-delivered to Mr. Page by Coastal Commission staff employee Lee Otter on November 17, 1997 at the 1450 Sunset Drive job site. Furthermore, the letter that we received from you via fax, dated November 17, 1997, acknowledges the receipt of our first letter via fax. Any additional work undertaken inconsistent with coastal development permit 3-96-102 will also be considered a knowing and intentional violation of the Coastal Act.

**As stated in our first letter, if the development activity that is inconsistent with the approved permit action is not immediately stopped, your client may be served a cease and desist order or sued in court.**

Please note that, as stated in our first letter, Coastal Act Section 30809 states that if the Executive Director determines that any person has undertaken, or is threatening to undertake, any activity that may be inconsistent with any permit previously issued by the Commission, the Executive Director may issue a temporary order directing that person to cease and desist. Coastal Act Section 30810 states that the Coastal Commission may also issue a permanent cease and desist order. A cease and desist order may be subject to terms and conditions that are necessary to avoid irreparable injury to the area or to ensure compliance with the Coastal Act. A violation of a cease and desist order can result in civil fines of up to \$6,000 for each day in which the violation persists.

In addition, please note that, as stated in our first letter, Sections 30803 and 30805 of the Coastal Act authorize the Commission to initiate litigation to seek injunctive relief and an award of civil fines in response to any violation of the Coastal Act. Section 30820(a) of the Coastal Act provides that any person who violates any provision of the Coastal Act may be subject to a penalty amount not to exceed \$30,000. Coastal Act Section 30820(b) states that, in addition to any other penalties, any person who "intentionally and knowingly" performs any development in violation of the Coastal Act can be subject to a civil penalty of not less than \$1,000 nor more than \$15,000 for each day in which the violation persists.

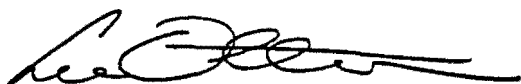
We have been in contact with the City of Pacific Grove and understand that the City has red-tagged your client's building site to stop grading operations. We appreciate the City's assistance in this matter and we intend to coordinate our future actions with City efforts. We understand that the City will not lift the red-tag order until a remediation plan is prepared by a qualified coastal biologist and is implemented or a firm commitment to implement is obtained.

We are in the process of preparing this case for referral to our Statewide Enforcement Unit in San Francisco for further enforcement action. In our San Francisco office, resolution of the matter may require a settlement which includes restoration of the site and possible monetary settlement in light of the resource impacts caused by your client's knowing and intentional

actions. We will consult with the California Department of Fish and Game and the U.S. Fish and Wildlife Service in order to obtain their expert advice prior to approving any remediation plans. We believe that this is an appropriate course of action at this time and we further believe that additional work should not proceed at your client's job site until such time as an approved remediation plan has been implemented. Please note that our approval of any remediation plan is independent of the City of Pacific Grove's approval. If satisfactory resolution proves impossible through our Statewide Enforcement Unit, our San Francisco staff will prepare this file for referral to the Attorney General's Office for legal action.

Any further questions regarding this matter should be directed to Nancy Cave in our Statewide Enforcement Unit in San Francisco at (415) 904-5290, or write to them at 45 Fremont Street, Suite 2000, San Francisco, CA 94105-2219. You may continue to contact me at the Central Coast Area office for local assistance regarding matters not concerning this enforcement action.

Sincerely,



Lee Otter  
District Chief Planner  
Central Coast Area Office

Attachment: Annotated portions of approved Grading and Erosion Control Plan for approved coastal development permit 3-96-102 (2 pages)

cc: Stephen Page

George Thacher, City Attorney, City of Pacific Grove  
Anthony Lobay, Director, City of Pacific Grove Community Development Department  
Jon Biggs, City of Pacific Grove Community Development Department  
Diane Landry, Legal Counsel, California Coastal Commission Central Coast Area Office  
Nancy Cave, Manager, California Coastal Commission Enforcement Program  
Marjorie Cox, Deputy Attorney General, Attorney General's Office

# EROSION CONTROL MEASURES

1. ALL DISTURBED SURFACES MUST BE PROTECTED FROM EROSION BETWEEN OCTOBER 15 AND APRIL 15. EROSION CONTROL MEASURES MUST BE IN PLACE AND CONTINUOUSLY MAINTAINED.
- 2. ALL WORK SHALL COMPLY WITH ALL RECOMMENDATIONS CONTAINED IN THE BASIC LANDSCAPE AND RESTORATION PLAN BY BRUCE COWAN, ENVIRONMENTAL LANDSCAPE CONSULTANT DATED SEPTEMBER 27, 1993
- 3. DISTURBANCE OF SURFACE VEGETATION DURING CONSTRUCTION SHALL BE KEPT TO A MINIMUM AND SHALL COMPLY WITH LANDSCAPE AND RESTORATION PLAN BY BRUCE COWAN.
4. TOPSOIL REMOVED DURING CONSTRUCTION SHOULD BE STOCKPILED AND LATER SPREAD OVER THE DISTURBED AREA.
5. RAIN RUNOFF FROM THE SITE SHALL BE RETAINED OR FILTERED BY VEGETATED FILTER STRIPS, STRAW BALES, AND/OR CATCH BASINS TO PREVENT THE ESCAPE OF SEDIMENT FROM THE SITE.
6. TEMPORARY CUT-OFF BERMS OR DITCHES MAY BE CONSTRUCTED TO DIRECT RUNOFF TO SILTATION BASINS PRIOR TO OUTLETTING INTO NATURAL CHANNELS OR ONTO ROADS.
7. ALL EROSION CONTROL MEASURES MUST BE IN PLACE AT THE END OF EACH DAY.
8. SITE INFORMATION TAKEN FROM PLAN PREPARED JOHN MATTHEWS, ARCHITECTS. EXISTING GRADES AT BUILDING SITE WERE FIELD CHECKED ON FEB 24, 1995
9. DRIVEWAY SHALL BE 12' WIDE PER PACIFIC GROVE FIRE DEPARTMENT RECOMMENDATIONS.
- 10. PRIOR TO COMMENCEMENT OF GRADING OR CONSTRUCTION TEMPORARY EXCLUSIONARY FENCES TO PROTECT SENSITIVE AREAS FROM DISTURBANCE SHALL BE IN PLACE. EXACT FENCE LOCATIONS SHALL BE IDENTIFIED BY THE PROJECT'S ENVIRONMENTAL CONSULTANT. EVIDENCE OF INSPECTION OF THE INSTALLED FENCE BY THE ENVIRONMENTAL CONSULTANT SHALL BE SUBMITTED TO THE EXECUTIVE DIRECTOR PRIOR TO COMMENCEMENT OF CONSTRUCTION. FENCES SHALL BE FOUR FEET HIGH AND SECURED BY METAL T-POSTS, SPACED EIGHT TO TEN FEET APART.
- 11. ALL WORK SHALL CONFORM TO COASTAL PERMIT REQUIREMENTS CONTAINED IN APPLICATION No. 3-94-32 FILED 9/30/94 WITH SPECIAL ATTENTION TO SPECIAL CONDITIONS No. II, ARCHAEOLOGIC MONITORING AND No.12, ENVIRONMENTAL MONITORING.
12. DISPOSAL SITE FOR EXCESS EXCAVATED INDIGENOUS SAND SUITABLE FOR DUNE RESTORATION SHALL BE THE ASILOMAR DUNES AREA ONLY (INCLUSIVE OF THE LIGHTHOUSE RESERVATION THROUGH SPANISH BAY AND FAN SHELL BEACH).

APPROVED

CALIFORNIA

COASTAL COMMISSION  
HAL COAST DISTRICT OFFICE  
25 FRONT ST., STE. 300  
SANTA CRUZ, CA 95060  
Feb. 4, 1997

COPY



EXPIRES 12/31/07

SHEET

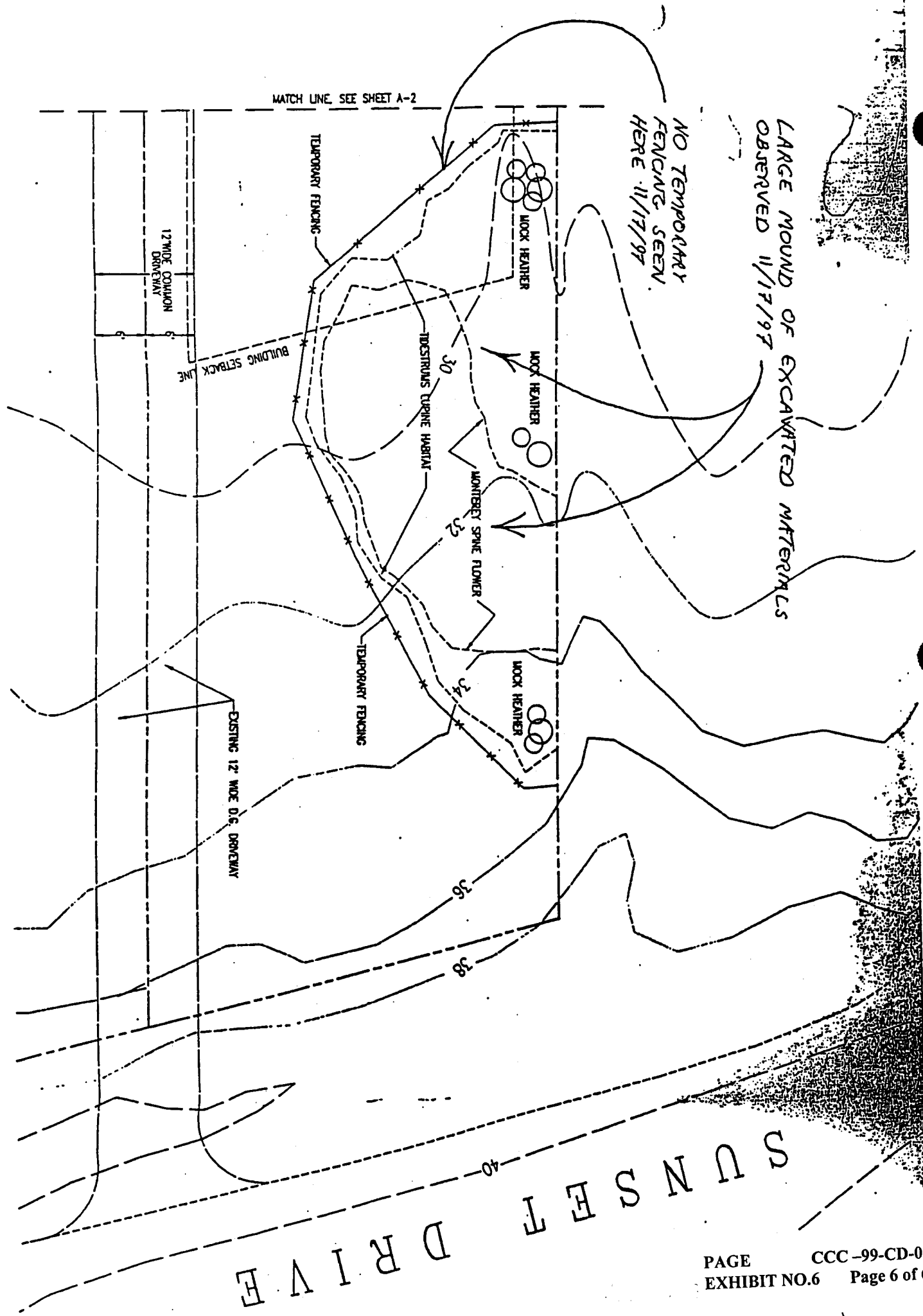
A-2.1

REVISIONS		GRADING AND EROSION CONTROL PLAN	
DATE	BY	PREPARED FOR	
5/22/95	BT	STEPHEN PAGE	
10/17/95	JT	1450 SUNSET DRIVE	
		CITY OF PACIFIC GROVE	STATE OF CALIFORNIA
		BY	
		MONTEREY BAY ENGINEERS, INC.	
		607 CHARLES AVENUE SUITE B	(408) 899-7899 SEASIDE, CALIFORNIA 9
		SCALE	
		1" = 10'	
		DATE	
		MAY, 19	
		DRAWN BY	
		JT/BT	
JOB No. 94008		STEVEN C. WILSON R.C.E. 25136 EXP. DAT	
		APPROVED	

LARGE MOUND OF EXCAVATED MATERIALS  
OBSERVED 11/17/97

NO TEMPORARY  
FENCING SEEN  
HERE 11/17/97

MATCH LINE, SEE SHEET A-2



FROM

12-02-97 09:16AM TO SF CCC

914159845400

\*256 P.1/2

for  
STEPHEN PAGE

VIOLATION OF COASTAL DEVELOPMENT PERMIT  
NO. 3-96-102 (Page)  
and  
CITY OF PACIFIC GROVE BUILDING PERMIT  
NO. 97-0297

PREPARED  
FOR  
CITY OF PACIFIC GROVE  
November 24, 1997

PREPARED  
BY  
PAUL KEPHART  
RESTORATION ECOLOGIST

Rana Creek Habitat Restoration 35351 East Carmel Valley Road Carmel Valley CA 93924  
(408) 859-3820

Post-Net Fax Note	7671	Date	12/1	# of Pages	9
From	Dee Otter				
To	CCC				
Phone #	648-3106				
Fax #	648-3106				

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## I. INTRODUCTION AND BACKGROUND

On November 15, 16, and 17 1997, grading was conducted on the Stephen Page property in violation of approved conditions set forth in coastal development permit 3-96-102 (Page) and unauthorized grading not in accordance with City of Pacific Grove building permit no. 97-0297. Grading materials have been placed on adjacent parcels as well as on the Page parcel which contain mapped sensitive habitat. The purpose of this plan is to identify impacts of unauthorized grading and provide the procedures to mitigate for impacts to sensitive habitat as a result of grading and stockpiling sand.

Historic biological assessments conducted in the vicinity of the property identified areas where nine Tidestrom's lupines (*Lupinus tidestromii*) were located in April of 1994 (Cowan). Historical analyses and findings in the September 1993 Landscape and Restoration Plan, and the April and May, 1994 addendum concerning possibility of certain endangered species and potential impacts of the driveway were consistent with these findings (Cowan 1997). Sensitive habitat areas were identified on the Grading and Erosion Control Plan Sheets (Monterey Bay Engineers Inc. 1995). Habitat that potentially contain Tidestrom's lupine, and Monterey spine flower (*Corisanthe pungens*) are clearly demarcated on the Grading and Erosion Control Plan Sheets.

In a recent biological assessment conducted September of 1997 by Cowan found no endangered plants on the project site. Regardless of the recent findings, historic occurrences of lupine and spine flower were located and identified. The impacts to the sensitive habitat fall under the jurisdiction of the California Department of Fish and Game and are subject to regulations governed by the Rare and Endangered Species Act.

The Botanical Survey, Landscape Restoration, Monitoring, Mitigation, and Maintenance Plan addendum dated August 3, 1995, mitigation measure # 3., states "The presence of California Legless Lizard shall be determined by trapping, combing, or other means deemed appropriate by the coastal biologist within all areas to be disturbed by construction activity immediately prior to grading operations." No survey has been conducted by a qualified herpetologist during grading to determine the presence or absence of Legless lizards. No survey was conducted by a qualified herpetologist to determine suitability of existing habitat. Legless lizards potentially occur over the entire project site.

A Landscape and Restoration Plan was submitted and approved by Cowan in September 1993. The plan provides specific information regarding a pre-construction meeting to be attended by the general contractor to ensure protection measures were understood. The meeting was held on August 27, 1997. In attendance was Mary-Margaret O'Connell, Bruce Cowan, and owner representatives. The owner, Stephen Page was not in attendance. Stephen Page conducted the grading and stockpiling of sand. The Landscape and Restoration Plan requires the supervision by a qualified biologist during grading activities. A monitoring report to be submitted to the City of Pacific Grove (Coastal Commission) is required to assure compliance with approved plans and protection guidelines. No report was submitted.

Upon submittal and acceptance of this mitigation plan, with a firm commitment to execute said plan, the owner will be allowed to proceed with construction activities. Compliance with the actions and standards specified in this plan shall be supervised by a qualified biologist and compliance reports submitted to all regulatory agencies.

1. Property owner  
Stephen Page
2. Property location  
1450 Sunset Drive  
Asilomar Dunes Area  
City of Pacific Grove  
Monterey County California
3. Coastal development permit 3-96-102  
Violation file V-3-97-020
4. City of Pacific Grove  
Building Permit 97-0297

## II. REGULATORY JURISDICTION

City of Pacific Grove  
Tony Lobay  
Community Development Director  
300 Sixteenth Street  
Pacific Grove, CA 93950

California Coastal Commission  
Central Coast Area Office  
Enforcement Division  
726 Front Street  
Santa Cruz, CA. 93960

California Department of Fish and Game  
Debra Hillyard  
Plant Ecologist  
P.O. Box 4003  
Aromas, CA 95004

- U. S. California Department of Fish and Wildlife  
Ventura Field Office  
Portola Road #8  
Ventura CA 93003

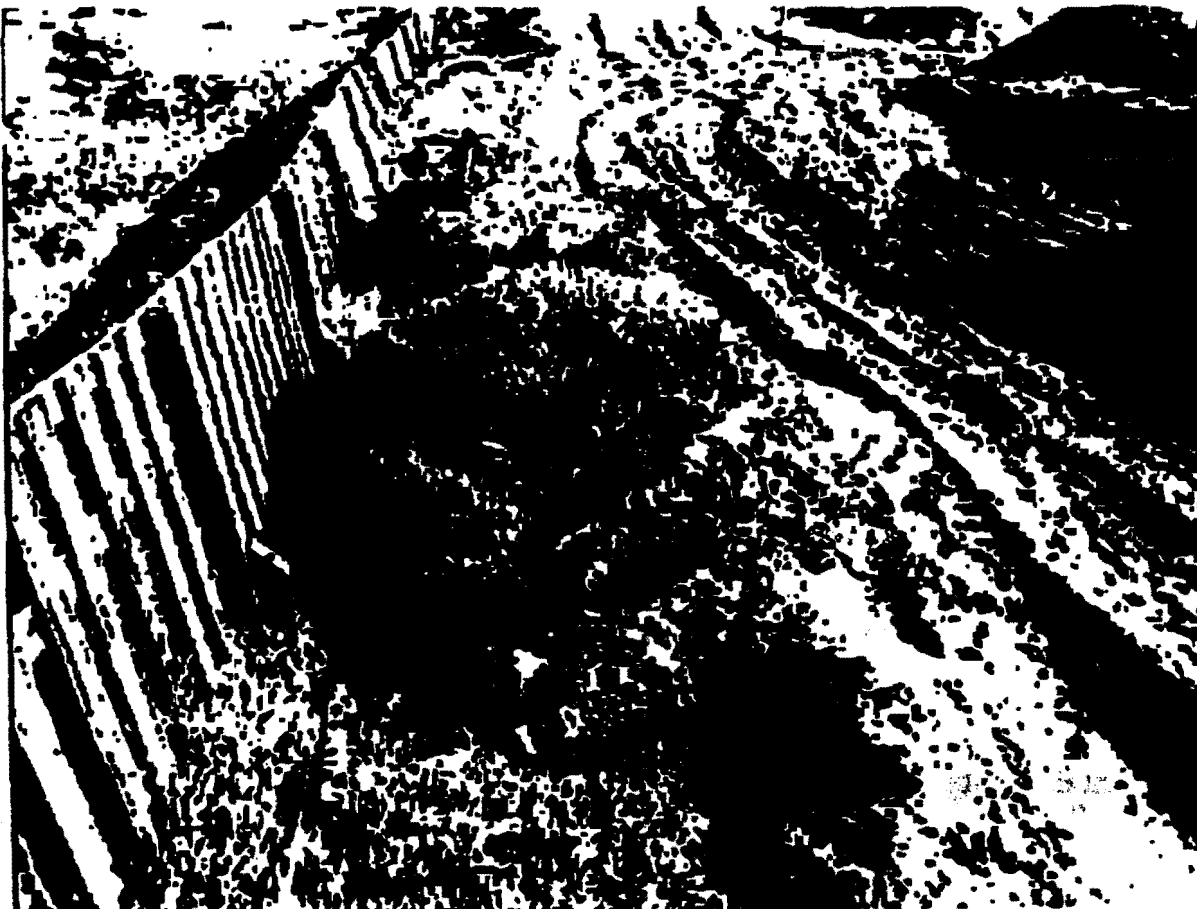


### III. ASSESSMENT OF IMPACTS

1. **Site analyses:** On November 23rd, 1997, a site analyses was conducted to determine the extent and severity of impacts to sensitive habitat areas. The method used was to thoroughly walk over the entire site and record images of the project site with a digital camera.

### IV. FINDINGS

1. **Fencing:** During the site visit it was found that exclusionary fencing, identification, and protection of sensitive habitat areas was inadequate. Fencing was not correctly installed to adequately demarcate habitat and grading zones. No identifying signs were present to demarcate sensitive habitat areas as shown on the Grading and Erosion Control Plan (1995). No grade stakes were present to adequately define areas, boundaries, and elevations of grading.



No exclusionary fencing, grading impacting mapped habitat areas.

2. **Habitat impacts:** The owner is in violation of Coastal Development Permit 3-96-102 (Page), special condition 29. Sand was placed in sensitive habitat areas where depicted on the approved Grading and Erosion Control Plan (1995). Excavated sand was placed on habitat areas throughout the project site. Considerable volumes of sand impact areas on the ocean side of the project site. The sand completely covers native plants and shrubs. The areas contain native species such as salt grass (*Distichlis spicata*), sand sedge (*Carx pansa*), coyote bush (*Baccharis pilularis* var. *pilularis*), and mock heather (*Haplopappus cricoides*). None of the aforementioned species are listed as State and/or Federally listed species.

3. **Stockpiling sand:** Stockpiling of sand and grading encroached onto sensitive habitat areas throughout the project site. The sensitive habitat depicted on the Erosion Control and Grading Plan historically contained Tidestrom's lupine and Monterey spine flower. Lupine and spine flower both germinate indeterminately, often lying dormant in the soils for many years. While shallow and infrequent levels of disturbance may benefit germination of these species, piling sands and grading below soil surface will cause irreparable injury.



Sand stockpiled on sensitive habitat areas



#### **Sand piled in future Dune Restoration Area**

The sand piled in areas of the Miller residence is consistent with the Landscape and Restoration Plan. The Grading and Erosion Control Plan provides for creation of dune habitat on the stockpiled sands. Sands piled on the ocean side of the house excavation and the north side of the driveway are not in compliance with protection measures stated in the plan.

3. Grading was mostly contained to designated grading areas, however, some grading activities encroached on the root zones of adjacent habitat, impacting several plants. No buffer between habitat areas and grading were identified. The grading footprint is considered to be within the guidelines stated in the Grading and Erosion Control Plan.

4. No determination of impacts to habitat regarding potentially occurring legless lizard have been made. No determination of presence or absence, or suitability of said habitat has been assessed by a qualified herpetologist. Grading occurred without required surveys.

## VI. MITIGATION MEASURES

The following mitigation measures are provided by which success criteria will be applied.

1. **Sand stockpiling:** All stockpiled sand must be removed from sensitive habitat areas upon approval to commence work, but must remain in the Asilomar Dunes area per approved mitigation measures. The stockpiled sand contains broken glass, remnants of iceplant, and debris. The sand is marginally suitable for dune restoration off-site. The sand may be scraped with a front end loader to a depth of six (6) inches above original grade. A back-hoe and/or excavator may be used to reach over excavated areas and existing habitat areas. Any remaining sand must be hand shoveled until reaching existing grade. Sands that have encroached on sensitive habitat areas shall be hand raked and hand shoveled away from sensitive habitat, buffer, fence, and transition areas. All sands shall be hauled off-site.
2. **Fencing and identification of habitat areas:** Once sand is removed, exclusionary fences shall be installed demarcating the extent and boundaries of all habitat areas. The four foot fencing shall be fastened to t-post stakes placed at eight foot intervals. At 12 foot intervals, signage shall be installed to the fence clearly designating boundaries of sensitive habitat areas. No grading shall occur within a 3 foot setback of sensitive habitat areas. Fencing shall be under the supervision of the consulting biologist.
3. **Restoration:** Restoration of the sensitive habitat areas shall commence after stockpiled soils are removed and the site returned to its original topography. Restoration shall follow the general guidelines as stated in the Landscape and Restoration Plan (Cowan).
4. **Legless lizard survey:** A qualified herpetologist will be required on site during all sand removal, grading, and site preparation work. The herpetologist will determine the presence or absence of legless lizards and assess the suitability of existing and impacted habitat areas. All areas where sand has been stockpiled shall be surveyed. A report shall be delivered to each regulatory agency describing the results of the survey and assessment.

## VII. SUCCESS CRITERIA

The objectives to be met are based upon returning the site to conditions existing prior to placement of sand. In addition, the sites must be restored and maintained as habitat for Tidestrom's lupine and Monterey spine flower.

1. Success will be determined when stockpiled sand is removed from sensitive habitat areas as shown on the Grading and Erosion Control Plan. Stockpiled sand shall be removed within ten (10) working days after permission to proceed is granted.
2. Success will be determined when all sensitive habitat areas are adequately fenced and signs installed demarcating sensitive habitat areas.

3. Success shall be determined when documentation of restoration activities are submitted demonstrating progress in collection, propagation, and installation of native plants as specified in the Landscape and Restoration Plan.

4. Success shall be determined when a qualified herpetologist provides habitat assessment and supervision of all sand removal, future grading, and excavation on the entire project site.

### VIII. PERFORMANCE STANDARDS

Prior to proceeding on any construction activities, the owner is required to comply with all mitigation procedures in this plan. Mitigation standards will focus on achieving complete and successful implementation of each success criteria within thirty (30) days of approval to proceed. Failure to achieve complete success in all criteria will result in a cease and desist order and monetary settlement. If success criteria are not met within thirty days, the implementation of each mitigation measure shall be born at the owners expense and carried out by a contractor selected and under direction of The City of Pacific Grove.

### IX. TIMELINE

Mitigation for impacts to the site shall begin immediately upon approval of this mitigation plan. Significant progress must be documented within fourteen (14) days of approval to proceed. Monitoring and reporting shall take place until all performance criteria are met.

### X. MONITORING AND REPORTING

Reports will be submitted to The City of Pacific Grove, The California Department of Fish and Game, The ~~California Department of Fish and Wildlife~~, and The California Coastal Commission. The reports shall be submitted on a monthly basis and shall occur until the project success criteria have been met. Reports shall contain photo-documentation, observational and analytical data, and notes pertaining to the compliance with mitigation objectives.

# Memorandum

To : Mr. Lee Otter  
California Coastal Commission  
725 Front Street, Suite 300  
Santa Cruz, California 95060

Date: January 23, 1998

**RECEIVED**

JAN 28 1998

From : Department of Fish and Game

CALIFORNIA  
COASTAL COMMISSION  
CENTRAL COAST AREA

Subject: Violation of Coastal Development Permit #3-96-102  
1450 Sunset Drive, Pacific Grove, Monterey County

Department of Fish and Game personnel have reviewed documents pertaining to the November, 1997 grading activities at the Stephen Page residence, 1450 Sunset Drive, Pacific Grove, in violation of his city building permit and coastal development permit. Specifically, we reviewed a "Mitigation Plan" prepared by Mr. Paul Kephart (November 24, 1997); and "California Department of Fish and Game Mitigation Agreement" prepared by Mr. Bruce Cowan (February 22, 1995); botanical surveys performed by Mr. Cowan and others on the subject property; and other documents regarding the project contained in our files.

Our records indicate that present on the project site, at least as recently as July, 1992, were Tidestrom's lupine (*Lupinus tidestromii*), California and Federally endangered; Menzies' wallflower (*Erysimum menziesii*), California and Federally endangered; and Monterey spine flower (*Chorizanthe pungens* var. *pungens*), Federally threatened. The presence of these species was called to the attention of the City and the applicant, at or prior to a July 16, 1992 City of Pacific Grove Planning Commission hearing; the presence of the three species had not been previously noted on the project site, despite many visits to the site by Mr. Cowan. On subsequent visits (March 22 and April 4, 1994), Mr. Cowan identified Tidestrom's lupine and Monterey spineflower on the property but was apparently still not able to detect the presence of the Menzies' wallflower.

We have previously informed the City, the Coastal Commission, and the applicant of our interest in the listed plants on the project site. We recommended all listed plants be avoided, which seemed feasible given the location of the plants and the proposed development; the driveway to the home be a shared drive with the Miller's residence to further reduce impacts to the lupine; the dune habitat outside of the building envelope be restored to a natural condition; and that the applicant enter into a Mitigation Agreement (now called a Memorandum of Understanding) regarding the State-listed plant species pursuant to Section 2081 of the California Endangered Species Act.

*Conserving California's Wildlife Since 1870*

Mr. Lee Otter  
January 23, 1998  
Page Two

Mr. Page submitted to this Department a draft Mitigation Agreement, dated February 14, 1995, which addressed the Menzies' wallflower, Tidestrom's lupine, and the black legless lizard. Mr. Page was subsequently informed of changes that needed to be made to his draft Mitigation Agreement (including the fact that no Mitigation Agreement was needed for the black legless lizard, as it is not State-listed). He also submitted a draft plan, prepared by Mr. Cowan, entitled "California Department of Fish and Game Mitigation Agreement", dated February 22, 1995. The latter document is actually not a Mitigation Agreement, which is a legal agreement; it is a draft plan, intended to identify measures to restore Menzies' wallflower and Tidestrom's lupine which would become an exhibit to the Mitigation Agreement (MOU). This plan was submitted by Mr. Page to Coastal Commission staff and Department staff on February 23, 1995.

Mr. Page and Mr. Cowan were informed that it did not appear that Mr. Cowan's plan included all the information required by our Department to process the Mitigation Agreement, and that using the format recommended in the Department's "Mitigation Plan Annotated Outline for Endangered Plants of California" (Howald and Wickenheiser, 1990) would facilitate our review of the document; both had previously been sent copies of this document. While Mr. Cowan's plan may have been approved by the City, it was never determined adequate by our Department.

This Department has heard nothing from Mr. Page, or Mr. Cowan on behalf of Mr. Page, from February, 1995 until after the November violation. We were asked the week of December 15, 1997, to review a plan prepared by Mr. Paul Kephart regarding the violations; the plan itself was not received until the week of December 22. Review of the materials, and a site visit by Ms. Deborah Hillyard, Plant Ecologist, on January 13, 1998, indicate that no listed plant species or habitat remain on the property after grading. It appears that Mr. Page may be in violation of the California Endangered Species Act (CESA).

We offer the following comments for your consideration:

1. We do not believe that the plan(s) submitted are sufficient. Mr. Kephart's plan identifies measures that should be implemented in order to lift the red tag on the property, including removal of sand over sensitive areas, fencing and signing of sensitive habitats, demonstration of progress in restoration activities, and clearance by a herpetologist for the black legless lizard. While we feel that these measures may be sufficient for lifting of the red tag, they are not sufficient for remediating damage which has occurred to the site.

2. Mr. Kephart's plan recommends restoration of the sensitive habitat areas according to the Landscape and Restoration Plan prepared by Mr. Cowan. This plan was not acceptable in 1995 to mitigate the impacts identified in the coastal permit application, and remains unacceptable, particularly in view of the substantial damage and losses that have resulted from the November grading. We recommend that Mr. Kephart expand the plan to address deficiencies.
3. Deficiencies in the plan include, but may not be limited to: location, methods, and materials of the restoration are not specific; specific information addressing the listed species must be included; a proposed work schedule is needed; specific success criteria, based on a high quality dune reference area, must be established, with intermediate criteria which act as thresholds to trigger specific remedial activities should they not be met; a monitoring program, with a schedule, must be specified which will identify if intermediate and final success criteria are being met.
4. We recommend that seed be collected from the immediate vicinity of the project, not from sources "from Pt. Pinos to Cypress Point" as recommended in the Cowan plan. Collection of plant materials for restoring the listed species on the site must be from the same biological population, or as nearby as is practicable. It is our understanding that the State Park property to the north contains all three listed species, and may provide suitable seed source should the California State Park Service allow collection.
5. The monitoring program, and any identified remedial activities, must continue until all success criteria have been met. In the case of endangered species, we request that success criteria be met for a minimum of three years following any initial or remedial restoration activities, including planting, watering, weeding, etc.
6. To provide the basis for entering into a Memorandum of Understanding between the Department and Mr. Page, pursuant to Section 2081 of CESA, all the information identified in the Department's annotated outline must be included, excepting items which do not apply to the specific project. We suggest that our format be utilized so that review is facilitated. We would be happy to send an additional copy to Mr. Kephart should he request it.



7. The issue of disposal of excess sand came up at the field meeting, and is not addressed in either Mr. Kephart's plan or Mr. Cowan's plan. This Department's recommendations include utilizing the highest quality sand on the project site for dune creation, as identified in Mr. Page's permit, and use of the lower quality sand for backfilling around the structures. We do not advocate disposing of any sand in a land fill. We do not recommend that sand be transported to Pebble Beach for other than short-term storage. We do not recommend that the sand be used for restoration of sensitive habitat at Spanish Bay or any other location which contains populations of listed species which are distinct from the population of which Mr. Page's property is a part. We recommend that any sand which cannot be utilized on Mr. Page's project be distributed not farther than the adjacent Asilomar State Beach and/or Coast Guard property to the north. We remain convinced that the sand contains a valuable seed bank which could be used for restoration of this project site.
8. We recommend that these impacts be mitigated through set-aside and management of other extant dune habitat which contains the target species, at a ratio of three acres set-aside for each acre disturbed, with all disturbed areas also scheduled for rehabilitation. This violation resulted in impacts which were not identified in the CEQA/Coastal documents which were reviewed by the public and other agencies. The impacts are significant, involving at least four species which meet the CEQA definition of rare and endangered (CCR Section 15380), and occurred in an area which the Local Coastal Plan identifies as Environmentally Sensitive Habitat Area. Had they been identified as part of the permitting process, mitigation which includes protection of extant habitat would have been necessary to insure that project impacts to sensitive resources were mitigated to a level of less-than-significant.

Thank you for the opportunity to comment on these documents. We look forward to reviewing a revised plan which will address our concerns. We request that the project applicant be required to enter into a Memorandum of Understanding regarding the listed plant species no later than final sign-off on their building permit. This should allow for adequate time to prepare, evaluate and process a satisfactory mitigation plan and MOU.

Mr. Lee Otter  
January 23, 1998  
Page Five

If you have questions regarding our comments or the MOU process, please contact Ms. Deborah Hillyard, Plant Ecologist, at (408) 726-3847; or Mr. Carl Wilcox, Environmental Services Supervisor, at (707) 944-5525.



Brian Hunter  
Regional Manager  
Region 3

cc: Ms. Olivia Orton Palmer  
U. S. Fish and Wildlife Service  
Ventura

Mr. George Thacher  
City Attorney  
City of Pacific Grove

Mr. Tony Lobay  
Planning Department  
City of Pacific Grove

Ms. Mary Margaret O'Connell  
550 Hartnell Street, Suite J  
Monterey, California 93940



# MUSEUM OF NATURAL HISTORY

165 FOREST AVENUE

PACIFIC GROVE, CALIFORNIA 93950

(408) 372-4212

## MEMORANDUM

TO: Bob Tiernan

FROM: Vern Yadon, Director

DATE: March 12, 1990

SUBJECT: Comments re Development of Four-Acre Site near  
1500 Sunset Boulevard  
Pacific Grove, CA

The report dated August 25, 1989 is well stated; the plants listed indicate dunes of great worth and the presence of Lupinus tidestromii var tidestromii makes special conditions on this property development mandatory.

Among the problems not stated in the report are that the normal course of events around most homes in the vicinity is the creation of watered landscape areas which harbor introduced garden snails, Halex aspersa, along with garden slugs of several genera. These show a feeding preference for Lupinus tidestromii var tidestromii and Erysimum menziesii, as well as other native dune vegetation. Also not stated is the normal desire of people living in any home to use the property surrounding it. Hence, increased trampling and dune erosion will be a certainty.

Not stated in the suggested transplanting procedures for Lupinus tidestromii var tidestromii is the certainty that many of the transplanted plants will die. While this species has in fact been successfully transplanted, evidence is not presented that transplanting success for single family parcels is permanent.

Where planting has been done on the Asilomar Conference grounds and on dunes of the Pebble Beach Corporation, this has been from nursery-reared stock grown from seed and/or roots collected from the site. If out-planting of endangered species is to be required, it is recommended that site-specific, nursery-reared stock be used and that it follow the directions of winter planting recommended in the report.

Should the development be approved, then my recommendation is that landscaping restrictions be a permanent requirement of the use permit, and that the stated number of endangered plants be maintained on the property for as long as they remain on the State of California Threatened and Endangered Species list.

cc: Bruce Elliott

Addendum:

Bob: This area had numerous menzies' willow  
circa 1960 - 1975. us

MEMORANDUM

TO: Robert Tiernan, Associate Planner

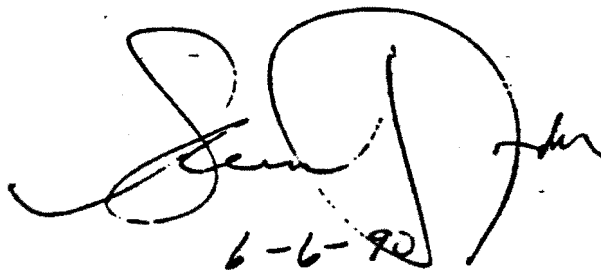
FROM: Vern Yadon, Museum Director

SUBJECT: Comment on P. Miller Proposal to Construct Six  
Single-family Dwellings on the Seaward Side  
of Sunset Drive at Lighthouse Avenue.

The property in question is habitat for the rare and endangered species mentioned. It is not ecologically sound to assume that the endangered species need to be considered only for the immediate sites in which they are presently found. Historically, Menzies Wallflower, Erysimum menziesii is known to have occurred in numerous locations on the property. I personally have observed it there in considerable numbers. More recently the prolific expansion of ice plant, along with human and deer activities have adversely impacted this species. All of the dune sites are habitat of this plant.

Tidestrom's Lupine, Lupinus tidestromii is less well known for its historical distribution. It occurs in good numbers in the dune systems north and south of the building sites. It must be concluded that these same numbers would be present on the site were adverse impact forces removed.

Endangered species that are relegated to greatly restricted sites within their former population locations are not likely to survive. Plants move about within their habitats. Young plants become established in areas which had not held the species in years. They also die out in spots where they were abundant. Perhaps this movement over years of time is necessary because of depletion of nutrients or the encroachment of inhospitable fungi or other unknown factors.



6-6-90

RECEIVED

JUN 6 1990

COMMUNITY DEV. DEPT

8/6/44

Deb -

I understand that you are reviewing the Page property, too, and I thought you should have copies of the information in my file, regarding the presence (or alleged absence) of sensitive species on that property.

Also, please note my comments in my letter to Les Stonad, May 26, 1994, pages 3-4, #5, concerning black legless lizards on the Page property.

I expect that Cowan's addendums have corrected the shortcomings of his earlier botanical report.

Any questions, please call.



all attached info sent by Tom Moss - TM info, Vern  
DH Yaden info

## DEPARTMENT OF FISH AND GAME

20 LOWER RAGSDALE DRIVE, SUITE 100  
MONTEREY, CA 93940  
(408) 649-2870



February 27, 1998

Mr. Bill Talkin  
U.S. Fish & Wildlife Service  
425 Henrietta  
Los Osos, CA 93402

Dear Mr. Talkin:

Enclosed please find information regarding the Page property that you requested. Included are four reports prepared by Mr. Bruce Cowan regarding the subject property, dated September 27, 1993, April 6, 1994, May 19, 1994, and January 26, 1995; a memo dated December 9, 1991 and testimony presented to the Pacific Grove Planning Commission July 16, 1992, by Tom Moss, State Park Resource Ecologist; and two memos from Vern Yadon, Director of the Pacific Grove Museum of Natural History, dated March 12, 1990, and June 6, 1990.

The memos from Vern Yadon, and the memo and testimony (which includes photographs) from Tom Moss clearly indicate that they had documented both Menzies' wallflower and Tidestrom's lupine on the property; in addition, Mr. Moss identified Monterey spineflower on the property.

The September 27, 1993, report by Bruce Cowan identified previous sightings of Tidestrom's lupine on the property and mapped it. The April 6, 1994, report by Bruce Cowan identified Monterey spineflower and legless lizard habitat on the property and mapped both, and identified Menzies' wallflower adjacent to the property. The May 19, 1994 report identified Tidestrom's lupine in the vicinity of the shared driveway and mapped it. The January 26, 1995 letter to Mr. Page indicated that there had been no changes since the last time he had surveyed, in May, 1994.

Based on this documentation, we believe that the Page property provides habitat for Menzies' wallflower (California and federally endangered), Tidestrom's lupine (California and federally endangered), and Monterey spineflower (federally Threatened) as well as the black legless lizard. In addition, all but the legless lizard have been documented on the property in the past.

The activities that occurred in November were inspected by me January 13, 1998, with Amelia Orton-Palmer of your agency, and the owner's attorney and consultant. It was apparent from that visit that the building envelope as well as entire lot eastward from the building envelope to Sunset Drive with the exception of a few feet adjacent to the north boundary, had been graded such that sand had been removed and/or the area used for stockpiling sand. The only areas left undisturbed were seaward of the building envelope

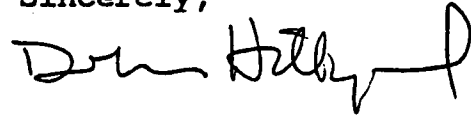
Mr. Bill Talkin  
February 27, 1998  
Page two

(though not entirely as there was considerable stockpiling of sand in this area) and immediately adjacent to the north boundary. The areas on the property that had been mapped as habitat for the Tidestrom's lupine and the Monterey spine flower were under 8-10 feet of stockpiled sand; it is unknown whether that area had been graded prior to deposition of sand. I do not have any map that indicates where the Menzies' wallflower had been documented on the site, and therefore do not know whether the grading activities affected this species and/or its habitat.

The deposition of this amount of sand on the habitat of these species will likely kill any existing plants that may have been present on the site, and will prevent new plants from germinating from seed on the site. It is my opinion that the grading activities resulted in take of these listed species. Unless remedial activities are undertaken, these populations will certainly be extirpated. Even in the event that remedial activities are undertaken, it is not guaranteed that seed and/or plant materials can be salvaged from the site to re-establish the populations of the species.

Please feel free to contact me if you have any questions regarding this information. I can be reached at the above letterhead address, or by phone at (408) 726-3847.

Sincerely,



Deborah Hillyard  
Plant Ecologist

cc: Amelia Orton-Palmer, USFWS  
Lee Otter, Coastal Commission



# United States Department of the Interior

## FISH AND WILDLIFE SERVICE

Ventura Fish and Wildlife Office  
2493 Portola Road, Suite B  
Ventura, California 93003

RECEIVED

JAN 27 1998

January 23, 1998

CALIFORNIA  
COASTAL COMMISSION  
CENTRAL COAST AREA

Lee Otter  
California Coastal Commission  
725 Front Street, Suite 300  
Santa Cruz, California 95060

Subject: Coastal Development Permit 3-96-102 (Page)

Dear Mr. Otter:

This letter is in response to a December 16, 1997 telephone and facsimile transmission request from Mr. Dan Carl, of your staff, for the U.S. Fish and Wildlife Service (Service) to provide recommendations regarding mitigation for alleged violations of Coastal Development Permit No. 3-96-102 (Page) issued by the California Coastal Commission (Commission). The permittee, Mr. Stephen Page, allegedly violated the permit by placing grading materials on mapped sensitive habitat for the federally endangered Tidestrom's lupine (*Lupinus tidestromii*) and the federally threatened Monterey spineflower (*Chorizanthe pungens* var. *pungens*). In an investigation of the site by Amelia Orton-Palmer of my staff and Deborah Hillyard of the California Department of Fish and Game (CDFG) on January 13, 1998, the stockpiled sand was observed to completely cover areas where the Tidestrom's lupine, Monterey spineflower, and probably the federally endangered Menzies' wallflower (*Erysimum menziesii*) had occurred. Other alleged non-compliance of the terms and conditions of the permit includes placing grading materials on an adjacent parcel containing mapped sensitive habitat, neglecting to provide adequate exclusionary fencing and demarcation of sensitive areas, neglecting to have a qualified biologist present during grading activities, neglecting to conduct surveys for the black legless lizard (*Anniella pulchra nigra*), a species proposed for listing by the Service, and failing to submit a monitoring report of project activities.

The November 24, 1997 mitigation plan for the violation, prepared by Paul Kephart, requires that all stockpiled sand be removed. All sand piled in sensitive habitat is to be hand-raked and hand-shoveled away from the sensitive habitat. After sand is removed, exclusionary fences and signs designating boundaries of sensitive habitat are to be installed. A biologist is to supervise fence installation. Restoration of the sensitive areas is to follow the guidelines provided in the September 27, 1993 landscape and restoration plan, prepared by Bruce Cowan. A qualified herpetologist is to be on site during sand removal, grading, and site preparation work. The herpetologist also is to determine presence of black legless lizards and assess suitability of existing and affected habitat areas.



We support all the measures required in the mitigation plan, but we believe that those measures alone are not sufficient to compensate for the damage to the listed plants buried by stockpiled sand. We strongly recommend that the Commission require Mr. Page to abide by the following terms and conditions to mitigate for the damage his grading and stockpiling activities caused to habitat and populations of federally listed plant species on his property:

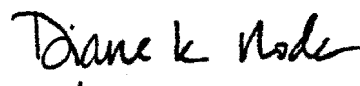
1. As soon as possible, Mr. Page shall remove sand stockpiled in identified sensitive areas on his and adjacent property according to the methods outlined in the November 24, 1997 mitigation plan prepared by Paul Kephart.
2. Sand to be removed, that cannot be used as back fill or for dune creation on the Page property, shall be transported to an appropriate site to be used for restoration purposes within Asilomar State Beach or at the site of the Pebble Beach Community Services' pumping station at Seventeen Mile Drive and Spyglass Hill Road. At the latter site, sand from the Page property may be used to build dunes on top of the degraded bluff where vegetation is currently unable to grow. The created dunes would allow for revegetation and would screen the pumping station structures from the ocean view. However, placement of sand in this area would require two years of monitoring for the germination of any Menzies' wallflower seeds and subsequent removal of such plants to avoid genetic contamination of nearby populations of this species.
3. After sand is removed from the sensitive areas, Mr. Page shall ensure that these areas are restored and revegetated according to the stipulations in the mitigation plan. In addition, Mr. Page shall ensure that all three federally listed plant species are restored to the damaged areas by collecting seeds from these species on adjacent properties, germinating seeds at an appropriate facility, and replanting seedlings in restoration areas on the Page property. Revegetation of the listed plants shall be carried out by a qualified biologist to be approved by the Service and CDFG. A detailed plan for the restoration of the listed plant species, outlining methods, monitoring, and success criteria, also shall be submitted for approval by the Service and CDFG before restoration activities are initiated.
4. Mitigation for the damage caused by Mr. Page's activities shall be carried out at a three-to-one ratio in units of area. Achieving this mitigation ratio will require off-site restoration of the listed plants and other native vegetation. We suggest that such restoration be conducted within the Asilomar Dunes complex or at the Coast Guard's Lighthouse Reservation at Point Pinos.
5. The proposed black legless lizard is not protected under the Federal Act. Although Mr. Page neglected to survey the site for this species, as required by the coastal development permit, we believe that a high likelihood exists that black legless lizards occurred on the Page property, given the suitable habitat conditions and distribution of the species. Disturbance by grading and stockpiling of sand probably caused most individuals that were not killed by such activities to disperse from the disturbed areas. Because

vegetation is currently absent on the stockpiled sand or in the graded areas, it is unlikely that black legless lizards have been attracted to the area since it was graded. Therefore, we do not believe that a stratified sampling effort before remediation of the disturbed areas is necessary. However, we do recommend that sampling for the black legless lizard be conducted in areas on the property not yet disturbed before further grading is done. We also recommend that a qualified herpetologist or biologist be present during remediation activities and future grading and site-preparation to ensure that no further damage may be done to this species. The biological monitor shall have the authority to halt activities if such damage is imminent.

Section 9 of the Endangered Species Act of 1973, as amended (Act), states that, with respect to endangered species of plants, it is unlawful to "remove and reduce to possession any such species from areas under Federal jurisdiction; maliciously damage or destroy any such species on any such area; or remove, cut, dig up, or damage or destroy any such species on any other area *in knowing violation of any law or regulation of any State* or in the course of any violation of a State criminal trespass law;" [16 U.S.C. Sec. 1538(a)(2)(B)] (emphasis added). The Service's Division of Law Enforcement is currently investigating this case to determine appropriate actions to be taken. The mitigation measures we recommend in this letter are provided as biological guidance, as requested by the Commission, and are independent of any criminal or civil actions that may be required resulting from this investigation.

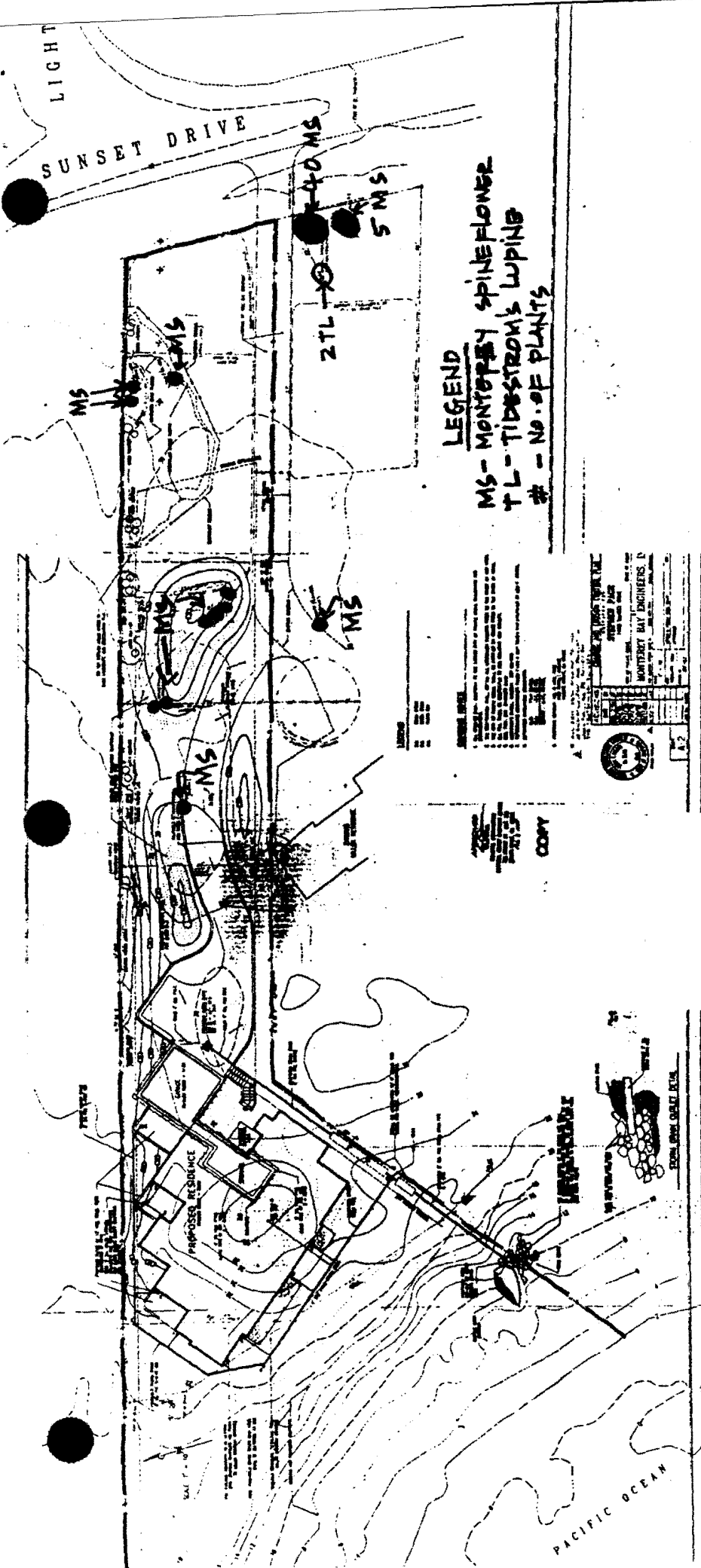
We appreciate the Commission's coordination with the Service and hope that the above recommendations will be fully incorporated into the Commission's resolution of this matter. If you have any questions or wish to discuss any of the above recommendations, please contact Amelia Orton-Palmer of our staff at 805-644-1766 any time.

Sincerely,



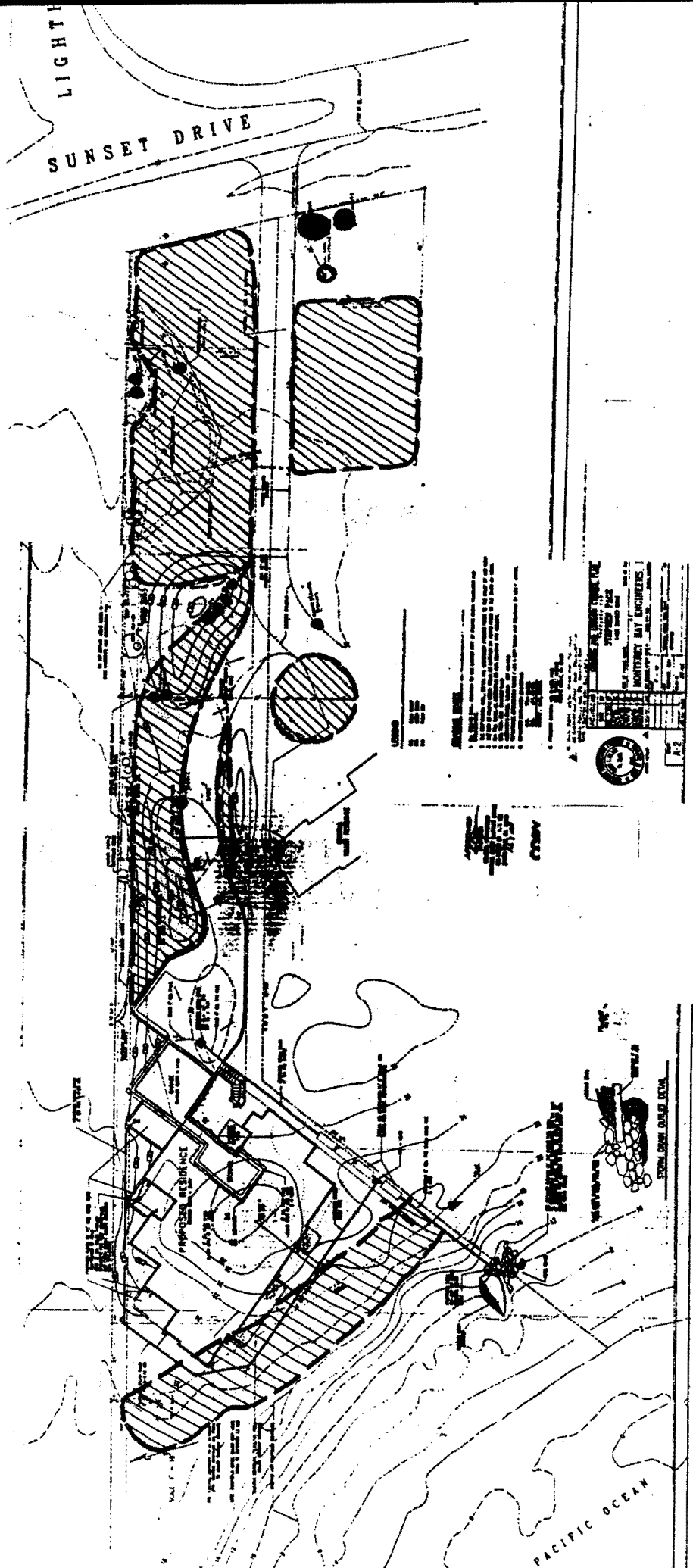
Diane K. Noda  
Field Supervisor

cc: Lawrence Farrington, Division of Law Enforcement, Torrance, CA  
Deborah Hillyard, California Department of Fish and Game, Monterey, CA  
Mary-Margaret O'Connell, Attorney for Stephen Page, Monterey, CA  
George Thacher, City Attorney, City of Pacific Grove, CA  
Anthony Lobay, Director, City of Pacific Grove Community Development Dept., CA



LOCATION OF FEDERALLY LISTED  
THREATENED MONTEREY SPINEFLOWER  
AND FEDERAL & STATE LISTED  
ENDANGERED TIDESTROM'S LUPINE

SOURCE:  
- BASE MAP EXHIBIT 5, Pgs 485  
- OBSERVATIONS OF  
DEBORAH HILLIARD



LOCATION OF GRADED AREAS, (ZZZ)  
AREAS OF STOCKPILED SAND (ZZZ)  
& THREATENED/ENDANGERED  
PLANTS (OO)

SOURCE:

- BASE MAP, EXHIBIT 5, Pgs 485
- OBSERVATIONS OF  
 LEE OTTER  
 RAVI SUBRAMANIAN  
 DEBORAH HILLIARD

**CALIFORNIA COASTAL COMMISSION**

46 FREMONT STREET, SUITE 2000  
SAN FRANCISCO, CA 94105-2219  
VOICE AND TDD (415) 904-6200



**REGULAR AND CERTIFIED MAIL**  
**(Article No. Z 387 425 319)**

April 26, 1999

Stephen Page  
5852 Glendora Avenue  
Dallas, TX 75230-5050

**SUBJECT: Notice of intent to commence Cease and Desist Order proceedings**  
**Coastal Act Violation File No. V-3-97-020**  
**Property Address: 1400 (previously 1450) Sunset Drive, Pacific Grove, CA**  
**93950, APN 007-021-005-000**

Dear Mr. Page:

This letter is to notify you of the intent of the California Coastal Commission to commence Cease and Desist Order proceedings as a result of unauthorized coastal development activities undertaken by you on your property (APN 007-021-005-000) at 1400 Sunset Drive, Pacific Grove, CA 93950.

The above referenced violation of the California Coastal Act pertains to development and other activities which are inconsistent with the special condition requirements of Coastal Development Permits (CDP) No. 3-96-102 (hereinafter, "Permit"). The conditionally-approved CDP 3-96-102 was for the construction of a 3680 sq.ft. single family dwelling with a driveway, storm drain system, paved terrace, courtyards, retaining walls, berming and grading of dunes.

The development activities in violation of the terms and conditions of coastal development permit No. 3-96-102 are as follows:

- a) Construction activities and use of staging areas that include but are not limited to grading and placement of grading materials on lands or sensitive habitats which are on the property and the adjacent parcel, in violation of the requirements of standard condition 3 and special conditions 3, 5, 24, 29, 31, 37 of the Permit.
- b) In violation of the requirements of standard condition 3 and special conditions 24 and 29 of the Permit, failure 1) to employ protective fencing, and 2) to provide to the Commission's Santa Cruz office evidence of the inspection by an environmental consultant of any fencing.
- c) Failure to submit, immediately prior to grading operations, as required by special condition 37 of the Permit, evidence of a determination by a coastal biologist of the presence or absence of black legless lizard.
- d) In violation of the requirements of standard condition 3 and special condition 24 of the Permit, failure, every month during construction, to submit to the Executive Director

evidence of monitoring of construction activities by the project's environmental consultant or the City's Community Development Director, to assure compliance with the mitigation measures adopted by the City of Pacific Grove.

On November 17, 1997, Commission staff from the Santa Cruz office received reports stating that on November 15 and 16, 1997, you had undertaken grading on your property. On November 17, 1997, Commission staff member Lee Otter visited your property, determined that the grading and placement of grading materials were inconsistent with the Permit, and delivered a "Notice of Violation" to you. The notice stated that your activities were in violation of Standard Condition 3 and Special Conditions 29 and 37 of CDP 3-96-102. The notice asked you to stop all work that is inconsistent with CDP 3-96-102. Additionally, in a follow-up letter dated November 20, 1997 to Ms. O'Connell, Mr. Otter clarified and elucidated the various violations of the terms and conditions of the Permit.

As of the date of this letter your activities remain in violation of the Permit and therefore of the Coastal Act. Therefore, Commission staff has decided to commence a proceeding to request the Commission to issue a Cease and Desist Order pursuant to Coastal Act Section 30810. This order would require you to cease and desist from engaging in any further development activity at the subject property in violation of the Permit or the Coastal Act without first obtaining a Coastal Development Permit to authorize any such activity. The order would also prohibit you from continuing to maintain at the property any development that is in violation of the Permit or the Coastal Act. Pursuant to section 30810(b) of the Coastal Act, *"the cease and desist order may be subject to such terms and conditions as the commission may determine are necessary to ensure compliance with this division, including immediate removal of any development or material or the setting of a schedule within which steps shall be taken to obtain a permit pursuant to this division."*

In accordance with the Commission regulations, you have the opportunity to respond to the staff's allegations as set forth in this notice by completing the enclosed Statement of Defense form. Pursuant to California Code of Regulations, Title 14, Section 13181(a), the completed Statement of Defense form must be received by this office no later than May 26, 1999. Should you have any questions, please contact Nancy Cave at (415) 904-5290 or Ravi Subramanian at (415) 904-5248.

Sincerely,



James W. Burns  
Chief Deputy Director

encl.: Statement of Defense form  
cc (with enclosure):  
Mary-Margaret O'Connell  
Law Offices of Mary-Margaret O'Connell  
550 Hartnell Street, Suite J  
Monterey, CA 93940  
(Article No. Z 387 425 320)

cc (without enclosure):

Charles Lester, Santa Cruz Coast Area Office, Coastal Commission  
Nancy Cave, Supervisor, Statewide Enforcement Program, Coastal Commission  
Marjorie Cox, Deputy Attorney General, Land Law Section, Department of Justice

George Thacher, City Attorney, City of Pacific Grove  
Anthony Lobay, Director, City of Pacific Grove Community Development Department  
Michael Stamp, Law Offices of Michael Stamp, Monterey  
Brian Hunter, Regional Manager, Region 3, California Department of Fish and Game  
Deborah Hillyard, Plant Ecologist, California Department of Fish and Game, Monterey  
Diane Noda, Field Supervisor, U. S. Fish and Wildlife Service  
Ameila Orton-Palmer, U. S. Fish and Wildlife Service

**CALIFORNIA COASTAL COMMISSION**

45 FREMONT STREET, SUITE 2000  
SAN FRANCISCO, CA 94105-2219  
VOICE AND TDD (415) 904-5200

**STATEMENT OF DEFENSE FORM**

DEPENDING ON THE OUTCOME OF FURTHER DISCUSSIONS THAT OCCUR WITH THE COMMISSION ENFORCEMENT STAFF AFTER YOU HAVE COMPLETED AND RETURNED THIS FORM, (FURTHER) ADMINISTRATIVE OR LEGAL ENFORCEMENT PROCEEDINGS MAY NEVERTHELESS BE INITIATED AGAINST YOU. IF THAT OCCURS, ANY STATEMENTS THAT YOU MAKE ON THIS FORM WILL BECOME PART OF THE ENFORCEMENT RECORD AND MAY BE USED AGAINST YOU.

YOU MAY WISH TO CONSULT WITH OR RETAIN AN ATTORNEY BEFORE YOU COMPLETE THIS FORM OR OTHERWISE CONTACT THE COMMISSION ENFORCEMENT STAFF.

This form is accompanied by either a cease and desist order issued by the executive director or a notice of intent to initiate cease and desist order proceedings before the commission. This document indicates that you are or may be responsible for or in some way involved in either a violation of the commission's laws or a commission permit. The document summarizes what the (possible) violation involves, who is or may be responsible for it, where and when it (may have) occurred, and other pertinent information concerning the (possible) violation.

This form requires you to respond to the (alleged) facts contained in the document, to raise any affirmative defenses that you believe apply, and to inform the staff of all facts that you believe may exonerate you of any legal responsibility for the (possible) violation or may mitigate your responsibility. This form also requires you to enclose with the completed statement of defense form copies of all written documents, such as letters, photographs, maps, drawings, etc. and written declarations under penalty of perjury that you want the commission to consider as part of this enforcement hearing.

You should complete the form (please use additional pages if necessary) and return it no later than May 26, 1999, to the Commission's enforcement staff at the following address:

Ravi Subramanian, Legal Division,  
California Coastal Commission  
45 Fremont Street, Suite 2000  
San Francisco, California 94105

If you have any questions, please contact **Ravi Subramanian** at (415) 904-5248.

1. Facts or allegations contained in the cease and desist order or the notice of intent that you admit (with specific reference to the paragraph number in such document):

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2. Facts or allegations contained in the cease and desist order or notice of intent that you deny (with specific reference to paragraph number in such document):

3. Facts or allegations contained in the cease and desist order or notice of intent of which you have no personal knowledge (with specific reference to paragraph number in such document):

4. Other facts which may exonerate or mitigate your possible responsibility or otherwise explain your relationship to the possible violation (be as specific as you can; if you have or know of any document(s), photograph(s), map(s), letter(s), or other evidence that you believe is/are relevant, please identify it/them by name, date, type, and any other identifying information and provide the original(s) or (a) copy(ies) if you can:

5. Any other information, statement, etc. that you want to offer or make:

6. Documents, exhibits, declarations under penalty of perjury or other materials that you have attached to this form to support your answers or that you want to be made part of the administrative record for this enforcement proceeding (Please list in chronological order by date, author, and title, and enclose a copy with this completed form):

Is your RETURN ADDRESS completed on the reverse side?

**SENDER:**

- Complete Items 1 and/or 2 for additional services.
- Complete Items 3, 4a, and 4b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "Return Receipt Requested" on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for an extra fee):

1. ☐ Addressee's Address

2. ☐ Restricted Delivery

Consult postmaster for fee.

3. Article Addressed to:

MARY-MARGARET O'CONNELL  
LAW OFFICES OF MARY-MARGARET O'CONNELL  
550 HARTNELL STREET, SUITE J  
MONTEREY, CA 93940

4a. Article Number  
Z 387 425 320

4b. Service Type

☐ Registered ☐ Certified

☐ Express Mail ☐ Insured

☐ Return Receipt for Merchandise ☐ COD

7. Date of Delivery  
4-27-99

8. Addressee's Address (Only if requested and fee is paid)

5. Received By: (Print Name)  
Jodie White

6. Signature: (Addressee or Agent)  
X

PS Form 3811, December 1994

102595-97-B-0179 Domestic Return Receipt

Thank you for using Return Receipt Service.

US Postal Service

# Receipt for Certified Mail

No Insurance Coverage Provided.

Do not use for International Mail (See reverse)

Sent to MARY-MARGARET O'CONNELL

Street & Number  
550 HARTNELL ST. STE. J

Post Office, State, & ZIP Code  
MONTEREY, CA 93940

Postage \$ 0.55

Certified Fee \$ 1.40

Special Delivery Fee \$ 1.25

Restricted Delivery Fee

Return Receipt Showing to Whom & Date Delivered

Return Receipt Showing to Whom, Date, & Addressee's Address

TOTAL Postage & Fees \$ 3.20

Postmark or Date  
ltr. to Page 4/26/99  
R.Subramanian

PS Form 3800, April 1995

Is your RETURN ADDRESS completed on the reverse side?

**SENDER:**

- Complete Items 1 and/or 2 for additional services.
- Complete Items 3, 4a, and 4b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "Return Receipt Requested" on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for an extra fee):

1. ☐ Addressee's Address

2. ☐ Restricted Delivery

Consult postmaster for fee.

3. Article Addressed to:

STEPHEN PAGE  
5852 GLENDORA AVENUE  
DALLAS, TX 75230-5050

4a. Article Number  
Z 387 425 319

4b. Service Type

☐ Registered ☐ Certified

☐ Express Mail ☐ Insured

☐ Return Receipt for Merchandise ☐ COD

7. Date of Delivery

8. Addressee's Address (Only if requested and fee is paid)

5. Received By: (Print Name)  
X

6. Signature: (Addressee or Agent)  
X

PS Form 3811, December 1994

102595-97-B-0179 Domestic Return Receipt

Thank you for using Return Receipt Service.

US Postal Service

# Receipt for Certified Mail

No Insurance Coverage Provided.

Do not use for International Mail (See reverse)

Sent to STEPHEN PAGE

Street & Number  
5852 GLENDORA AVENUE

Post Office, State, & ZIP Code  
DALLAS, TX 75230-5050

Postage \$ 0.55

Certified Fee \$ 1.40

Special Delivery Fee \$ 1.25

Restricted Delivery Fee

Return Receipt Showing to Whom & Date Delivered

Return Receipt Showing to Whom, Date, & Addressee's Address

TOTAL Postage & Fees \$ 3.20

Postmark or Date  
ltr. dtd. 4/26/99  
R.Subramanian

PS Form 3800, April 1995

# Page-Wheatcroft & Co., Ltd.

SENIOR LEVEL EXECUTIVE SEARCH

## RESPONSE TO THE CALIFORNIA COASTAL COMMISSION STATEMENT OF DEFENSE FORM

MAY 21, 1999

DEADLINE – MAY 26, 1999

# Page-Wheatcroft & Co., Ltd.

SENIOR LEVEL EXECUTIVE SEARCH

May 18, 1999

Mr. James W. Burns  
Chief Deputy Director  
California Coastal Commission  
45 Fremont Street, Suite 2000  
San Francisco, CA 94105-2219

Via Fax: 415-904-5400 and  
Certified Mail No. Z272186854

RE: Response to the California Coastal Commission Letter to Stephen Page  
dated April 26, 1999

SUBJECT: Notice of intent to commence Cease and Desist Order proceedings  
Coastal Act Violation File No. V-3-97-020

Dear Mr. Burns:

This letter responds to your letter to me dated April 26, 1999 requesting answers to the attached Statement of Defense Form, be received in your office no later than May 26, 1999.

Answers to questions 1 through 6 are as follows:

1. Question: Facts or allegations contained in the cease and desist order or the notice of intent that you admit (with specific reference to the paragraph number in such document):  
Response: None.
2. Question: Facts or allegations contained in the cease and desist order or notice of intent that you deny (with specific reference to paragraph number in such document):  
Response: All.
3. Question: Facts or allegations contained in the cease and desist order or notice of intent of which you have no personal knowledge (with specific reference to paragraph number in such document):  
Response: None.

4. Question: Other facts which may exonerate or mitigate your possible responsibility or otherwise explain your relationship to the possible violation (be as specific as you can; if you have or know of any document(s), photograph(s), map(s), letter(s), or other evidence that you believe is/are relevant, please identify it/them by name, date, type, and any other identifying information and provide the original(s) or (a) copy(ies) if you can:
- Response: There have been significant changes in applicable law. There have been significant changes in the site conditions. As a result, numerous conditions of the original permits are unnecessary and mute. Therefore, the need to mitigate, punish or rectify have been eliminated.

As indicated by the attached exhibits and other reports, there has never been sighted, seen or observed on my property, any endangered or protected plants in recent applicable time. While there may have been the potential for possible development of these plants, no one was able to positively identify any protected or endangered plants, and no one has ever said they have observed any legless lizards. Never the less, as stated in paragraph one, the changed conditions and circumstances in law mitigate against punitive action.

None of the government representatives have identified any actual harm to any species, future species or future activities. No harm has been identified by government agents.

Prior to grading, and as required by my permit, we retained the services of Bruce Cowan (Project Environmental Consultant and author of the California Coastal Commission Approved Landscape Restoration Plan) to perform a site analysis. Mr. Cowan stated that there were no endangered plants present on the site. I specifically drew Mr. Cowan's attention to the area that was suppose to be fenced off during construction activities.

Since the initial site plan documents were drawn, (approximately five years previously) the "protected area" had become completely overgrown by ice plant and was no longer viable habitat for endangered species. Since the area was no longer viable habitat for endangered species, and none were present on the site, we did not needlessly fence the "protected area". While conducting the on-site site inspection with Mr. Cowan, I asked about the presence of black legless lizards. He opined that the site contained largely unsuitable terrain for black legless lizards, but that if any occurred on the site, they would occur against the northern most boundary of the property, under some small hedge bushes growing against the fence. During grading, these hedges were flagged and protected.

Since our alleged violation, we have learned that the black legless lizard is no longer an endangered species. It is beyond comprehension that the California Coastal Commission is still trying to extract punishment for an alleged violation against a non-endangered species.

A condition of our permit was that all graded materials be kept on site. Prior to grading, I discussed our soil excavation plan with Mr. Tony Lobay, then Community Development Director for the City of Pacific Grove. During a personal meeting with Mr. Lobay, I discussed and thought I had obtained his approval on two key matters within our Grading Plan. First, Mr. Lobay verbally approved the placement of sands on the adjacent Miller property and on the area, now overgrown with ice plant, that was suppose to be the "protected area". Second, I discussed the fact that no endangered species had been found on site and that because of the unusual configuration of our lot, the only place to store the volume of sand on-site created by our grading activities, was the finger of property that contained the "protected area".

5. Question: Any other information, statement, etc. that you want to offer or make:  
Response: During our alleged grading impropriety (November 15-17, 1999), the California Coastal Commission moved with an alacrity not seen before or since. It took the California Coastal Commission (Lee Otter) less than one day to produce and deliver the "Notice of Violation".

At great personal expense, we ceased all construction activities by the end of November 17, 1997 (the date of Notice of Violation delivery) and, at great personal expense, we have not resumed construction on our property under threat of California Coastal Commission fines of \$10,000 per day and/or imprisonment.

It would seem totally mute to provide monthly written reports on the construction status of our project, when there has been no construction since November 17, 1997 to present.

Upon learning of our alleged permit violations, at great personal expense, we completed two "Landscape Mitigation Plans", authored by Paul Kephart (Coastal Biologist). Mr. Kephart was selected by the City of Pacific Grove as their expert to resolve this matter. Mr. Kephart's first Landscape Mitigation Plan was approved for implementation by the City of Pacific Grove on December 2, 1997. The California Coastal Commission referred the report for review by its sister agencies and has yet to render an opinion regarding its admissibility and/or provide implementation approval. Many of the initial Mitigation Plan's recommendations were time sensitive. The California Coastal Commission's lack of decision action rendered the Plan's recommendations obsolete.



A second Mitigation Plan was authored by Paul Kephart at the California Coastal Commission's request (and my expense). The Revised Plan was submitted for implementation approval during July, 1998. Approval to implement the plan has never been received by the California Coastal Commission.

In contrast to the California Coastal Commission's immediate ability to produce a Notice of Violation, the California Coastal Commission has taken my property during the previous six years as a consequence of permit processing and alleged violation processing procedures.

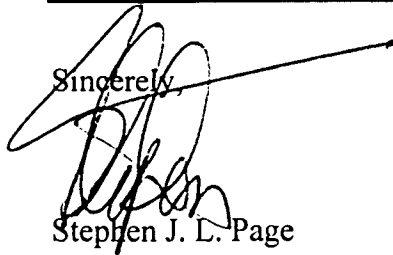
It took four years from 1994 to 1997 to obtain a California Coastal Commission Development Permit to develop our property. It took one work day for the California Coastal Commission to stop work on our project. Our property has been taken for yet another two years (1997 to Present) as the California Coastal Commission continues to enforce actions regarding alleged violations against non-listed species.

6. Question: Documents, exhibits, declarations under penalty of perjury or other materials that you have attached to this form to support your answers or that you want to be made part of the administrative record for this enforcement proceeding (Please list in chronological order by date, author, and title, and enclose a copy with this completed form.):

Response:

- Botanical/Biological Report, July 20, 1989, Page 5, APN 007-021-05.  
"No endangered species were found on this parcel."
- Excerpt from Environment Impact Report, Page 4.3-7,  
"Little or no habitat suitable for this species (California black legless lizard) on the site."
- Bruce Cowan initial Site Inspection Report dated August 26, 1997.  
"No endangered plants were found on your property."
- Bruce Cowan Affidavit dated November 21, 1997.
- Landscape Mitigation Plan I, authored by Paul Kephart, dated November 24, 1997.
- Revised Landscape Restoration Plan, authored by Paul Kephart, dated July 30, 1998.
- California Department of Fish & Game Mitigation Agreement, revised at California Coastal Commission's request July 20, 1995.

Sincerely,



Stephen J. L. Page  
Chairman & CEO

SJLP:lh

cc: Mary-Margaret O'Connell, Attorney at Law  
Peter Douglas, Director, California Coastal Commission  
Marjorie Cox, Deputy Attorney General, State of California

SJLPpers/PointPinos/Personal/Burns051799

# Page-Wheatcroft & Co., Ltd.

SENIOR LEVEL EXECUTIVE SEARCH

RECEIVED

October 16, 1998

OCT 21 1998

CALIFORNIA  
COASTAL COMMISSION

**PERSONAL AND CONFIDENTIAL**  
**FOR ADDRESSEE'S EYES ONLY**

Peter M. Douglas  
Executive Director  
California Coastal Commission  
45 Fremont Street, Suite 2000  
San Francisco, CA 94105-2219

**Via Fax 415-904-5400**  
**and United States Mail**

Dear Mr. Douglas:

The purpose of this letter is to bring to your attention the continuing failure of Commission staff to timely address my continued willingness to mitigate against any actual damage that may have been caused during a totally inadvertent grading error that occurred on my property in November, 1997.

You will recall during the period of November 15-17, 1997, we began grading on our property to construct our single-family residence. I commenced the grading myself for the specific purpose of insuring that all permit conditions would be satisfied and that no errors would occur in the grading. Unfortunately, I erred unintentionally.

In the late afternoon of November 17, 1997, staff member, Lee Otter, personally arrived on the property and served me with a three-page purported "Cease and Desist Order" that demanded that I immediately stop work on the property or face the possibility of imprisonment and fines of up to \$10,000 per day. Although I have been able to find no regulatory or statutory authority for a so-called "Cease and Desist Order," I have earnestly honored the Order to cease work on the property.

The City of Pacific Grove issued a "Stop Work Order" the following day. The City also commissioned restoration biologist Paul Kephart to create a Mitigation Plan to remedy the alleged permit infractions. I am required to pay for the Plan.

The Plan was reviewed by the City and me. Upon review of Mr. Kephart's proposals, I immediately agreed to comply with the restoration plan. On December 2, 1997, the City approved the Kephart Plan. I asked to commence work immediately on the Plan, however, the City believed that the restoration plan should be reviewed by the California Coastal Commission.

The Commission staff has not acted in good faith in review of the Kephart Plan.

9850 N. CENTRAL EXPRESSWAY, SUITE 226, DALLAS, TX 75231  
TEL. (214) 696-4333 [www.p-wco.com](http://www.p-wco.com) FAX (214) 696-9595

DALLAS

WASHINGTON

PALO ALTO

PAGE CCC-99-CD-05  
EXHIBIT NO.13 Page 1 of 3

I personally worked with the Enforcement Division, and met with Nancy Cave during the six months January – June, 1998, in an ongoing attempt to correct the Plan's alleged deficiencies. I was continually advised to reinvolve Mr. Kephart to enhance the original Mitigation Plan, approved by the City of Pacific Grove on December 2, 1997.

On or about August 1, 1998, Mr. Kephart submitted a Revised Mitigation Plan to the California Coastal Commission's Central Coast Office, Attention: Mr. Lee Otter. Ms. Nancy Cave did not receive a copy of the Plan until approximately August 11, 1998, complying with a California Coastal Commission submittal deadline of August 12, 1998.

The staff's new delays have been allegedly brought about by the need for the staff to have input from staff's resource advisory agencies: state Fish & Game and federal Fish & Wildlife. I have patiently waited for that advice. However, in spite of the fact that both resource agencies promised written input regarding the revised Kephart Plan, I have been told contradictory reports regarding the actual existence of any reports from those agencies.

We have been told by Santa Cruz staff that there are no new written reports. We have also been told by Ms. Cave that she would not send us copies of the written reports.

If there has, in fact, been no input by state Fish & Game or federal Fish & Wildlife, there is, in fact, no continuing need for Commission staff to delay in approval of the revised Kephart Plan.

Despite numerous telephone calls to Ms. Cave and unfulfilled promises that "our response will be sent to you shortly," we have yet to have the California Coastal Commission remove its "Cease and Desist Order", so that we might resume construction of our property.

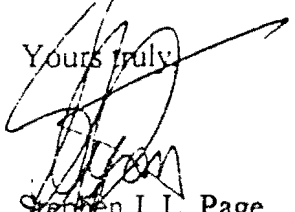
Separately, the City of Pacific Grove has again reviewed and voiced approval of Mr. Kephart's Revised Mitigation Plan.

Mr. Douglas, I don't want to litigate anymore, but I will if the California Coastal Commission continues to take my property. I want to build my retirement home and get on with my life. The emotional and financial toll on me and my family during this ten year process has been enormous.

Please lift the "Cease and Desist Order" and let me build my house without further interference from the California Coastal Commission. I commit to abide by the City of Pacific Grove approved recommendations in Kephart's Revised Mitigation Plan. There should be no further taking of my property. Any requirements in excess of the revised Kephart Plan will be totally unjust and represent another taking of my property without compensation.

Please respond in writing to this letter within ten days

Yours truly,



Stephen J. L. Page

Property Owner at 1450 Sunset Drive  
Pacific Grove CA 93950

BRUCE COWAN

ENVIRONMENTAL LANDSCAPE CONSULTANT

P.O. BOX 671

PACIFIC GROVE, CA 93950

(408) 372-7650

DATE: September 27, 1993

BASIC LANDSCAPE AND RESTORATION PLAN

LANDSCAPING/REVEGETATION RECOMMENDATIONS

APN: C07-021-05

PARCEL SIZE: 1.08 acres

APPLICANT/OWNER: Steven Page, c/o John Matthams, 572  
Lighthouse Ave., Pacific Grove, CA 93950 (408) 646-1261

DATE OF BOTANICAL/BIOLOGICAL REPORT: 7/20/89

TYPE OF DEVELOPMENT: Single Family residence

ADDRESS OR LOCATION OF PROPERTY: 1450 Sunset Drive, Pacific Grove

INTRODUCTION

The objective of this landscaping/revegetation plan is to provide guidelines for creating an esthetically pleasing landscape that is in harmony with the natural environment, protects rare/endangered species or sensitive habitats, if any, and controls invasive non-native species.

The following basic principles apply to creating environmentally sound landscapes:

1. New plantings should respect, and be subordinate to, the dominate features of the surrounding natural landscape.
2. Indigenous (site-specific) species should be planted where appropriate, using genetically local plants if available.
3. If sufficient appropriate site-specific plants do not exist, native California plants from similar habitats may be used. These should be placed in site conditions with exposure (sun, shade, wind, soil type, and moisture conditions) resembling the habitats where the plants grow naturally.

4. Certain non-native plants may be included, provided that they do not visually dominate over the natural vegetation type, are compatible with the habitat and the native plants sharing the landscape, and are non-invasive (or else planted where they can be strictly controlled). In most cases they are best used near buildings, patios or other structures. They must pose no threat to sensitive habitat/endangered species on the subject property or on adjacent properties.

5. If any plants requiring frequent summer irrigation are used, they must be isolated to certain specific areas apart from drought tolerant plantings, or the goal of drought tolerant landscaping will be lost.

A list of appropriate plants for this landscape, and suggested minimal spacing, is provided with this report.

It should be explained that a restoration differs from a traditional landscape in the following ways:

- 1) Plants are placed where most likely to succeed, rather than according to a prescribed design.
- 2) A mosaic of appropriate species is introduced, rather than lumping each species by itself.
- 3) Instead of retaining exact numbers of plants over a period of time, the composition of the plants will change as a result of natural plant succession (dominant species gradually replacing less dominant ones). Plants are expected to reproduce on their own, without interference.
- 4) Irrigation is provided only as necessary to get plants established.
- 5) Long term maintenance involves mainly looking for and eradicating invasive non-native weeds and other species as they appear.

Because this project involves a home, the Plan is a compromise between a restoration and a landscape. Plants on the drawings have not been grouped as in a landscape, as the intention is to allow for flexibility so that plants may be appropriately mixed or placed according to the preference of the designer after the house is completed and the resulting site conditions are more obvious.

#### EXISTING SITE CONDITIONS

The proposed house is on a small dune covered mainly with ice plant. The north side of the house will be near the property line, where the habitat is a cover of sand sedge (Carex pansa) and coyote bush (Baccharis pilularis var. pilularis). The sedge is a thick grass-like plant that forms a dense unmowed turf and is an excellent erosion control on steep banks and bluffs, and the local form of coyote bush is the attractive low growing variety--one type of which is called 'Twin Peaks' is a commonly used landscape plant. Habitat is coastal bluff.

The property on the northwest side of the house contains a good

example of the sedge/coyote bush habitat. Numerous small patches of ice plant are invading but are not large enough to have any effect on erosion. However, on the southwest side of the proposed house the steep bank is solid ice plant. While ice plant is not as good for erosion control on steep banks as sedge, which has a tough fibrous root system compared to the long shallow wirey roots of ice plant, the ice plant on this bank should be left at least until more satisfactory groundcover is available. (Ice plant can easily be undermined where it drapes over steep bluffs, and its weight can actually pull down an unstable slope.)

The narrow portion along the north side of the house near the property line contains sedge, coyote bush, yarrow (Achillea borealis), and some seaside daisy (Erigeron glaucus). Some of this is being invaded by ice plant.

The long corridor east of the house (Between the house and Sunset) is mostly ice plant and sand. Along the north property line are a number of native mock heather bushes (Haplopappus ericoides). An open sandy area has a sparse cover of dune bluegrass (Poa douglasii). Endangered Tidestrom's lupines (Lupinus tidestromii) were found here during the initial botanical survey. It is likely that the lupines still occur, presently dormant under the sand until next spring. This open sandy area is considered to be Tidestrom's lupine habitat and should be left undisturbed.

#### SPECIFIC RECOMMENDATIONS AND APPROXIMATE TIMETABLE

This Plan is based on a 3-phase timetable.

Phase I, the area near the house, is to be undertaken as soon as the house is completed. This includes the north side of the house, entry way plantings and a small dune area immediately in front of the house.

Phase II includes the fifty foot easement along Sunset Drive, and will be done a year after the house is completed, pending the success of Phase I.

Phase III includes the remainder of the property between the house and Sunset Drive, and will be done within two years after the house is completed, pending the success of Phases I and II.

If, at any time, the Owner wishes to complete any or all of Phases I, II and III together, he may do so. Planting should be mainly done from November through February, to coincide with the rainy season.

#### PHASE I GUIDELINES

Ice plant should be sprayed or removed from sedge/ coyote bush habitat. Ice plant should be left intact on the steep slope southwest of the house.



The north side of the house is a very windy place with added shade from the house, which limits the native vegetation which can grow there. Frequent browsing by deer is another limiting factor. Groundcover should include reestablishing the sedge, and planting seaside daisy (Eriogonum glaucus) and Douglas iris (Iris douglasiana).

No native trees can withstand the conditions except Monterey cypress (Cupressus macrocarpa). At least two are recommended for screening near the north side of the house.

There are no large growing native shrubs that are adapted to this habitat. Therefore it is recommended that some planters or large containers be installed, and wind resistant shrubs and trees that can withstand the conditions be planted. Two of the most satisfactory are New Zealand Christmas tree (Metrosideros tomentosa) and mirror plant (Coprosma repens), both from New Zealand.

A protected patio/courtyard area with a southeastern exposure is adapted for ornamental plantings. The list of plants that could be included here is large, and is not within the scope of this report.

A small dune immediately east of the house is presently covered mainly with ice plant. The ice plant may be sprayed with glyphosate (Roundup), and left on location to hold the sand in place. As soon as the ice plant has begun to decompose and form a mulch, native plants may be planted. The species list, and instructions for planting, are included later in this report.

#### PHASE II GUIDELINES

This area is mainly a berm near the Sunset Drive, containing a few Mock heather and bush lupines, and mainly overrun with ice plant. The ice plant may be sprayed and left to form a mulch, or be removed. Suggested plantings include mock heather (Haplopappus ericoides), dune buckwheat (Eriogonum parvifolium), bush lupines (Lupinus arboreus), and dune bluegrass (Poa douglasii). Existing native mock heathers should be left intact.

The open sandy area in the northwest third of this portion should be left unplanted because it is known habitat for Tidestrom's lupines.

#### PHASE III GUIDELINES

1. Ice plant should be sprayed and left to form a mulch, or be removed.
2. Existing mock heathers along the north fence should be left in place.
3. The open sandy area near the east end should be left unplanted, as it is habitat for Tidestrom's lupines.
4. Plantings should be a mosaic of dune plants from the list included in this report, with recommended minimal spacings.

## PLANTING INSTRUCTIONS

Plants used in the restoration, which includes all but the ornamental landscape areas of Phase I, should be grown from seed, cuttings or divisions obtained on the property, or within the general Asilomar/Spanish Bay natural dune and bluff area. Plants are to be grown by contract specifically for this project.

Unless otherwise stated, all plants will be grown in 5½ by 1¼ inch "stubby cells", and planted directly from these cells.

## PLANTING INSTRUCTIONS

Plants as listed below shall be planted randomly, in percentages and minimal spacings as indicated for each Area.

Plants grown in 5½ by 1¼ inch "stubby cells" shall be planted as follows:

- 1) Plants shall be thoroughly watered in containers prior to planting.
- 2) A hole shall be dug at least eight inches deep in the sand or substrate.
- 3) A packet of GROMAX (fertilizer plus polymer) is inserted in the bottom of the hole. (This absorbs water from irrigation or rain, and provides a reservoir of moisture and nutrients for young plants.)
- 4) The plant is carefully removed from the container. If the roots are knotted together at the apex of the rootball, the knot is pinched off.
- 5) The plant is carefully planted, with two inches of fill between the bottom of the rootball and the GROMAX (to prevent the young plant from being over saturated).
- 6) A shallow well is formed around each plant to collect water.
- 7) After planting, each plant is watered by hand or from an overhead irrigation system sufficiently that water penetrates to a depth of at least eight inches.

Pink sand verbena (*Abronia latifolia*) is to be grown directly from seed, to be planted two inches under the surface.

## PLANT LIST FOR RESTORATION

<u>Species</u>	<u>Min. Spacing</u>	<u>% Cover</u>
<u>PHASE I</u>		
<u>North side of house</u>		
ACHILLEA BOREALIS--Yarrow	3" O.C.	5%
CAREX PANSA--Sand sedge	1'	60%
ERIGERON GLAUCUS --Seaside daisy	2'	15%
IRIS DOUGLASIANA--Douglas iris	3'	15%
SISYRINCHIUM BELLUM--Blue-eyed grass	1'	5%
<u>Small dune east (in front) of house</u>		
ABRONIA UMBELLATA--Pink sand verbena	(Seeded, $\frac{1}{2}$ lb.)	
ARMERIA MARITIMA--Sea pink	1'	3%
BACCHARIS PILULARIS VAR. PILULARIS--Coyote bush	4'	5%
CAMISSONIA (OENOTHERA) CHEIRANTHIFOLIA--Beach primrose	1'	5%
CASTILLEJA LATIFOLIA--Monterey paint brush/painted cup	6'	2%
CAREX PANSA--Sand dune sedge	1' (low area)	5%
CORETHROGYNE CALIFORNICA/C. LEUCOPHYLLA--Beach aster	3'	30%
DUDLEYA CAESPITOSA--Sea lettuce, live-forever	3'	2%
ERIGERON GLAUCUS--Seaside daisy	4'	3%
ERIOGONUM PARVIFOLIUM--Dune buckwheat	4'	5%
ERIOPHYLLUM STAECHADIFOLIUM--Lizard tail	4'	5%
ERIOGONUM PARVIFOLIUM--Dune buckwheat	4'	5%
ESCHSCHOLZIA CALIFORNICA VAR. MARITIMA--Beach poppy	2'	15%
GRINDELIA LATIFOLIA--Gum plant	3'	10%
HAPLOPAPPUS ERICOIDES--Mock heather	4'	5%
<u>PHASE II</u>		
ERIOGONUM PARVIFOLIUM--Dune buckwheat	4'	20%
HAPLOPAPPUS ERICOIDES--Mock heather	3'	50%
LUPINUS ARBOREUS--Yellow bush lupine	6'	5%
POA DOUGLASII--Dune bluegrass	2'	25%
<u>PHASE III</u>		
ABRONIA UMBELLATA--Pink sand verbena	(Seeded, $\frac{1}{2}$ lb.)	
ARMERIA MARITIMA--Sea pink	1'	5%
CAMISSONIA (OENOTHERA) CHEIRANTHIFOLIA--Beach primrose	3'	5%
CASTILLEJA LATIFOLIA--Monterey paint brush/painted cup	8'	2%
CORETHROGYNE CALIFORNICA/C. LEUCOPHYLLA--Beach aster	3'	30%
DUDLEYA CAESPITOSA--Sea lettuce, live-forever	2'	3%
ERIGERON GLAUCUS--Seaside daisy	4'	5%
ERIOGONUM PARVIFOLIUM--Dune buckwheat	4'	5%

ESCHSCHOLZIA CALIFORNICA VAR. MARITIMA--Beach poppy	2'	20%
*ERYSIMUM MENZIESII--Menzies' wallflower (Optional*)	2'	--
HAPLOPAPPUS ERICOIDES--Mock heather	6'	20%
*LUPINUS TIDESTROMII var. TIDESTROMII--Tidestrom's lupine (Optional*)		--
POA DOUGLASII--Dune bluegrass	2'	5%

\* ERYSIMUM MENZIESII and LUPINUS TIDESTROMII are both Federally and State Endangered Species. Planting is optional because permits are needed from the U.S. Fish and Wildlife Service and the California Department of Fish and Game to propagate, collect, sell or plant these species.

## APPENDIX A

POSSIBLE SOURCES OF PLANT MATERIALS  
(GROWN BY CONTRACT)

ELKHORN RANCH, ATTN. PAUL KEPHART, P.P. BOX 70, MOSS LANDING, CA 95039.  
(408)763-1207. (Native Grasses and dune plants).

DORRELL-CANEPA, JOEY  
26185 Carmelo St.  
Carmel, CA 93923  
(408)624-5951 or 372-0645

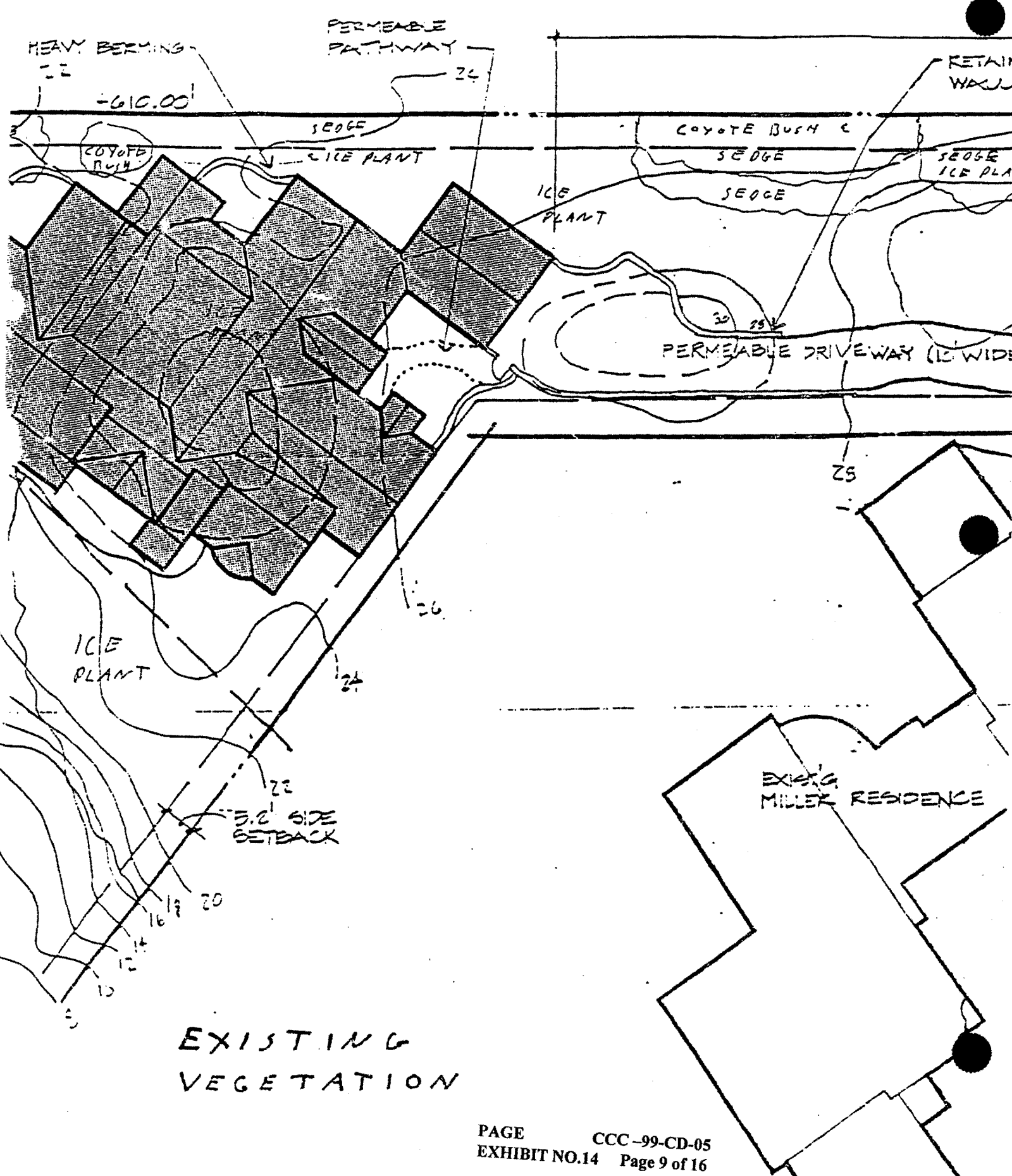
DROUGHT RESISTANT WHOLESALE NURSERY  
P.O. BOX 1471  
CARMEL VALLEY, CA 93924  
(408)624-6226

MOSS, TOM  
252 CHESTNUT St.  
PACIFIC GROVE, CA 93950  
(408) 373-8573 or 372-0481

PEBBLE BEACH CO.  
ATTN: ERIC LOVE  
P.O. BOX 567  
PEBBLE BEACH, CA 93953  
(408) 624-1100

SUNSET COAST NURSERY  
PATTI KREIBERG, OWNER  
P.O. BOX 221  
WATSONVILLE, CA 95077  
(408) 726-1672

GROMAX (A combination slow-release fertilizer and water absorbing polymer, can be obtained from Target Specialty products, 1280 N. 10th St., San Jose, CA 95112.



EXISTING  
VEGETATION

PERMEABLE  
PATHWAY

RETAINING  
WALL ..

LEAVE EXISTING  
CRAYOTE  
BUSH & SEDGE

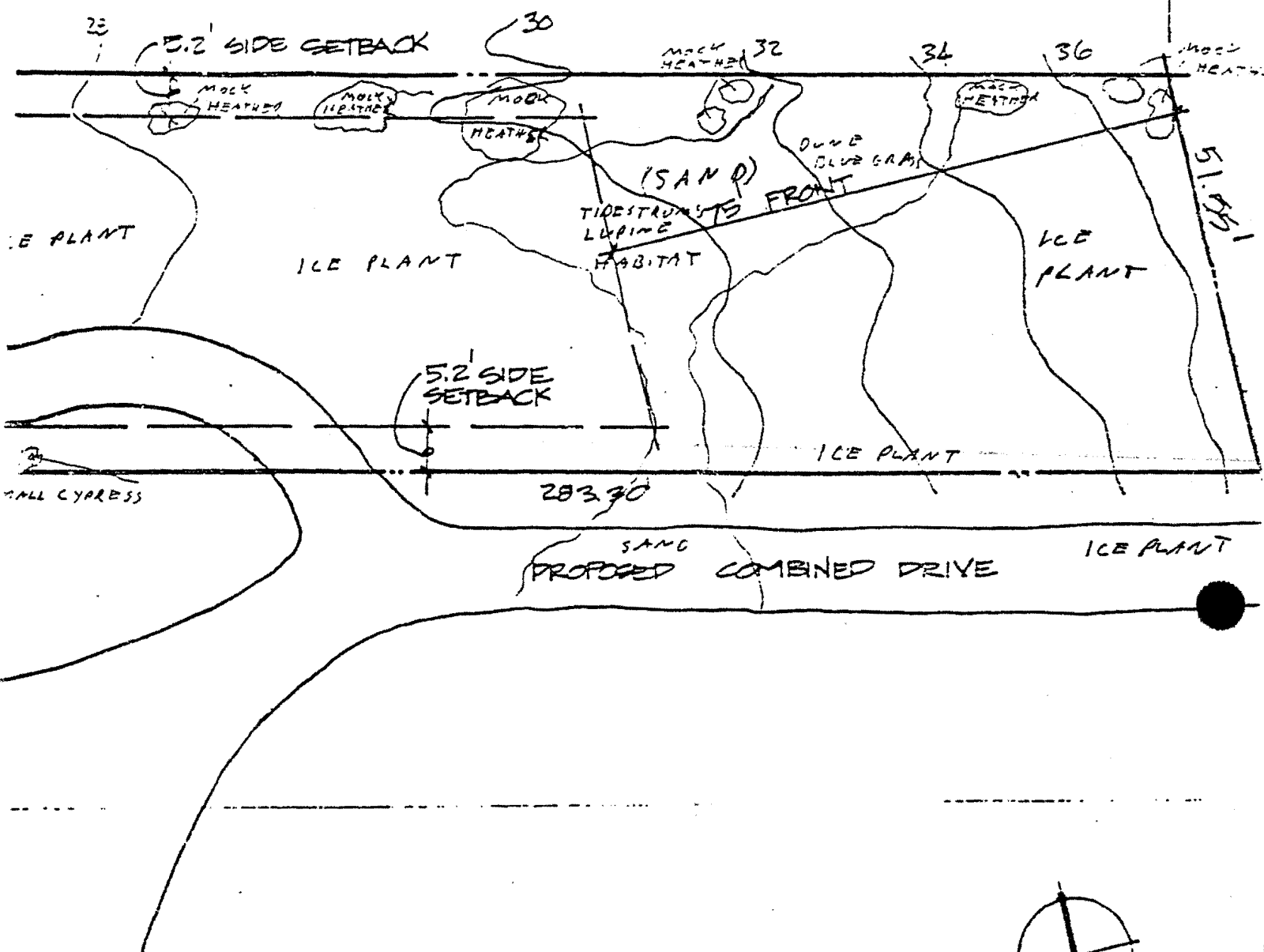
PHASE I

PERMEABLE DRIVEWAY (10' WIDE)

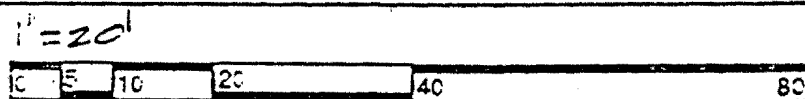
PHASE I

EXIST'G  
MILLER RESIDENCE

245'-0"



# site plan



5.26.92

EXISTING VEGETATION



PERMEABLE  
PATHWAY

24

SEDE

ICE PLANT

ICE  
PLANT

COYOTE BUSH & SEDE

SEDE

RETAINING  
WALL

26

SEDE &  
ICE PLANT

FLOR  
HEATHER

ICE PLANT

ICE  
PLANT PERMEABLE DRIVEWAY (15' WIDE)

EXIST

26

26

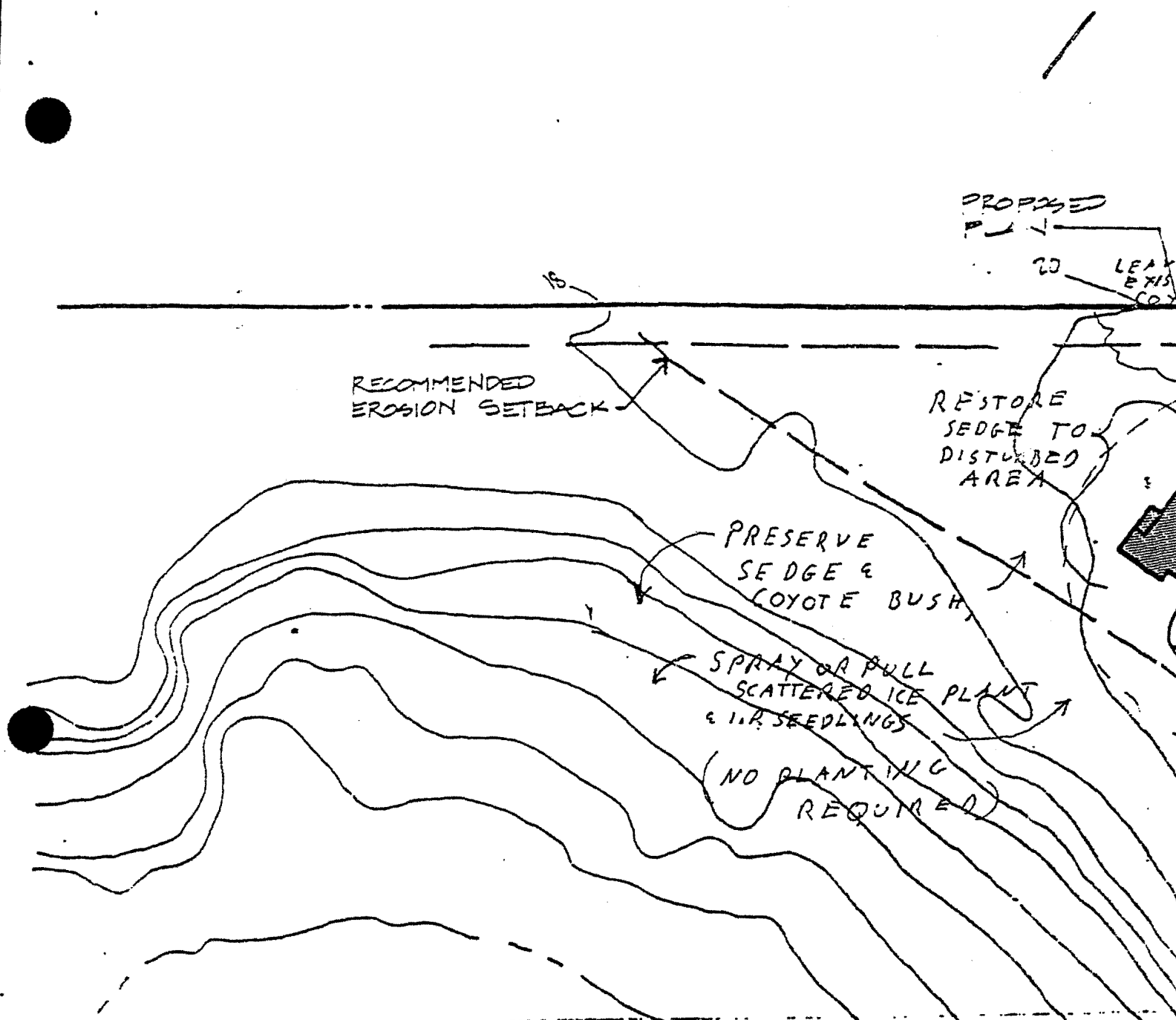
24

20

5.0' SIDE  
SETBACK

EXIST'G  
MILLER RESIDENCE





## PLANNING INFORMATION

OWNER: STEVEN PAGE  
C/O: 572 LIGHTHOUSE AVE.  
PACIFIC GROVE, CA 93950

PROJECT ADDRESS: 1450 SUNSET DRIVE  
PACIFIC GROVE, CA 93950

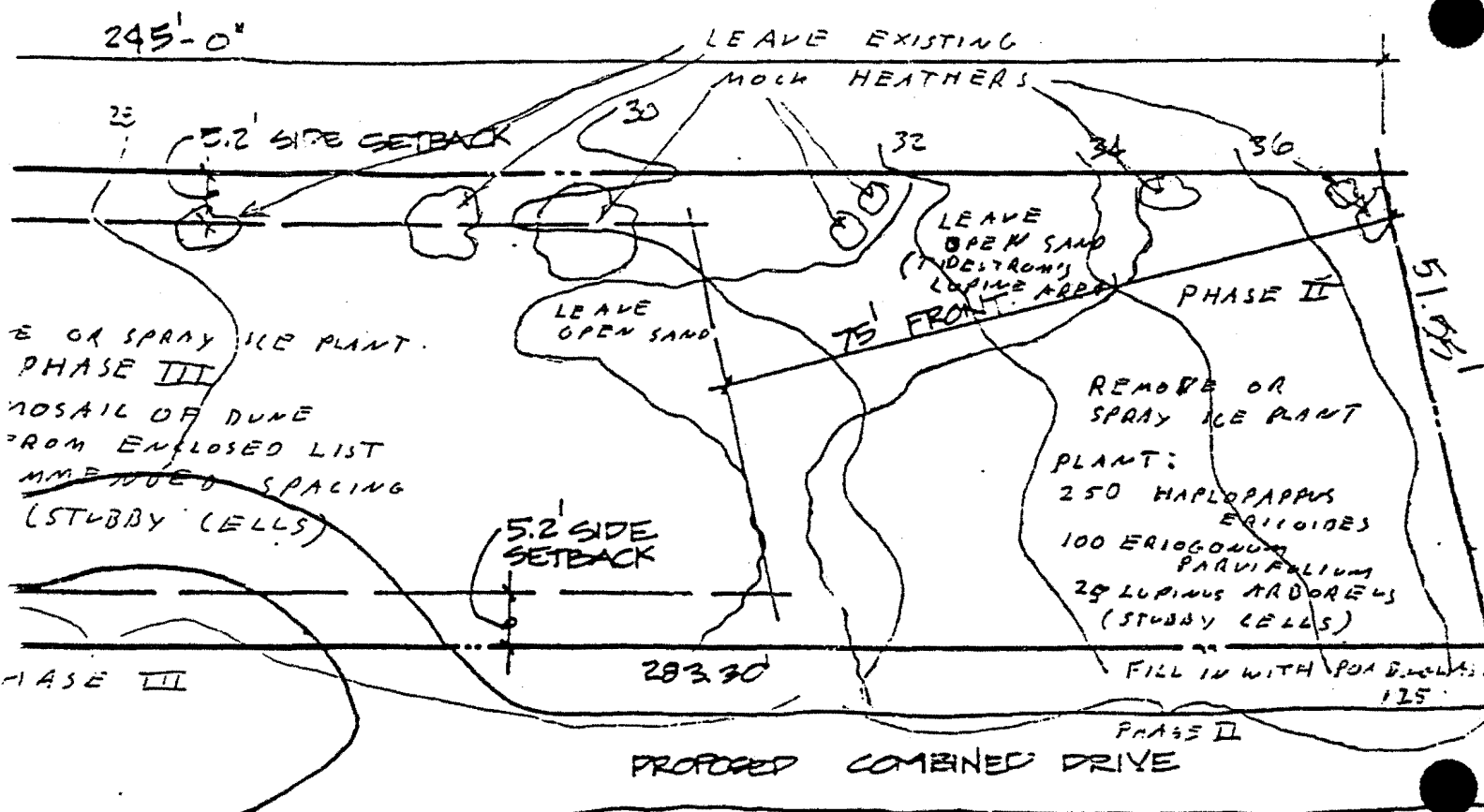
APN: 007-021-05

ZONE: R-1 B-4 COASTAL ZONE  
BEACH TRACT

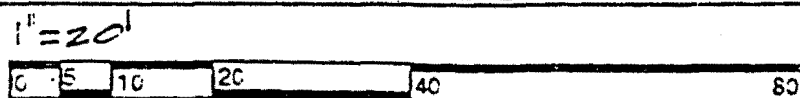
LOT SIZE: 1.08 ACRE (47,045 S.F.)

PROPOSED HOUSE: 3,320 SF  
GARAGE: 360 SF

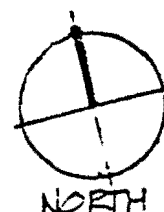
FOOTPRINT: 3,680 SF  
PATIO: 570 SF



# site plan



5.26.92



BASIC LANDSCAPE &  
RESTORATION PLAN  
(PHASES II & III)

PERMEABLE  
PATHWAY

24

RETAINING  
WALL

26

SEDE  
ICE PLANT

COYOTE BUSH & SEDGE

SEDE &  
ICE PLANT

TRUCK  
HEADSTOCK

ICE  
PLANT

SEDE

30

ICE PLANT

ICE  
PLANT PERMEABLE DRIVEWAY (10' WIDE)

EXIST'

26

26

24

22

5.0' SIDE  
SETBACK

EXIST'G  
MILLER RESIDENCE

BRUCE COWAN  
ENVIRONMENTAL LANDSCAPE CONSULTANT

P.O. BOX 671

PACIFIC GROVE, CA 93950

RECEIVED  
MAY 3 1994  
CALIFORNIA  
COASTAL COMMISSION  
CENTRAL COAST AREA  
(408) 372-7650

DATE: April 6, 1994

ADDENDUM TO BOTANICAL/BIOLOGICAL REPORT

AFN: 007-021-05

File No.

APPLICANT: John Matthams, 572 Lighthouse Ave., Pacific Grove, CA 93950  
(408)646-1261

OWNER: Steven Page

DATE OF ORIGINAL REPORT: 7/20/89 (for Paul Miller)

TYPE OF DEVELOPMENT: Single Family Residence

ADDRESS OR LOCATION OF PROPERTY: 1450 Sunset Drive, Pacific Grove

INTRODUCTION

The Coastal Commission has required that an additional biological survey be done in a non-drought year during the peak blooming period for several rare and endangered plants that might potentially exist on the property, and to look for certain species of endangered fauna. These are listed as follows:

- a. Snowy plover (threatened)
- b. Least tern (endangered)
- c. Black legless lizard (candidate)
- d. Smith's blue butterfly host plant, dune buckwheat (done)
- e. Globose dune beetle (candidate)
- f. Menzies wallflower (March-April)
- g. Tidestrom's lupine (April-May)
- h. Beach layia (May 1-May 30)
- i. Sand gilia (May 1-May 30)
- j. Monterey spineflower (May, June)
- k. Seaside bird's beak (August)
- j. Seaside painted cup/Monterey paintbrush (March-August)

Field surveys on this property have been done by me on February 3, May 26, May 31, June 9 and July 18, 1989; September; 1993, March 22, and April 4, 1994. Additional studies on Rocky Shores property have been done by Tom Moss, State Park Ecologist at Asilomar.

## FINDINGS

In the March and April 1994 surveys about a dozen small Monterey spineflower plants were seen on the property. Several Tidestrom's lupines were found growing, but not yet blooming, on the adjacent Miller property, and one Menzies' wallflower was seen blooming just north of the property line about a foot from the fence. This plant was probably somewhat protected from predation by deer by its nearness to the fence.

Monterey spineflower (Chorizanthe pungens var. pungens) was designated a Federally Threatened Species as of March, 1994. On the Page property about a dozen very small plants were found in an open sandy area near the northeast corner. On the north side of the fence outside the property several hundred plants were found in similar habitat. The plants were just beginning to bloom when observed on April 4, 1994. The portion of the Page property on which this species occurs is to remain undisturbed.

No other rare or endangered plants were seen on the Page property.

The Page property consists mainly of ice plant and scattered sedge in the western part of the property in and near the building site, and ice plant alternating with bare sand in the eastern part. Several rock heathers occur along the fence line and near Sunset Drive. Otherwise the open sandy areas not covered with ice plant are mainly bare sand, with a few sparse examples of dune bluegrass, Monterey spineflower and beach morning glory.

No plants were seen in open sand that could be identified as beach layia, sand gilia, Menzies' wallflower, seaside painted cup, or seaside bird's beak. None of these plants can survive in thick ice plant.

I am well acquainted with these plants, including sand gilia and Monterey spineflower, which grow abundantly on the Naval Postgraduate School property where I am restoring the dunes, and Seaside bird's beak, which grows on and adjacent to a property I landscaped near the Monterey Airport. I am able to recognize these plants before they bloom. The sand gilia on the Navy property have already begun blooming for two or three weeks. I did not see anything resembling these on the Page property. Seaside bird's beak does not occur in the Asilomar area to my knowledge.

As to rare and endangered fauna:

The Snowy plover nests on beaches along the Monterey Bay dunes. I have built red fox exclosures for snowy plovers and am familiar with their habitat requirements. No appropriate nesting sites occur on the Page property, and the plover is not known to nest in the ~~Asilomar~~ area.

Least tern: No terns of any kind have been seen on the property.

Black legless lizard: This species has been observed on or adjacent to the property as a significant population by Tom Moss, State Park Ecologist. According to Moss, the lizard would occur mainly in a

habitat of sedge, coyote bush and mock heather, or where these are mixed with ice plant, but probably not in thick ice plant. The most likely habitat for the lizard is along the north fence line, and in the sedge/coyote bush habitat near the northeast corner of the proposed house, where it remains mostly burrowed in the sand or under leaf duff. The lizard is a Federal candidate species. According to Bruce Elliott of the California Department of Fish and Game, a candidate species receives the same protection (from the State) as though it were a designated species.

Attempting to locate the lizards by digging in the sand can potentially harm them. If verification is needed, an herpetologist should be consulted. The Department of Fish and Game recommends Steve Ruth at (408)384-2267. Tom Moss also has considerable experience searching for legless lizards.

Globose dune beetle: This insect (Coelus globosus) remains mostly buried in sand in foredunes immediately above the high tide line, mainly in association with beach bur and yellow sand verbena. Where bluffs occur along the coast it inhabits sandy areas below the bluffs. It is a candidate species found in limited areas along the length of the California coastline. The globose dune beetle has been documented in the Monterey Bay dunes near the Salinas River, but not in the Asilomar area. The sandy areas on the Page property do not appear to be habitat for this insect.

#### SUGGESTIONS

A combined driveway easement is proposed on the Miller property adjacent to the Page property. This driveway might run through Tidestrom's lupine habitat. The exact locations of Tidestrom's lupines within that part of the property should be designated by a land surveyor during April or May so that the driveway may be routed around them.

The open sandy area where Monterey spineflower occurs should be left undisturbed and unplanted in any landscaping or dune restoration.

An herpetologist should be consulted to determine if impacts to black legless lizards can be mitigated.

Signed: Bruce Connor Date: 4/6/94



PERMEABLE  
PATHWAY

24

SEDGE

ICE PLANT  
(LEGLESS LIZARD  
HABITAT)

ICE  
PLANT

COYOTE BUSH & SEDGE

(LEGLESS LIZARD HABITAT)

SEDGE

RETAINING  
WALL

26

SEDGE &  
ICE PLANT

ASPH  
PAVEMENT

26  
412

ICE PLANT

ICE  
PLANT PERMEABLE DRIVEWAY (15' WIDE)

EXISTING

26

26

24

22

5.2' SIDE  
SETBACK

EXIST'G  
MILLER RESIDENCE

EXISTING VEGETATION  
& LEGLESS LIZARD HABITAT



BRUCE COWAN

ENVIRONMENTAL LANDSCAPE CONSULTANT

P.O. BOX 671

PACIFIC GROVE, CA 93950

(408) 372-7650

September 26, 1997

Mr. Stephen Page  
Page, Wheatcroft & Co.  
9850 N. Central Expressway Suite 226  
Dallas, Texas 75231

RE: Pre-construction plant protection, 1450 Sunset, Pacific  
Grove, California

Dear Mr. Page:

I have inspected your property on August 26 and September 26, 1997. No endangered plants were found on your property. However, a small colony of Tidestrom's lupines (nine last observed in April, 1994) has occurred on the Paul Miller property adjacent to the joint driveway just west of Sunset Drive. If any remain, they were dormant and not visible in September, 1997.

With Mr. Miller's permission I have inserted flags along the driveway edge and across a corner of the Miller property where the plants occurred. The flags are to designate a temporary fence to protect the habitat from construction equipment or dumping of soil.

If more information is needed, please contact me.

Sincerely,

*Bruce Cowan*  
Bruce Cowan

**BRUCE COWAN**  
**ENVIRONMENTAL LANDSCAPE CONSULTANT**

P.O. BOX 671

PACIFIC GROVE, CA 93950

(408) 372-7650

December 5, 1997

**AFFIDAVIT**

RE: Violation of Coastal Development Permit No. 3-96-102 and Pacific Grove Building Permit No. 97-0297 for Stephen Page.

I, Bruce Cowan, live and work in Pacific Grove, California as a self-employed Environmental Landscape Consultant.

Since 1989 to the present, I have been retained as a biological consultant to the property located at 1450 Sunset Drive, Pacific Grove, CA 93950, owned by Stephen J.L. Page.

During 1989, when I first inspected the property, it was owned by Mr. Paul Miller, who sold it to Mr. Page in December, 1989.

A Botanical/Biological Report by me on July 20, 1989 stated (regarding APN 007-021-05) "This is a flat area covered with ice plant, with some sedge and coyote bush at the west end. At the east end of the parcel, and through the setback where the driveway would pass, is a small remnant dune consisting of open sand and ice plant. No endangered species were found on this parcel." (See attached Exhibit A).

In an Addendum to Botanical/Biological Report, dated April 6, 1994 (Exhibit B), I stated that "In the March and April 1994 surveys about a dozen Monterey spineflower plants were seen on the property. Nine Tidestrom's lupines were found growing, but not yet blooming, on the adjacent Miller property just south of the entrance to the proposed joint driveway, and one Menzies' wallflower was seen blooming just north of the property line about a foot from the fence. This plant was probably somewhat protected from predation by deer by its nearness to the fence. . . . No other rare or endangered plants (other than the Monterey spineflowers) were seen on the Page property."

In the bare sandy area where the Monterey spineflower plants had been seen in 1994, none were evident when I inspected the property on August 26 and September 26, 1997 (Exhibit D). Monterey spineflower is an annual that thrives in disturbed sandy soils. While the spineflower could have reappeared on the bare sandy site in subsequent years, it could also potentially grow in sandy material which has since been spread onto the site from the excavation. It was my understanding that the building permit required sandy material to be mounded into a 6 foot dune on that site and subsequently restored. Thus I do not consider that there has been any "take" of Monterey spineflower, any significant violation of the permit within the spineflower habitat, or any permanent damage done to the spineflower habitat.

In addition, the bare sandy area where the spineflowers occurred has shrunk in size since 1989 due to encroachment by ice plant. The remaining sand had apparently been used as a play area by children, since during the August or September surveys I had observed several small plastic toys in the sand.

Even though no Tidestrom's lupines occurred on the Page property, I recommended that a temporary fence be built along the south boundary of the shared driveway prior to construction of the driveway to protect the nine Tidestrom's lupines occurring on the adjacent Miller property (Exhibit C). Prior to the excavation of the building site and stockpiling of sand, which took place on November 15, 16 and 17, 1997, I had placed marking flags on September 26, 1997 to delineate the Tidestrom's lupine habitat which was to be fenced (Exhibit D). This area was partially fenced, and no material was deposited within the designated Tidestrom's lupine habitat. Excavated material which was deposited on the Miller property was placed on a flat area covered with ice plant, which I did not consider to be sensitive habitat.

Regarding legless lizards and other rare or endangered fauna: I have personally not seen any on the property (Exhibit C). Black legless lizard is the only one likely to occur on the property. According to the EIR, p. 4.3-7 (Exhibit E), "The lizard could potentially occur on the project site, although little or no habitat suitable for this species (occurs) on the site."

In an Addendum, April 6, 1994 (Exhibit B), I stated, "This species has been observed on or adjacent to the property as a significant population by Tom Moss, State Park Ecologist. According to Moss, the lizard would occur mainly in a habitat of sedge, coyote bush and mock heather, or where these are mixed with ice plant, but probably not in thick ice plant. The most likely habitat for the lizard is along the north fence line, and in the sedge/coyote bush habitat near the northeast corner of the proposed house, where it remains burrowed in the sand or under leaf duff.

Mr. Page placed marking flags along the edge of the potential habitat near the north fence line and avoided disturbing most of this habitat while operating the bulldozer.

Most of the excavation had occurred in an area with a very thick cover of ice plant which was an unlikely habitat for legless lizards. Most of the excavated material was likewise placed on areas of ice plant or bare sand. Thus it is my belief that significant damage to sensitive habitat/endangered species has not occurred.

I have read the Mitigation Plan prepared by Paul Kephart, Restoration Ecologist, November 24, 1997, and wish to offer the following comments on Mitigation Measures, p. 6:

1. Sand stockpiling: Removing all stockpiled sand may be excessive. Existing material should be contoured according to the grading permit, taking care not to further damage the possible legless lizard habitat along the north fence, or place any material within the Tidestrom's lupine habitat on the Miller property. Sand which was placed over ice plant on the Miller property should be reduced to a level of six to twelve inches, and restored to native vegetation. Ice plant pieces that take root and grow, or ice plant seedlings and weeds such as ripgut grass that may invade should be removed on a continuing basis throughout the sand deposits. Sand deposited on sedge/coyote bush habitat on the west side of the building site should be removed as recommended. Only excess sand would need to be hauled away.

2. Fencing: As recommended.

3. Restoration: Restoration of native species should take place after, not before, construction of the house is completed. Any restoration done prior to construction would be subject to damage during construction activities.

4. Legless lizard survey: As recommended.

On Success Criteria No. 3: This should be mandated after, not before, construction of the house has been completed.

I believe that the violations of the permit did not cause irreparable damage.

I believe that the quickest way to minimize and repair environmental damage, and restore a habitat that had been mainly ice plant to one of native dune and coastal plants, is to allow the project to resume--with close monitoring to make certain all of the conditions of the building and coastal permits are being met.

Sworn to and attested to this day, December 5, 1997.

*Bruce Cowan*

Bruce Cowan

**LAW OFFICES OF  
MARY-MARGARET O'CONNELL**

**550 Hartnell St., Suite J  
Monterey, CA 93940**

**Telephone: (408) 649-0535  
Facsimile: (408) 649-0559**

December 2, 1997

via fax transmission 427-4877

Lee Otter  
California Coastal Commission  
725 Front Street, suite 300  
Santa Cruz, CA 95060

RE: property location: 1450 Sunset Drive  
Asilomar Dunes Area  
City of Pacific Grove  
Monterey County (APN 007-021-05)

Dear Mr. Otter,

This letter seeks to assure you that Mr. Page has taken note of the Commission's concerns regarding the recent grading work done at his property in the Asilomar Dunes Area. Mr. Page fully intends to cease all work on the property until the appropriate agencies have been able to fully review the potential mitigation measures that may be required to resolve any real issue raised by the grading activity.

There is no reason for the Commission to seek recourse in a temporary cease and desist order or any other formal activity to bring about the cessation of work while the appropriate parties are reviewing the grading issue.

As you know, not one single survey has ever identified the presence of endangered legless lizards on the property. Further, plant surveys conducted over the recent years, including the most recent survey in September 1997, also failed to identify the presence of any growing endangered plants on the property. Nevertheless, Mr. Page is ready, able, and willing to work with the governing agencies to resolve any real issues that resulted from the grading activity that took place on the property in November.

As a demonstration of his good faith, Mr. Page traveled from Texas to meet with representatives of the City of Pacific Grove today, December 2, 1997. The meeting was very productive and resulted in the review of a mitigation plan recently developed by Restoration Ecologist Paul Kephart which addresses potential issues that may have been created by the grading activity. The city approved the recommendations proposed by Ecologist Kephart.

At the end of the meeting with the city, I mentioned that the Coastal Commission, the state Department of Fish and Game, and the federal Fish and Wildlife Service may have additional or different conditions or concerns for the site. It appears appropriate, therefore, for Mr. Page to refrain from commencement of restoration measures until approval is also forth coming from all affected jurisdictions.

Please be advised, however, that time is of the essence.


According to Mr. Kephart's report at page 7, section IX, of which you have a copy:

Mitigation for impacts to the site shall be begin immediately upon approval of this mitigation plan. Significant progress must be documented within fourteen days of approval . . .

The city approved the plan on December 2.

Mr. Page urges a speedy response from the Coastal Commission staff, as well as the staffs of state Fish and Game and U.S. Fish and Wildlife.

Sincerely,

  
Mary-Margaret O'Connell

cc: Nancy Cave, Enforcement Unit,  
California Coastal Commission  
via fax transmission (415) 904-5400



STATE OF CALIFORNIA - UNRECORDED PAGE  
**CALIFORNIA COASTAL COMMISSION**

CENTRAL COAST AREA OFFICE  
ENFORCEMENT DIVISION  
725 FRONT STREET, SUITE 300  
SANTA CRUZ, CA 95060  
(408) 427-4863



BY FAX AND U.S. MAIL

January 23, 1998

Mary-Margaret O'Connell, Esq.  
Attorney for Stephen Page  
550 Hartnell Street, Suite J  
Monterey, CA 93940

Property Location: **1450 Sunset Drive, Asilomar Dunes area, City of Pacific Grove,  
Monterey County (APN 007-021-05)**

Subject Activity: **Grading of dunes inconsistent with approved conditions of  
coastal development permit 3-96-102 (PAGE)**

Violation File: **V-3-97-020**

Dear Ms. O'Connell,

This purpose of this letter is to memorialize our telephone conference call discussion from this afternoon with myself, Diane Landry, and Dan Carl of the Central Coast Area Office. As you are aware, in our January 9, 1998 letter to you we indicated that we would provide comments on the November 24, 1997 Kephart Mitigation Plan for the above-described Stephen Page property by today. As you are also aware, our comments were to be based upon input to be received from United States Fish and Wildlife Service (USFWS) and the California Department of Fish and Game (DFG).

In our conference call with you this afternoon we discussed with you the fact that we were prepared to respond today, as indicated in our January 9, 1998 letter. However, the response that we would offer today would only be able to refer vaguely to the input received from USFWS and DFG this afternoon by fax and phone. While this would satisfy the self-imposed deadline, the result would be that actual sign-off on the Kephart Mitigation Plan would still have to be based upon final written input from USFWS and DFG. Given that both agencies are in the process of finalizing their comments by the end of the day today, we all agreed that this office's formal response would necessarily have to wait until early next week.

Sincerely,

Lee Otter  
District Chief Planner  
Central Coast Area Office

cc: George Thacher, City Attorney, City of Pacific Grove  
Anthony Lobay, Director, City of Pacific Grove Community Development Department  
Deb Hillyard, California Department of Fish and Game  
Amelia Orton-Palmer, United States Fish and Wildlife Service  
Paul Kephart, Rana Creek Restoration  
Diane Landry, Legal Counsel, California Coastal Commission Central Coast Area Office  
Nancy Cave, Manager, California Coastal Commission Enforcement Program  
Darryl Rance, Enforcement Analyst, California Coastal Commission Enforcement Program

V-3-97-020\NOVA5.DOC

PAGE CCC-99-CD-05  
EXHIBIT NO.19 Page 1 of 1

**CALIFORNIA COASTAL COMMISSION**

CENTRAL COAST DISTRICT OFFICE  
ENFORCEMENT DIVISION  
725 FRONT STREET, SUITE 300  
SANTA CRUZ, CA 95060  
(408) 427-4863



BY FAX AND U.S. MAIL

January 29, 1998

Anthony Lobay, Director, Community Development Department  
George Thacher, City Attorney  
City of Pacific Grove  
Pacific Grove City Hall  
300 Forest Avenue  
Pacific Grove, CA 93950

**Re: Comments on Draft Mitigation Plan (dated November 24, 1997) prepared for the City of Pacific Grove by Paul Kephart in response to California Coastal Act violation on Stephen Page's property at 1450 Sunset Drive, Asilomar Dunes area, City of Pacific Grove, Monterey County (APN 007-021-05). California Coastal Commission Violation File Number V-3-97-020.**

Dear Mr. Lobay and Mr. Thacher,

Thank you for the opportunity to comment on the above-described proposed mitigation plan. We have evaluated the draft mitigation plan and we have conferred with the resource experts at the United States Fish and Wildlife Service (USFWS) and the California Department of Fish and Game (DFG) regarding the provisions of the mitigation plan. Our review of the draft mitigation plan, as supplemented by the concerns identified by DFG and USFWS, has identified some shortcomings and necessary modifications. **We will be able to endorse the mitigation plan for the Page property only if the modifications listed below are fully incorporated into a final mitigation plan:**

- (1) The following typographical errors should be corrected:
  - ▶ The address listed for the Central Coast District Office of the California Coastal Commission is incorrect (page 2, Part II, paragraph 2). The correct address is: 725 Front Street, Suite 300, Santa Cruz, CA 95060.
  - ▶ The United States Fish and Wildlife Service is incorrectly identified as the California Department of Fish and Wildlife (page 2, Part II, paragraph 4 and page 7, Part X, paragraph 1). In addition, the USFWS contact person (Amelia Orton-Palmer) should be listed on page 2.
- (2) Paragraph 2 of page 2 (Part I, "Introduction and Background") describes plants and animals which have historically been identified on the subject Page parcel. This paragraph excludes California black legless lizard (*Anniella pulchra nigra*) which, according to Bruce Cowan's April 6, 1994 report, "has been observed on or adjacent to the property as a significant population by Tom Moss, State Park Ecologist." The final mitigation plan should

identify the fact that significant populations of black legless lizard have been identified on the subject Page parcel. Furthermore, paragraph 2 of page 2 also incorrectly omits Menzies' wallflower (*Erysimum menziesii*). According to Cowan's April 6, 1994 report, Menzies' wallflower was seen just north of the north property line during March and April 1994 surveys. In addition, USFWS indicates that the stockpiled sand on the property completely covers areas where Menzies' wallflower probably occurred (see attached January 23, 1998 USFWS letter). This assessment is corroborated by DFG's historical site records indicating the presence of Menzies' wallflower on the subject site as recently as July of 1992 (see attached January 23, 1998 DFG letter). The final mitigation plan should identify these historic occurrences of Menzies' wallflower on and adjacent to the Page parcel as described by the resource experts.

- (3) Paragraph 3 of page 2 (Part I, "Introduction and Background") partially describes the regulatory protection offered to sensitive habitats and species. This paragraph omits the fact that USFWS implements the provisions of the Federal Endangered Species Act which governs sensitive habitats and species on the Page parcel. This omission should be corrected in the final mitigation plan. Furthermore, this paragraph in the final mitigation plan should describe the current regulatory status of the listed species identified on the subject Page parcel. Specifically:

- ▶ Menzies' wallflower (*Erysimum menziesii*) - Federal & State Endangered Species
- ▶ Tidestrom's lupine (*Lupinus tidestromii*) - Federal & State Endangered Species
- ▶ Monterey spineflower (*Chorizanthe pungens* var. *pungens*) - Federally Threatened Species
- ▶ California black legless lizard (*Anniella pulchra nigra*) - Federal Endangered Candidate Species, State Species of Special Concern

- (4) Paragraph 3 of page 5 describing impacts to black legless lizard (numbered "4") should be revised to include the USFWS finding in recommendation number 5 of the USFWS's January 23, 1998 letter (see attached). Specifically, the following should be added to this paragraph of the final mitigation plan:

*The proposed black legless lizard is not protected under the Federal [Endangered Species] Act. Although Mr. Page neglected to survey the site for this species, as required by the coastal development permit, [USFWS] believe[s] that a high likelihood exists that black legless lizards occurred on the Page property, given the suitable habitat conditions and distribution of the species. Disturbance by grading and stockpiling of sand probably caused most individuals that were not killed by such activities to disperse from the disturbed areas. Because vegetation is currently absent on the stockpiled sand or in the graded areas, it is unlikely that black legless lizards have been attracted to the area since it was graded."*

- (5) Proposed mitigation measure number 1 ("Sand Stockpiling" - paragraph 2 of page 6) states that "all sands shall be hauled off-site" and that this sand "must remain in the Asilomar Dunes are (sic)." First, the final mitigation plan should be clear that *all* stockpiled sands on the Page parcel should *not* be removed to an off-site location. In fact, the approved coastal

development permit (CDP 3-96-102) and the approved grading and erosion control plan identify temporary on-site storage locations for graded sands and require new dune creation on the Page parcel. Consistent with the understanding expressed by USFWS and DFG (see attached USFWS and DFG letters dated January 23, 1998), and consistent with Mr. Page's approved coastal development permit, the final mitigation plan should state that the highest quality stockpiled sand on the project site should stay on the project site to be used for dune creation, the lower quality sands to be used for backfilling around structures as necessary, and any remaining sand to be transported off-site. The final plan should also identify appropriate temporary sand storage locations, as necessary, and it should identify measures to protect any stored sand against contamination with weed seeds, theft, and degradation of purity by careless mixing with gravel, dirt or other such materials upon removal from the storage site.

With respect to the disposal of any excess sand remaining on the Page parcel once it is "removed from sensitive habitat areas" as described in the draft mitigation plan, there are some differences that have been expressed. USFWS recommends that any sand not used on-site be used for restoration purposes within Asilomar State Beach or at the pumping station at 17-Mile Drive and Spyglass Hill Road (see recommendation 2 in attached USFWS letter of January 23, 1998). DFG recommends that any sand which cannot be utilized on the Page property be distributed not farther than the adjacent Asilomar State Beach and/or Coast Guard property to the north of the Page parcel (see comment 7 in attached DFG letter of January 23, 1998). Erosion Control Note 12 of the approved grading and erosion control plan for CDP 3-96-102 states:

*Disposal site for excess excavated indigenous sand suitable for dune restoration shall be the Asilomar Dunes area only (inclusive of the Lighthouse Reservation through Spanish Bay and Fan Shell Beach).*

To satisfy Coastal Commission staff concerns, the proposed off-site disposal of sand within the Asilomar Dunes area (as described in the draft Kephart plan) is appropriate given the earlier parameters established by the approved grading plan. However, if more restrictive locations for sand disposal are required to satisfy DFG and USFWS requirements as stated in their attached January 23, 1998 letters, this office will not object to those more restrictive locations being included in the final plan.

- (6) Proposed mitigation measure number 3 ("Restoration" - paragraph 4 of page 6) states that "restoration shall follow the general guidelines as stated in the Landscape and Restoration Plan (Cowan)." Both USFWS and DFG recommend that this restoration mitigation measure be bolstered to adequately remediate for on-site habitat damages and, according to DFG, to address deficiencies in the aforementioned Cowan plan (see attached January 23, 1998 letters). In particular, DFG and USFWS both require approval of a much more detailed restoration plan on the Page property in light of the loss of listed species. According to the DFG and USFWS letters, Mr. Page may be in violation of both the California Endangered Species Act and the Federal Endangered Species Act. Accordingly, the restoration mitigation measure in the final mitigation plan should incorporate recommendation number

3 in the attached USFWS letter and comments number 3, 4, 5, and 6 in the DFG letter (see attached USFWS and DFG January 23, 1998 letters).

- (7) Both USFWS and DFG recommend the addition of an additional mitigation measure to mitigate for damages to habitat, including federal and state endangered species, from the grading activities at the subject site. This is particularly appropriate since the stockpiled sands were placed precisely on top of the Tidestrom's lupine and Monterey spineflower habitat areas which were *required* to be left "undisturbed" to preserve these endangered species (reference: Cowan's September 27, 1993 and April 6, 1994 plans, approved grading and erosion control plans for CDP 3-96-102). In addition to the habitat areas designated on the approved grading plan, the conditions of approval for CDP 3-96-102 specifically required that the native dune area be preserved as much as possible. Special condition 31 of CDP 3-96-102 states, in part:

*To the maximum extent possible the existing ground cover that protects the sand dunes shall not be disturbed.*

Special condition 37 states, in part:

*Leave natural vegetation intact in all portions of the property, except as required for the normal construction of buildings, utility infrastructure, roadways, driveways, parking, and to comply with fire safety specifications and recommendations.*

Special condition 37(e) states, in part:

*Site specific populations of Menzies' wallflower (*Erysimum menziesii*) and Tidestrom's Lupine (*Lupinus tidestromii*) shall be retained.*

Special condition 37(f) states:

*Native dune building grasses and forbs shall be retained.*

The conditions of approval and the approved grading plan for CDP 3-96-102 clearly required grading to be kept to a minimum to protect the natural dune area represented by Mr. Page's parcel. That is not to say that no grading was allowed but rather that care was to be taken when grading to protect the dune habitat. Certainly, by using an arm excavator and end-hauling of spoils, the allowed house site excavations could easily have been carried out with little disturbance of listed plant species and other dune habitat. As a result, the natural vegetation and sensitive habitat on the site were not protected to the "maximum extent possible."

Accordingly, the final mitigation plan should incorporate USFWS recommendation number 4 and DFG comment number 8 in the attached letters dated January 23, 1998. The 3:1 ratio recommended by USFWS and DFG is based upon the area of dune habitat disturbed. For purposes of clarification, Coastal Commission staff has calculated the area of dune habitat and sensitive species habitat that should, and easily could, have been protected -- but, was unnecessarily disturbed by the grading activities on Mr. Page's property. We calculate this area of unnecessary disturbance to be approximately 5,300 square feet. Therefore, to satisfy Coastal Commission staff concerns, based upon a 3:1 ratio, the additional mitigation measure to be added to the plan should state that the off-site

restoration component should restore an area of approximately 15,900 square feet using listed plants and other native vegetation. Please note that DFG and USFWS may independently require a larger area of mitigating restoration to satisfy State and Federal Endangered Species Act requirements. If that is the case, this office will not object to a larger restoration area, based upon DFG and USFWS calculations, being required in the final plan.

- (8) USFWS further recommends that proposed mitigation measure number 4 ("Legless lizard survey" - paragraph 5 of page 6) be revised to include surveying areas of the Page property that have not yet been disturbed for the presence of black legless lizard before further grading is done. Furthermore, a biological monitor shall be present (either a qualified herpetologist or biologist) during all remediation, grading, and site-preparation activities with the biological monitor having the authority to halt activities should the black legless lizard be in imminent danger (see recommendation number 5 in the attached USFWS January 23, 1998 letter). This is particularly appropriate since special condition 37 of Mr. Page's approved coastal development permit 3-96-102 specifically requires this same type of survey. Accordingly, this mitigation measure should be revised in the final mitigation plan to incorporate these USFWS recommendations.
- (9) In accordance with the recommendations by DFG and USFWS for more detailed restoration information (see number 6 above) and for off-site restoration (see number 7 above), a new success criteria should be added to the draft plan. This new success criteria should be inserted following proposed success criteria number 2 (on page 6 of the draft plan) and should state:

*Success will be determined when DFG and USFWS approve a detailed restoration plan outlining restoration methods, monitoring procedures, and performance criteria for restoring listed species (Menzies' wallflower, Tidestrom's lupine, and Monterey spineflower) and other native species (1) on the Page property and (2) off-site within the Asilomar Dunes complex or the Coast Guard's Lighthouse Reservation at Point Pinos.*

Accordingly, proposed success criteria number 3 (on page 7 of the draft plan) should be modified in the final mitigation plan to include "...as specified in the Landscape and Restoration Plan and the DFG/USFWS approved Restoration Plan described in the previous success criteria." (*italics indicate new text to be added*)

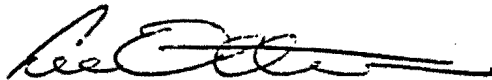
- (10) In the last paragraph of the proposed mitigation plan (under Part X, "Monitoring and Reporting"), the second sentence should be modified as follows: "The reports shall be submitted on a monthly basis and shall occur until the project success criteria have been 'met to the satisfaction of the City of Pacific Grove, the California Department of Fish and Game, the United States Fish and Wildlife Service, and the California Coastal Commission.'" (*italics indicate new text to be added*)
- (11) And finally, the final mitigation plan must include an appendix containing all comment letters received on the draft Kephart Mitigation Plan.

Please note that, according to USFWS and DFG, the grading at the Page site may have violated both the California Endangered Species Act and the Federal Endangered Species Act. As a result, these two agencies may be pursuing actions independent of the mitigation plan that we have commented upon in this letter. While we do not know the specifics of any actions that may be required by these two agencies, we can inform you of the methodology for resolving the Coastal Commission action.

In order to resolve Coastal Commission violation file number V-3-97-020, Mr. Page and the Coastal Commission will need to enter into a written settlement agreement. This settlement agreement will require implementation of a final mitigation plan incorporating the above-described comments. Since this settlement agreement depends upon an approved mitigation plan, please let us know as soon as possible the time-frame for producing a revised mitigation plan (incorporating the modifications listed above) for final review and approval.

We thank you for your ongoing assistance in resolving this matter and are available for consultation as needed as you proceed with developing the appropriate remediation measures for the Page property. If you have any questions regarding these mitigation plan comments, please contact myself or Dan Carl in the Central Coast Area office at (408) 427-4863. If you have any questions regarding the settlement agreement, please contact Darryl Rance in the Statewide Enforcement Program in San Francisco at (415) 904-5248.

Sincerely,



Lee Otter  
District Chief Planner  
Central Coast Area Office

Attachments: USFWS letter to Lee Otter dated January 23, 1998  
DFG letter to Lee Otter dated January 23, 1998

cc: Mary-Margaret O'Connell, Attorney for Stephen Page (by fax and U.S. Mail)  
Deb Hillyard, California Department of Fish and Game  
Amelia Orton-Palmer, United States Fish and Wildlife Service  
Paul Kephart, Rana Creek Restoration  
Diane Landry, Legal Counsel, California Coastal Commission Central Coast District Office  
Nancy Cave, Manager, California Coastal Commission Enforcement Program  
Darryl Rance, Enforcement Analyst, California Coastal Commission Enforcement Program

**LAW OFFICES OF  
MARY-MARGARET O'CONNELL**

**550 Hartnell St., Suite J  
Monterey, CA 93940**

**Telephone: (408) 649-0535  
Facsimile: (408) 649-0559**

March 30, 1998      via fax transmission (415) 904-5400

Daryl Rance  
Enforcement Unit  
California Coastal Commission  
45 Fremont, suite 2000  
San Francisco, CA 94105-5200

RE: Stephen Page Property

Dear Mr. Rance,

Attached to this fax is editing suggestions for the original proposed settlement agreement provided by your office in the Page matter.

I was unsure if the agreement should include state Fish & Game and US Fish & Wildlife. These two agencies appear to be "part" of the Coastal Commission staff on resource issues. We wish to resolve all issues with all entities upon settlement.

Sincerely,

  
Mary-Margaret O'Connell



3. Restoration Plan Status: With the exception of the unfounded substantive findings proposed by Mr. Otter in his letter of January 29, 1998, the technical restoration steps largely appear acceptable.

I have asked Mr. Kephart to work up a revision to his restoration plan that incorporates the additional technical steps suggested by Mr. Otter in his letter of January 29, 1998.

4. Commencement of Restoration Plan: I have contacted various individuals who could qualify as the expert monitors to over see the technical steps of the Restoration Plan. It occurred to me that since Mr. Kephart has thoroughly evaluated the property and worked with Coastal and State Parks in the past, he would be certainly qualified to serve as the monitor.

Do you agree?

5. March 2, 1998 letter to Mr. Rance from Mr. Page: You have just this week received Mr. Page's March 2, 1998 letter wherein he comments on your letter of February 19, 1998. I realize that you will not feel comfortable communicating with Mr. Page directly because he is represented, however, I do wish you would respond to his letter. Please feel free to transmit the response to me and I will forward it to Mr. Page.

Sincerely,

  
Mary-Margaret O'Connell

cc: George Thacher, Esq. fax transmission 375-9863  
Paul Kephart, fax transmission 689-4851

**RANA  
CREEK  
HABITAT RESTORATION**



**RECEIVED**

AUG 10 1998

CALIFORNIA  
COASTAL COMMISSION  
CENTRAL COAST AREA

July 30, 1998

To: Anthony Lobay, Community Development Department  
George Thatcher, City Attorney  
City of Pacific Grove  
300 Forest Avenue  
Pacific Grove, CA 93950

RE: Stephen Page

Dear Mr. Lobay and Mr. Thatcher,

Effective June 15th, 1998, Stephen Page authorized me to submit a Final Mitigation Agreement in response to California Coastal Act Violation File No. V-3-97-020 (PAGE); APN 007-021-05, on Stephen Page's property at 1450 Sunset Drive, Asilomar Dunes area, City of Pacific Grove. I have modified the Revised Mitigation Plan for the Page property based on comments and suggested revisions provided to me by Mr. Page and his attorney, Mary-Margaret O'Connell.

If you have questions regarding the mitigation plan, I can be reached at (831) 659-3820.

*Paul Kephart*

Paul Kephart  
Restoration Ecologist

cc

Mary-Margaret O'Connell, Attorney for Stephen Page  
Bruce Elliott, California Department of Fish and Game  
Ray Bransfield, United States Fish and Wildlife Service  
Darryl Rance, Analyst, California Coastal Commission Enforcement Program  
Lee Otter, California Coastal Commission, District Chief Planner

CC'D TO NANCY TOO

PAGE CCC-99-CD-05  
EXHIBIT NO.22 Page 1 of 12

REVISED MITIGATION PLAN  
for  
STEPHEN PAGE

VIOLATION OF COASTAL DEVELOPMENT PERMIT  
NO. 3-96-102 (Page)  
and  
CITY OF PACIFIC GROVE BUILDING PERMIT  
NO. 97-0297

PREPARED  
FOR  
STEPHEN PAGE

REVISED  
July 30, 1998

PREPARED  
BY  
PAUL KEPHART  
RESTORATION ECOLOGIST

Rana Creek Habitat Restoration 35351 East Carmel Valley Road Carmel Valley CA 93924  
(408) 659-3820

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## I. INTRODUCTION AND BACKGROUND

On November 15, 16, and 17 1997, grading was conducted on the Stephen Page property, allegedly contrary to certain conditions set forth in coastal development permit 3-96-102 (Page), and with City of Pacific Grove building permit no. 97-0297. Graded materials have been placed on adjacent parcels as well as on the Page parcel which contain mapped sensitive habitat. The purpose of this plan is to identify impacts and provide the procedures to mitigate for impact to sensitive habitat as a result of grading and stockpiling sand.

The 1994 biological assessment conducted by Cowan identified areas where nine Tidestrom's lupines (*Lupinus tidestromii*) and a population of Menzie's wallflower (*Erysimum menziesii*) were located on the adjacent Miller property. A small population of the Federally threatened Monterey spine flower (*Chorizanthe pungens*) were found on the Page property. No Tide'stroms lupine or Menzie's wallflower were found on the Page property. Since 1994, the property was surveyed by Cowan several times and no further sightings of endangered flora occurred (Cowan pers. com. 1998). Further, the protected area defined in plans submitted to the California Coastal Commission and City of Pacific Grove in 1995, had become overgrown with iceplant. Historical analyses and findings in the September 1993 Landscape and Restoration Plan, and the April and May, 1994 addendum concerning possibility of certain endangered species and potential impacts to areas south of the driveway on the Miller property were consistent with these findings (Cowan 1997). Sensitive habitat areas were identified on the Grading and Erosion Control Plan Sheets (Monterey Bay Engineers Inc. 1995). Habitat that in 1994 contained Monterey spine flower (*Chorizanthe pungens*) are clearly demarcated on the Grading and Erosion Control Plan Sheets. The plan sheets erroneously site Tidestrom's lupine as historically occurring in the sensitive habitat areas on the Page property. According to Cowan (1989-1993-94), Menzie's wallflower and Tidestrom's lupine were not and never have been found on the Page property.

A recent biological assessment conducted September of 1997 by Cowan found no endangered plants on the project site. Regardless of the recent findings, one historic occurrence of Monterey spine flower in 1994 was located and identified. The 1997 alledged impact to the habitat falls under the jurisdiction of the California Department of Fish and Game and is subject to regulations governed by the Rare and Endangered Species Act which governs habitat and species on the Page parcel. The current regulatory status of species that could occur and previously identified, is as follows:

- |    |   |   |
|----|---|---|
| 1. | Menzies' wallflower ( <i>Erysimum menziesii</i> )                       | Federal & State Endangered Species                                      |
| 2. | Tidestrom's lupine ( <i>Lupinus tidestromii</i> )                       | Federal & State Endangered Species                                      |
| 3. | Monterey spineflower ( <i>Chorizanthe pungens</i> var. <i>pungens</i> ) | Federally Threatened Species  |
| 4. | California black legless lizard ( <i>Anniella pulchra nigra</i> )       | Federal Endangered Candidate Species, State Species of Special Concern. |

Populations of California Black Legless Lizards (*Anniella pulchra nigra*) are known to occur on adjacent properties. According to Bruce Cowan's April 6, 1994 report. "California Black Legless Lizards have been identified adjacent to the Page property as a significant population by Tom Moss, State Park Ecologist." No sightings of California Black Legless Lizards have occurred on the Page property.

The Botanical Survey, Landscape Restoration, Monitoring, Mitigation, and Maintenance Plan addendum dated August 3, 1995, mitigation measure #3., stated "The presence of California Legless Lizards shall be determined by trapping, combing, or other means deemed appropriate by the coastal biologist within all areas to be disturbed by construction activity immediately prior to grading operations." A survey was conducted by Bruce Cowan prior to grading. Page relied on Cowan's

advice, and findings in the previously conducted EIR study. Page 4.3-7 of the EIR study states, "The California Black Legless Lizard could potentially occur on the site, although little or no habitat suitable for this species is found on site." Prior to grading, Page flagged the small area of potential habitat near the northern most property line. This area was protected during grading. The grading took place in an area that had since 1994, become overgrown with iceplant, and therefore not suitable habitat for this species (Cowan pers. com. 1998). Page believed he had complied with the Special Permit Conditions, prior to grading. Further, in the CDFG letter dated January 23, 1998, Page 2, Paragraph 1 states: Mr. Page was subsequently informed of changes that needed to be made to his draft Mitigation Agreement (including the fact that no Mitigation Agreement was needed for the black Legless Lizard as it is non State-listed). CDFG would appear to state, no mitigations were necessary for the Black Legless Lizard.

On July 30, 1998, a survey was conducted on the entire Page parcel specifically to determine if in fact any Legless Lizards inhabit the property. The search was conducted by combing and raking underneath shrubs and within the duff layer in fifteen locations in graded and non-graded areas. No California Black Legless Lizards were found (Kephart 1998).

A Landscape and Restoration Plan was submitted and approved by Cowan in September 1993. The plan provides specific information regarding a pre-construction meeting to be attended by the general contractor to ensure protection measures were understood. The meeting was held on August 27, 1997. In attendance was Mary-Margaret O'Connell, Bruce Cowan, and owner representatives. The owner, Stephen Page (who lives in Texas) was not in attendance. Stephen Page conducted the grading and stockpiling of sand. The Landscape and Restoration Plan requires the supervision by a qualified biologist during grading activities. A monitoring report to be submitted to the City of Pacific Grove (Coastal Commission) is required to ensure compliance with approved plans and protection guidelines. No report was submitted.

Within two weeks of the alleged November 1997 permit violations, Paul Kephart, at the request of The City of Pacific Grove, submitted a Mitigation Plan acceptable to Page. The December 1997 Mitigation Plan was rejected by the California Coastal Commission as deficient. Since December 1997, Page has negotiated for reasonable mitigation measures and language to be included in a Revised Mitigation Plan. Upon submittal and acceptance of this Revised Mitigation Plan, with a firm commitment to execute said plan, the owner will be allowed to proceed with construction activities. Compliance with the actions and standards specified in this plan shall be supervised by a qualified biologist and compliance reports submitted to all regulatory agencies.

1. Property owner  
Stephen Page  
1450 Sunset Drive  
Asilomar Dunes Area  
City of Pacific Grove  
Monterey County California
2. Coastal development permit 3-96-102 Violation file V-3-97-020
3. City of Pacific Grove  
Building Permit 97-0297

Debra Hillyard  
Plant Ecologist  
P.O. Box 4003  
Aromas, CA 95004

California Coastal Commission  
Central Coast Area Office  
Enforcement Division  
725 Front Street, Suite 300  
Santa Cruz, CA. 93960

Tony Lobay  
Community Development Director  
300 Sixteenth Street  
Pacific Grove, CA 93950

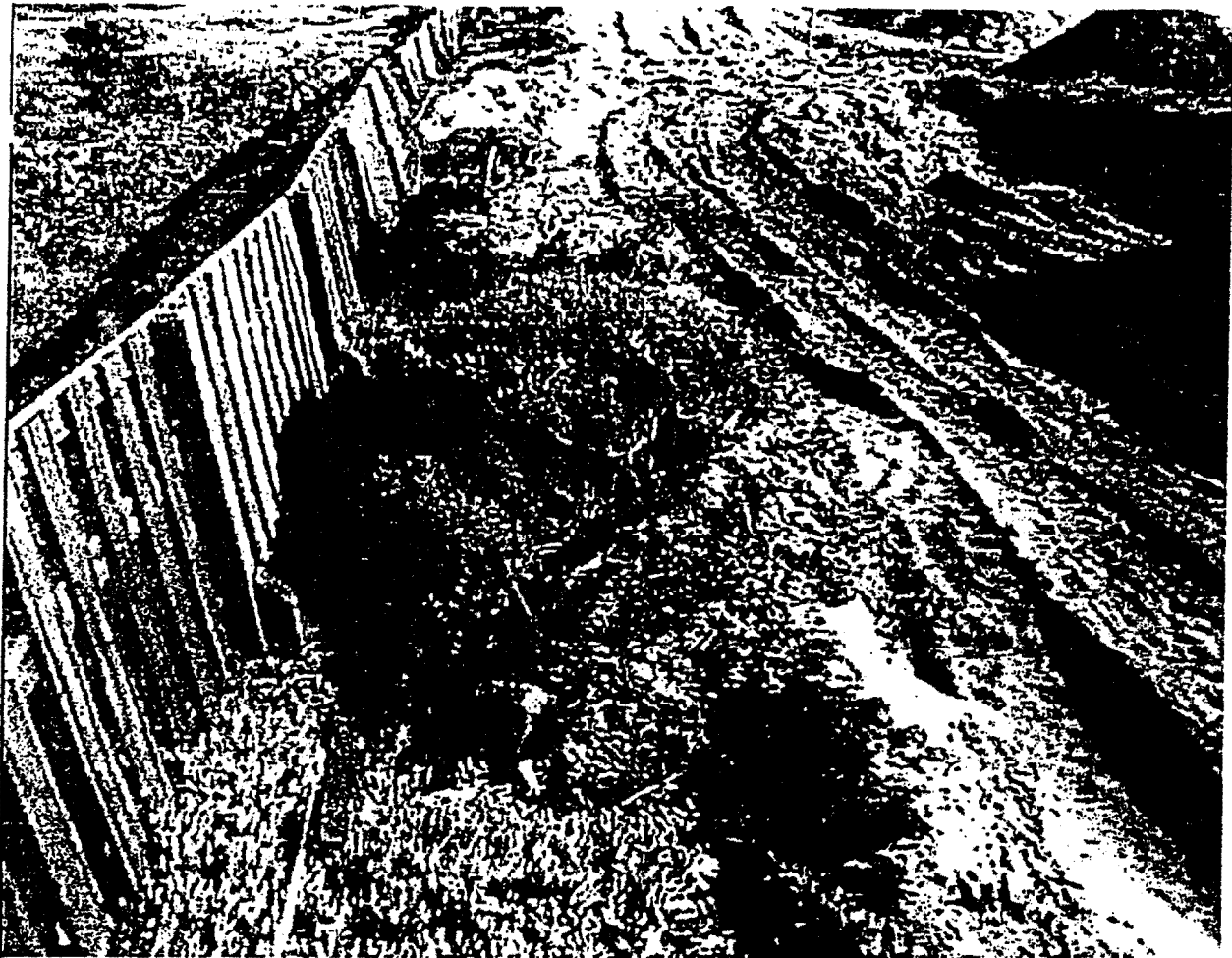
U.S. Fish and Wildlife Service  
Amelia Orton-Palmer  
Ventura Field Office, Portola Rd #B  
Ventura CA 93003

### III. ASSESSMENT OF IMPACTS

1. **Site analyses:** On November 23<sup>rd</sup>, 1997, a site analyses was conducted to determine the extent and severity of impacts to sensitive habitat areas. The method used was to thoroughly walk over the entire site and record images of the project site with a digital camera.

### IV. FINDINGS

1. **Fencing:** During the site visit it was found that exclusionary fencing, identification, and protection of sensitive habitat areas was inadequate. Fencing was correctly installed in an area adjacent to the shared driveway with the Miller property, as suggested in the Cowan site review, during September 1997, prior to grading. Fencing was not correctly installed to adequately demarcate habitat and grading zones as shown on the approved Erosion Control and Grading Plan Sheets. No identifying signs were present to demarcate sensitive habitat areas as shown on the Grading and Erosion Control Plan (1995). No grade stakes were present to adequately define areas, boundaries, and elevations of grading.



No exclusionary fencing; grading impacting mapped habitat areas.

2. **Habitat impacts:** The City of Pacific Grove and The California Coastal Commission alleges the owner placed sand in areas of sensitive habitat depicted on the approved Grading and Erosion Control Plan (1995), although this area had since become overgrown with iceplant and no longer represented a viable habitat for endangered flora and/or fauna (Cowan site survey, 1997). Considerable volumes of sand impact areas on the ocean side of the project site. This area was not designated as protected in California Coastal Commission approved Erosion Control and Grading Plan. The sand completely covers native plants and shrubs. The areas contain native species such as salt grass (*Distichlis spicata*), sand sedge (*Carex pansa*), coyote bush (*Baccharis pilularis* var. *pilularis*), and mock heather (*Haplopappus ericoides*). None of the aforementioned species are listed as State and/or Federally listed species.
3. **Stockpiling sand:** Stockpiling of sand and grading encroached onto sensitive habitat areas throughout the project site. The Page Erosion Control and Grading Plan depict habitat for Tidestrom's lupine (erroneously stated) and Monterey spine flower. Monterey spine flower germinates indeterminately, often lying dormant in the soils for many years. While shallow and infrequent levels of disturbance may benefit germination of these species, piling sands and grading below soil surface can cause irreparable injury.





Sand stockpiled on sensitive habitat areas



Sand piled in future Dune Restoration Area

The sand piled in areas of the Miller residence is consistent with the Landscape and Restoration Plan. The Grading and Erosion Control Plan provides for creation of dune habitat on the stockpiled sands.

3. Grading was mostly contained to designated grading areas, however, some grading activities encroached on the root zones of adjacent habitat, impacting several non-listed plants. No buffer between habitat areas and grading were identified. The grading footprint is considered to be within the guidelines stated in the Grading and Erosion Control Plan. During a recent survey (7/30/98), the plants have not suffered any injury and native species such as salt grass and sand sedge have grown over the edge of the graded site.

4. No determination of impacts to habitat regarding potentially occurring legless lizard have been made. No determination of presence or absence, or suitability of said habitat has been assessed by a qualified herpetologist. According to the CDFG January 23, 1998 letter, none was required. Grading occurred without required surveys, however the California Black Legless Lizard is not protected under the Federal Endangered Species Act, and no Legless Lizards were found on site (Kephart, 1998).

Mr. Page mistakenly relied on the advise of a non qualified herpetologist who surveyed the site for this species, as required by the coastal development permit. (USFWS) believe(s) "that a high likelihood exists that black legless lizards occurred on the Page property, given the suitable habitat conditions and distribution of the species". "Disturbance by grading and stockpiling of sand probably caused

most individuals that were not killed by such activities to disperse from the disturbed areas." "Because vegetation is currently absent on the stockpiled sand or in the graded areas, it is unlikely that Black Legless Lizards have been attracted to the area since it was graded," (USFWS). Contrary to USFW's position, the EIR study for the project states, "Known to inhabit coastal dunes including the Asilomar dunes. The lizard could potentially occur on the project site although little or no habitat suitable for this species is on the site." No legless lizards have been seen prior to or after grading.

## VI. MITIGATION MEASURES

The following mitigation measures are provided by which success criteria will be applied.

1. **Sand stockpiling:** Most of the stockpiled sand must stay on the project site for future dune creation. Poor quality stockpiled sand shall be used to backfill around the house upon completion of the foundation. Sand in the potential habitat areas shall remain until such time as restoration of habitat begins. Disposal site of excess sand suitable for dune restoration shall be the Asilomar Dunes Area only.
2. **Fencing and identification of habitat areas:** Exclusionary fences shall be installed demarcating the extent and boundaries of all habitat areas. The four foot fencing shall be fastened to t-post stakes placed at eight foot intervals. At 12 foot intervals, signage shall be installed to the fence clearly designating boundaries of sensitive habitat areas. No grading shall occur within a 3 foot setback of sensitive habitat areas. Fencing shall be under the supervision of the consulting biologist.
3. **Restoration:** Restoration of the sensitive habitat areas shall commence after stockpiled soils are removed and the site returned to its original topography, post construction. Restoration shall follow the guidelines as stated in the Landscape and Restoration Plan (Cowan). Additional remediation for alleged on-site damages to sensitive habitat shall be conducted. Restoration of an adjacent 3,000 sq. foot area using native vegetation as described in the Cowan Plan will be implemented concurrently with the landscape restoration effort on the Page property, once construction activities have ended.
4. **Legless Lizard survey:** A coastal biologist will determine the presence or absence of legless lizards and assess the suitability of remaining habitat areas, all areas where sand has been stockpiled shall be surveyed. A report shall be delivered to each regulatory agency describing the results of the survey and assessment (study conducted 7/30/98).

## VII. SUCCESS CRITERIA

The objectives to be met are based upon returning the site to conditions existing prior to the placement of sand, post completion of construction activities.

1. Success will be determined when stockpiled sand is removed from sensitive habitat areas as shown on the Grading and Erosion Control Plan, post completion of construction activities.
2. Success will be determined when Page implements the previously approved Cowan Plan, post completion of construction activities, on the property site and adjacent 3000 sq. ft. area, only if permission is given to restore adjacent area by appropriate agencies and/or property owner.
3. Success shall be determined when a qualified biologist submits a one time report describing habitat assessment, future grading and excavation recommendations.

4. Success shall be determined when a qualified biologist provides habitat assessment and supervision of all sand removal, future grading, and excavation on the entire project site.

#### VIII. PERFORMANCE STANDARDS

Prior to proceeding on any construction activities, the owner is required to comply with all mitigation procedures in this plan. Mitigation standards will focus on achieving complete and successful implementation of each success criteria within ninety (90) days of approval to proceed. If success criteria are not met within ninety days, the reasonable implementation of each mitigation measure shall be borne at the owners expense and carried out by a contractor selected and under direction of The City of Pacific Grove.

#### IX. TIMELINE

Mitigation for impacts to the site shall begin immediately upon approval of this Revised Mitigation Plan. Significant progress must be documented within ninety (90) days of approval to proceed. Monitoring and reporting shall take place until all performance criteria are met.

#### X. MONITORING AND REPORTING

A copy of the Report will be submitted to The City of Pacific Grove, The California Department of Fish and Game, The United States Fish and Wildlife Service, and The California Coastal Commission. The reports shall be submitted on a quarterly basis and shall occur until Page receives an Occupancy Permit from the City of Pacific Grove. Reports shall contain photo-documentation, observational and analytical data, and notes pertaining to the compliance with mitigation objectives.

Appendix:

1. Comment letters received on the draft Kephart Mitigation Plan.
2. CDFG letter dated January 23, 1998.
3. Excerpt from EIR, Page 4.3-7.

**CALIFORNIA COASTAL COMMISSION**

CENTRAL COAST DISTRICT OFFICE  
ENFORCEMENT DIVISION  
725 FRONT STREET, SUITE 300  
SANTA CRUZ, CA 95060  
(408) 427-4863

**BY FAX AND U.S. MAIL****November 13, 1998**

Mary-Margaret O'Connell, Esq.  
Attorney for Stephen Page  
550 Hartnell Street, Suite J  
Monterey, CA 93940

**Subject: Coastal Act Violation Number V-3-97-020**

Dear Ms. O'Connell,

The purpose of this letter is to respond to Paul Kephart's "Revised Mitigation Plan for Stephen Page" dated July 30, 1998 received in this office on August 10, 1998. We are encouraged that Mr. Page followed through on his June 4, 1998 commitment to revise the previous draft Kephart plan. We take this as a positive sign that Mr. Page is now committed to an administrative resolution to the above-referenced Coastal Act violation. However, we are generally disappointed in the content of this revised plan. In order to achieve an acceptable plan and final resolution of this matter, we will provide word by word examples of what it will take to revise the plan to a level acceptable for resolving Mr. Page's enforcement case. In the absence of such revisions, we are prepared to commence cease and desist and restoration order proceedings as necessary to restore the site.

In multiple letters on the subject, Commission staff has gone to great lengths to specifically identify the necessary modifications to the draft Kephart plan to resolve violation number V-3-97-020. The revised plan received on August 10, 1998 seems to mostly ignore this previous correspondence. In fact, portions of the revised plan attempt to dispute (rather than incorporate) our previous recommendations. Although we again reiterate our willingness to discuss variations to our recommended revisions that are more palatable to Mr. Page, please be advised that any such revisions cannot be undertaken at the expense of the coastal resources which were to be protected pursuant to Coastal Development Permit (CDP) 3-96-102 and which were adversely impacted by Mr. Page's unpermitted grading activities.

Commission staff has spent a great deal of time and effort to resolve this matter administratively. In letters dated 12/17/97, 12/18/97, 12/26/97, 1/11/98, 1/29/98, 2/19/98, 4/2/98, 4/7/98, 6/3/98, 6/4/98, and 8/14/98 Commission staff have clearly outlined the work that was undertaken inconsistent with approved CDP 3-96-102, and the reasonable steps necessary to mitigate the resultant adverse impacts to coastal resources and to allow Mr. Page to move forward with his project. Despite these genuine and consistent staff efforts, the desired administrative solution still eludes us.

Nevertheless, because we still believe that we can come to an administrative agreement, we are willing to make one more effort to bolster the draft Kephart plan to adequately address the impacts of the subject grading activities at Mr. Page's property. Although disappointed with the July 30, 1998 revised Kephart plan, we believe that there is enough common ground that we can again offer our recommendations for modifying and correcting inaccuracies in this plan so that, when implemented, it will result in an administrative resolution to V-3-97-020. Towards this end, the attached recommendations build upon our previous attempts to help you construct a viable resolution solution and need to be incorporated into a final Kephart mitigation plan. If you would prefer, we would also be pleased to meet with Mr. Kephart at a mutually agreeable time and place, roll up our sleeves, and hammer out any final revisions that will be needed to complete this task. Please let us know by November 30, 1998 if you would like us to facilitate in this manner; Dan Carl of the Central Coast office will be available for such purposes should you desire to pursue this "in-person" option.

Please inform us by November 30, 1998 if you will be pursuing revisions to the draft Kephart plan as detailed in this letter. If we have not heard from you before November 30, 1998, we will assume that you are not going to revise the draft Kephart plan. If we understand by November 30, 1998 that you are not going to pursue Kephart plan revisions, or, alternatively, if a revised Kephart plan which responds to our comments is not resubmitted prior to January 16, 1999, we will initiate formal Commission cease and desist and restoration order proceedings as necessary to restore the site.

We look forward to your anticipated cooperation.

Sincerely,

*Lee Otter (RB)*

Lee Otter  
District Chief Planner  
Central Coast Area Office

*Nancy Cave*

Nancy Cave  
Manager, Statewide  
Enforcement Program

cc: Stephen Page  
George Thacher, City Attorney, City of Pacific Grove  
Anthony Lobay, Director, City of Pacific Grove Community Development Department  
Deb Hillyard, California Department of Fish and Game  
Amelia Orton-Palmer, United States Fish and Wildlife Service  
Bill Talkin, United States Fish and Wildlife Service  
Paul Kephart, Rana Creek Habitat Restoration  
Diane Landry, Legal Counsel, California Coastal Commission Central Coast District Office

## **Kephart Plan Revisions**

---

### **1. Erroneous Violation Background Information**

The July 30, 1998 revised Kephart plan is rife with inaccuracies regarding the basic details of the enforcement case. These inaccuracies must be corrected for the record. Frankly, we were surprised to see so many misstatements in the revised plan and we would hope that all parties share our goal of framing the issue based solely on the documented history at the Page parcel. An accurate contextual foundation is crucial to understanding the importance of the coastal resources damaged by the November 1997 grading activities.

#### **1a. Comments on Part I: Introduction and Background (Pages 1 – 2)**

The plan is incorrect when it goes to great lengths on page 1 to describe the subject property as having provided limited habitat for endangered and threatened species. The plan even states that, "[a]ccording to Cowan (1989-1993-1994), Menzie's wallflower and Tidestrom's lupine were not and never have been found on the Page property." This is simply not true and even contradicts the previously submitted draft Kephart plan on this point. In fact, Bruce Cowan himself, Mr. Page's own environmental consultant, identified all but Menzie's wallflower on the subject site. In his 9/27/93 report, Cowan states:

*An open sandy area [between the proposed house and Sunset Drive] has a sparse cover of dune bluegrass (Poa douglasii). **Endangered Tidestrom's lupines (Lupinus tidestromii) were found here during the initial botanical survey. It is likely that the lupines still occur, presently dormant under the sand until next spring. This open sandy area is considered to be Tidestrom's lupine habitat and should be left undisturbed.** (Emphasis added)*

This area of protected lupine habitat specifically identified by Cowan is precisely the area within which grading took place in November 1997 inconsistent with the Grading and Erosion Control Plan approved in CDP 3-96-102 which required this area to be protected. This area was likewise to be protected because it was identified by Cowan as Monterey spineflower habitat. Specifically, in his 4/6/94 report, Cowan states.

*Monterey spineflower (Chorizanthe pungens var. pungens) was designated a Federally Threatened Species as of March, 1994. **On the page property about a dozen very small plants were found in an open sandy area near the northeast corner. On the north side of the fence outside the property several hundred plants were found in similar habitat. The plants were just beginning to bloom when observed on April 4, 1994. The portion of the Page property on which this species occurs is to remain undisturbed.** (Emphasis added)*

Contrary to the requirements of CDP 3-96-102 for fencing and protecting these habitat areas described by Cowan, these areas were observed to be fully disturbed when Commission staff first verified the improper grading activities on November 17, 1997. In fact, contrary to page 2, paragraph 1 of the revised Kephart plan which states that "the small area of potential habitat near the northern most property line...was protected during grading," the only area that staff observed to be flagged on November 17, 1997 was on the Miller property adjacent to the



southern property line (as correctly described in the revised plan on page 3 under "fencing"). The Kephart plan needs to be revised to accurately reflect this fact.

In terms of Menzies' wallflower, our January 29, 1998 letter describing the changes necessary in the original draft Kephart Plan included as an attachment a letter dated January 23, 1998 from the California Department of Fish and Game (CDFG) which states:

*Our records indicate that present on the subject site [Page parcel], at least as recently as July 1992, were Tidestrom's lupine (Lupinus tidestromii), California and Federally endangered; Menzies' wallflower (Erysimum menziesii), California and Federally endangered; and Monterey spineflower (Chorizanthe pungens var. pungens), Federally threatened. (Emphasis added)*

In terms of California black legless lizard, the revised mitigation plan inaccurately quotes Cowan's 4/6/94 report and concludes incorrectly that "[n]o sightings of California Black Legless Lizards have occurred on the Page property." In the corrected passage from Cowan's 4/6/94 report, Cowan states:

*[Black legless lizard] has been observed on or adjacent to the property as a significant population by Tom Moss, State Park Ecologist. (Emphasis showing portion of quote missing from description in revised Kephart plan)*

Mr. Kephart's failure to include "on or" results in a negative conclusion regarding the historical presence of black legless lizard on the subject site. However, Mr. Page's approved Grading and Erosion Control Plan defines an area of "legless lizard habitat" adjacent to the northern property line, as does Cowan's April 6, 1994 report. Moreover, our January 29, 1998 letter describing the changes necessary in the original draft Kephart Plan included as an attachment a letter dated January 23, 1998 from the United States Fish and Wildlife Service (USFWS) which states that "[USFWS] believe[s] that a high likelihood exists that black legless lizards occurred on the Page property." This USFWS sentiment is likewise echoed by Kephart later on in the revised plan. More importantly, the approved conditions of Mr. Page's CDP were designed to protect any populations of black legless lizards that may have been present on the Page parcel prior to grading of the site.

Therefore, contrary to the incorrect description in the revised Kephart plan which only describes a small population of Monterey spineflower as ever being present on the property, all of the above-described endangered and threatened plant species have been identified on the Page parcel. Moreover, the site supports legless lizard habitat with members of this species having been documented on or adjacent to the site. The Kephart plan needs to be revised to reflect these facts.

An accurate habitat history for the Page site is necessary because it corrects Kephart's general background description which minimizes the Page site as providing habitat for these species. When Kephart states that no endangered plants were found in a 1997 site survey, or that iceplant covers the Menzies' wallflower/Monterey spineflower exclusion area defined by the approved Grading and Erosion Control Plan, he is taking a very short term view of the site's habitat values. In fact, it is precisely because of these historical occurrences of endangered and threatened species that caused the Commission to protect said habitat areas when it

conditionally approved CDP 3-96-102. We know that proven, viable endangered and threatened species' habitat exists on the Page site. It makes no difference if these species are dormant, currently displaced by iceplant, or above the surface in spring blooms, this parcel supports endangered and threatened species habitat. More importantly, this habitat area was protected by the approved Grading and Erosion Control Plan of CDP 3-96-102. It is because Mr. Page chose to disregard these approved plans protecting habitat areas that we continue to argue the merits of the Kephart plan at all.

**1b. Comments on Part IV: Findings (pages 3 – 7)**

Mr. Cowan's 1997 assertion, as described in the revised Kephart plan on page 4 under "Habitat Impacts," that the "areas of sensitive habitat depicted on the approved Grading and Erosion Control Plan...no longer represented a viable habitat for endangered flora and/or fauna" does not take precedence over the Commission's action on CDP 3-96-102. The Landscape and Restoration Plan approved by the Coastal Commission identifies specific areas on the Page property as sensitive habitat to be protected from disruption by site development activities. Further, the Grading and Erosion Control Plan approved by the Coastal Commission to implement the Landscape and Restoration Plan also required these specific areas to be fenced and flagged to prevent disruption. Moreover, as described above, this area represents proven and viable endangered and threatened species' habitat. As verified by Commission staff on November 17, 1998, these areas were not fenced and protected but rather were covered with sand as a result of your client's grading activities. On this point, it is not an "allegation" but rather a verified observation by staff of the Commission, as corroborated by the pictures in the revised Kephart plan, that sand was placed in areas required by CDP 3-96-102 to be protected and free of sand. Furthermore, as stated in the January 23, 1998 CDFG letter (included as an attachment to our January 29, 1998 on the original draft Kephart plan), CDFG also visited the site on January 13, 1998 and concluded that while CDFG's records indicate that Tidestrom's lupine, Menzies' wallflower, and Monterey spineflower had all been identified on the Page parcel as recently as 1992, "no listed plant species or habitat remain on the parcel after grading." Accordingly, references in the Kephart plan to sand *allegedly* covering this area contrary to the approved Grading and Erosion Control Plan need to be revised to reflect this as fact. These protected habitat areas were, in fact, disrupted by Mr. Page's grading activities.

The "Habitat Impacts" section on page 4 also states that "[c]onsiderable volumes of sand impact areas on the ocean side of the project site." The revised Kephart plan correctly states that the ocean side of the project site was not designated as protected in the approved Grading and Erosion Control Plan. However, the plan should also complete this thought by denoting that no work was proposed or authorized in this area either. The Kephart plan needs to be revised to reflect this fact.

The revised Kephart plan is incorrect on page 4, paragraph 2 when it claims that lupine habitat is "erroneously stated" on Mr. Page's approved Grading and Erosion Control Plan. As described in the comments above on "Introduction and Background," Tidestrom's lupine was identified on the subject Page parcel by Mr. Page's own environmental consultant, Bruce Cowan. Pursuant to Mr. Cowan's recommendations and with the Commission's permit action, the Tidestrom's lupine habitat area was designated for protection from site grading activities in the approved Grading and Erosion Control Plan. The Kephart plan needs to be revised to reflect this fact.

The revised Kephart plan is incorrect on page 6, paragraph 2 where it states that "[t]he grading footprint is considered to be within the guidelines stated in the Grading and Erosion Control Plan." To the contrary, Commission staff observed the site on November 17, 1998 to be almost completely disturbed. Stockpiled sands were placed precisely on top of the Tidestrom's lupine and Monterey spineflower habitat areas. These areas were required to be left "undisturbed" to preserve these endangered species by Cowan's September 27, 1993 and April 6, 1994 plans and the approved Grading and Erosion Control Plan for CDP 3-96-102. Furthermore, in addition to the habitat areas that were supposed to have been protected and which were not, general disturbance on-site was to be kept to a minimum. Erosion Control Note 3 of the approved Grading and Erosion Control Plan states:

*Disturbance of surface vegetation during construction shall be kept to a minimum and shall comply with landscape and restoration plan by Bruce Cowan.*

Likewise, the conditions of approval for CDP 3-96-102 specifically required that the native dune area be preserved as much as possible. Special condition 31 of CDP 3-96-102 states, in part:

*To the maximum extent possible the existing ground cover that protects the sand dunes shall not be disturbed.*

Special condition 37 states, in part:

*Leave natural vegetation intact in all portions of the property, except as required for the normal construction of buildings, utility infrastructure, roadways, driveways, parking, and to comply with fire safety specifications and recommendations...Site specific populations of Menzies' wallflower (*Erysimum menziesii*) and Tidestrom's Lupine (*Lupinus tidestromii*) shall be retained...Native dune building grasses and forbs shall be retained.*

The conditions of approval and the approved Grading and Erosion Control Plan for CDP 3-96-102 clearly required grading to be kept to a minimum to protect the natural dune habitat area represented by Mr. Page's parcel. That is not to say that no grading was allowed, but rather that care was to be taken when grading to protect the dune habitat. Certainly, by using an arm excavator and end-hauling of spoils, the allowed house site excavations could easily have been carried out with little disturbance of listed plant species and other dune habitat. As a result, the natural vegetation and sensitive habitat on the site were not protected to the "maximum extent possible" and the grading footprint was not within the parameters of the Grading and Erosion Control Plan. The Kephart plan needs to be revised to reflect this fact.

The finding for black legless lizard on pages 6 and 7 requires clarification. The important element to identify is that the CDP-required pre-grading assessment was lacking for the Page project. It is immaterial that black legless lizards are not protected by the Federal Endangered Species Act. It is likewise immaterial that Mr. Kephart did not find any lizards in 1998 after the grading took place. It is also immaterial if, in 1995, CDFG informed Mr. Page that he did not need to enter into a formal Mitigation Agreement over black legless lizard because it was not State-listed. None of these assertions have any bearing on the requirements of CDP 3-96-102 which were to be implemented prior to grading in 1997.

Furthermore, as discussed in the above comments on the "Introduction and Background" section, as detailed by Mr. Page's own environmental consultant, Bruce Cowan, black legless lizards have been identified on or adjacent to the subject Page parcel "as a significant population by Tom Moss, State Park Ecologist." Mr. Cowan's April 6, 1994 report and the Commission-approved Grading and Erosion Control Plan both define an area of legless lizard habitat near the northern property line. Therefore, the assertion at the end of paragraph 1 of page 7 that "[n]o legless lizards have been seen prior to or after grading" is not supportable. Lizards have been observed historically on or adjacent to the site and Mr. Page's own environmental consultant mapped out an area of legless lizard habitat on the Page property. Further, and as correctly indicated in the revised Kephart plan, the United States Fish and Wildlife Service is of the opinion that "a high likelihood exists" that the lizards were present on the Page property prior to grading and that "disturbance by grading and stockpiling of sand probably caused most individuals that were not killed by such activities to disperse from the disturbed areas." The black legless lizard finding is confusing and contradictory and the Kephart plan needs to be revised to more accurately reflect the record on black legless lizard requirements.

## 2. Measures to Resolve the Violation

Our comments on the previous draft Kephart plan were very clear in terms of the necessary modifications to mitigation measures, success criteria, performance standards, timelines, and monitoring and reporting. These comments have not been adequately considered in the revised July 30, 1998 Kephart plan. Accordingly, for the reasons outlined at the beginning of this letter, the attachment which follows provides word by word recommendations on how to restructure these sections to result in an administrative resolution of this Coastal Act violation. In an effort to be as constructive as possible, our comments are listed in ~~strike through~~ (for text to be deleted) and underline (for text to be inserted).

### Modifications for "Mitigation Measures" (page 7 of the revised plan)

**Sand stockpiling:** Stockpiled sand currently occupying (a) the eastern 100 feet of the Page parcel extending towards Sunset Drive (excluding the 6 foot by 100 foot area to be used for the common driveway with the adjacent Miller residence); and (b) currently occupying the 150 foot by 5 foot strip adjacent to the northern property line (extending eastward from the location of the future garage site to the area described by (a) above), shall be removed immediately upon approval of this plan. The sand will be removed with a front end loader or comparable equipment to a depth within three (3) inches of the original grade (i.e., the grade prior to the November 1997 grading activities). A back hoe and/or arm excavator may be used to reach over excavated and habitat areas. To the extent feasible, all~~Most of the~~ stockpiled sand must stay on the project site in the areas depicted for this purpose on the approved Grading and Erosion Control Plan for CDP 3-96-102 (i.e., described as "temporary spoils storage sites"). Within the designated temporary spoils storage sites, the sand shall be segregated with separate storage for high quality and poor quality sand. The highest quality stockpiled sand shall be used for future dune creation as shown on the approved Grading and Erosion Control Plan for CDP 3-96-102. Poor quality stockpiled sand shall be used to backfill around the house upon completion of the foundation. Sand in the potential habitat areas shall remain until such time as restoration of habitat begins.

Sand which is not needed on site to implement the approved Grading and Erosion Control Plan, and which is not needed for backfill around the approved residence, shall be deemed excess sand. Such excess sand shall be made available for off-site dune restoration purposes. Disposal site of excess sand suitable for dune restoration shall be the Asilomar Dunes Area only (inclusive of the Lighthouse Reservation through Spanish Bay and Fan Shell Beach). If excess sand is to be removed from the site prior to other restoration activities, permittee shall first provide to Coastal Commission staff engineering calculations which demonstrate that the volume of sand being removed from the site in fact exceeds that which is needed to complete the approved development project. The destination of any such excess sand shall be subject to approval by the Coastal Commission Executive Director prior to transport. The receiving landowner shall be responsible for coastal permit authorizations if any are required for the receiving location. If no suitable destination for excess sand is available at the time, then the excess sand shall be placed in segregated storage at the City's public works yard.

**Fencing and identification of habitat areas:** After the sand has been removed as described above, ~~e~~Exclusionary fences shall be installed in the locations shown on the approved Grading and Erosion Control Plan for CDP 3-96-102 demarcating the extent and boundaries of all habitat areas. The four foot fencing shall be fastened to t-post stakes placed at eight foot intervals. At 12 foot intervals, signage shall be installed to the fence clearly designating boundaries of sensitive habitat areas. No grading shall occur within a 3 foot setback of sensitive habitat areas. Fencing shall be under the supervision of the consulting biologist.

**Restoration:** Three (3) different areas shall be restored pursuant to this plan: (1) the area on the Page parcel within the exclusionary fencing; (2) the area on the Page parcel not contained by exclusionary fencing and outside of the building envelope; and (3) a degraded offsite area of 15,900 square feet as 3:1 mitigation for the 5,300 square feet of unnecessary disturbance of dune and sensitive species habitat due to Mr. Page's November 1997 grading activities. This off-site restoration area shall be located on the adjacent Lighthouse Reservation property unless permission is refused by the appropriate agencies. If permission is not granted for a restoration project on the adjacent Lighthouse Reservation property, the off-site restoration area shall be located at Asilomar State Beach or another suitable location within the Asilomar Dunes complex approved by the Executive Director of the Coastal Commission.

**Restoration of area one (1)** shall commence as soon as the exclusionary fencing has been installed. This restoration shall involve the planting of a mosaic of Tidestrom's lupine, dune bluegrass, mock heather, and Monterey spineflower in order to restore these defined habitat areas as described in the Basic Landscape and Restoration Plan for the site (Cowan, September 27, 1993) and as shown on the approved Grading and Erosion Control Plan for CDP 3-96-102.

**Restoration of area two (2)** shall commence as soon as the construction of the house is complete. This restoration shall be according to the general parameters of the Basic Landscape and Restoration Plan for the site (Cowan, September 27, 1993) with one modification: the planting of Menzies' wallflower and Tidestrom's lupine heretofore described by Cowan as optional, shall be required in order to restore the documented habitat on the site.

Restoration of area three (3) shall commence immediately upon approval of this plan, subject to necessary approval by the appropriate agencies. This restoration shall involve the eradication of exotic species and the planting of Menzies' wallflower, Tidestrom's lupine, and Monterey spineflower along with a mix of suitable native vegetation as selected from the Basic Landscape and Restoration Plan Plant List (Cowan, September 27, 1993). This restoration shall take place within the Asilomar Dunes complex as specified above.

Plant collection, propagation, exotic eradication, and planting shall be in accordance with the Planting Instructions of the Basic Landscape and Restoration Plan (Cowan, September 27, 1993). Plant materials for the listed species must be from the same biological population, or as nearby as practicable, as the Page property (e.g., the adjacent Lighthouse Reservation or the State Park property south of the Page property). All restoration activities shall be carried out by a coastal dune restoration expert.

~~Restoration of the sensitive habitat areas shall commence after stockpiled soils are removed and the site returned to its original topography, post construction. Restoration shall follow the guidelines as stated in the Landscape and Restoration Plan (Cowan). Additional remediation for alleged on-site damages to sensitive habitat shall be conducted. Restoration of an adjacent 3,000 sq. foot area using native vegetation as described in the Cowan Plan will be implemented concurrently with the landscape restoration effort on the Page property, once construction activities have ended.~~

Legless Lizard Survey: A qualified herpetologist or coastal biologist shall survey the entire site prior to the resumption of grading activities following the adoption of this plan to will determine (by trapping, combing, or other means deemed appropriate by the qualified herpetologist or coastal biologist) the presence or absence of legless lizards; any lizards found shall be relocated to suitable habitat. and assess the suitability of remaining habitat areas, all areas where sand has been stockpiled shall be surveyed. A biological monitor shall be present (either a qualified herpetologist or coastal biologist) during all remediation, grading, and site-preparation activities with the biological monitor having the authority to halt activities should black legless lizards be in imminent danger; any lizards so discovered shall be relocated to suitable habitat. A report shall be delivered to each regulatory agency describing the results of the survey and assessment (study conducted 7/30/97).

#### **Modifications for "Success Criteria" (pages 7 & 8 of the revised plan)**

The objectives to be met are based upon returning the site to conditions existing prior to the November 1997 placement of sand and restoring the off-site dune area consistent with current resource management practices, post completion of construction activities.

Success will be determined when stockpiled sand is removed from sensitive habitat areas in the manner described above in the "Sand stockpiling" mitigation measure within thirty (30) days of approval of this plan as shown on the Grading and Erosion Control Plan, post completion of construction activities.

Success will be determined when all exclusionary fences are installed and cautionary signs attached in the manner described above in the "Fencing and identification of habitat areas" mitigation measure within thirty (30) days of approval of this plan.

Success will be determined when all plants have been planted within restoration areas in the manner described above in the "Restoration" mitigation measure within ninety (90) days of approval of this plan for restoration areas one (1) and three (3), and within one-hundred-eighty days of completion of construction on the approved residence for restoration area two (2). ~~Page implements the previously approved Cowan plan, post completion of construction activities, on the property site and adjacent 3000 sq. ft. area, only if permission is given to restore adjacent area by appropriate agencies and/or property owner.~~

Success will be determined when a qualified herpetologist or coastal biologist surveys and monitors the site, and relocates any black legless lizards found to a suitable habitat location, in the manner described above in the "Legless lizard survey" mitigation measure within ninety (90) days of approval of this plan.

Success will be determined when a qualified biologist provides habitat assessment and supervision of all sand removal, future grading, and excavation on the project site.

Success will be determined when a qualified coastal biologist submits a ~~one-time~~ status report to the agencies listed in the "Monitoring and Reporting" section below describing the activities taken pursuant to the "mitigation measures" of this plan and to what extent the above "success criteria" have been achieved within one-hundred-twenty (120) days of approval of this plan (with the exception of restoration area two (2) which will take place following completion of the approved residence). All monitoring methods will conform to current professional standards. This report will have a separate section for each mitigation measure and will provide recommendations, as necessary, to meet all success criteria of this plan. In the event that the above success criteria have not been met, additional status reports shall be submitted at thirty (30) day intervals under these same reporting parameters until success criteria have been met. ~~habitat assessment, future grading and excavation recommendations.~~

#### **Modifications for "Performance Standards" (page 8 of the revised plan)**

Prior to proceeding on any grading, site preparation, or construction activities (except for that which is undertaken specifically to implement the mitigation measures described in the "mitigation measures" section of this plan), the owner shall meet all success criteria described in this plan except for (a) planting of restoration area two (2), which takes place following completion of the approved residence; and (b) coastal biologist site monitoring as described in the "Legless Lizard Survey" mitigation measure, which takes place during subsequent grading and site preparation activities. When the final status report (as described above in the last success criteria) determines that these success parameters have been achieved, and the City of Pacific Grove and the Executive Director of the Coastal Commission concur on this point, construction activities on the site can recommence. ~~is required to comply with all mitigation procedures in this plan. If these success criteria parameters Mitigation standards will focus on achieving complete and successful implementation of each success criteria within ninety (90) days of approval to proceed. If success criteria are not met within one-hundred-twenty (120) days of approval of this plan ninety days,~~ the reasonable implementation of each (pre-



construction) mitigation measure shall be borne at the owners expense and carried out by a contractor selected and under direction of The City of Pacific Grove. When success criteria parameters are then met to the satisfaction of the coastal biologist so hired, the City of Pacific Grove, and the Executive Director of the Coastal Commission, construction activities on the site can recommence; the coastal biologist so hired will be retained to monitor the site (pursuant to the "Legless Lizard Survey" mitigation measure) under the direction of the City of Pacific Grove and at the owners expense.

Restoration areas will be monitored by a qualified coastal biologist and reports submitted on an annual basis for at least three years from the date of approval of this plan which include both qualitative and quantitative evaluation. All monitoring methods will conform to current professional standards. At the least, quantitative measurements shall record plant density and relative composition, native plant cover percentages, and the general amount of exotic vegetation remaining. At the least, qualitative assessment shall describe the general health and vitality of the restored vegetation. At a minimum, all restoration areas shall show: (a) an average plant density of one (1) plant per four (4) square feet for non-listed native species; (b) an average plant density of one (1) plant per one-hundred (100) square feet for Menzies' wallflower, Tidestrom's lupine, and Monterey spineflower; and (c) overall native coverage as follows: 10% after 1 year, 25% after 2 years, and 40% after 3 years. If the report should identify a failure to meet any of these minimum standards, or failure to meet any other standards consistent with current professional dune restoration standards, the report shall include appropriate recommendations for achieving these minimum standards. Restoration monitoring and reporting shall continue on an annual basis until the minimum standards have been achieved. These standards may be modified after two (2) years, subject to prior approval from the Executive Director of the Coastal Commission and the City of Pacific Grove, if the coastal biologist determines that the preceding standards cannot be feasibly maintained due to adverse natural conditions on the site.

After all success criteria have been met and all restoration completed, a coastal biologist shall submit a final report to verify compliance with all provisions of this mitigation plan.

#### **Modifications for "Timeline" (page 8 of the revised plan)**

Mitigation for impacts to the site shall begin immediately upon approval of this Revised Mitigation Plan as described in the "mitigation measures" and "success criteria" sections of this report. Significant progress must be documented within one-hundred-twenty (120) days of approval of this plan ~~ninety (90) days of approval to proceed~~. Monitoring and reporting shall take place as described below until all success criteria are achieved and all performance standards and criteria are met.

#### **Modifications for "Monitoring and Reporting" (page 8 of the revised plan)**

A ~~copy of the~~ All reports shall ~~Report will~~ be submitted for the review and approval of ~~to~~ The City of Pacific Grove, The California Department of Fish and Game, The United States Fish and Wildlife Service, and the Executive Director of The California Coastal Commission. These reviewing and approving agencies shall have twenty (20) working days from the day of receipt of any report to contact (by phone, fax, e-mail, or in person) the consulting coastal biologist who prepared the report and indicate that there are deficiencies, that the report is not approved, and



what needs to be done to make the report approvable. If such an objection to any report is not sent within twenty (20) working days, the report will be determined to have been approved by that agency. These reports include the status report(s) required (and as described) by the last success criteria and the reports required (and as described) in the "Performance Standards" section for long-term restoration success. ~~The reports shall be submitted on a quarterly basis and shall occur until Page receives an Occupancy Permit from the City of Pacific Grove.~~ Reports shall contain photo-documentation, observational and analytic data and notes pertaining to the compliance with mitigation objectives. All reports shall be signed, dated, and delivered by U.S. Mail or other courier service.

**LAW OFFICES OF  
MARY-MARGARET O'CONNELL**

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November 13, 1998

via fax transmission (415) 904-5200

Peter Douglas  
Executive Director  
California Coastal Commission  
45 Fremont, suite 2000  
San Francisco, CA 94105-2219

RE: Stephen Page  
Unanswered Requests

Dear Mr. Douglas,

Citizen Stephen Page recently attempted to bring to your attention various problems generating from the Enforcement Unit of the Coastal Commission's San Francisco office. You declined to become involved and, indeed, also did not respond to Mr. Page's additional requests for public documents.

In response to Mr. Page's October 16, 1998 letter to you, you responded on October 28 that you were not going to become involved in the issue. In turn, Mr. Page transmitted to you another letter on November 2, 1998 that provided you with transcriptions of various messages from your staff that attempted to justify the on-going delays in this matter. That November 2, 1998 letter also restated the demand for public documents relating to any written input or notations of your staff regarding verbal input pertinent to the review by federal Fish & Wildlife and state Fish & Game for the pending alleged necessity for mitigation and restoration caused by a grading error.

In turn, Page received another message from Nancy Cave on November 5 stating that he should expect more delays.

In turn, we have filed litigation in the hopes of capturing some certainty for this situation. We will ask that the action for Declaratory Relief and Injunctive Relief be heard first. The Attorney General will be served with the petition/complaint forthwith. The City of Pacific Grove was served yesterday.

Sincerely,

  
Mary-Margaret O'Connell

cc: Nancy Cave (fax 415 904-5400)