

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE
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W3a



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Filed: 7/27/01
49th day: 9/14/01
180th day: 1/23/02
Staff: K. Cuffe
Staff report prepared: 8/30/01
Hearing date: 9/12/01
Hearing item number: W3a

COASTAL DEVELOPMENT PERMIT APPLICATION - CONSENT

Application number 3-01-064, Tucker

Applicant E.L. & Kathleen Tucker

Project location 188 Sloat Road, Pacific Grove, Monterey County CA (APN 006-224-014)

Project description Construction of a new two-story 2,010 sq. ft. single family residence.

Local approval Pacific Grove: Final Architectural Review Board approval (No 2838-01, dated 6/12/01)

File documents Coastal Development Permit File for 3-01-064; Cultural Resources Inventory 2/01; CEQA 15303(a) Categorical Exclusion.

Staff recommendation ... Approval with Conditions

Summary: The Applicant proposes to construct a new, 2,010 square foot, two-story single family residence at 188 Sloat Avenue, in Pacific Grove. The subject parcel is an inland lot fronting Sloat Avenue, west of Dewey Avenue. Development for residential use is consistent with the R4 - Multiple Family Residential/Professional Office District zoning of the parcel, and the project plans conform to the requirements of the R-4 zoning district. The parcel is located in an archaeologically sensitive area, and archaeological investigations of the parcel have indicated that the site may contain midden soils that have been removed from some other archaeological context and deposited on site along with other types of fill material. Since midden soils from archaeological sites can contain human remains, and since construction activities may unearth previously undisturbed materials during construction, the project has been conditioned to prepare and implement an archaeological mitigation plan if archaeological resources are encountered. Water assignments are also an issue for most new construction in Pacific Grove, since water supplies are limited. However, the applicant has received a water credit assignment from the City of Pacific Grove based on transfer of water credits from a previous commercial operator who has gone out of business, and therefore is assured a domestic water supply.

As conditioned, the project is consistent with Coastal Act policies protecting scenic resources, geological resources, archaeological resources, and water supply and the applicant has consented to the permit conditions included herein. Staff therefore recommends approval.



California Coastal Commission
September, 2001 Meeting in Eureka

Staff: K Cuffe Approved by: *(K.C.) 8/29/01*

Staff Report Contents

- I. Staff Recommendation on CDP Application 3
- II. Conditions of Approval 3
 - A. Standard Conditions 3
 - B. Special Conditions 4
- III. Recommended Findings and Declarations 5
 - A. Project Description 5
 - 1. Project Location 5
 - 2. Project Description 5
 - B. Coastal Development Permit Determination 6
 - 1. Visual Resources and Community Character 6
 - A. Applicable Visual Resources and Community Character Policies 6
 - B. Visual Resources and Community Character Analysis 6
 - C. Visual Resources and Community Character Conclusion 7
 - 2. Geological Resources 7
 - A. Applicable Geological Resources Policies 7
 - B. Geological Resources Analysis 7
 - C. Geological Resources Conclusion 7
 - 3. Archaeological Resources 7
 - A. Applicable Archaeological Resources Policies 7
 - B. Archaeological Resources Analysis 8
 - C. Archaeological Resources Conclusion 8
 - 4. Water Supply 9
 - A. Applicable Water Supply Policies 9
 - B. Water Supply Analysis 9
 - C. Water Supply Conclusion 9
 - C. Local Coastal Programs 9
 - D. California Environmental Quality Act (CEQA) 10
- IV. Exhibits
 - Exhibit A. Regional Location Map
 - Exhibit B. Project Vicinity Map
 - Exhibit C. Assessors Parcel Map
 - Exhibit D. Pacific Grove Coastal Zone Land Use Plan
 - Exhibit E. Pacific Grove Land Habitat Sensitivity Map
 - Exhibit F. Pacific Grove Archaeological Sensitivity Map
 - Exhibit G. Pacific Grove Shoreline Access Map
 - Exhibit H. Proposed Development Plans
 - Exhibit I. Water Credit Assignment for Russell and Tucker



I. Staff Recommendation on CDP Application

The staff recommends that the Commission, after public hearing, **approve** a coastal development permit for the proposed development subject to the standard and special conditions below.

Motion. I move that the Commission approve Coastal Development Permit Number 3-01-064 pursuant to the staff recommendation.

Staff Recommendation of Approval. Staff recommends a **YES** vote. Passage of this motion will result in approval of the coastal development permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

Resolution to Approve a Coastal Development Permit. The Commission hereby approves the coastal development permit on the ground that the development as conditioned, will be in conformity with the policies of Chapter 3 of the Coastal Act. Approval of the coastal development permit complies with the California Environmental Quality Act because either: (1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the amended development on the environment; or (2) there are no feasible mitigation measures or alternatives that would substantially lessen any significant adverse effects of the amended development on the environment.

II. Conditions of Approval

A. Standard Conditions

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the Permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. **Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. **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.



5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the Permittee to bind all future owners and possessors of the subject property to the terms and conditions.

B.Special Conditions

1. **Archaeological Mitigation.** Should archaeological resources be discovered at the project site during any phase of construction, the permittee shall stop work until a mitigation plan, prepared by a qualified professional archaeologist and using accepted scientific techniques, is completed and implemented. Prior to implementation, the mitigation plan shall be submitted for review and approval by the State Historical Preservation Office and for review and approval by the Executive Director of the Commission. The plan shall provide for reasonable mitigation of the archaeological impacts resulting from the development of the site, and shall be fully implemented. A report verifying compliance with this condition shall be submitted to the Executive Director for review and approval, upon completion of the approved mitigation.
2. **Geologic Review.** As a portion of the site contains artificial fill material, the applicant shall provide evidence from a licensed geologist that the soils at the site are of sufficient bearing capacity so that the proposed development will not be subject to excessive differential settlement. Such evidence shall be submitted for Executive Director review and approval. If the licensed geologist determines that the bearing capacity of the soils is not adequate for the proposed spread foot foundation, revised designs shall be submitted for Executive Director review and approval of the appropriate foundation to be used to ensure the stability and structural integrity of the development.
3. **Exterior Finish.** The exterior façade shall include lap siding and wooden garage doors as required by the City of Pacific Grove Architectural Review Board. All exterior finishes and window frames shall be of wood or earthen-tone colors as proposed by the applicant on the elevations sheets 3 and 4, revision 5, dated 5/16/00 and date stamped received in the Coastal Commission office June 27, 2001 (Exhibit H). Any changes shall require prior review and approval by the Executive Director.



III. Recommended Findings and Declarations

The Commission finds and declares as follows:

A. Project Description

1. Project Location

The subject parcel is an inland lot fronting Sloat Avenue, between Ocean View Boulevard and Sloat Avenue, west of Dewey Avenue (Exhibits A-C). The parcel is located in the R4 - Multiple Family Residential/Professional Office Zoning District (Exhibit D). The parcel is also located in an archaeologically sensitive area (Exhibit E). Surrounding land uses include single and multiple-family residential, heavy commercial and visitor serving uses. The American Tin Cannery and Monterey Bay Aquarium are located nearby east of Dewey Avenue, and the Hopkins Marine Station is located north of Ocean View Boulevard. Shoreline Park and the Pacific Grove Recreation Trail are also located in the vicinity of the project north of Ocean View Boulevard.

The parcel is roughly rectangular in shape, with a lot size of 5,402 square feet. The parcel is topographically level where it fronts Sloat Avenue and over most of its surface. However the last 28 feet at the north-western end of the parcel slopes steeply northwestward, creating an approximately 10-foot high, uniformly sloped embankment, with the toe of the embankment located near the fence on the parcel's northern boundary. The adjacent lots to the north and west have shallower slopes and more irregular topographic surfaces, and it has been determined through archaeological site investigation that the leveling of the subject lot is a result of several episodes of fill that have occurred on the subject site under previous ownership.

2. Project Description

The Applicant proposes to construct a new, 2,010 square foot, two-story single family residence on the 5,402 square foot lot, according to plans included in Exhibit D. The proposed residential use is consistent with the R-4 zoning district. The project plans conform to the coverage, mass, height and setback requirements of the R-4 zoning district, and the proposed design, as conditioned by the Architectural Review Board is consistent with the neighborhood community character. The project is not expected to have any issues regarding scenic resources and no sensitive habitat is mapped in this area. However, the parcel is located in an archaeologically sensitive zone. Additionally, new development is an issue on much of the Monterey Peninsula, because of limited water supplies. The applicants have obtained assignment of water for their development through a water credit assignment agreement between the applicant, the City of Pacific Grove, and CTE Properties (the seller).



B. Coastal Development Permit Determination

1. Visual Resources and Community Character

A. Applicable Visual Resources and Community Character Policies

Section 30251 of the Coastal Act requires, among other things, that new development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural landforms, and to be visually compatible with the character of surrounding areas.

The City's certified Land Use Plan requires that new development not interfere with public views of the ocean and bay, obtain review and approval from the Architectural Review Board, undergrounding of utilities in multiple-family residential districts, and obtain landscape approval for any project affecting landforms and landscaping.

Within the vicinity of the project, the LUP has designated all areas seaward of Ocean View Boulevard as scenic. Ocean views exist continuously along Ocean View Boulevard, since all structures are located along the landward side of the road. Views directly from Sloat Boulevard are blocked by the existing structures located on the landward side of Ocean View Boulevard, however Dewey and 2nd Street, which are oriented perpendicular to the shoreline, provide clear, unobstructed views to the shore in the vicinity of the proposed project.

B. Visual Resources and Community Character Analysis

As designed, the project will not detract from views of the ocean from public viewing areas defined in the Shoreline Access Map (Exhibit H). The project site is not located in or adjacent to any scenic area and is not located along any public street that provides views of the ocean as shown in the Shoreline Access map. The project does not include any grading other than that required for construction of the foundation and so minimizes landform alteration. Landscaping will be conducted along the Sloat Boulevard frontage of the parcel and will include several native plants appropriate to the site.

The original proposed design matched the character of adjacent homes quite well, so much so that the City's Architectural Review Board conditioned approval of the project "...to include lap siding in selected locations as noted by the designer,..." rather than stucco in order to differentiate it and distinguish it enough from stucco exterior of the adjacent house. The ARB also required the use of a wooden garage door rather than vinyl, to keep the design in character with the area. This permit has incorporated these requirements to ensure that the project design conforms and adds to the community character of the area.

The landscape design submitted by the applicant shows that only the area fronting Sloat Boulevard is to be landscaped. Landscape plantings include several native, drought tolerant plants suitable to the City's coastal environment. Notes accompanying the design indicate that the sloped area at the back of the lot, which is currently covered with a thick growth of Nasturtium, is not going to be landscaped, and will remain as is.



C. Visual Resources and Community Character Conclusion

The proposed project will not block or interfere with any existing public views of the ocean. The City's Architectural Review Board has approved the project design, with the conditions that the project's exterior facade include lap siding in particular locations, and a wooden garage door in order to conform to the existing character of the adjacent neighborhood. With the incorporation of these requirements into this permit, the project is consistent with Coastal Act and LUP visual resource policies.

2. Geological Resources

A. Applicable Geological Resources Policies

Section 30253 of the Coastal Act states:

New development shall:

- (1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.*
- (2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.*

B. Geological Resources Analysis

No grading, other than that required for construction of spread foot foundation has been proposed, therefore landform alteration will be kept to a minimum. However, as a portion of the lot contains artificial fill material, the applicant shall provide evidence from a licensed geologist that the soils at the site are of sufficient bearing capacity so that the proposed development will not be subject to excessive differential settlement. The applicant has also indicated that as designed, erosion will be minimized by constructing the dwelling on the level portion of the lot, and directing additional runoff away from the sloped area at the back of the lot and toward small gravel pits around the residence.

C. Geological Resources Conclusion

The project does not involve any significant landform alteration, but because the building site may contain uncompacted fill material, the permit has also been conditioned to require review by a licensed geologist to ensure geological stability and structural integrity of the dwelling. Therefore, as conditioned, the project is consistent with Coastal Act policies regarding geological resources.

3. Archaeological Resources

A. Applicable Archaeological Resources Policies

Section 30244 of the Coastal Act states:



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

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

LUP Policy 2.4.5.1. Prior to the issuance of any permit for development or the commencement of any project within the areas designated on Figure 3, the Archaeological Sensitivity Map, the City in cooperation with the State Historic Preservation Office and the Archaeological Regional Research Center, shall:

- (a) Inspect the surface of the site and evaluate site records to determine the extent of the known resources.*
- (b) Require that all sites with potential resources likely to be disturbed by the proposed project be analyzed by a qualified archaeologist with local expertise.*
- (c) Require that a mitigation plan, adequate to protect the resource and prepared by a qualified archaeologist be submitted for review and, if approved, implemented as part of the project.*

B. Archaeological Resources Analysis

The subject site is located within an archaeologically sensitive area (see Exhibit G). Therefore, an archaeological (cultural resources) survey was conducted for the subject parcel and a report prepared by Robert Gargett and Thomas Jackson of Pacific Legacy Incorporated (February 2001). The survey results indicate that the northwestern portion of the site contains a patch of dark brown/black soil resembling midden soils. These soils were found to include a complete sea urchin exoskeleton and fragments of clam, mussel, and abalone shell. The report also states that several episodes of fill disposal have occurred on the site in the past. The topography of adjacent parcels slope northward from Sloat Boulevard and it is possible that the subject parcel had a similar slope prior to the placement of the fill materials on site. While the presence of an intact midden site could not be confirmed by excavations conducted on site, construction activities may unearth previously undisturbed materials which may further substantiate whether or not any intact deposits are located on site. Since midden from archaeological sites can contain human remains, and since construction activities may unearth previously undisturbed materials, the project has been conditioned to suspend work if archaeological resources are encountered during construction activities in order to prepare and implement an archaeological mitigation plan.

C. Archaeological Resources Conclusion

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



4. Water Supply

A. Applicable Water Supply Policies

Coastal Act Section 30250 states in part that

[n]ew residential. . . development shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources. .

B. Water Supply Analysis

The Monterey Peninsula Water Management District (MPWMD) allocates water to all of the municipalities on the Monterey Peninsula. The actual water purveyor is the California American Water Company (Cal Am). Each municipality allocates its share of the water to various categories of development, such as residential, commercial, industrial, etc. There is currently a water shortage on the Monterey Peninsula, and the City of Pacific Grove uses a water waiting list to allocate water to applicants once it becomes available.

The City of Pacific Grove approved a water credit assignment agreement to transfer a fixed amount of water from CTE Properties (CTE) to two property owners, Tucker (APN 006-224-014) and Russel (APN 006-224-015). A copy of the water credit assignment agreement, issued April 6th, 2001 is included in Exhibit I.

C. Water Supply Conclusion

The applicants currently have evidence of water availability for the project issued by the City of Pacific Grove. Therefore, the project is assured an adequate supply of water for the proposed development, which is consistent with Coastal Act Section 30250 regarding water supply.

C. Local Coastal Programs

The Commission can take no action that would prejudice the options available to the City in preparing a Local Coastal Program that conforms to the provisions of Chapter 3 of the Coastal Act (Section 30604 of the Coastal Act).

The Land Use Plan for the City of Pacific Grove has been approved by the Commission (certified January 10, 1991) and adopted by the City. However, the City is still working on completing their implementing-ordinances and so does not have a complete, certified LCP yet. In the interim, the City has adopted an ordinance that requires that new projects conform to LUP policies. (Of course, the standard of review for coastal development permits, pending LCP completion, is conformance with the policies of the Coastal Act.)



The LUP designates the subject site as residential. The proposal is consistent with this designation and with the policies of the LUP. As conditioned to be consistent with community character, to protect potential sensitive archaeological resources, and to ensure geologic stability, the proposed development is consistent with the policies contained in Chapter 3 of the Coastal Act and will not prejudice the ability of the City of Pacific Grove to prepare and implement a complete Local Coastal Program consistent with Coastal Act Policies.

D. California Environmental Quality Act (CEQA)

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

The environmental review of the project conducted by Commission staff has involved the evaluation of potential impacts to relevant coastal resource issues, including visual resources and community character, archaeologically sensitive resources, and water supply issues. This analysis is reflected in the findings that are incorporated into this CEQA finding. Any public comments have been addressed in the findings.

The Coastal Commission's review and analysis of land use proposals has been certified by the Secretary of Resources as being the functional equivalent of environmental review under CEQA. This staff report has discussed the relevant coastal resource issues with the proposal, and has recommended appropriate mitigations to address adverse impacts to said resources. Accordingly, the project is being approved subject to conditions to implement the mitigating actions required of the Applicant by the Commission (see Special Conditions). As such, the Commission finds that only as modified and conditioned by this permit will the proposed project not have any significant adverse effects on the environment within the meaning of CEQA.



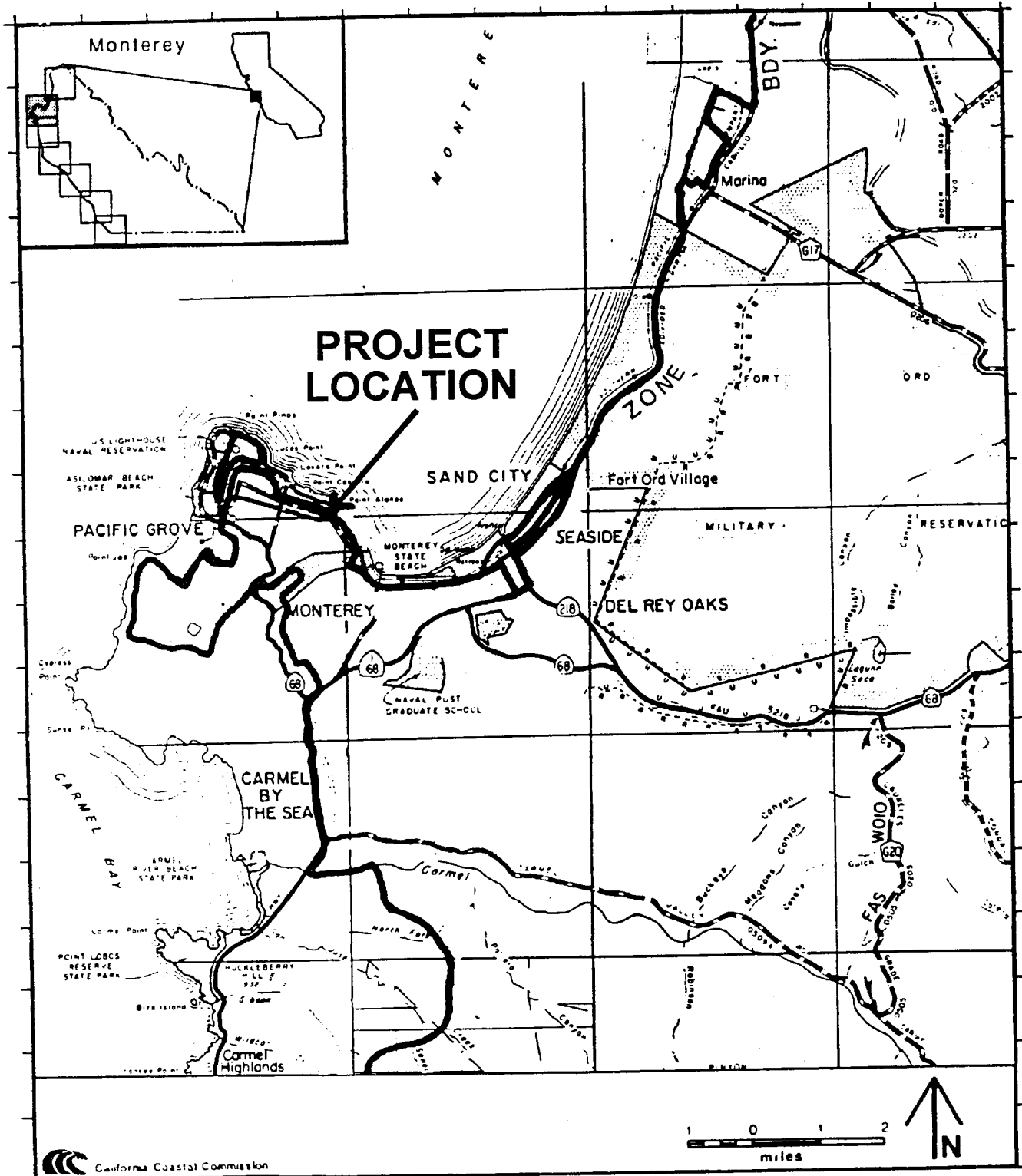
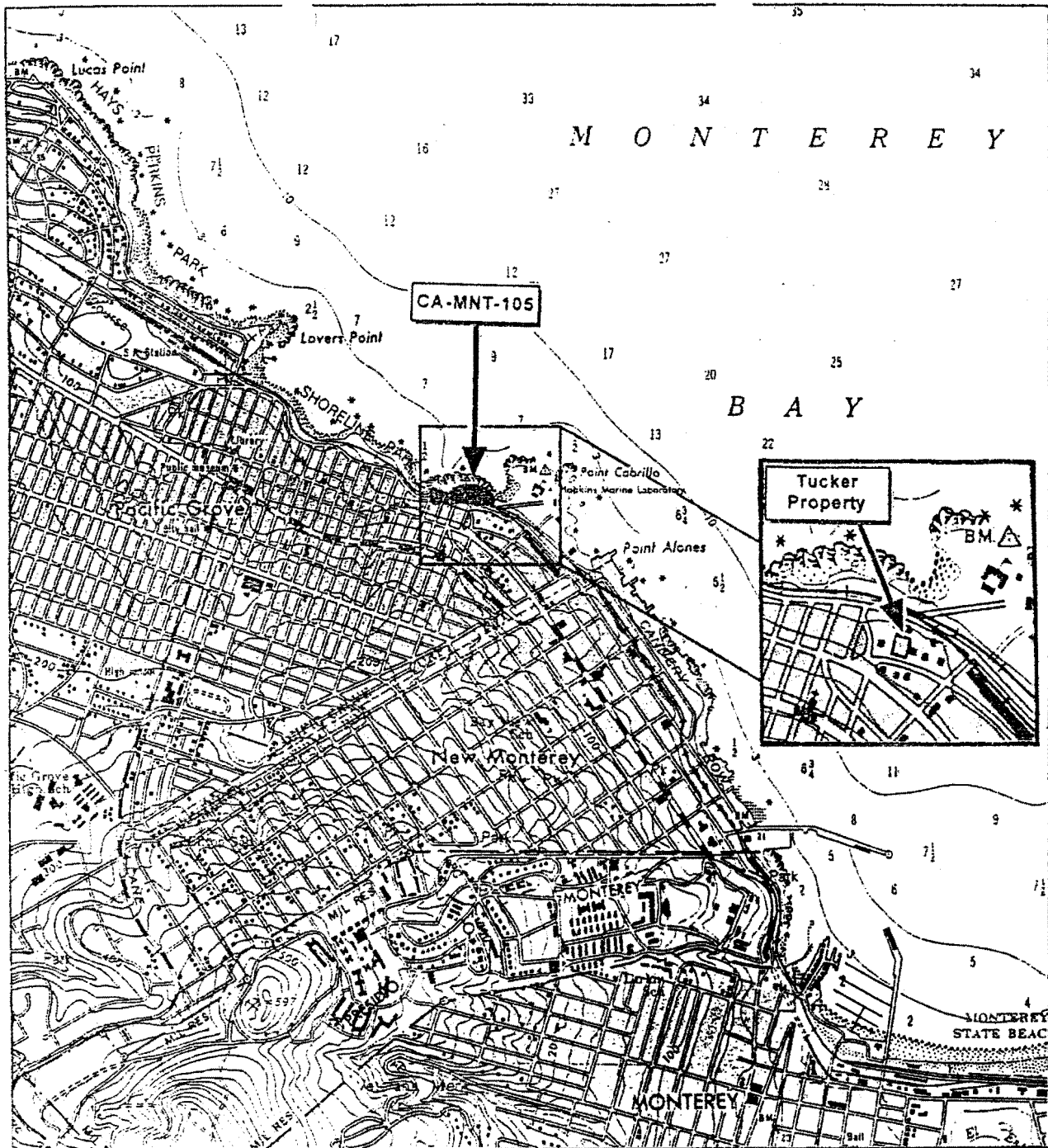


Exhibit A
 Regional Location Map
 Tucker
 3-01-064



SOURCE: USGS 7.5' Quad, Monterey, Calif. 1947, Photorevised 1983; SCALE: 1:24,000

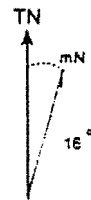
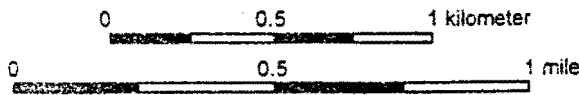
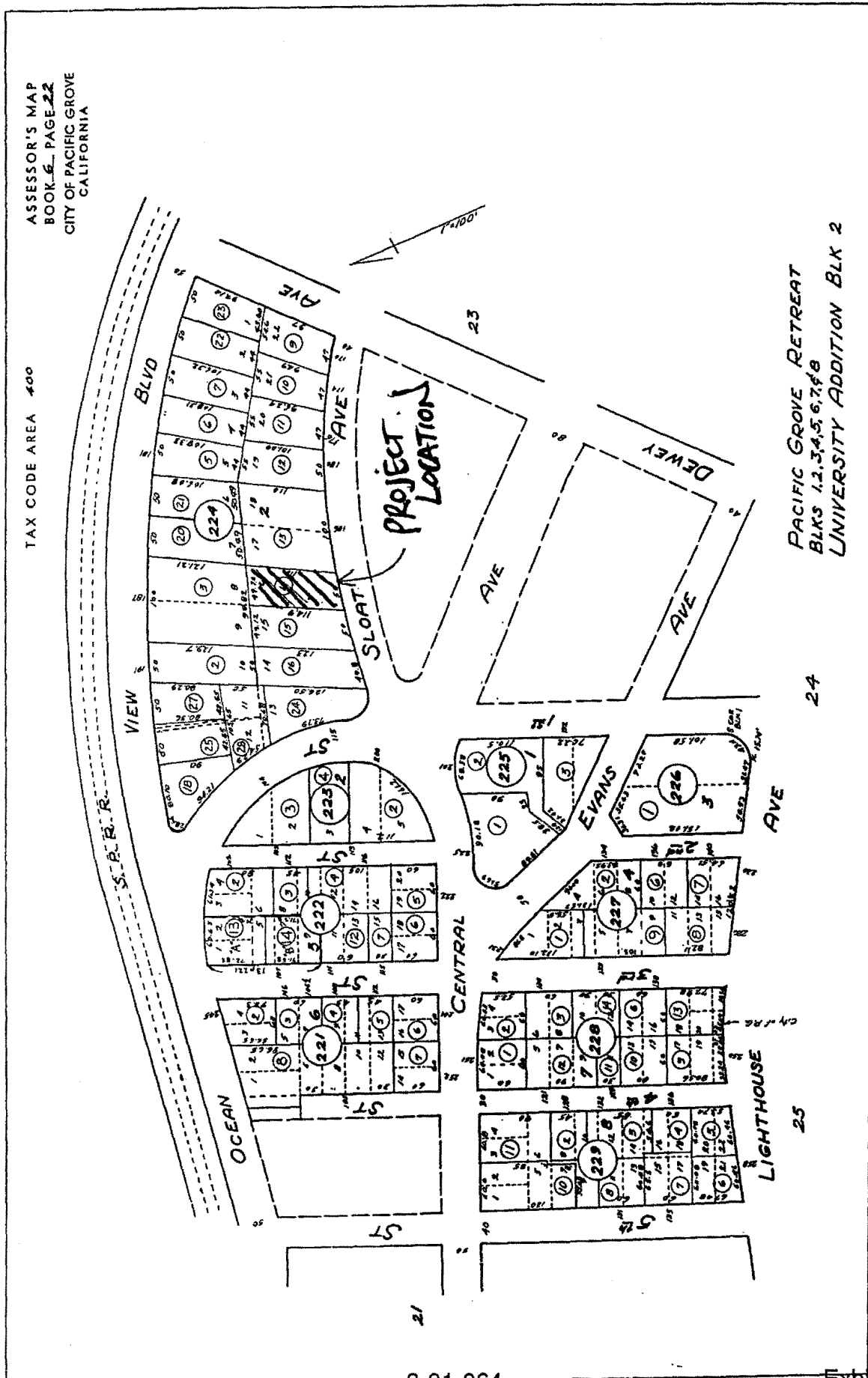


Figure 2. Project Location

ASSESSOR'S MAP
BOOK 6, PAGE 22
CITY OF PACIFIC GROVE
CALIFORNIA

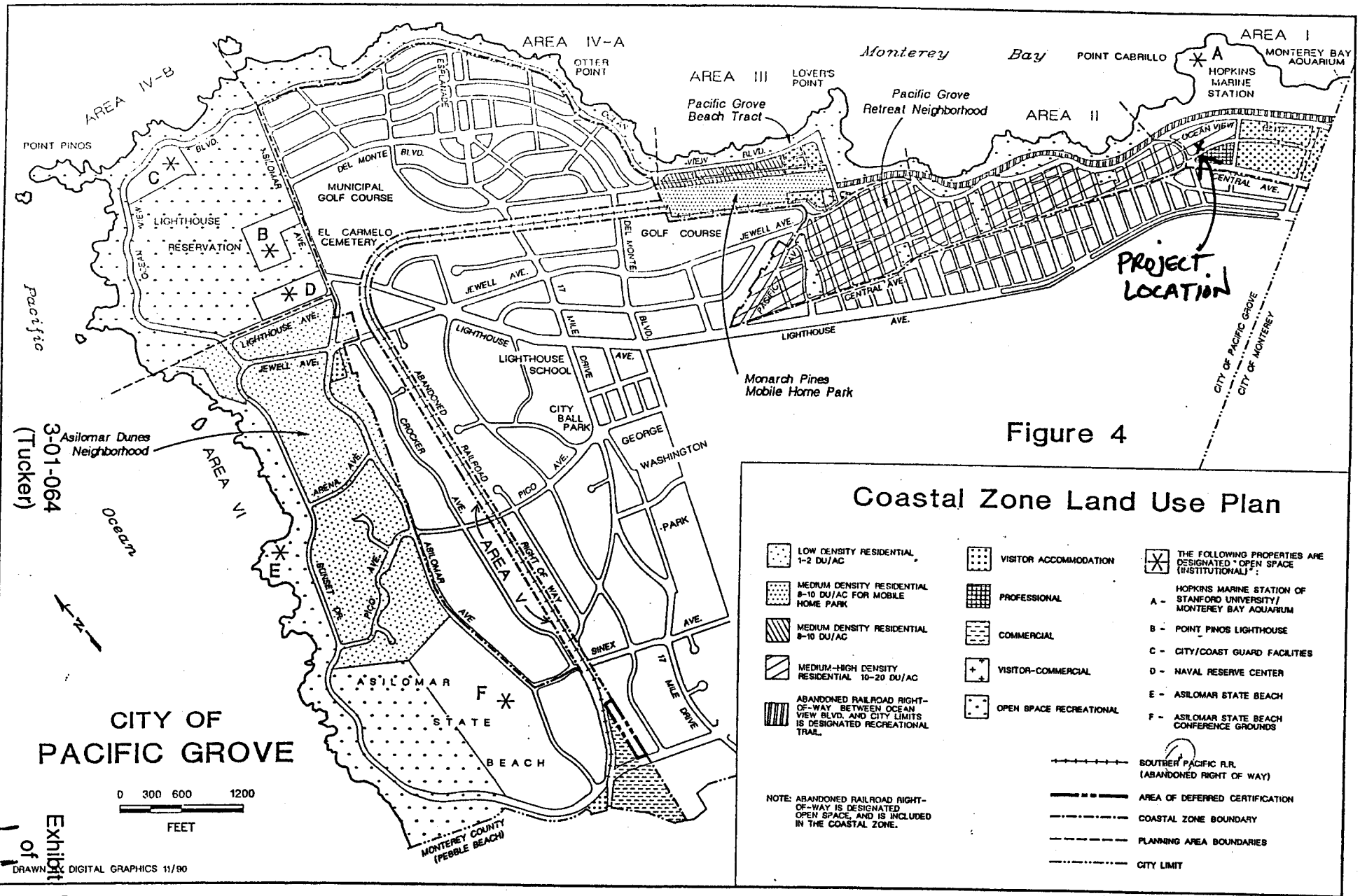
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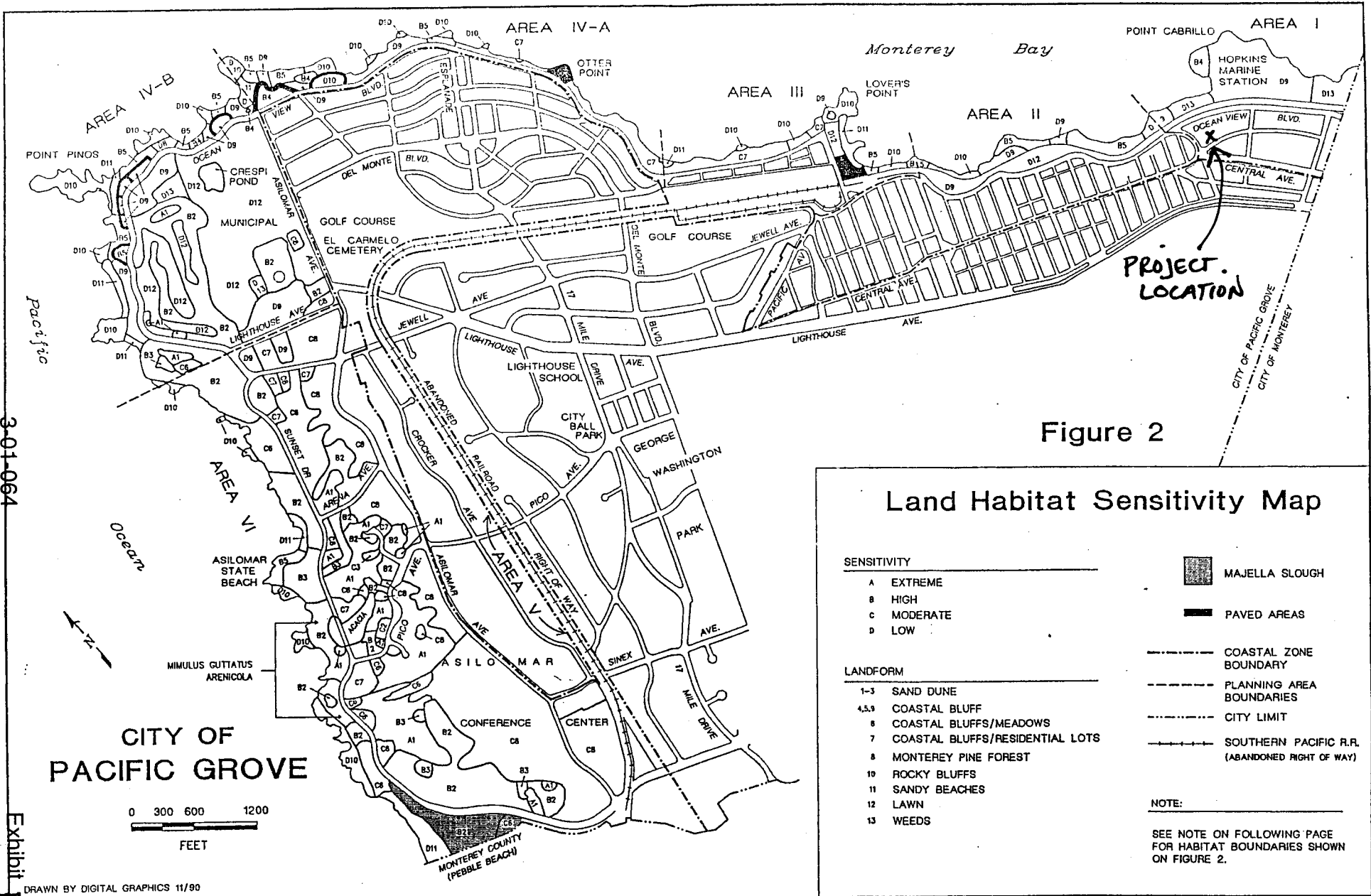


PACIFIC GROVE RETREAT
BLKS 1,2,3,4,5,6,7,8
UNIVERSITY ADDITION BLK 2

3-01-064
(Tucker)

Exhibit C
of 1





3-01-064
(Tucker)

Exhibit
(of 1)

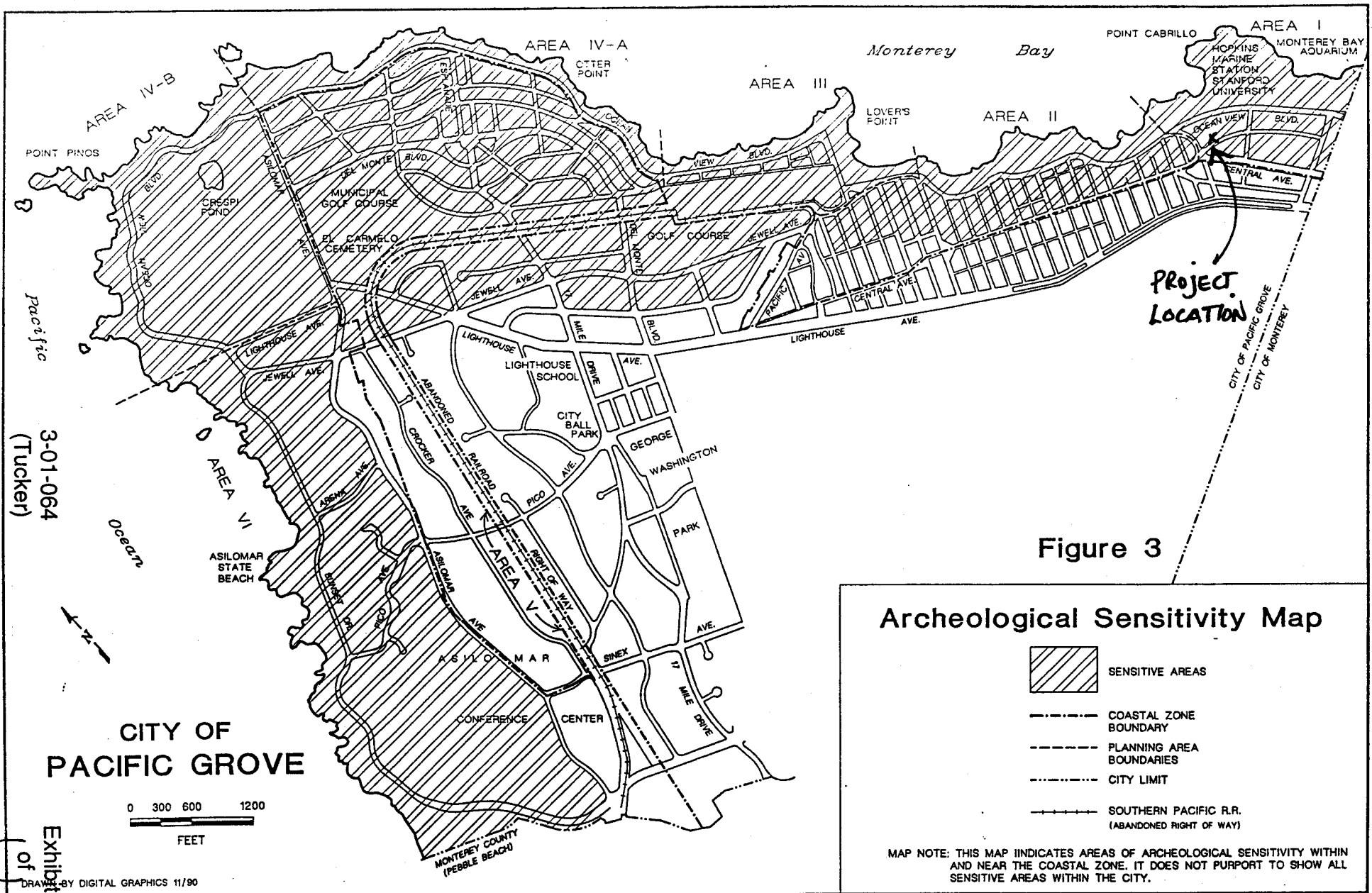
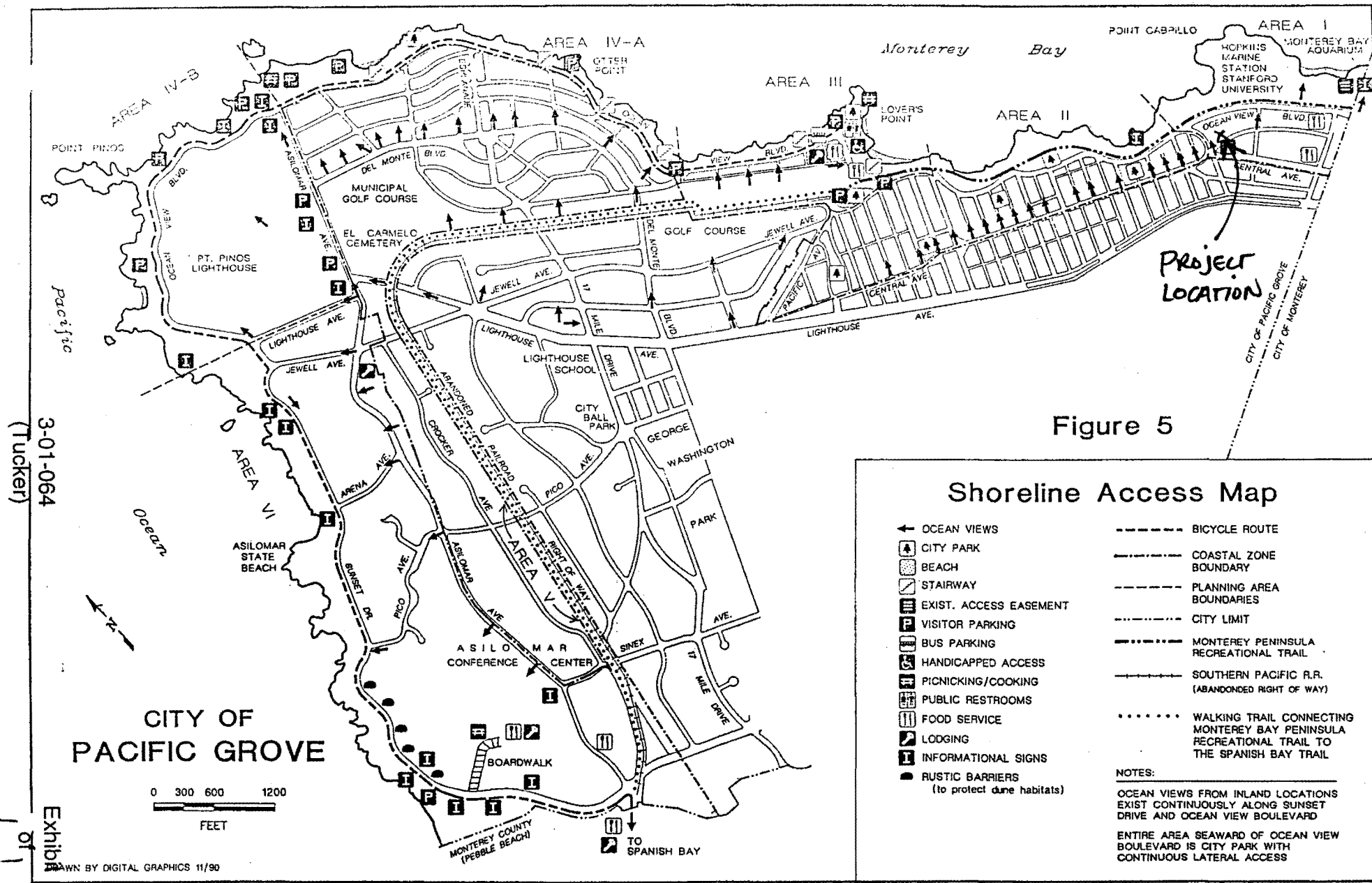


Figure 3

3-01-064
(Tucker)

Exhibit
of
F

DRAWN BY DIGITAL GRAPHICS 11/90



3-01-064
(Tucker)

Figure 5

Shoreline Access Map

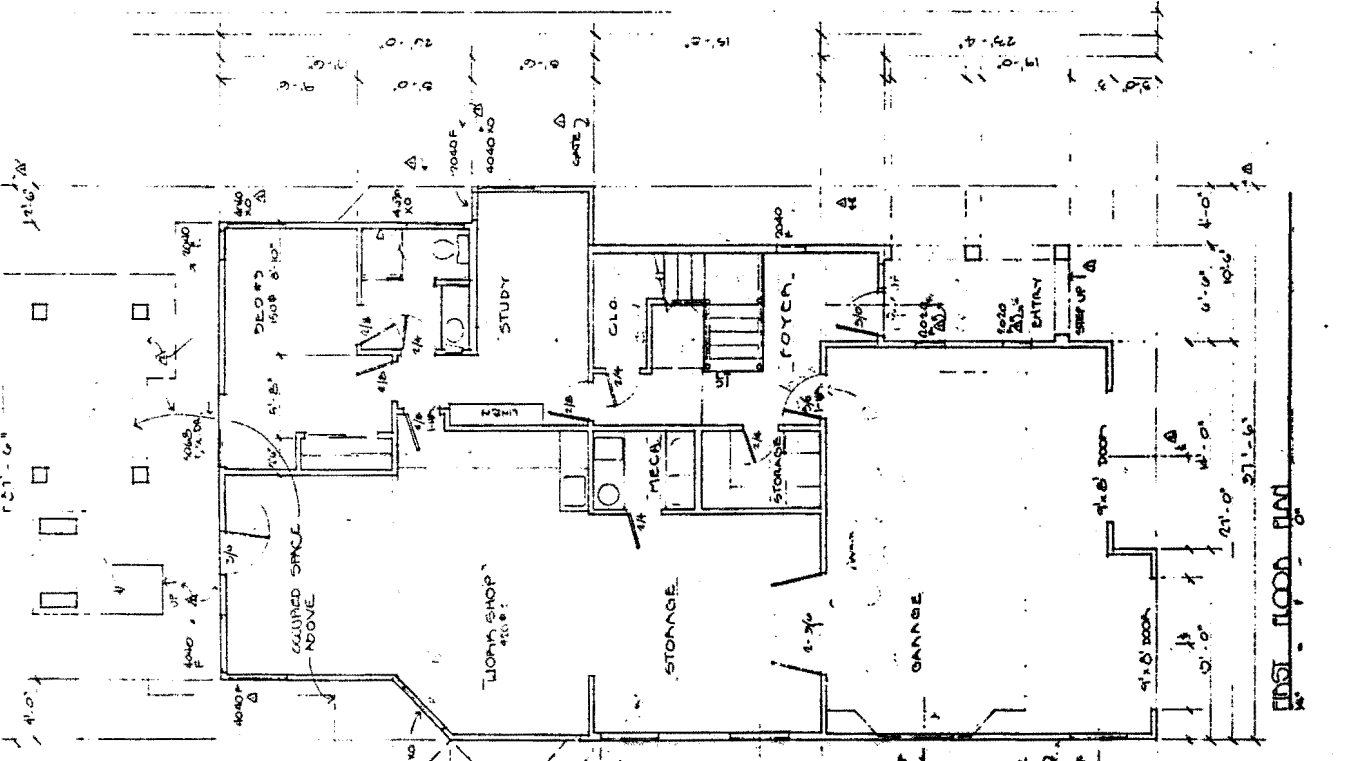
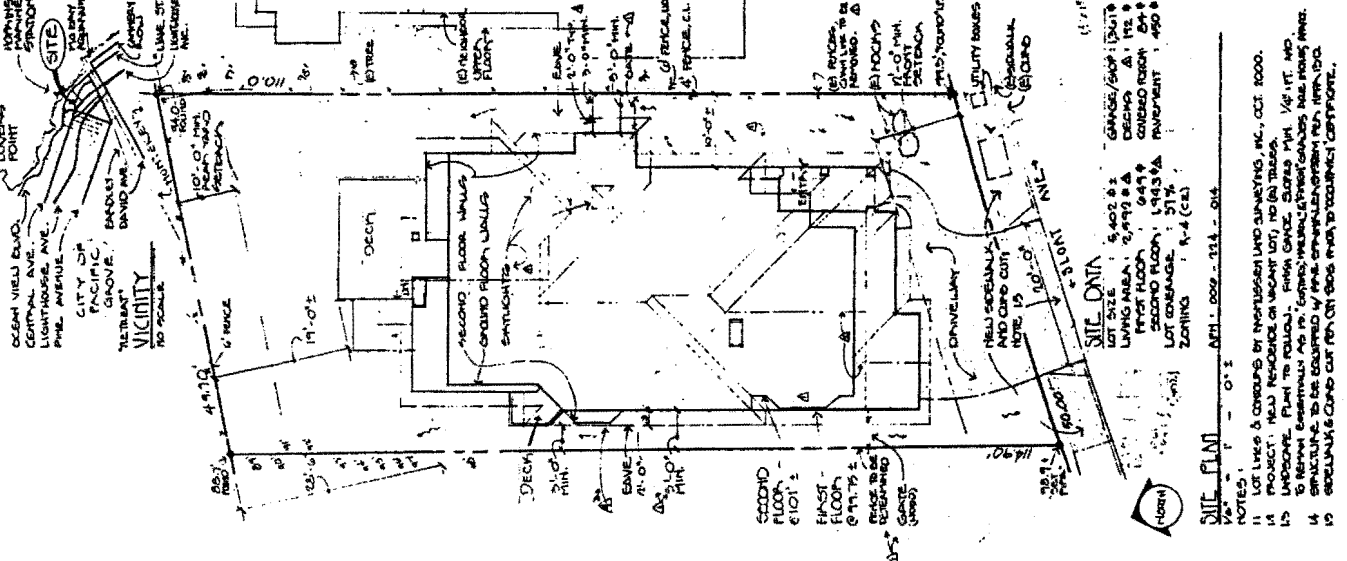
- ← OCEAN VIEWS
- 🌳 CITY PARK
- 🏖️ BEACH
- 🪜 STAIRWAY
- 🚶 EXIST. ACCESS EASEMENT
- 🅅 VISITOR PARKING
- 🚌 BUS PARKING
- ♿ HANDICAPPED ACCESS
- 🍷 PICNICKING/COOKING
- 🚻 PUBLIC RESTROOMS
- 🍽️ FOOD SERVICE
- 🏠 LODGING
- 📍 INFORMATIONAL SIGNS
- 🌿 RUSTIC BARRIERS (to protect dune habitats)
- BICYCLE ROUTE
- COASTAL ZONE BOUNDARY
- PLANNING AREA BOUNDARIES
- CITY LIMIT
- MONTEREY PENINSULA RECREATIONAL TRAIL
- SOUTHERN PACIFIC R.R. (ABANDONED RIGHT OF WAY)
- WALKING TRAIL CONNECTING MONTEREY BAY PENINSULA RECREATIONAL TRAIL TO THE SPANISH BAY TRAIL

NOTES:
 OCEAN VIEWS FROM INLAND LOCATIONS EXIST CONTINUOUSLY ALONG SUNSET DRIVE AND OCEAN VIEW BOULEVARD
 ENTIRE AREA SEAWARD OF OCEAN VIEW BOULEVARD IS CITY PARK WITH CONTINUOUS LATERAL ACCESS

CITY OF
PACIFIC GROVE

0 300 600 1200
FEET

Exhibit
1 of 1
5



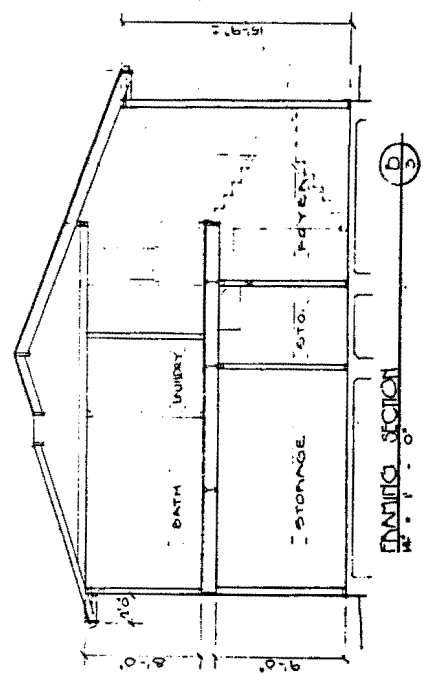
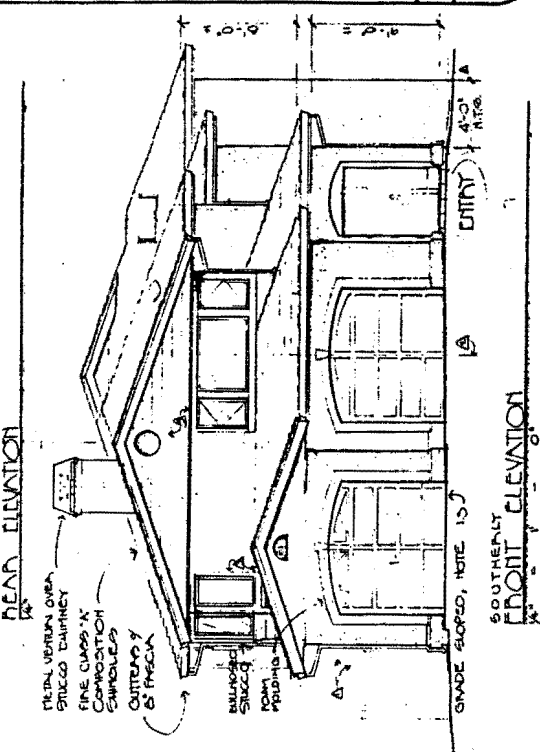
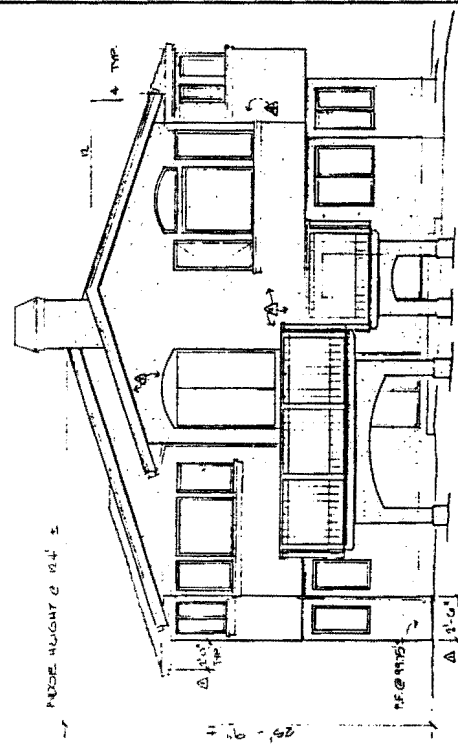


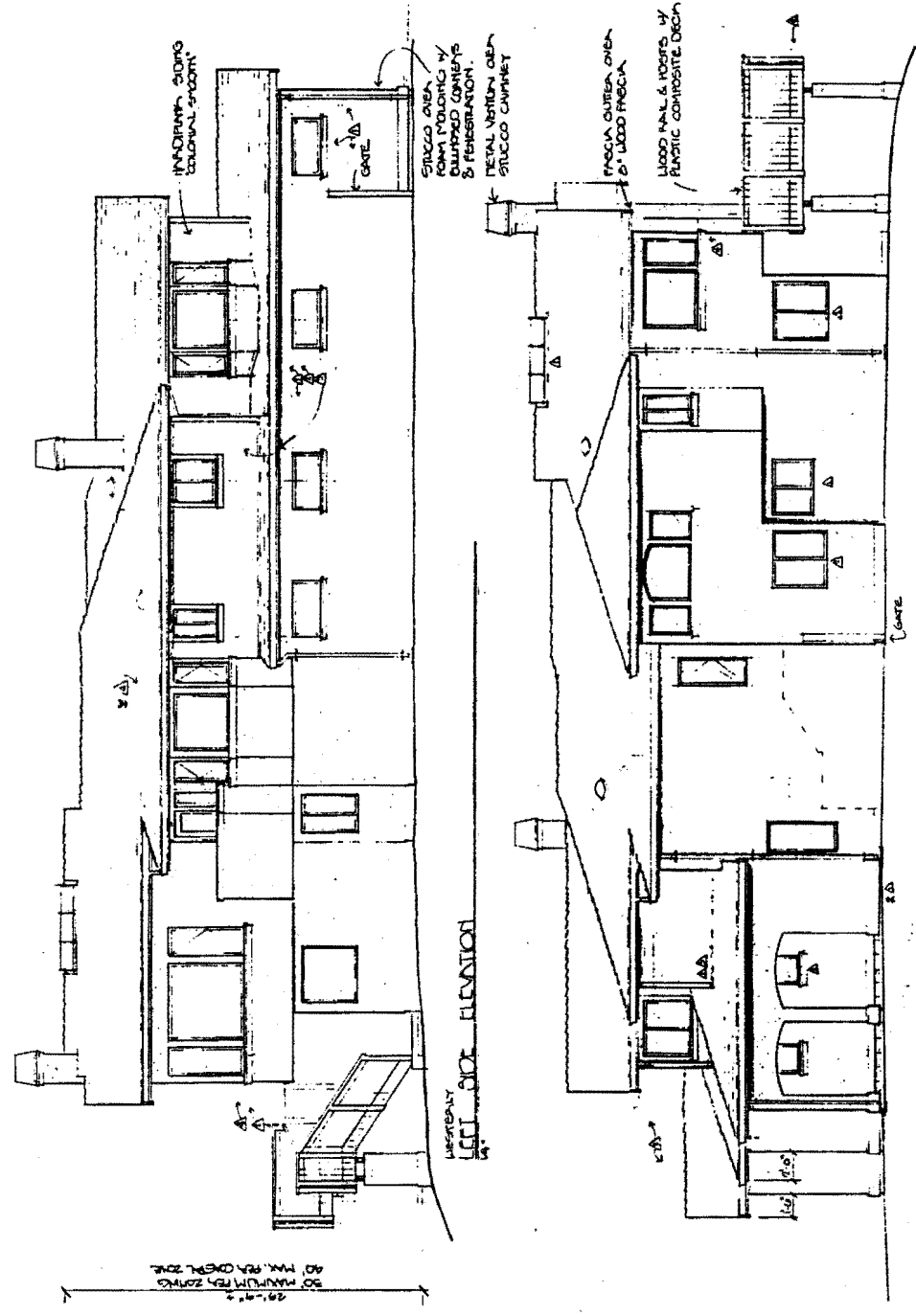
REVISION
 1. 10/1/81
 2. 10/1/81
 3. 10/1/81
 4. 10/1/81

RESIDENTIAL DESIGN, DRAFTING, ETC.
 MARK EDWIN MORRIS
 434 - 2114

NEW RESIDENCE
 TUCKER
 655-2956

JOB NO. 2028
 SHEET 3 OF 6





30' MAXIMUM ZONE
 40' MAX. RA OVER ZONE

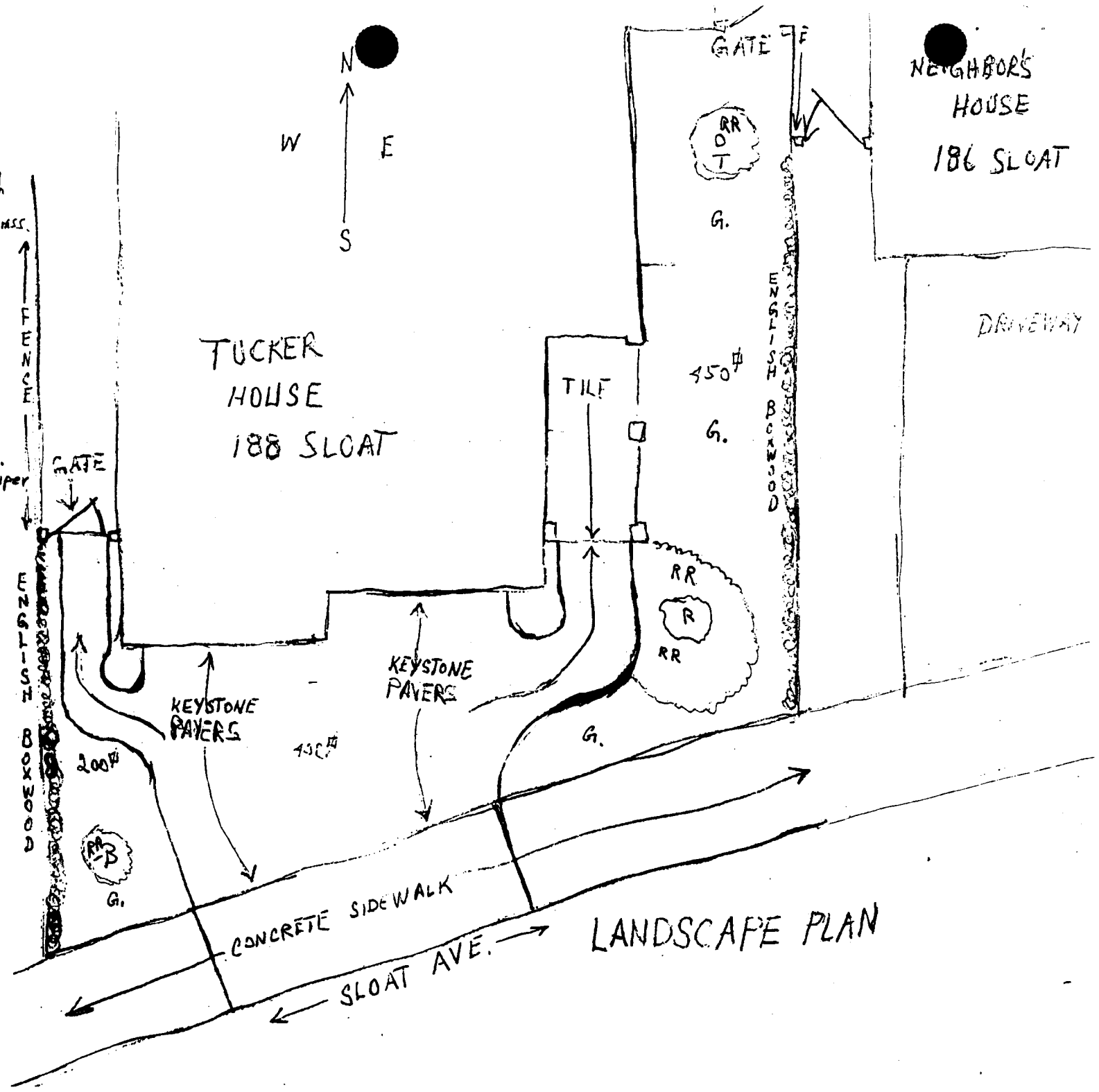
3-01-064
 (Tucker)

Exhibit H
 3 of 5

3-01-064
(Tucker)

Exhibit H
4 of 5

- G. = Native California bunch grass - "Purple Needle Grass"
Nassella
- B = Ceanothus
- R = Granite rock
- RR = River Rock with Dwarf Japanese Juniper ground cover
- T = Myoporum laetum



Landscape will be as shown on drawing.

One tree (T) will be on the East side of the house. It will be a *Myoporum Laetum*. This tree is listed in the Pacific Grove Guide to Selection, Planting and Care for Landscape Trees. It states that this tree is drought tolerant, and does well in coastal conditions and wind. It attracts Monarch Butterflies and is deer resistant. There will be gray river rock, 1"-2" size, (RR) around base of tree.

One bush (B) will be on the front West corner of the lot. It will be a *Ceanothus* that is a California native, and is drought tolerant and deer resistant. RR will be around the base.

A large granite rock (R) is presently located on the front East corner of the lot. It will be cleaned and bordered with RR. Low growing Dwarf Japanese Juniper will be placed around the R in the RR. This is drought tolerant and deer resistant.

The East and West borders of the lot, from the side gates to the sidewalk, will have a low border hedge of English Boxwood, which is drought tolerant and deer resistant.

The remainder of the front yard will have native California bunch grass (G), such as *Nassella Pulchra*, Purple Needle, and *Carex Pansa*. These grow to about 10" to 12" in height and wave in the breeze with the wind. They are drought tolerant and deer resistant. These grasses are raised and sold by the Rana Creek Ranch, Carmel Valley.

The driveway and walk paths will be of interlocking paving stones of tan/red/charcoal and keystone shape.

Drip irrigation will be installed, with one system on the East side of the house, and one on the West side. They will have Nelson automatic timers, 1/2" feeder lines, and 1/4" drip lines or soaker lines as appropriate. Tree, bushes and hedges will be drip irrigated. Grass will not. It is self-sustaining with the winter rains after the first year. The first year may require a limited amount of sprinkling. The grass will not be planted until just before the start of the winter rains.

The building site is basically level except the back, as shown on the site plan. The slope at the back of the lot is going to be untouched and is covered with a thick growth of *Nasturtium*, and has been that way for many years. There is no sign of erosion in this area. All rain water from the roof will drain into small gravel pits to prevent runoff erosion.

RECEIVED 2/13

JUN 27 2001

**Recording Requested by and
When Recorded Return to:**

Joseph F. Pitta
Monterey County Recorder
Recorded at the request of
City of Pacific Grove

CALIFORNIA
COASTAL COMMISSION
CENTRAL AREA
7/12/2000
15:21:20

George C. Thacher
City Attorney
City of Pacific Grove
300 Forest Avenue
Pacific Grove, California 93950

DOCUMENT: 2000044372

Titles: 1 / Pages: 11



Fees.... 38.00
Taxes...
Other...
AMT PAID 38.00

AGREEMENT

WATER CREDIT ASSIGNMENT (Russell and Tucker)

This water credit assignment agreement ("Agreement") is made and effective this 6th day of April, 2000, by and among the City of Pacific Grove ("City"), Thomas Nathan Russell, Jr. (hereinafter "Russell"), and Eli L. Tucker and Kathleen O. Tucker, husband and wife (hereinafter collectively, "Tucker").

This Agreement is made with reference to the following facts and circumstances.

A. Russell owns a residential parcel of real property (APN 006-224-015) located in the City of Pacific Grove and more particularly described in Exhibit A, attached hereto and incorporated herein by this reference. Tucker owns a residential parcel of real property (APN 006-224-014) located in the City of Pacific Grove and more particularly described in Exhibit B, attached hereto and incorporated herein by this reference.

B. City has approved an agreement entitled "Second Amendment to Water Credit Assignment Agreement," whereby City has approved, pursuant to agreement with CTE Properties, Inc. ("CTE"), water assignments including transfers to the parcels described in Exhibits A and B hereto, said agreement attached hereto, marked Exhibit C, and incorporated herein by this reference.

C. Russell and Tucker have negotiated purchase from CTE of the one acre foot of water transferred and assigned per Section 004 Exhibit C.

(Tucker)
5-01-064

Exhibit I
1 of 5

SENT BY: OLD REPUBLIC TITLE CO. ; 9-26- 0 ; 12:43 ; OLD REPUBLIC TITLE+

2/13

**Recording Requested by and
When Recorded Return to:**

Joseph F. Pitta
Monterey County Recorder
Recorded at the request of
City of Pacific Grove

CROLIE
7/12/2008
15:21:20

DOCUMENT: 2000041372 Titles: 1 / Pages: 11

**AGREEMENT
WATER CREDIT ASSIGNMENT (Russell and Tucker)
Page 2 of 3**

D. City, Russell and Tucker desire, by this Agreement, to complete the implementation of the assignments set out in Exhibit C.

NOW, THEREFORE, in recognition of Russell's and Tucker's agreement to carry out and receive the benefits of the provisions of Exhibit C, which has resulted in considerable public benefit by reservation of water for a possible future senior housing project and by making available water for projects on the City water waiting list, the parties agree as follows:

1. City represents and warrants to Russell and Tucker that the water which is the subject of this Agreement is in the City's allocation and is available for transfer and assignment to each of the parcels. City hereby grants, conveys, transfers, assigns, allocates and vests to each of the parcels described in Exhibits A and B, .276 acre foot of water per parcel for the benefit of each respective parcel, in perpetuity. Said water right and entitlement shall be appurtenant to each parcel and shall run with the land and accrue to the benefit of each parcel and Russell and Tucker as parcel owners, and their successors and assigns in the ownership of each parcel or any portion thereof. Said right and entitlement is and shall be superior to all other water allocations made or to be made by City and shall not be subject to revocation or modification by the City for any reason.

2. City agrees to fully cooperate with Russell and Tucker and their successors and assigns, to process consistent with City practices all necessary or appropriate permits and approvals which may be required to place a water meter on each parcel to draw water from said meter, and to take all other actions necessary or appropriate to legally vest the water right and entitlement to each parcel, including, without limitation, cooperating with regard to obtaining MPWMD permits or other applicable governmental approvals.

3. This Agreement and all the covenants, representations, warranties and obligations of the parties herein shall inure to the benefit of and be binding upon and enforceable by the parties hereto, their successors and assigns.

4. In the event of any controversy, claim or dispute concerning the interpretation or enforcement of any of the provisions of this Agreement or any action at law or in equity between the parties arising out of this Agreement to enforce any of the provisions or rights hereunder, the unsuccessful party to such controversy, claim, dispute or litigation covenants and agrees to pay to the successful party all costs, expenses and reasonable attorney fees incurred therein by such successful party, and if such successful party shall recover judgment in

3-01-064
(Tucker)

Exhibit I
3 of 5

SENT BY: OLD REPUBLIC TITLE CO.; 9-26- 0 ; 12:48 ; OLD REPUBLIC TITLE-

**AGREEMENT
WATER CREDIT ASSIGNMENT (Russell and Tucker)
Page 3 of 3**


any action or proceeding, such costs, expenses and attorney fees shall be included in and as part of such judgment.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

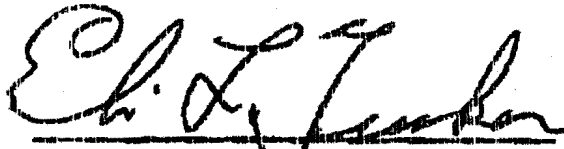
CITY OF PACIFIC GROVE


Sandra L. Koffman, Mayor

APPROVED AS TO FORM:


George Thatcher, City Attorney
Date: 7-6-00


Thomas Nathan Russell, Jr., by Roger R. Post*


Eli L. Tucker


Kathleen O. Tucker

* As successor in interest to Thomas Nathan Russell, Jr.'s interest in the property described in Exhibit A.

EXHIBIT B

Lot Numbered 14 in Block Numbered 2, as said Lot and Block are shown on that certain map entitled "Map of the University Addition to Pacific Grove, Monterey County, State of California", filed for record August 17, 1909 in the Office of the County Recorder of the County of Monterey, State of California, in Volume 2 of Maps, "Cities and Towns", at page 21.

