

CALIFORNIA COASTAL COMMISSION

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COASTAL DEVELOPMENT PERMIT APPLICATION**Application number**3-02-004**Applicant**.....Mr. & Mrs. Don Redgwick**Project location**.....1398 Pico Avenue, in the Asilomar Dunes neighborhood of Pacific Grove, Monterey County (APN 007-061-019).**Project description**Partial demolition and reconstruction of an existing 1,760 square foot single family residence; increase in building footprint of 109 sf; a 712 s.f. partial second floor addition; construction of a 704 s.f. garage (no existing garage); removal of 459 sf of paving, and removal of 2 Monterey pines.

	Existing	Proposed
Project Site =	35,066 square feet	35,066 square feet
Building Coverage =	1,760 square feet (5.0%)	2,776 square feet (7.9%)
Non-Structural Impervious Area =	2,889 square feet (8.2%)	2,430 square feet (6.9%)
Total Lot Coverage =	4,649 square feet (13.3%)	5,206 square feet (14.8%)

Local approval.....City of Pacific Grove: Architectural Review Board (ARB); final architectural approval on 10/23/01 (AA #2690-01).**File documents**.....Biological Survey Report by Thomas Moss (09/03/1999); Landscape Restoration Plan by Thomas Moss (12/10/01); Archaeological Investigation by Archaeological Consulting (02/26/1999); Coastal Development Permit file 3-02-004; City of Pacific Grove certified Land Use Plan.**Staff recommendation** ...**Approval with Conditions**

Summary: The applicant proposes to partially demolish an existing, one-story, 1,760 square foot single-family residence, and reconstruct a two-story, 2,581 square foot single family dwelling on a 35,066 square foot lot in the Asilomar Dunes neighborhood of the City of Pacific Grove (See Exhibits A, B and C). The City has a certified Land Use Plan (LUP), but the Implementation Plan has not yet been certified. Therefore, a coastal development permit for the project must be obtained from the Coastal Commission and the proposal is subject to the policies of Chapter 3 of the Coastal Act. The policies of



California Coastal Commission
June 2002 Meeting in Long Beach

Staff: S. Matraw Approved by: *C.F.L. 5/22/02*

the City’s LUP can also be looked to for guidance.

The Asilomar Dunes area has a number of unique biological and geological resources, including at least ten plant and one animal species of special concern, and dune landforms that are comprised almost entirely of quartz sand. Dunes are considered environmentally sensitive habitat areas (ESHA) because they include plant or animal life or their habitats, which are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments. The subject parcel is comprised of dune habitat, and contains the existing house and appurtenant structures.

In order to minimize disturbance to the unique, environmentally sensitive dune habitat that characterizes this area while still allowing an economic use of the property, the total maximum aggregate lot coverage under the City’s LUP is limited to 15 percent of the lot area. As defined in the LUP, calculation of the maximum aggregate lot coverage includes buildings, driveways, patios, decks that do not allow for the passage of water and light to the dune surface, and any other features that eliminate native plant habitat.

The maximum allowable aggregate lot coverage for the 0.805-acre (35,066-sf) project site is 5,260 square feet. The existing development on site consists of a one-story, single-family dwelling (1,760 sf), a driveway and a paved area located on the western side of the house (2,889 sf). These developed areas currently total 4,649 square feet of coverage (13.3%). The proposed project includes partial demolition of the existing house, construction of the new residence, the new garage, and a paved driveway, with building coverage of 2,776 sf (7.9% lot coverage), and impermeable surface coverage of 2,430 sf (6.9% lot coverage). Thus, the total aggregate coverage as proposed is 5,206 square feet, or 14.8%. Therefore, as designed, the project does conform to the 15 percent maximum aggregate lot coverage allowed.

The existing structure was built prior to the Coastal Act and the Land Use Plan, and will be demolished, effectively clearing the lot. The proposed new single-family dwelling is evaluated as new development on a vacant lot that is entirely environmentally sensitive habitat area (ESHA). As proposed, the aggregate coverage for the lot is below the maximum allowed, however, impacts from residential use have not been considered, and the structures and paving proposed on the site are inconsistent with Coastal Act Section 30240 because the entire site is considered to be environmentally sensitive habitat.

Although the entire lot is considered to be ESHA, to prevent a takings, some development of the lot must be allowed. As conditioned to limit site coverage and restore and preserve the remaining portion of the site as dune habitat, the project will comply with the standards of the certified LUP, and mitigate for impacts to environmentally sensitive habitat. The project is also consistent with Coastal Act policies protecting scenic and archaeological resources. Therefore, as conditioned, Staff recommends approval.

Staff Report Contents

- I. Staff Recommendation on CDP Application.....3
- II. Conditions of Approval.....4
 - A. Standard Conditions.....4
 - B. Special Conditions5



- III. Recommended Findings and Declarations.....8
 - A. Project Description.....8
 - 1. Project Location8
 - 2. Project Description.....9
 - B. Standard of Review9
 - C. Basis of Decision10
 - D. Issue Analysis.....10
 - 1. Environmentally Sensitive Habitat Areas10
 - a. Applicable Environmentally Sensitive Habitat Area (ESHA) Policies10
 - b. ESHA Analysis12
 - 1. Description of Environmentally Sensitive Habitat12
 - 2. Implementing Section 30010 and 30240 of the Coastal Act13
 - 3. ESHA Impact Analysis16
 - c. ESHA Conclusion.....18
 - 2. Visual Resources.....19
 - a. Applicable Visual Resources Policies19
 - b. Visual Resources Analysis.....20
 - c. Visual Resources Conclusion20
 - 3. Archaeological Resources.....21
 - a. Applicable Archaeological Resources Policies.....21
 - b. Archaeological Resources Analysis.....21
 - c. Archaeological Resources Conclusion.....21
 - E. Local Coastal Programs22
 - F. California Environmental Quality Act (CEQA)22

IV. Exhibits

- A. Regional Location Map
- B. Project Vicinity Map
- C. Assessors Parcel Map
- D. Pacific Grove Land Habitat Sensitivity Map
- E. Pacific Grove Archaeological Sensitivity Map
- F. Pacific Grove Shoreline Access Map
- G. Project Site Plans
- H. Aerial Photo
- I. Project Photos
- J. Mitigation Monitoring Report

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 3-02-004 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, although not in conformity with the policies of Chapter 3 of the Coastal Act can be approved to avoid an impermissible taking of private property. 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 lessen significant adverse effects of the 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. **Incorporation of City's Mitigation Requirements.** The Mitigations and Mitigation Monitoring Program adopted by the City of Pacific Grove for its final Mitigated Negative Declaration for this project are attached as Exhibit J to this permit; these mitigations are hereby incorporated as conditions of this permit.

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

2. **Final Site Plans.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Permittee shall submit two sets of final site plans for the Executive Director's review and approval, which demonstrate the following

- (a) Final site plan demarcating the building envelope, all other areas covered by impervious surfaces, immediate outdoor living areas (including the area outside the main entry to the house and the area between the garage and the house, which were originally proposed for restoration areas) and landscape/habitat restoration areas. Areas covered by impervious surfaces (house, driveway, patios, etc.) shall not exceed 15% (5,260 square feet) of the 35,066 square foot lot area. Any additional changes to the plans originally submitted (approved by the Architectural Review Board on 10/23/01) shall require Executive Director review and approval or an amendment to this permit. Such plan changes shall require evidence of review and approval by the City of Pacific Grove prior to Executive Director review and approval.
- (b) Immediate outdoor living areas shall be designated on the final site plan, shall be left in a natural condition or landscaped so as to avoid impervious surfaces (i.e., surfaces that do not allow water or light to penetrate into the soil), and shall not exceed 5 percent of the area of the lot.

3. **Dune Habitat Restoration Landscaping Plan.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Permittee shall submit for the Executive Director's review and approval, two sets of dune habitat restoration plans for the entire lot outside of the building envelope as designated on the final site plans required by Special Condition #2. The restoration plan shall be prepared using California native plant species appropriate to the site. The plan shall include an analysis by a qualified expert that considers the specific condition of the site including soil, exposure, temperature, moisture, and wind, as well as restoration goals. At a minimum, the plan shall demonstrate that:

- (a) All vegetation planted on the site will consist of native dune plants,
- (b) All required plantings will be maintained in good growing conditions throughout the life



of the project, and whenever necessary, shall be replaced with new plant materials to ensure continued compliance with the landscape plan, and

The plans shall include, at a minimum, the following components:

- (a) A map showing the type, size, and location of all plant materials that will be on the developed site, the irrigation system (if any), topography of the developed site, and all other landscape features, and
- (b) A schedule for installation of plants within the first growing season after completion of construction.

Installation of all plants shall be completed prior to occupancy of the new home. Within 30 days of completion of the landscaping installation, the Permittee shall submit a letter from the project biologist indicating that plant installation has taken place in accord with the approved restoration plans and describing long-term maintenance requirements for the restoration. At a minimum, long-term maintenance requirements shall include site inspections by a qualified biologist annually, or more frequently, to identify and correct any restoration and maintenance issues.

Five years from the date of completion of the addition, the Permittee or successors in interest shall submit, for the review and approval of the Executive Director, a restoration monitoring report, prepared by a qualified specialist, that certifies the on-site restoration is in conformance with the approved plan along with photographic documentation of plant species and plant coverage.

If the restoration monitoring report or biologist's inspections indicate the landscaping is not in conformance with or has failed to meet the performance standards specified in the Dune Habitat Restoration Mitigation Plan approved pursuant to this permit, the Permittee or successors in interest, shall submit a revised or supplemental restoration plan for the review and approval of the Executive Director. The revised restoration plan must be prepared by a qualified specialist, and shall specify measures to remediate those portions of the original plan that have failed or are not in conformance with the original approved plan.

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

- A. For the protection and enhancement of the natural habitat values on all portions of the site, except for the building envelope area and outdoor living area as shown in the final site plans required by Special Condition #2. The deed restriction shall include provisions to prohibit all development outside of the approved building envelope, requiring that the maximum aggregate lot coverage (which includes the building footprint, driveway and any other paved areas, decks and patios) shall not exceed 15% of the lot area.

The only exceptions to the prohibition of development outside of the approved building envelope are for temporary fencing to protect restoration areas, possible perimeter fencing



around the immediate outdoor living area, and utilities necessary to serve the residential use. The deed restriction shall also include provisions to: prevent disturbance of native groundcover and wildlife; to provide for maintenance and restoration needs in accordance with the approved Dune Habitat Restoration Mitigation Plan (see above); to specify conditions under which non-native species may be removed, and entry for monitoring of restored area secured.

- B. For measures to implement the approved Dune Habitat Restoration Landscaping Plan prepared for the subject property as required by Special Condition #3.
- C. For fencing restrictions to allow free passage of native wildlife, as provided by Local Coastal Program Land Use Plan Policy 2.3.5.1(e).
- D. For a monitoring program as set forth in the approved mitigated negative declaration; and provide that, following construction, annual monitoring reports shall be submitted to the Executive Director and the City of Pacific Grove for review and approval for a period of five years.

The recorded document shall include legal descriptions of both the applicant's entire parcel and the deed-restricted area. The recorded document shall also reflect that development in the deed-restricted area is restricted as set forth in this permit condition.

The deed restriction shall be recorded free of prior liens and encumbrances that the Executive Director determines may affect the interest being conveyed. The deed restriction shall run with the land in favor of the People of the State of California, binding all successors and assignees. Any revisions to the deed restriction will require approval of an amendment to this permit by the California Coastal Commission.

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

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

The exact placement of the temporary exclusionary fencing shall be identified on site by the project biologist. Evidence of inspection of the installed construction fence location by the project biologist shall be submitted to the Executive Director prior to commencement of construction. Fences shall be 4 feet high and secured by metal T-posts, spaced no more than 8 feet apart. Either mesh field fence or snowdrift fence, or comparable barrier shall be used.

- B. Plans for any permanent landscaping fence, should they be necessary to discourage trampling of the area to be restored outside of the building envelope, shall require the Executive Director's review and approval, and may require an amendment to this permit. Fencing design submittal shall include evidence of review and approval by the City of Pacific Grove. No



permanent fencing other than that shown on approved plans is authorized by this permit without Executive Director approval.

6. **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.
7. **Environmental Monitoring During Construction.** Permittee shall employ an environmental monitor who is approved by the Executive Director and the City of Pacific Grove Community Development Director to ensure compliance with all mitigation requirements during the construction phase. Evidence of compliance with this condition by the project monitor shall be submitted to the Executive Director each month while construction is proceeding and upon completion of construction.
8. **Utility Connections.** All utility connections shall remain underground. When installing any new utility connections, care shall be taken to minimize disturbance of the deed-restricted revegetation in accordance with Special Conditions 3 and 4.

III. Recommended Findings and Declarations

The Commission finds and declares as follows:

A. Project Description

1. Project Location

The site of the proposed demolition and reconstruction is a 35,066 square foot lot located at 1398 Pico Avenue in the Asilomar Dunes neighborhood of the City of Pacific Grove. The Asilomar Dunes neighborhood is mapped as the area bounded by Lighthouse Avenue, Asilomar Avenue, and the northern boundary of Asilomar State Park to the south (See Exhibits A, B and C).

The parcel is located in an area zoned R-1-B-4, Single Family Residential, with a minimum parcel size of 20,000 square feet. Development within the surrounding neighborhood is characterized by one and two-story single-family dwellings. Similar to the surrounding residences, the existing house is sited relatively close to the road, leaving roughly 87% of the lot in undeveloped dune habitat. This low-density zoning on relatively large lots gives this area an open-space character consistent with the zoning



and low-density residential Land Use Plan designation.

The entire site is considered to be environmentally sensitive habitat area (ESHA), as are all lots located within the Asilomar Dunes area. This is due in part to the existence of up to ten plant species and one animal species of special concern that have evolved and adapted to the harsh conditions found in the Asilomar Dunes system. Increasing development pressure has reduced the amount of available habitat and thus the range of these species. The site is also located within an archaeologically sensitive area (see Exhibit E). Therefore, an archaeological survey was conducted for the subject parcel and a report prepared by Mary Doane and Trudy Haversat for Archaeological Consulting (February 26, 1999).

2. Project Description

The applicants propose to partially demolish a 1,760 square foot, one-story single family dwelling, and to construct a 2,581 square foot, two-story house, and a 704 sf, detached, three-car garage in the Asilomar Dunes neighborhood of the City of Pacific Grove (Exhibit G). The existing development on site consists of 1,760 square feet of structural coverage and 2,889 square feet of impervious surface, resulting in total site coverage of 13.3%. As designed, the new project's total site coverage, which includes the residence, the garage, a patio and a paved driveway (14.8% total), does conform to the 15% maximum aggregate lot coverage (5,260 square feet for the .805-acre lot) allowed under the City's approved LUP. However, this coverage factor does not take into account the outdoor living areas, which, although not proposed, will result from residential use such as foot traffic, pets, etc. due to their location in areas that will be used for access to the garage and the driveway.

According to the site plans, construction of the new dwelling will take place primarily within the footprint of the existing dwelling, with the exception of a 109 square foot increase in building footprint. However, the majority of construction of the detached garage will take place on areas that are currently free of development. The biological report states the entire property was searched for the presence of rare plants of the Asilomar Dunes, with the primary focus of the plant survey being the area proposed for the new garage and driveway expansion. One protected plant species, Tidestrom's lupine, occurs to the west and northwest of the house, the closest plant being 40 feet from the residence. No sensitive plants were found in the project area, but there are several Tidestrom's lupine located on the adjacent property to the south. Monterey pines occur naturally on site in the swales surrounding the residence, and two, a 12" and a 14" diameter, are located within the footprint of the proposed garage and will be removed.

B. Standard of Review

The Asilomar Dunes portion of the City of Pacific Grove is within the coastal zone, but the City does not have a certified LCP. The City's Land Use Plan (LUP) was certified in 1991, but the zoning, or Implementation Plan (IP) portion of the LCP has not yet been certified. The City is currently working to complete the IP. Because the City does not yet have a certified LCP, the Coastal Commission must issue coastal development permits, with the standard of review being the Coastal Act, although the certified LUP may serve as an advisory document.



C. Basis of Decision

As stated above, the standard of review for this project is conformance with the policies of the California Coastal Act. These policies include Section 30240, which prohibits any significant disruption of environmentally sensitive habitat areas, and bans those uses that are not dependent on such resources. In this case, the entire .805-acre parcel is environmentally sensitive coastal dune habitat (see finding D below for details). Accordingly, because the proposed single-family residence is not a resource-dependent use and would result in a significant habitat disruption, there is no place on this parcel where a residential development could be found consistent with Section 30240. Therefore, absent other considerations, the construction portion of this project would have to be recommended for denial.

On the other hand, Coastal Act Section 30010 provides:

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

The Coastal Commission is not organized or authorized to compensate landowners denied reasonable economic use of their otherwise developable residential property. Therefore, in order to preclude a claim of taking and to assure conformance with California and United States Constitutional requirements, as provided by Coastal Act Section 30010, this permit allows the development of a single family residence to provide for reasonable economic use of this property. This determination is based on the Commission's finding in Section D2 of this staff report, below, that the property was purchased with the expectation of residential use, that such expectation is reasonable, that the investment was substantial, and that the proposed development is commensurate with such investment-backed expectations for the site. Although the project is not consistent with the ESHA protection policy of Coastal Act Section 30240, this approval is conditioned to be consistent with this policy to the maximum extent feasible without denying all economic use, which, as discussed, could result in a taking.

D. Issue Analysis

1. Environmentally Sensitive Habitat Areas

a. Applicable Environmentally Sensitive Habitat Area (ESHA) Policies

Coastal Act Section 30240, states:

30240(a)...Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on such resources shall be allowed within such areas.



The Coastal Act, in Section 30107.5, defines an environmentally sensitive area as

30107.5...any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.

While Coastal Act policies are the standard of review for coastal development permits until the City completes its LCP, the City's LUP also provides guidance to the Commission as it considers proposals for development in the Asilomar Dune neighborhood. With regards to environmentally sensitive habitat areas, the LUP contains the following relevant policies:

LUP Policy 2.3.5.1. New development in the Asilomar dunes area (bounded by Asilomar Avenue, Lighthouse Avenue, and the boundary of Asilomar State Park) shall be sited to protect existing and restorable native dune plant habitats... No development on a parcel containing esha shall be approved unless the City is able to find that, as a result of the various protective measures applied, no significant disruption of such habitat will occur.

LUP Policy 2.3.5.1.d. The alteration of natural land forms and dune destabilization by development shall be minimized. Detailed grading plans shall be submitted to the City before approval of coastal development permits.

LUP Policy 2.3.5.1.e If an approved development will disturb dune habitat supporting or potentially supporting Menzies' wallflower, Tidestrom's lupine or other rare or endangered species, or the forest front zone along Asilomar Avenue south of Pico Avenue, that portion of the property beyond the approved building site and outdoor living space (as provided in section 3.4.5.2) shall be protected by a written agreement, deed restrictions or conservation easement granted to an appropriate public agency or conservation foundation. These shall include provisions which guarantee maintenance of remaining dune habitat in a natural state, provide for restoration of native dune plants under an approved landscape plan, provide for long-term monitoring of rare and endangered plants and maintenance of supporting dune or forest habitat, and restrict fencing to that which would not impact public views or free passage of native wildlife. Easements, agreements or deed restrictions shall be approved prior to commencement of construction and recorded prior to sale or occupancy.

LUP Policy 2.3.5.1.g. Require installation of utilities in a single corridor if possible, and should avoid surface disturbance of areas under conservation easement.

LUP Policy 3.4.4.1. All new development shall be controlled as necessary to ensure protection of coastal scenic values and maximum possible preservation of sand dunes and the habitat of rare and endangered plants.

Section 3.4.5.2 of the LUP specifies the maximum aggregate lot coverage allowed for new development in the Asilomar Dunes area as follows:

LUP Policy 3.4.5.2. Maximum aggregate lot coverage for new development in the R-1-B-4



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

b. ESHA Analysis

1. Description of Environmentally Sensitive Habitat

The proposed development is located in the Asilomar Dunes area, an environmentally sensitive habitat area located at the seaward extremity of the Monterey Peninsula. The Asilomar Dunes area is a sand dune complex located west of Asilomar Avenue between Lighthouse Avenue and the shoreline south of Asilomar State Park. It extends inland from the shoreline dunes and bluffs through a series of dune ridges and interdune swales to the edge of Monterey pine forest. The unusually pure, white quartz sand in this area was formerly stabilized by a unique indigenous dune flora. However, only a few acres of the original approximately 480-acre habitat area remain in a natural state. The balance of the original habitat has been lost or severely damaged by sand mining, residential development, golf course development, trampling by pedestrians, and the encroachment of non-indigenous introduced vegetation.

While a number of preservation and restoration efforts have been undertaken, most notably at the Spanish Bay Resort, Asilomar State Beach, and in connection with previously approved residential developments on private lots, certain plants and animals, characteristic of this environmentally sensitive habitat, have become rare or endangered. The Asilomar Dune ecosystem includes up to ten plant species and one animal species of special concern that have evolved and adapted to the desiccating, salt-laden winds and nutrient poor soils of the Asilomar Dunes area.

The best known of these native dune plants are the Menzie's wallflower, Monterey spineflower and the Tiedestrom's lupine, all of which have been reduced to very low population levels through habitat loss and are Federally-listed endangered species. Additionally, the native dune vegetation in the Asilomar Dunes area also includes more common species that play a special role in the ecosystem, for example: the bush lupine which provides shelter for the rare black legless lizard, and the coast buckwheat, which hosts the endangered Smith's blue butterfly. Because of these unique biological and geological characteristics of the Asilomar Dunes, all properties in the Asilomar Dunes area are located within environmentally sensitive habitat areas (See Exhibit D).

A biological survey conducted by Thomas Moss in February of 1999 (Surveys done 2/11/99 and 7/24/99, report dated 9/3/99) to determine potential impacts of proposed development found no threatened or endangered species *in the immediate project area*. However, the report noted the existence of



Tidestrom's lupine on the site, within 40 feet of the existing house. The report also states that no Tidestrom's lupine occur on the property near the proposed development, and no plant or animal species of special concern will be adversely impacted by the development. However, while there may not be any endangered plants in the building site presently, the nature of the dune habitat is such that they appear at different locations and times. Thus, the whole area is considered habitat as it all has the potential to sustain the endangered plants.

The Pacific Grove Land Use Plan describes all dune habitats in this area as being comprised of potential habitat for rare and endangered plants and animals such as Menzie's wallflower and the black legless lizard. The LUP goes on to state that natural dunes which are "presently barren or covered with non-native plants, but are potentially restorable to native plant cover" shall be considered environmentally sensitive. Similarly, as the Commission has often observed, developed areas of dune systems like Asilomar, such as driveways and residences, frequently revert back to dune habitat (self-restore) over time when the development is removed.

Therefore, based upon the surveys and biological report prepared for the property, staff observations, and consistent with the City's LUP and prior Commission actions on other proposed development in the dunes, the Commission finds that the site is environmentally sensitive habitat as defined by Section 30107.5 of the Coastal Act.

2. Implementing Section 30010 and 30240 of the Coastal Act

The entire area of the applicant's 35,066 square foot (.805-acre) parcel is an environmentally sensitive dune habitat. Other than the demolition, the proposed development includes a single-family dwelling and a detached garage, a driveway, and possible immediate outdoor living area. This project will require a net grading of approximately 1.25 cubic yards of material and will result in a permanent loss (i.e., aggregate lot coverage) of approximately 5,206 square feet of environmentally sensitive habitat (2,776 square foot building coverage + 2,430 square feet of impervious surfacing).

Additional disruptions will result from residential development and subsequent use of the site, but these uses are generally amenable to native plant restoration and maintenance measures. Such activities may include: installation of a storm drain system, utility trenching and, over the long run, ordinary residential activities on the premises such as allowing dogs and children in the habitat area. None of these development activities are of a type that is dependent on a location within the sensitive resource area, and it is reasonable to expect that these development activities, individually and collectively, will result in a significant disruption of the environmentally sensitive dune and forest habitat area on site. Therefore, this project cannot be found consistent with Coastal Act Section 30240.

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



will avoid this result.

Once an applicant has obtained a final and authoritative decision from a public agency, and a taking claim is "ripe" for review, a court is in a position to determine whether the permit decision constitutes a taking. The court first must determine whether the permit decision constitutes a categorical or "per se" taking under *Lucas v. South Carolina Coastal Council* (1992) 505 U. S. 1005. According to *Lucas*, if a permit decision denies all economically viable use of property by rendering it "valueless," the decision constitutes a taking unless the denial of all economic use was permitted by a "background principle" of state real property law. Background principles are those state law rules that inhere in the title to the property sought to be developed and that would preclude the proposed use, such as the common law nuisance doctrine.

Second, if the permit decision does not constitute a taking under *Lucas*, a court may consider whether the permit decision would constitute a taking under the ad hoc inquiry stated in cases such as *Penn Central Transp. Co. v. New York City* (1978) 438 U.S. 104, 123-125. This inquiry generally requires an examination into factors such as the character of the government action, its economic impact, and its interference with reasonable, investment-backed expectations. The absence of reasonable, investment-backed expectations is a complete defense to a taking claim under the ad hoc inquiry (e.g., *Ruckelshaus v. Monsanto Co.* (1984) 467 U.S. 986, 1005, 1008-1009), in addition to any background principles of property law identified in *Lucas* that would allow prohibition of the proposed use.

Because permit decisions rarely render property "valueless," courts seldom find that permit decisions constitute takings under the *Lucas* criteria. For the reasons that follow, however, the Commission finds that there is sufficient evidence that a court might find that the denial of some non-resource dependent use on this property would constitute a taking under the ad hoc takings analysis, and that the Coastal Act, therefore, allows the approval of a non-resource dependent use.

In this situation, the Asilomar Dunes area has already been subdivided into residential lots, and has, over the years, been partially developed. Indeed, the project site is currently developed with a residence and driveway. Additionally, residences are located directly adjacent to the project site, and other residences are in the immediate vicinity (Exhibit H). In view of the location of the applicant's parcel and, in particular, its small lot size, the Commission is unaware of any use that would be both dependent on the environmentally significant resources of the site as otherwise required by Section 30240 and capable of providing an economically viable use. The Commission is also unaware of any intent by any public agency to purchase this or other similarly situated and zoned lots in the Asilomar Dunes. Therefore, it is reasonable to conclude that permanently restricting the use of the property to non-resource dependant uses would have a very drastic impact on the value of the property.

Additionally, it has been determined that the applicants purchased the property on March 15, 1999. According to the applicants, at that point in time they felt it was reasonable to expect that residential use would be allowed on this property based on a number of factors, primarily because of the existence of a single-family dwelling on the site. Additionally, the parcel is designated for residential use in the City of Pacific Grove's Land Use Plan and in the City's zoning ordinances. Also, the parcel is located adjacent to Pico Boulevard between Sunset Avenue and Calle de los Amigos Avenue, among other residential



properties that have been developed with houses of a similar size to that proposed in this application, and where public utility service is currently available. As noted above, a substantial number of parcels in the Asilomar Dunes area are already developed, including this site, and have been for some time.

As a further basis of an expectation of residential use, the Commission has approved a number of homes in this area. (Miller, Coastal Development Permit No. 3-96-81). That approval was for a house with approximately 12 percent lot coverage. More recently, the Commission has approved a house on the Baldacci site in May of 2001 (Baldacci, Coastal Development Permit No. 3-01-013) fronting Sunset Drive, with 18 percent coverage. The current applicants note that no hazardous conditions exist on the site, that there are no other potential clouds on legal title to the property and there is no evidence that residential use constitutes a nuisance.

After reviewing these factors (LUP provisions allowing 15% site coverage, zoning, existence of similar homes approved by both the City and the Commission), the Commission finds that an applicant would have had reasonable basis for expecting that the Commission might approve a residential use of the property, subject to conditions that would mitigate the adverse impacts that likely would result from development in this sensitive resource area.

Finally, the applicants have submitted detailed information to demonstrate that their expectations were backed by substantial investments. The property was purchased for \$836,279, which was the fair market value for residential property including a house in this area at the time of purchase. Since this purchase the property has generated \$4,400.00 income in the form of rent, and has been taxed based on its current zoning designation as residential land. Accordingly, the Commission finds that the applicants had an investment-backed expectation that this property could be used for residential use City of Pacific Grove certified Land Use Plan, although the purchase price does not guarantee any particular size of development and is only one factor in the overall analysis.

In view of the findings that (1) none of the resource dependent uses provided for in Section 30240 would provide an economic use, (2) residential use of the property would provide an economic use, and (3) the applicants had a reasonable investment backed expectation that such a properly mitigated residential use would be allowed on their property, there is a reasonable possibility that a court might determine that the final denial of a residential use based on the inconsistency of this use with Section 30240 could constitute a taking. Therefore, consistent with Coastal Act Section 30010 and the Constitutions of California and the United States, the Commission determines that implementation of Section 30240 in a manner that would permanently prohibit residential use of the subject property is not authorized in this case.

Having reached this conclusion, however, the Commission also finds that Section 30010 only instructs the Commission to construe the policies of the Coastal Act, including Section 30240, in a manner that will avoid a taking of property. It does not authorize the Commission to otherwise suspend the operation of or ignore these policies in acting on permit applications. Moreover, while the applicants in this instance may have reasonably anticipated that residential use of the subject property might be allowed, the City Land Use Plan and Coastal Act also provided notice that such residential use would be contingent on the implementation of mitigation measures necessary to minimize the impacts of



development on environmentally sensitive habitat. Thus, the Commission must still comply with the requirements of Section 30240 to the maximum extent feasible by protecting against the significant disruption of habitat values at the site, and avoiding impacts that would degrade these values, to the extent that this can be done consistent with the direction to avoid a taking of property.

In the present situation, there are several conditions that the Commission can adopt that implement Section 30240 to the maximum extent feasible, while still allowing a reasonable size house on the property. The applicants currently propose to cover over 5,098 square feet of the .805-acre parcel with building and paving. As a result, this area of dune habitat will be permanently lost, and additional area will also be disrupted by construction and residential activities. However, the extent of this disruption and land alteration can be mitigated to the maximum extent feasible by the implementation of appropriate conditions.

Therefore, several additional conditions are necessary to offset these direct and indirect project impacts as discussed in these findings. Most importantly, Special Condition No. 4 requires that the area of the property that will not be developed shall be preserved in open space subject to a deed restriction. This recorded restriction shall prohibit uses that are inconsistent with habitat restoration and preservation, and is needed to ensure that future owners are aware of the constraints associated with this site

3. ESHA Impact Analysis

As described above, the entire area of the applicant's 35,066 square foot (0.805-acre) parcel is considered environmentally sensitive dune habitat, Coastal Act Section 30240 allows only resource-dependent uses in ESHA. The proposed development includes a demolition, construction of a single-family dwelling; a detached, 704 sf, three-car garage, a paved driveway, and the removal of two Monterey pines, and thus is not a type of development that is dependent on a location within a sensitive resource area.

In order to minimize disturbance to the unique, environmentally sensitive dune habitat that characterizes this area and to allow an economic use of the lots to address takings issues, the City's LUP limits the total maximum aggregate lot coverage for new development to 15% of the lot area. As defined in the LUP, calculation of the maximum aggregate lot coverage includes buildings, driveways, patios, decks that do not allow for the passage of water and light to the dune surface, and any other features that eliminate native plant habitat.

The LUP also allows for an additional 5% coverage that may be used for immediate outdoor living space if it is left in a natural condition or landscaped so impervious surfaces are avoided. This policy creates the potential for roughly 20% of the dune habitat on a lot to be lost when a new house is constructed.

Currently, the property has an aggregate lot coverage of 4,649 square feet, or 13.3%. The applicant has proposed increase the aggregate lot coverage of this property by 557 square feet, or 1.6% for a total of roughly 14.8 percent coverage. As with other homes in Asilomar, the home will have on-going impacts on ecological functioning of the Asilomar Dunes such as covering and fragmentation of habitat, prevention of sand movement, shading of dune plants, and the continuation of residential uses which are inconsistent with protection of dune habitat.



Therefore, the existing house is inconsistent with the protection of ESHA, with respect to Coastal Act Section 30240, because it places a continuing burden on the remaining resources in this area and reduces the dune habitat available for use by endangered plants and animals found in the Asilomar Dunes area, such as Menzie's wallflower, Monterey spineflower and the black legless lizard. This new house will further increase the floor area of this inconsistent use by 109 square feet, and an additional impact is caused by an entry area of 168 square feet and the construction of 354 square feet of a 704 square foot garage in an undeveloped area. A realignment of the existing driveway will also impact an undeveloped area. Enduring impacts of the project include disruption due to increased bulk of the house, which decreases the amount of sunlight available to dune plants, and other residential uses such as foot traffic and pet traffic and the additional garage and entryway development. Also, the replacement of the 1950's era house with a new one effectively doubles the life of the structure, thereby increasing the amount of time that a non-resource dependent use will occupy the dune habitat of this lot and all associated impacts to the dune habitat.

Moreover, one area proposed for restoration is located between the proposed house and the garage. The area is marginal for habitat restoration to begin with because it is located between the house and garage in an area that will likely receive high foot traffic. Also, another area proposed for restoration is located outside the main entryway to the house. This area is also expected to receive high foot traffic and not be suitable for viable dune habitat. These areas are more equivalent to the immediate outdoor living area allowed by the LUP than habitat restoration areas.

Because of the expected foot traffic, the viability of these areas as restored dune habitat will be greatly reduced, which increases the potential for failure of the restored areas as viable habitat. Thus the value of the restoration of this area and the area immediately outside the main entry to the house, proposed as mitigation for the new larger home and garage, is questionable. Additionally, categorizing the non-viable restoration area located immediately outside the entryway to the house as an outdoor living area would be a more effective use of the space. While it decreases the amount of land available for habitat restoration, this area does not have much potential to serve as a restoration area.

To offset this loss of habitat area, the driveway could be reduced. Reducing the size of the driveway would have the effect of retaining a larger amount of area available for viable dune restoration and it would compensate for the increase of the footprint of the building, the loss of habitat to the outdoor living area, and the increase in coverage from the garage.

Therefore, in order to mitigate impacts of this non-resource dependent use to the maximum extent feasible, several additional mitigating conditions are necessary to protect and restore dune habitat value on site. Most importantly, Special Condition No. 4 requires that the undeveloped area on the property shall be preserved in open space subject to a deed restriction that prohibits uses that are inconsistent with habitat restoration and preservation, and Special Condition No. 3 requires that all of the area outside the designated building envelope shall be restored. Definition of a building envelope will help reduce the potential for adverse impacts to the environmentally sensitive habitat in the immediate project area as well as to minimize disruption to sand dune habitat throughout the life of the development. These deed restrictions shall run with the land in order to ensure that future owners are aware of the constraints



associated with this site. Furthermore, as the proposed development (14.8%) is very close to the maximum allowable lot coverage (15%), and impacts are expected to occur in areas proposed for restoration, an increase in the aggregate lot coverage will not be allowed in the future.

The Pacific Grove LUP also contains provisions for immediate outdoor living areas for new development, stating that an additional 5% coverage can be used for an immediate outdoor living area if the area is left in a natural condition or landscaped to avoid impervious surfaces. This policy creates the potential for roughly 20% of the dune habitat on a lot to be lost when a new house is constructed. Although the applicant has not specifically taken advantage of the additional outdoor living area allocation, the areas referenced above, outside the entryway and between the house and the garage, will in actuality serve as an outdoor living area because of the high probability that it will not function as viable dune habitat. Therefore, Special Condition # 2 requires final site plans that include these areas as outdoor living area.

c. ESHA Conclusion

The project is proposed to intensify residential development on the site and in portions of the lot now occupied by open sand. The project includes an increase in the amount of impervious surface and revegetation with native dune plants as mitigation.

The LUP standards provide guidance with respect to consistency with Coastal Act Section 30240, and the intensification of the existing residential use and associated impacts are inconsistent with Coastal Act Section 30240. In accordance with Coastal Act Section 30240, and with past Commission actions, it is appropriate to require a deed restriction to protect the environmentally sensitive native dune habitat areas over that portion (a minimum of 80% percent) of the lot not counted as building envelope and immediate outdoor living area. In order to ensure that the habitat values of the site will continue to be protected into the future, such a recorded document is necessary. The recordation of a deed restriction also provides notice to future property owners regarding the constraints and obligations associated with this site. The deed restrictions allow only those uses necessary for, and consistent with, maintenance of the restricted area as a nature reserve under private stewardship.

As conditioned to require recordation of deed restrictions, including restoration and maintenance of natural habitat equivalent to a minimum of 80 percent of the lot area; identification of temporary exclusionary fencing and prohibition of fencing that restricts movement of native wildlife; and prohibition of any additions, the proposed development can be found to reduce impacts on ESHA to an insignificant level. Also, the project protects the environmentally sensitive habitat outside of the immediate building envelope, as conditioned.

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



Temporary exclusionary fences to protect sensitive native dune plant habitat areas outside of the building envelope during construction are a necessary mitigation measure and are required to assure protection of these environmentally sensitive habitat areas. Experience has shown that exclusionary fencing helps to assure that workpeople and materials stay outside sensitive natural habitat areas, such as those surrounded by the existing residence. Finally, utility maintenance shall be consistent with protection of the dune habitat.

2. Visual Resources

a. Applicable Visual Resources Policies

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

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

LUP Policy 2.5.2. ...Coastal area scenic and visual qualities are to be protected as resources of public importance. Development is required to be sited to protect views, to minimize natural landform alteration, and to be visually compatible with the character of surrounding areas.

LUP Policy 2.5.4.1. It is the policy of the City of Pacific Grove to consider and protect the visual quality of scenic areas as a resource of public importance. The portion of Pacific Grove's coastal zone designated scenic includes: all areas seaward of Ocean View Boulevard and Sunset Drive, Lighthouse Reservation Lands, Asilomar Conference Ground dune lands visible from Sunset Drive, lands fronting on the east side of Sunset Drive; and the forest front zone between Asilomar Avenue and the crest of the high dune (from the north side of the Pico Avenue intersection to Sinex Avenue)

LUP Policy 2.5.5.1. New development, to the maximum extent feasible, shall not interfere with public views of the ocean and bay.

LUP Policy 2.5.5.5. Landscape approval shall be required for any project affecting landforms and landscaping. A landscaping plan, which indicates locations and types of proposed plantings, shall be approved by the Architectural Review Board.

LUP Policy 2.5.5.6. ...Utilities serving new single-family construction in scenic areas shall be placed underground.

LUP Policy 3.4.4.1. All new development in the Asilomar Dunes area shall be controlled as necessary to ensure protection of coastal scenic values and maximum possible preservation of



sand dunes and the habitat of rare and endangered plants.

The LUP identifies the Asilomar Dunes area bounded by Lighthouse Avenue, Asilomar Avenue and the Asilomar State Beach and Conference Grounds as a highly scenic area of importance and policies of the LUP as described above serve to protect public views and scenic resources in the Asilomar dunes area. The LUP indicates that south of Lighthouse Avenue, the Asilomar Dunes area has been substantially developed with single-family residential dwellings.

b. Visual Resources Analysis

As designed, the project will not detract from views of the ocean from public viewing areas defined on the Shoreline Access Map (Exhibit F). As the subject parcel is surrounded by other existing development, it is not located in an area that would block any significant existing public ocean views. The project site is visible from Arena Ave., Sunset Drive, Pico Boulevard and Calle De los Amigos, nevertheless, because of the orientation of the house on the site, and because the site slopes down from east, the proposed addition will not significantly obstruct public views of the shoreline. Additionally, as shown on the shoreline access map in the LUP (Exhibit F), a public viewing corridor is identified at the corner of Pico Boulevard and Asilomar Avenue. Staff site visit has confirmed that the project is not visible from this area. Additionally, as the project design is proposed for the close to the maximum allowable site coverage, no future additions will be allowed that would increase the total aggregate site coverage and cause potential visual impacts.

As mentioned, the proposed structure will be visible from Arena and Sunset Drive (See Exhibit I), however, it will not block any views of the ocean, and it blends in with existing residential development. Additionally, the main view intended to be protected on Sunset Ave. is of the ocean and along Sunset. This project is visible on the inland side of Sunset, and does not interfere with views of the ocean or along Sunset Ave. The proposed development is consistent with the LUP policies described above. The residence has been designed to compliment the natural dune topography, and does not exceed 23 feet as measured from natural existing grade.

As required by LUP Policy 2.5.5.5, final architectural approval was granted by the ARB at the October 23, 2001 hearing with a vote of 7-0. As required by 2.5.5.4.d, the permit has been conditioned to require an earthtone color scheme to assist in subordinating the structure to the natural dune setting.

c. Visual Resources Conclusion

The project as proposed does not block additional views not already obstructed by the existing residence. Additional required visual resource mitigation measures include the use of earthen-tone finishes (Required by the City of Pacific Grove) and the requirement that utilities remain underground (Special Condition #8). Accordingly, the project can be found consistent with Section 30251 and 30240(b) of the Coastal Act and LUP visual resource policies.



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

As the subject site is located within an archaeologically sensitive area (See Exhibit E), an archaeological survey was conducted for the subject parcel, and a report prepared by Mary Doane and Trudy Haversat for Archaeological Consulting (February 26, 1999). The survey results indicated that numerous archaeological sites are located within one kilometer of the project site, and that a small midden has been recorded on a parcel immediately adjacent to the project parcel. Field reconnaissance of the site, conducted February 15, 1999, resulted in no finding of materials frequently associated with prehistoric cultural resources (e.g., dark soil containing soil fragments, broken or fire-altered rocks, bone or bone fragments, etc) on the site. However, since construction activities may unearth previously undisturbed materials, the project has been conditioned to prepare and implement an archaeological mitigation plan if archaeological resources are encountered.

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.



E. 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). Because this neighborhood contains unique features of scientific, educational, recreational and scenic value, the City in its Local Coastal Program will need to assure long-range protection of the undisturbed Asilomar Dunes.

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

The LUP contains various policies that are relevant to the resource issues raised by this permit application, particularly with respect to protection of environmentally sensitive habitat and scenic resources. Finding 1 above summarizes the applicable habitat protection policies; Finding 2 addresses the LUP's visual resource policies; and Finding 3 discusses archaeological resource policies. The City's action on the project also found the project in conformance with LUP policies. Additionally, the conditions of this permit apply, particularly with respect to native plant restoration and maintenance.

Finally, the City of Pacific Grove does not have a certified Implementation Plan. In this case, the applicant is proposing demolition and reconstruction that modifies more than 25% of the existing structure, thus it is treated as a vacant lot containing no development. Furthermore, as conditioned to minimize and mitigate for the impacts associated with the development of a use inconsistent with Coastal Act Section 30240, the project does not prejudice the ability of the City of Pacific Grove to complete an LCP consistent with Chapter 3 of the Coastal Act, and is in conformity with Section 30604(a).

Therefore, as conditioned, the proposed development is consistent with 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.

F. 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 involved the evaluation of potential impacts to relevant coastal resource issues, including environmentally sensitive dune habitat, visual resources and archaeologically sensitive resources. This analysis is reflected in the findings that are incorporated into this CEQA finding. No public comments were received by Commission staff.

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 that 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.



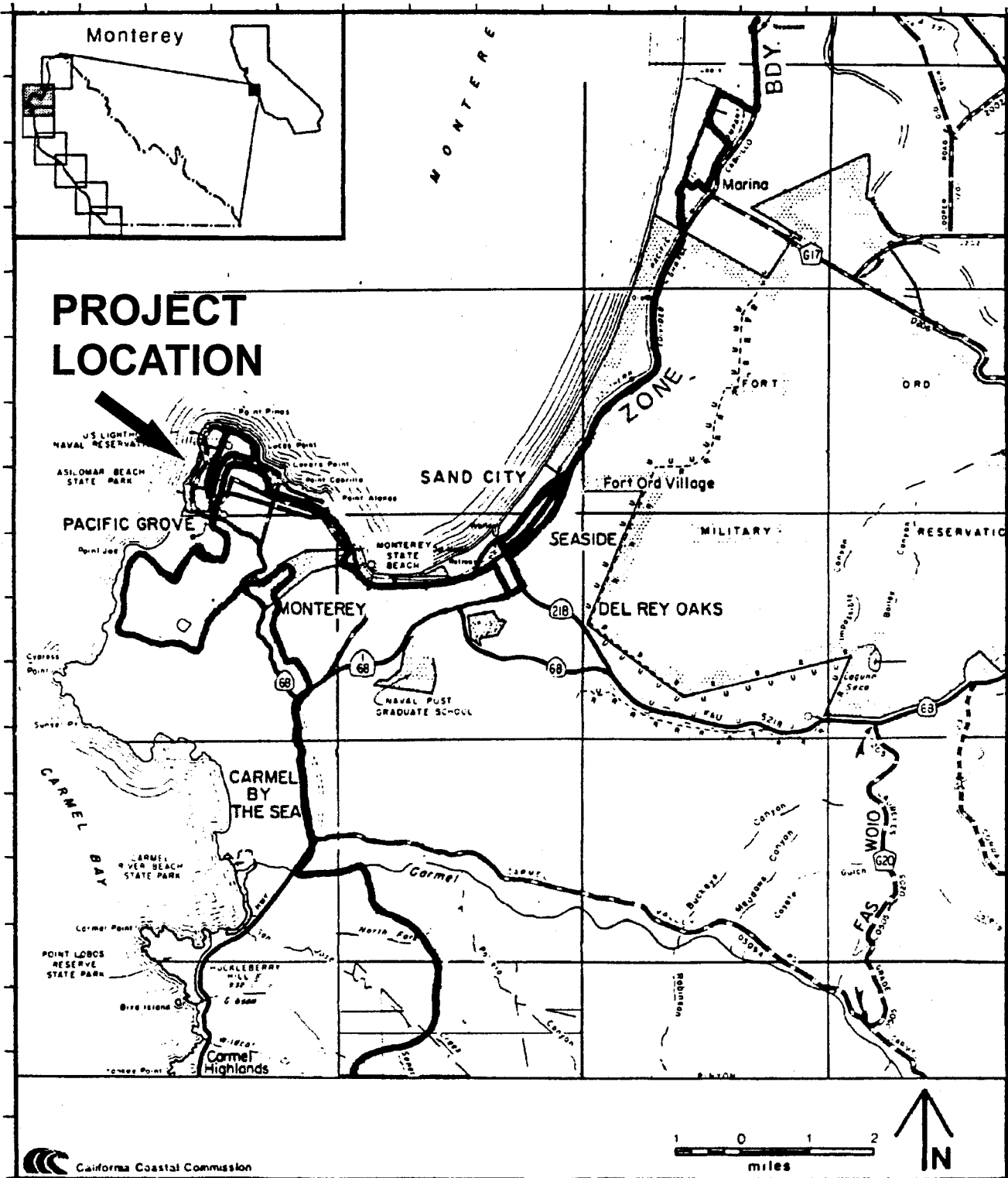
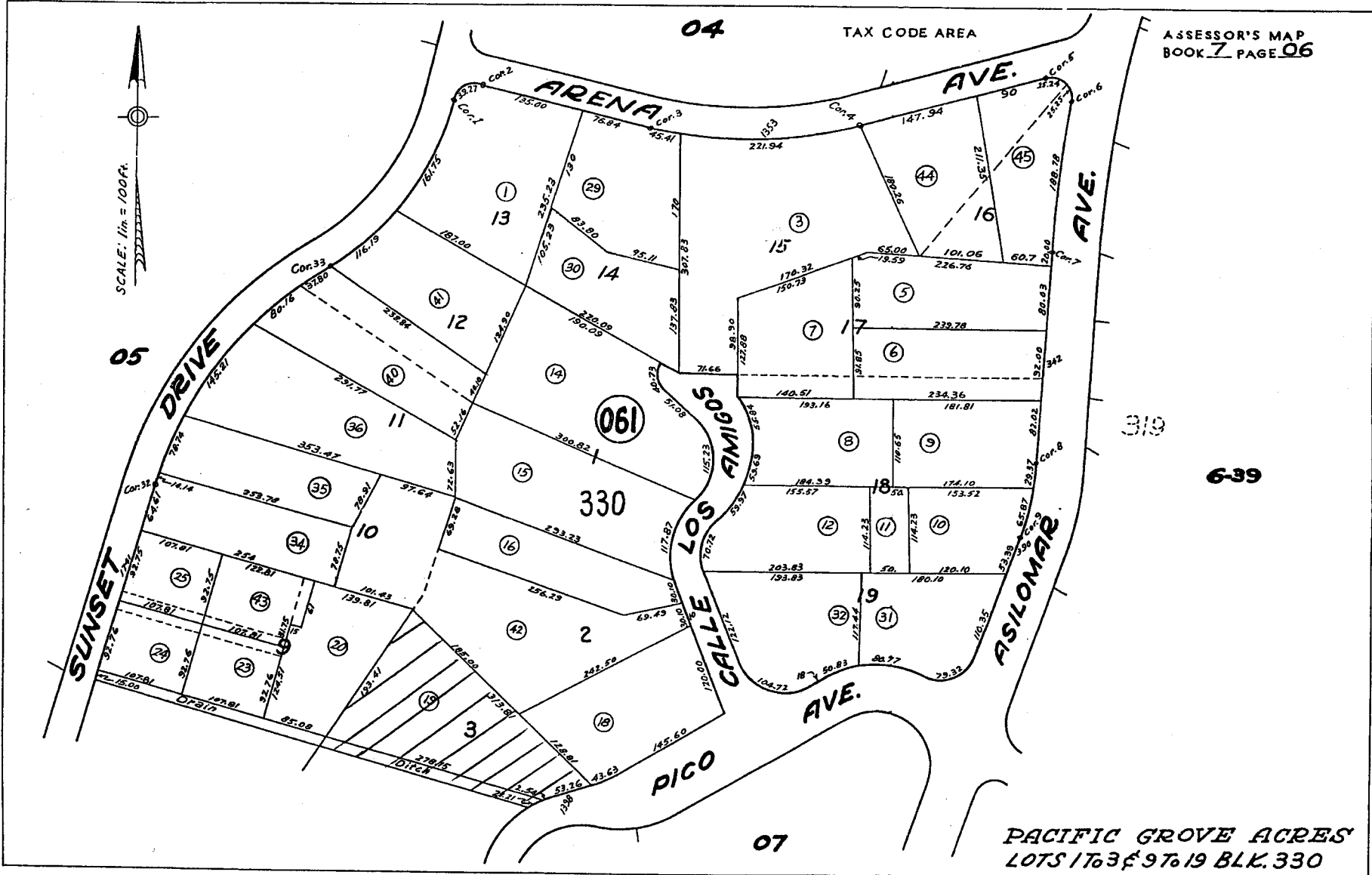
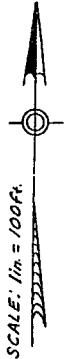


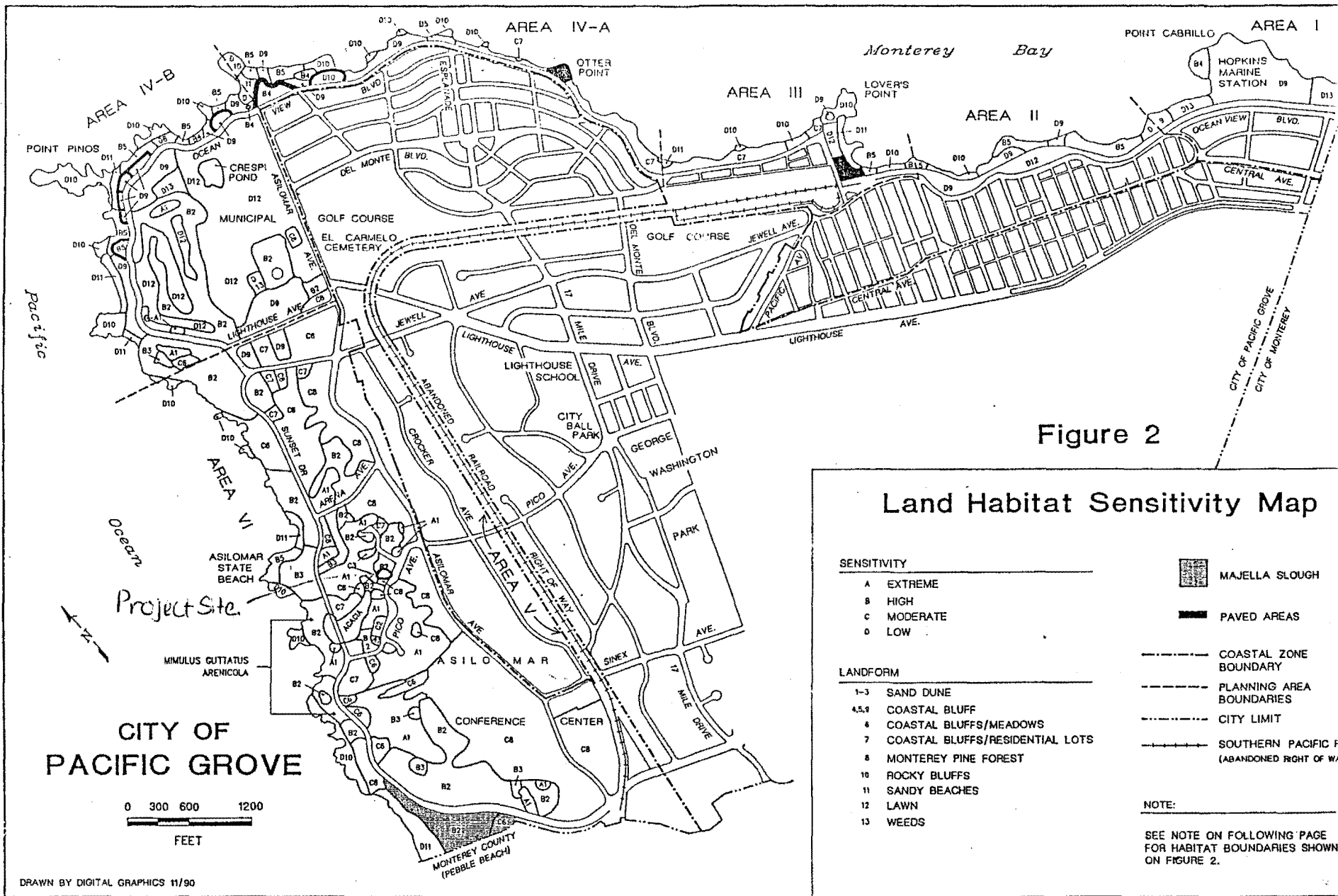
Exhibit A
 Regional Location Map
 Redgwick Demo/Rebuild
 3-02-004

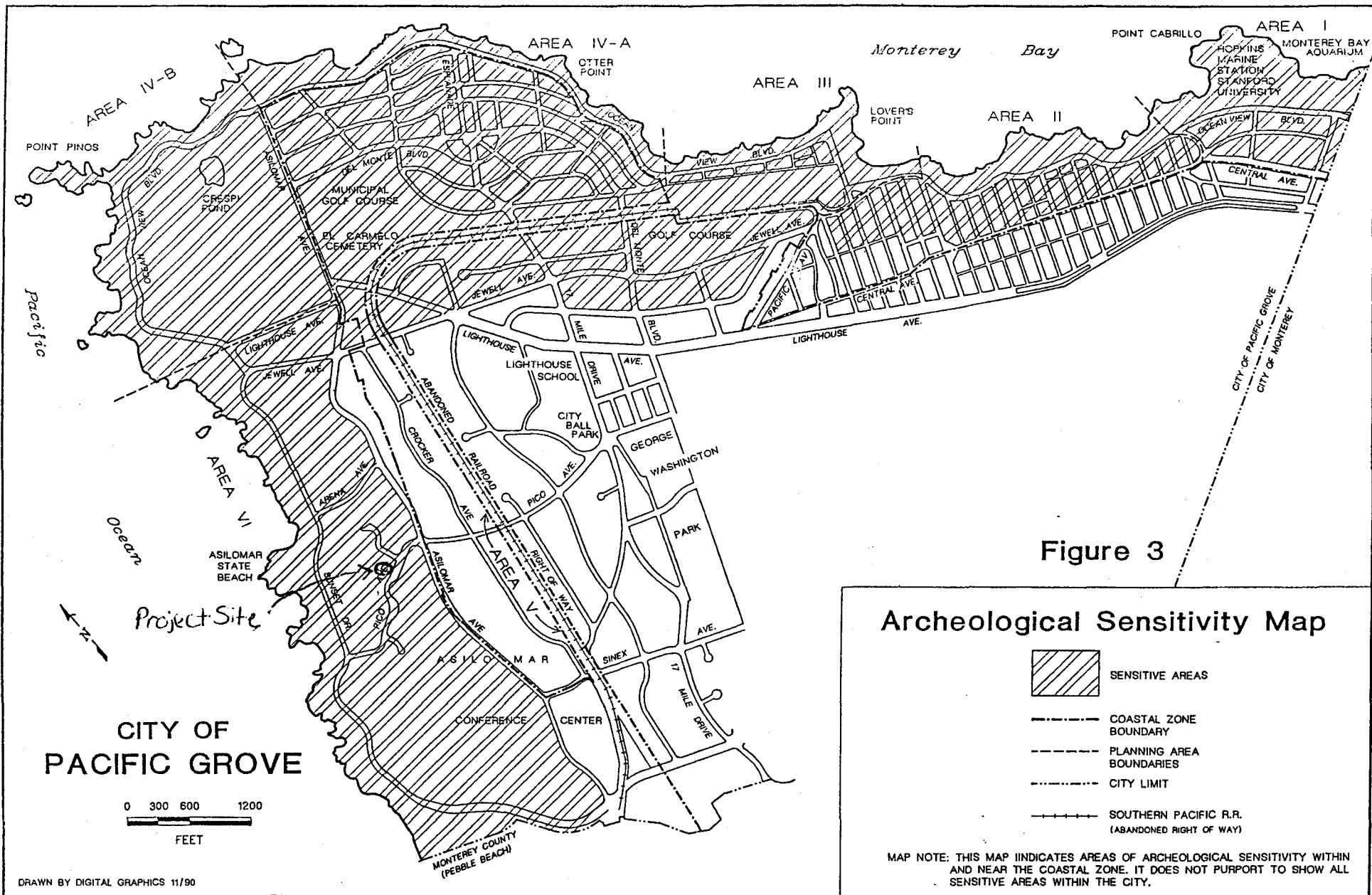


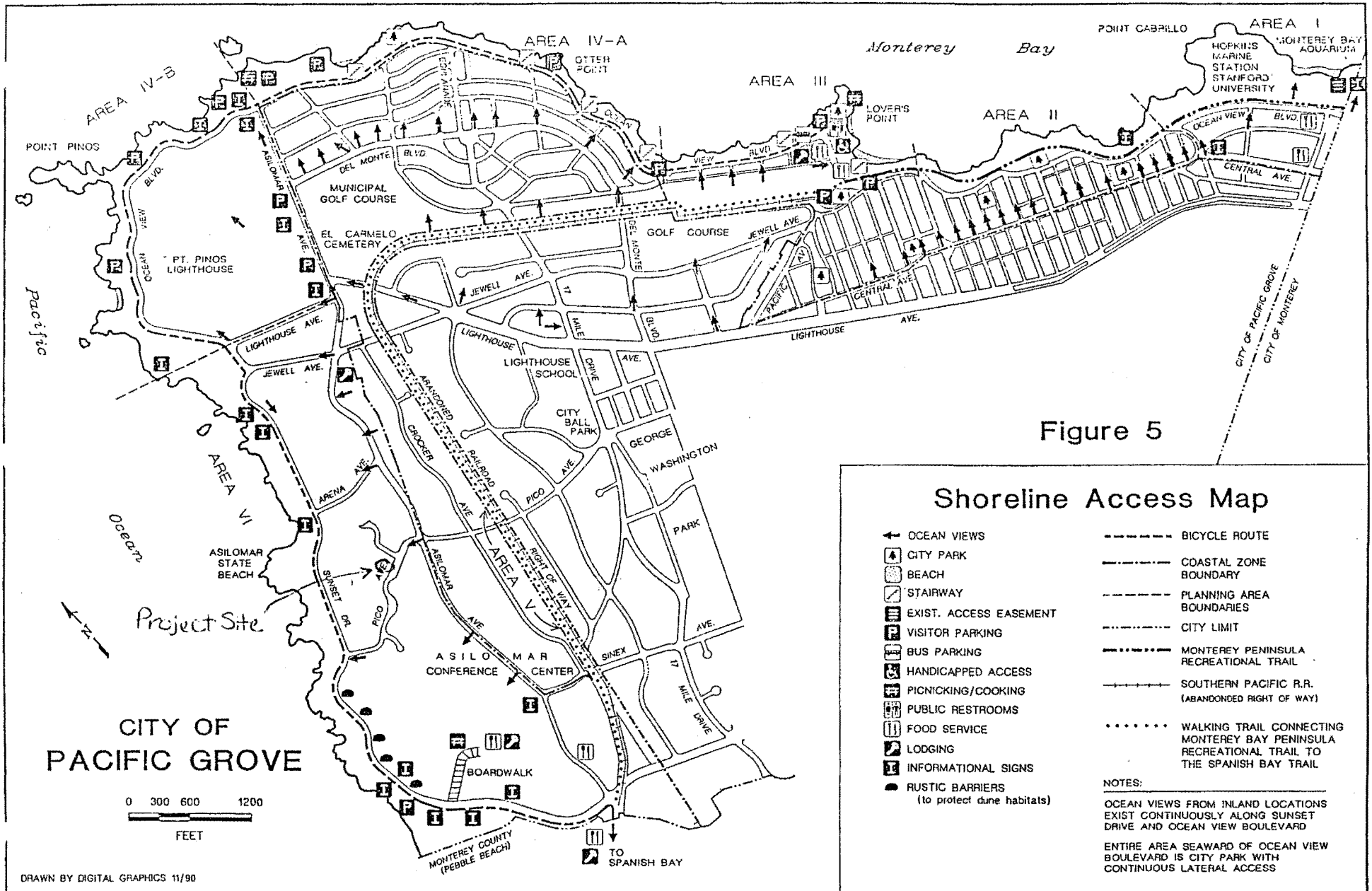
Map 1. Project Location.

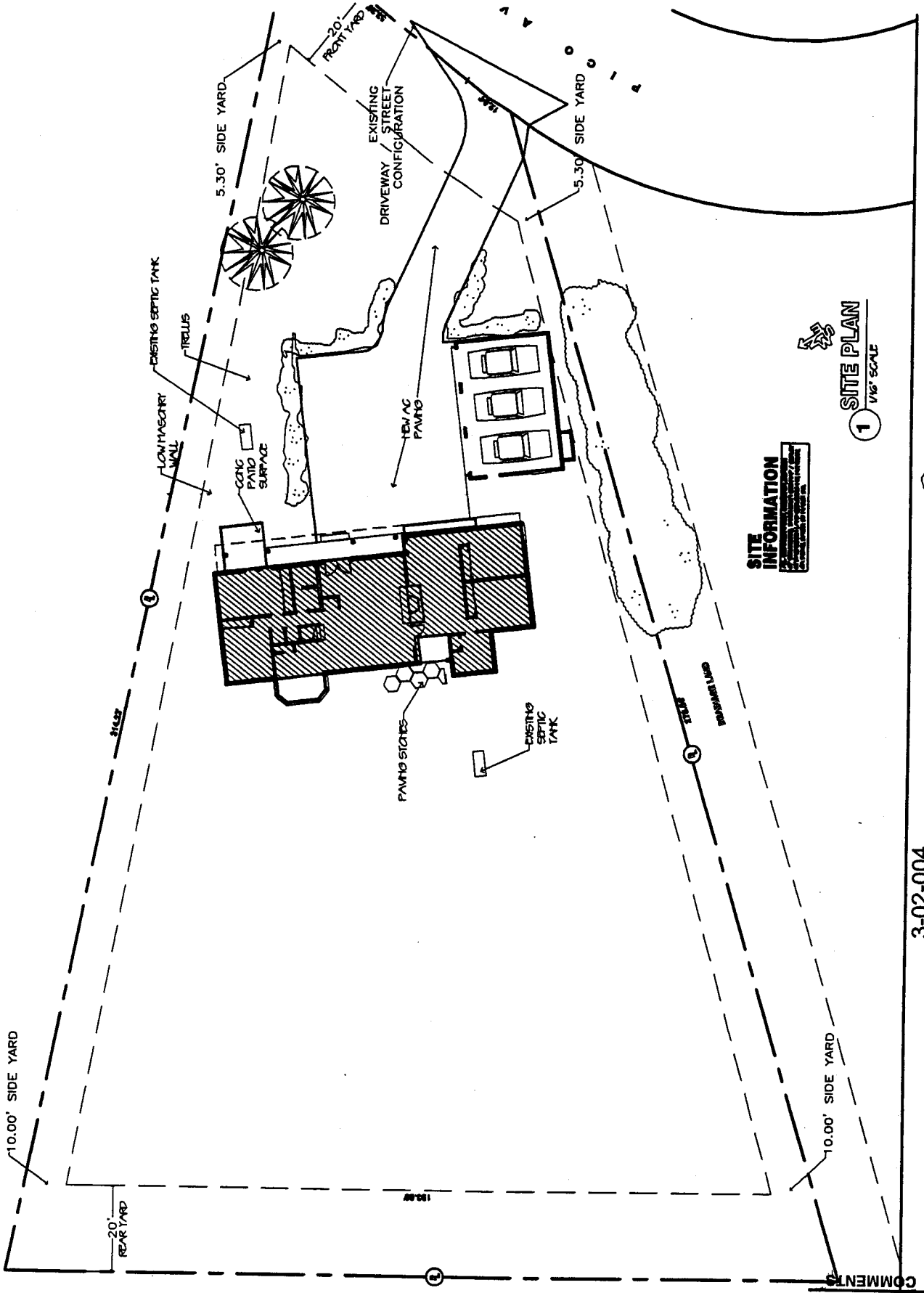


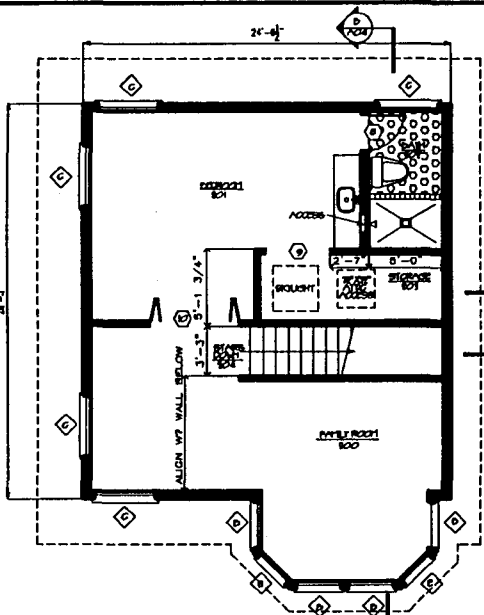
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LOTS 1 TO 36 & 9 TO 19 BLK. 330





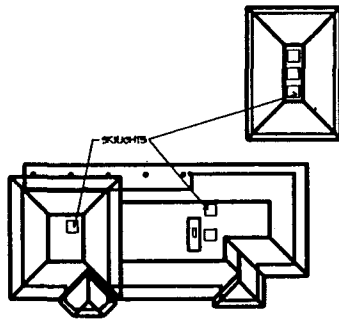






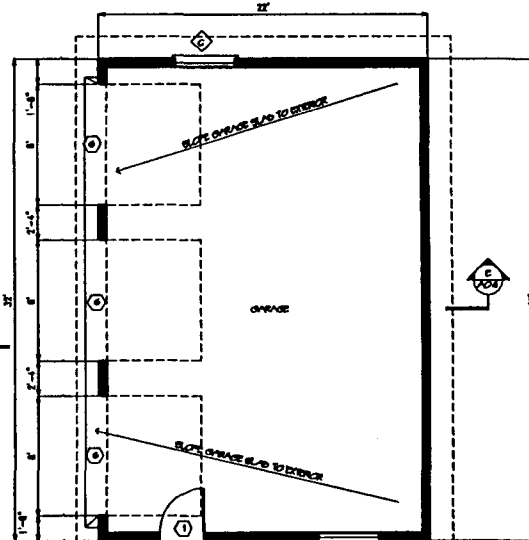
SECOND FLOOR

SCALE 1/4" = 1'-0"
BY FLOOR - 8400 SF



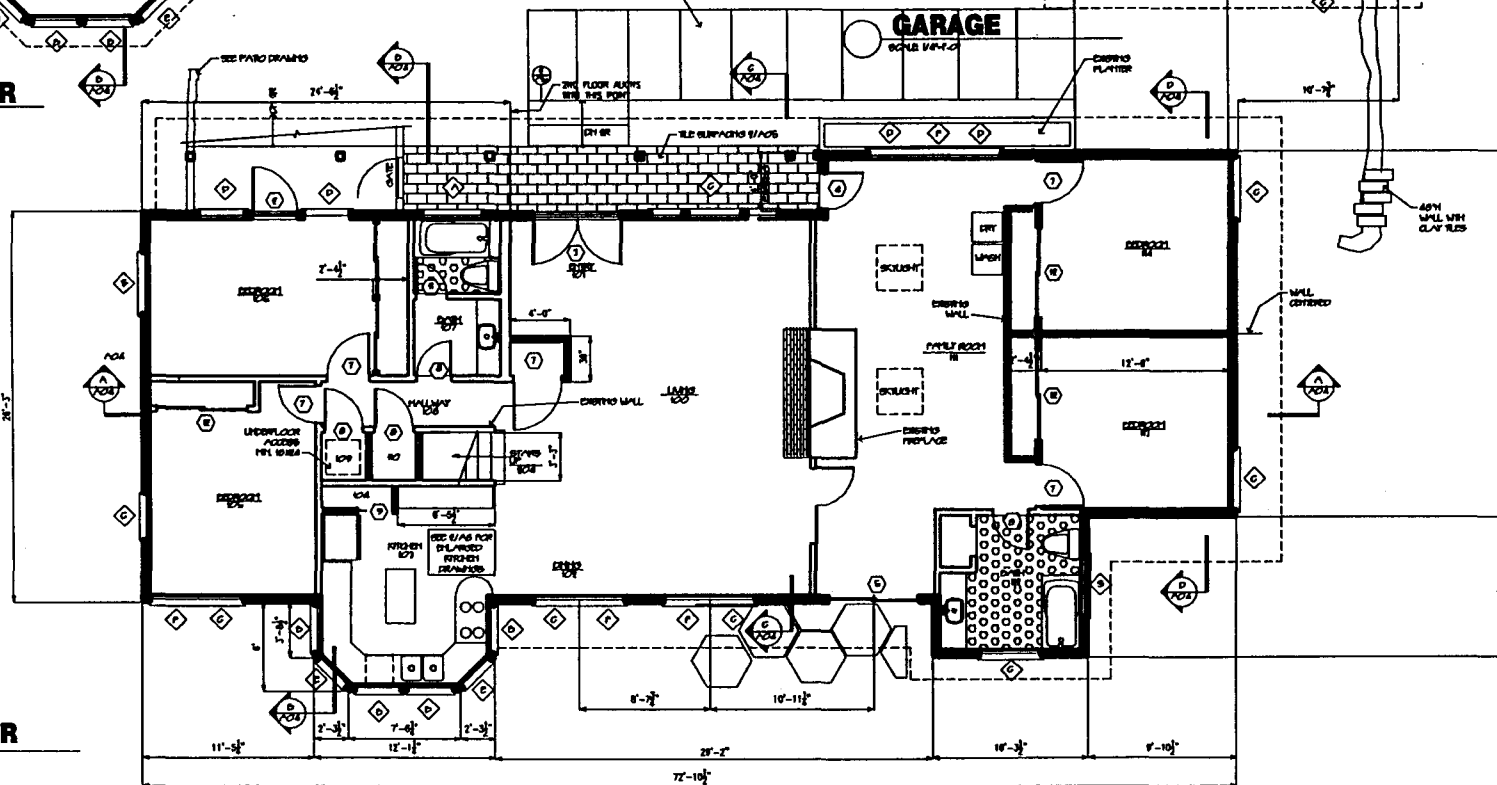
ROOF PLAN

SCALE 1/4" = 1'-0"
BY FLOOR - 8400 SF
BY FLOOR - 8400 SF
GARAGE - 7040 SF



GARAGE

SCALE 1/4" = 1'-0"



FIRST FLOOR

SCALE 1/4" = 1'-0"
BY FLOOR - 8400 SF

DRAWING HISTORY

TR LARSON AIA & ASSOCIATES
ARCHITECTS - PRESERVATION

ADDITIONS & REMODELING



A02

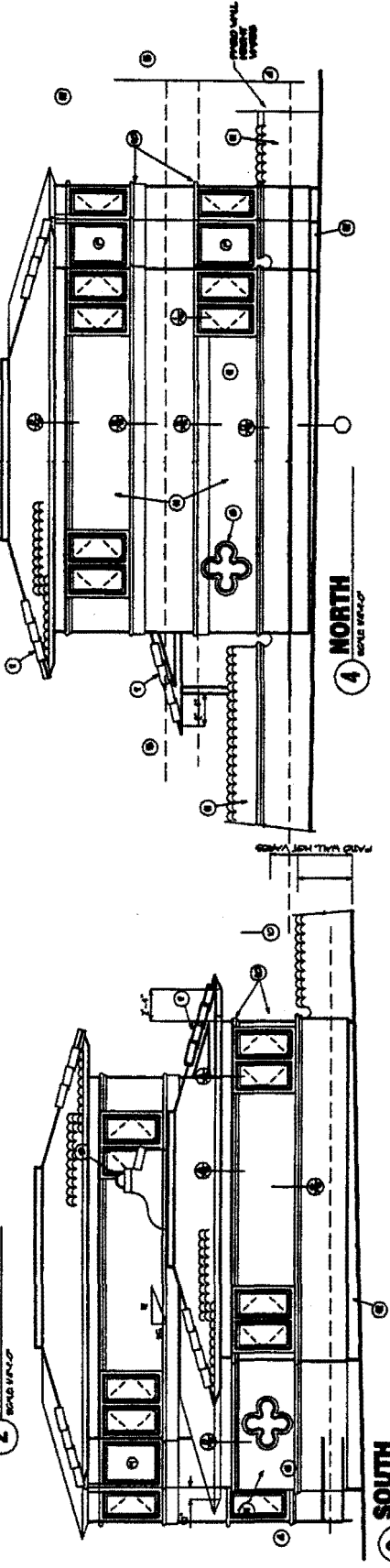
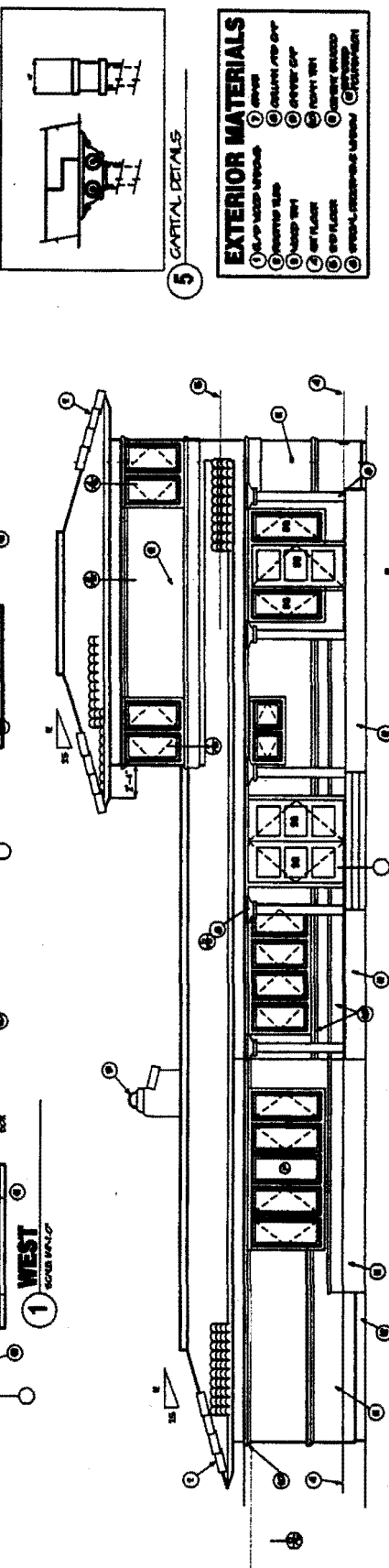
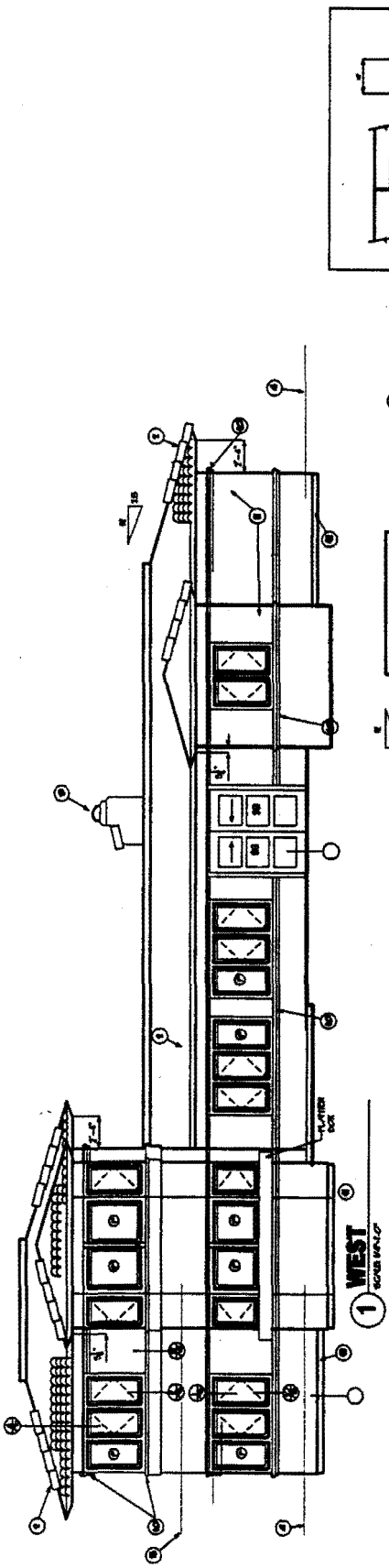
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ADDITIONS & REMODELING
 TR LARSON AIA & ASSOCIATES
 ARCHITECTS & INTERIORS
 147 1/2 LINDENBUECK • MENLO PARK, CA 94025 • 650-325-4411



A03



- 5 CAPITAL DETAILS**
-
- EXTERIOR MATERIALS**
- 1 ALUMINUM WINDOW
 - 2 BRICK
 - 3 BRICK AND GR
 - 4 BRICK
 - 5 BRICK
 - 6 BRICK
 - 7 BRICK
 - 8 BRICK
 - 9 BRICK



Exhibit H
Aerial Photo
Redwick Demo/rebuild
3-02-004

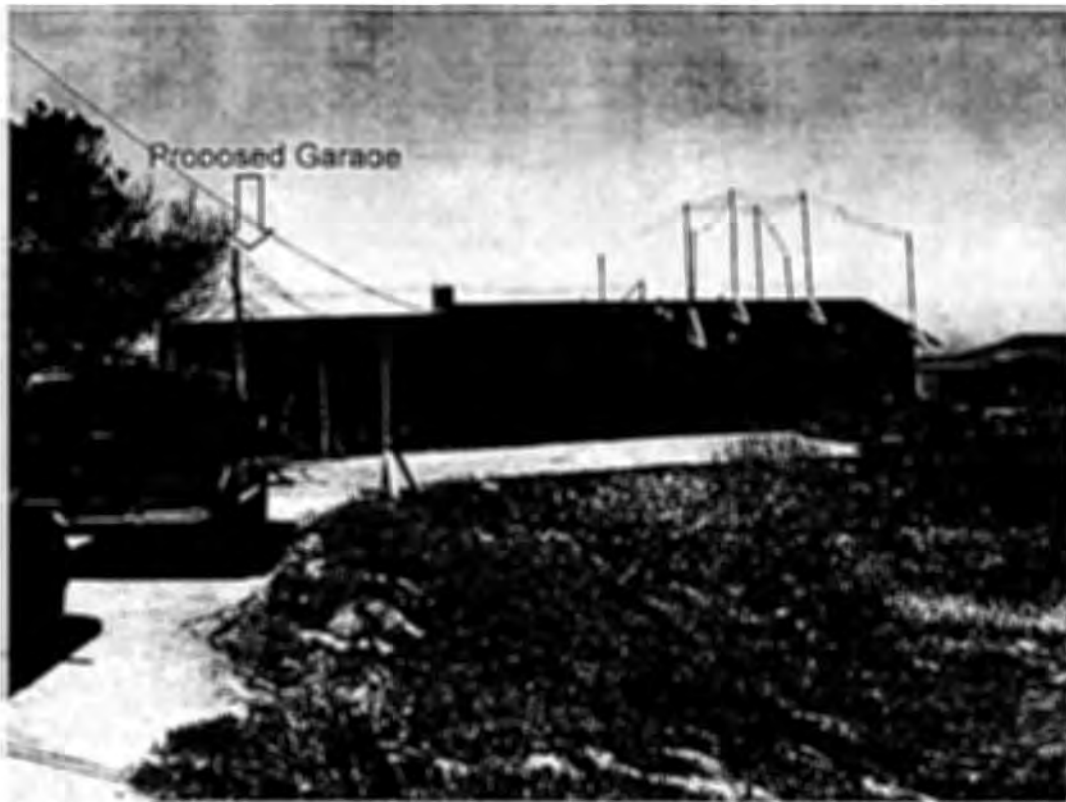


Photo 1: View of existing and proposed house and garage from Pico Blvd.

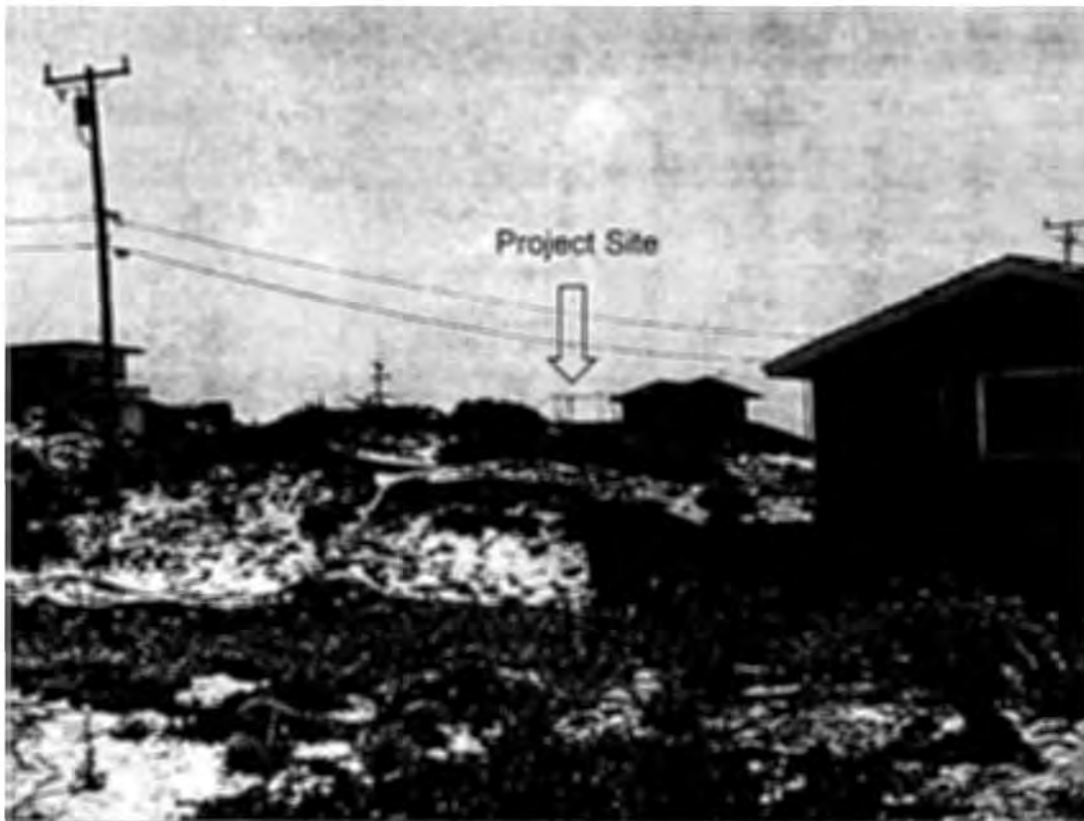


Photo 2: View of proposed residence from Arena Ave.

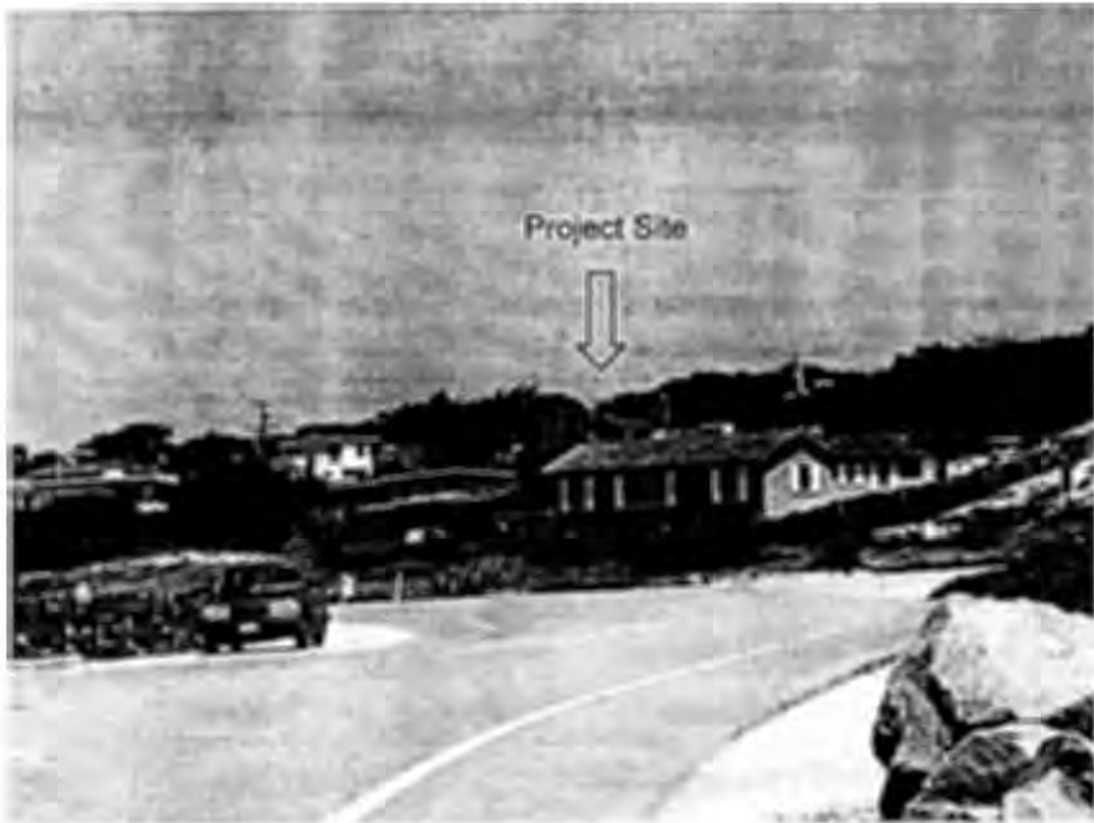


Photo 3: View of project from Sunset Ave.



Photo 4: View from Sunset Ave

Exhibit I
Project Photos
Redgwick Demo & Rebuild
3-02-004

MITIGATION MONITORING PROGRAM

for:

1398 PICO AVENUE - REDGWICK RESIDENCE

applicant:

T.R. LARSON, ARCHITECT

Lead Agency:



CITY OF PACIFIC GROVE
COMMUNITY DEVELOPMENT DEPARTMENT

INTRODUCTION

BACKGROUND

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

PURPOSE

The purpose of the mitigation-monitoring program for the proposed project at 1398 Pico Avenue is to ensure that all mitigation measures adopted as part of project approval are implemented and completed during and after construction. This program will be used by the City of Pacific Grove to verify that all required mitigation measures are incorporated into the project and will serve as a convenient tool for logging the progress of mitigation measure completion and for determining when required mitigation measures have been fulfilled.

MANAGEMENT

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

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

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

BASELINE DATA

Any baseline data for the mitigation-monitoring program are contained in the Mitigated Negative Declaration adopted by the Pacific Grove Architectural Review Board on XXXX XX, 2000.

DISPUTE RESOLUTION

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

ENFORCEMENT

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

PROGRAM

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

FUNDING

For the project 1398 Pico Avenue, the property owners shall be responsible for the costs of implementing and monitoring the mitigation measures.

Mitigation Measures for 1398 Pico Avenue – Redwick Residence

MITIGATION	IMPLEMENTED BY:	WHEN IMPLEMENTED:	MONITORED BY:	VERIFICATION DATE:
1. Prior to a final on the building permit for the project, the structure shall be painted using an earthtone color scheme that shall be approved by the Architectural Review Board.	Applicant or Applicant's Representative	Prior to a final on the building permit for the project.	Community Development Department	
2. Exterior lighting shall be screened to confine light splay to the site and exposed lamps shall be at wattage levels that sufficiently limit light glare.	Applicant or Applicant's Representative	Before installation of light fixtures and prior to a final on the building permit.	Community Development Department	
3. Architectural Review Board approval is required for exterior lighting.	Applicant or Applicant's Representative	Before installation of light fixtures and prior to a final on the building permit.	Community Development Department	
4. After installation, the Architectural Review Board may require lamps with lower wattage levels in order to limit the glare levels of the light fixtures.	Applicant or Applicant's Representative	After installation of light fixtures but prior to a final on the building permit.	Community Development Department	
5. All underground utilities shall be installed in a single corridor and situated near to the house and under or adjacent to roads, driveways, and walkways.	Applicant or Applicant's Representative	Prior to installation of underground utilities.	Community Development Department	
6. All drain lines and related systems shall be shown on the project's construction drawings. A qualified biologist shall review the plans to ensure that no impacts will result to the dunes and areas containing rare plants as a result of changes in drainage.	Applicant or Applicant's Representative	Prior to issuance of a building permit.	Community Development Department	
7. A qualified biologist shall prepare a Landscape Restoration Plan that defines goals/objectives, procedures, and minimum performance standards for restoration, maintenance, and monitoring of the undeveloped portion of the property. The plan should include provisions for the planting, protection, and maintenance of Tidestroms's lupine and Menzies wallflower.	Applicant or Applicant's Representative	Prior to a final on building permit.	Community Development Department	

<p>8. The landscape and restoration plan requires the approval of the Architectural Review Board. Modifications to the landscape restoration plan must be reviewed and approved by Community Development Department Staff and may require approval by the Architectural Review Board.</p>	<p>Applicant or Applicant's Representative</p>	<p>Prior to a final on building permit.</p>	<p>Community Development Department</p>	
<p>9. A qualified biologist shall be retained by the owner to serve as the Project Biologist for the purposes of monitoring construction and restoration of the landscape and providing oversight for implementation of the approved Landscape Restoration Plan.</p>	<p>Applicant or Applicant's Representative</p>	<p>On-going</p>	<p>Community Development Department</p>	
<p>10. Temporary fencing shall be installed to protect the dunes surrounding the proposed garage, particularly the area on the adjacent property to the south that contains a small population of Tidestrom's lupine. The Project Biologist shall confer with the General Contractor and identify the actual location of the fence in the field.</p>	<p>Applicant or Applicant's Representative</p>	<p>Prior to beginning construction.</p>	<p>Community Development Department</p>	
<p>11. The fence shall consist of high-visibility, 4-ft plastic mesh or equivalent material. The fence shall be securely fastened to metal T-posts, spaced no more than 8-ft apart.</p>	<p>Applicant or Applicant's Representative</p>	<p>Prior to beginning construction.</p>	<p>Community Development Department</p>	
<p>12. All exotic plants on the project site should be killed with an appropriate herbicide according to specifications described in the approved Landscape Restoration Plan prior to the start of construction or ground excavation. Special precautions should be taken to avoid spraying existing native plants, especially Tidestrom's lupine plants.</p>	<p>Applicant or Applicant's Representative</p>	<p>Prior to beginning construction.</p>	<p>Community Development Department</p>	
<p>13. A pre-construction meeting shall be held between the owner or their representative, the General Contractor, the Project Planner, and the Project Biologist to review the project's permits and all environmental compliance requirements.</p>	<p>Applicant or Applicant's Representative</p>	<p>Prior to issuance of building permit.</p>	<p>Community Development Department</p>	
<p>14. Immediately prior to the start of construction, the Project Biologist shall thoroughly search the construction zone for black legless lizards. If they are found, they should be captured and properly cared for until they can be released into a suitable area of restored habitat on the property.</p>	<p>Applicant or Applicant's Representative</p>	<p>Prior to beginning construction.</p>	<p>Community Development Department</p>	

15. Fencing that has been installed to protect sensitive species and habitat should be maintained in good condition and remain in place until all construction on the site is completed. Removal or changing the location of the fence will require the concurrence of the Project Biologist.	Applicant or Applicant's Representative	On-going	Community Development Department	
16. All activities associated with construction, trenching, storage of materials, and disposal of construction wastes and excavated soil should not impact areas protected by fencing. The areas protected by the fence should remain in a trash-free condition and not used for material stockpiling, storage or disposal, or vehicle parking. All construction personnel shall be prohibited from entering areas protected by fencing.	Applicant or Applicant's Representative	On-going	Community Development Department	
17. No paint, cement, joint compound, cleaning solvents, gravel, rock fragments or residues from other chemicals or materials associated with construction shall be disposed of on-site. The General Contractor will be responsible for complying with this requirement and will clean up any construction materials, spills or contaminated ground to the full satisfaction of the Project Biologist.	Applicant or Applicant's Representative	On-going	Community Development Department	
18. No soil shall be introduced to the site. Excess soil remaining from excavation will be disposed of off-site, preferably within the Asilomar Dunes, but not in a way that will negatively affect any existing native vegetation. The location for off-site disposal will require approval of the California Coastal Commission prior to exporting of material.	Applicant or Applicant's Representative	On-going	Community Development Department	
19. The Project Biologist should inspect the site no less than one time each week to ensure compliance with all provisions for protecting the surrounding environment. Any activity or condition not in accord with the provisions of this report will be brought to the attention of the owner or their representative, the General Contractor, and if necessary, the Pacific Grove Community Development Department.	Applicant or Applicant's Representative	On-going	Community Development Department	
20. With the concurrence of the Project Biologist, the temporary fence shall be removed.	Project Biologist	At the conclusion of construction.	Community Development Department	

<p>21. Landscaping shall be installed according to the specifications in the Landscape Restoration Plan and completed no later than the first planting season (fall and winter) following completion of construction. The Pacific Grove Community Development Department may require submittal of a certificate of deposit (payable to the City of Pacific Grove) for the cost of implementing the Landscape Restoration Plan.</p>	<p>Applicant or Applicant's Representative</p>	<p>At time of landscape installation and on-going</p>	<p>Community Development Department</p>	
<p>22. The project biologist shall prepare a letter notifying the Pacific Grove Community Development Department and the California Coastal Commission when the installation of the landscape has been satisfactorily completed.</p>	<p>Applicant or Applicant's Representative</p>	<p>At completion of landscape installation.</p>	<p>Community Development Department</p>	
<p>23. A qualified biologist shall be retained to monitor the landscape restoration project on an annual basis for at least five years and provide an annual status report to the Pacific Grove Community Development Department and the California Coastal Commission. The five-year monitoring program shall begin upon notification of completion of installation of the landscape.</p>	<p>Applicant or Applicant's Representative</p>	<p>At completion of landscape installation.</p>	<p>Community Development Department</p>	
<p>24. Any exotic plants that are used for ornamental purposes within the building envelope should not include species that are capable of naturalizing or spreading into the adjacent dunes. In particular, the following invasive species should not be used: acacias (<u>Acacia</u> sp.), genista (<u>Cytisus</u> sp.), pampas grass (<u>Cortaderia</u> sp.) and ice plant (<u>Carpobrotus</u> sp., <u>Mesembryanthemum</u> sp., <u>Drosanthemum</u> sp., <u>Maleophora</u> sp., etc.). Any exotic plants used will be confined to special landscape features (containers or planters) near to the house.</p>	<p>Applicant or Applicant's Representative</p>	<p>On-going</p>	<p>Community Development Department</p>	
<p>25. The landscape shall be maintained as specified in the Landscape Restoration Plan, including removing exotic plants and planting and caring for additional plants where deficiencies in numbers or species are identified.</p>	<p>Applicant or Applicant's Representative</p>	<p>In perpetuity.</p>	<p>Community Development Department</p>	

<p>26. If the property should change ownership, future owners of the property should have the same obligation for preserving, maintaining, and perpetuating the native landscape on the site. To ensure that this objective is achieved over the long term, the property owner shall record a Conservation Easement Deed, whereby all provisions for restoring and maintaining the native landscape will run with and burden title to the property in perpetuity and will bind the property owner and their successors</p>	<p>Current and Future Property Owners</p>	<p>On-going</p>	<p>Community Development Department</p>	
<p>27. Staff of the City of Pacific Grove Community Development Department, the California Coastal Commission, the California Department of Fish and Game or their agent may visit the property and recommend replanting or additional planting or other work where deficiencies occur if the property does not appear to be in compliance with the conditions of the development permit. If deficiencies do occur the applicant/owner will replace the dead plants and remove the invasive species.</p>	<p>Current and Future Property Owners</p>	<p>In perpetuity.</p>	<p>Community Development Department</p>	
<p>28. If archaeological resources or human remains are accidentally discovered during construction, work shall be halted within 50 meters (150 feet) of the find until it can be evaluated by a qualified professional archaeologist. The Pacific Grove Community Development Director shall be notified immediately of the find. If the find is determined to be significant, appropriate mitigation measures shall be formulated and implemented.</p>	<p>Applicant or Applicant's Representative</p>	<p>During grading, excavation or earth moving activities.</p>	<p>Community Development Department</p>	
<p>29. The existing septic system will be inspected by the Monterey County Health Department at the conclusion of construction for adequacy. The property owner is required to implement any improvements required by the Monterey County Health Department to maintain the septic system.</p>	<p>Applicant or Applicant's Representative</p>	<p>Prior to a final on the building permit.</p>	<p>Community Development Department</p>	
<p>30. Construction activities shall be limited to the hours of 7:30 a.m. to 7:00 p.m. Monday through Saturday, interior work excluded.</p>	<p>Applicant or Applicant's Representative</p>	<p>On-going during construction.</p>	<p>Community Development Department</p>	
<p>31. All power equipment shall be in good operating condition and properly maintained.</p>	<p>Applicant or Applicant's Representative</p>	<p>On-going during construction.</p>	<p>Community Development Department</p>	

