

CALIFORNIA COASTAL COMMISSION

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W13g**RECORD PACKET COPY**

Filed: 07/15/02
180th day: 01/11/03
Staff: SC
Staff report prepared: 08/22/02
Hearing date: 09/11/02
Hearing item number: W13g

COASTAL DEVELOPMENT PERMIT APPLICATION

Application number3-02-031

ApplicantsDavid Smith & Laurie Miller

Project location6 Dunecrest Avenue, Monterey (APN 011-464-019)

Project descriptionConstruct a two-story 1,440 square foot single-family dwelling with a two-car garage, basement, cantilevered decks, a rooftop deck, a fenced trash area, and retaining walls; grading and removal of approximately 244 cubic yards of sand from site

Local approvalPlanning Commission 12/11/01; Planning Commission approval appealed to City Council; City Council denied appeal 1/15/02

File documentsCoastal Act; Negative Declaration granted 12/11/01; Del Monte Beach Land Use Plan; Botanical Survey Report 7/12/01; Landscape Restoration Plan 3/10/02; Geotechnical Investigation, May 2001

Staff recommendation ...Approval with Conditions

Summary: The Applicants propose to construct a two-story, 1,440 square foot single-family dwelling on a 3,600 square foot lot in an environmentally sensitive dune area. The project site is located on Dunecrest Avenue in the Del Monte Beach area of the City of Monterey and is the one remaining vacant lot along this section of Dunecrest Avenue that currently does not have Commission approval for a single-family residence. The proposed project represents infill of existing development along this roadway.

Coastal Act Section 30240 requires that environmentally sensitive habitat areas (ESHA) be protected against any significant disruption of habitat values, and states that only uses dependent on those resources shall be allowed. The Del Monte Beach dunes, although substantially altered, are considered ESHA because of the known occurrence of plant and animal species native, and restricted to, the Monterey Bay dune system, including those listed as endangered or threatened under Federal and/or State regulations. The project would result in a direct impact to dune habitat and would involve the removal of representatives of one plant species of special concern and one plant species federally listed as threatened. Although non-resource-dependent development in ESHA is not consistent with Coastal Act Section 30240, some development of the site must be allowed to avoid a taking of private property



California Coastal Commission
September 2002 Meeting in Los Angeles

Staff: S. Craig Approved by: DSL

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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 3-02-031 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 grounds 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



restoration fund for the protection and restoration of the Monterey Bay dunes within the City of Monterey. The funds shall be solely used to acquire restoration sites and to implement projects that restore native dune plant habitats (including installation of boardwalks to reduce public access impacts), not to fund operations, maintenance, or planning studies. The funds in the account shall be released as provided for in a memorandum of agreement between the City of Monterey and the Commission, setting forth terms and conditions to assure that the in-lieu fee will be expended in the manner intended by the Commission.

3. OPEN SPACE RESTRICTION.

A. No development, as defined in section 30106 of the Coastal Act shall occur in the Open Space Area as described and depicted on page 1 of Exhibit 5 attached to the Notice of Intent to Issue Permit (NOI) that the Executive Director issues for this permit, except for:

1. Fencing and/or boardwalks needed to accommodate habitat conservation/restoration. Any such fencing shall be designed to avoid substantial impairment of public views, light, wind, and rain. Landscaping that would block public views or introduce nonnative species shall be prohibited. Structures, uses, and activities that would degrade natural habitat values are prohibited.

B. **PRIOR TO ISSUANCE BY THE EXECUTIVE DIRECTOR OF THE NOI OF THIS PERMIT**, the Applicants shall submit for review and approval of the Executive Director, and upon such approval, for attachment as an Exhibit to the NOI, a formal legal description and graphic depiction of the portion of the subject property affected by this condition, as generally described and shown on page 1 of Exhibit 5 attached to this staff report.

4. **PUBLIC RIGHTS.** By acceptance of this permit, the Applicants acknowledge, on behalf of themselves and their successors in interest, that issuance of the permit shall not constitute a waiver of any public rights that may exist on the property. The Applicants also acknowledge that issuance of the permit and construction of the permitted development shall not be used or construed to interfere with any public prescriptive or public trust rights that may exist on the property.
5. **SAND DISPOSAL. PRIOR TO THE COMMENCEMENT OF CONSTRUCTION**, the Permittees shall identify a disposal site for excavated sand within the Monterey Dunes. The disposal site and proposed method of sand disposal shall be subject to the review and approval of the City of Monterey, the project biologist, and the Executive Director.
6. **COMPLIANCE WITH GEOTECHNICAL RECOMMENDATIONS. PRIOR TO THE COMMENCEMENT OF CONSTRUCTION**, the Permittees shall submit to the Executive Director, written evidence of compliance with the recommendations contained in the May 18, 2001 geotechnical report from Tharp & Associates, Inc.



III. Recommended Findings and Declarations

The Commission finds and declares as follows:

A. Project Description

1. Project Location

The proposed project is located in the Del Monte Beach area of the City of Monterey, between Del Monte Boulevard and the ocean, in the high oceanfront Flandrian dunes (see Exhibit 1). The project site is the last undeveloped 3,600 square foot parcel located on Dunecrest Avenue west of Beach Way in the legally subdivided Del Monte Beach Tract #2 subdivision (see Exhibit 2). The project site is bordered by Dunecrest Avenue to the south, residences to the east and west, and open dunes to the north. Further east of the project lies the Del Monte Tract #1 subdivision, which is almost fully developed. The City's Del Monte Public Beach is located approximately 700 feet north of the project site (see Exhibit 3). The project site abuts the "Parcel B" open space area of the recently approved Del Monte Beach re-subdivision (see Exhibit 4).

The majority of the lots on Dunecrest Avenue were developed prior to the Coastal Act of 1976. Since 1990 the Commission has approved development of four other residences on this section of Dunecrest. All of these approvals were conditioned with a requirement to retain 50% of the lot as undeveloped open space for the reasons discussed in the findings regarding Environmentally Sensitive Habitats in section III(B) of this report.

2. Proposed Development

The Applicants propose to construct a two-story, 1,440 square foot single-family residence on a 3,600 square foot lot. The proposed project includes a two-car garage, basement, cantilevered decks, a rooftop deck, a fenced trash area, and retaining walls. Grading will be required to reduce the slopes of steep grades on the site, resulting in the removal of approximately 244 cubic yards of sand from the project site.

3. Project Area Background

The Del Monte Beach subdivision was created in 1918. The eastern two-thirds of the subdivision (Tract #1) is substantially developed. The perimeter of Tract #2 along Sea Foam and Dunecrest Avenue (location of the project site) has also been developed. Limited development has occurred in the western third (Tract #2) of the subdivision since 1918 (see Exhibit 3).

In 1976 the Coastal Commission denied proposed road and utility improvements to the undeveloped areas of Tract #2 (seaward of the project site), finding that there was a potential for impacts to the dunes and that the preservation and stabilization of the remaining coastal dunes were of critical concern in the



However, Coastal Act Section 30010 states:

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 therefore. 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, to preclude claim of takings and to assure conformance with California and United States Constitutional requirements, as provided by Coastal Act Section 30010, this permit allows for development of this parcel to provide a reasonable economic use of this property. This determination is based on the Commission's finding in section III(B)(c) of this staff report, below, that this privately-owned parcel 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.

B.Coastal Development Permit Determination

1. Environmentally Sensitive Habitat

a. Applicable Policies

Section 30240 of the Coastal Act states:

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

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

Section 30250(a) of the Coastal Act states, in part:

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



considered rare by the California Native Plant Society (CNPS); 2) Coast wallflower (*Erysimum ammodendrum*), which is considered a species of special concern by USF&WS, is considered of limited distribution by CNPS, but is not state listed; 3) Monterey spineflower (*Chorizanthe pungens* var. *pungens*), which is federally listed as a threatened species and is considered rare by CNPS and CDFG, but is not state listed; and 4) Monterey paintbrush (*Castilleja latifolia*), which is considered a species of special concern by USF&WS and is considered of limited distribution by CNPS, but is not state listed.

The dunes also support a number of rare animal species. Dune buckwheat, a host plant for the Smith's blue butterfly (*Euphilotes enoptes smithi*), is found in the Del Monte Beach dunes area. Smith's blue butterfly is federally listed as endangered, and is known only from Monterey County.

The western snowy plover (*Charadrius alexandrinus nivosus*) is federally listed as a threatened species and is a California species of special concern. These birds forage along the shoreline and nest in the foredunes. The plovers are known to nest upcoast in Marina, and the State Department of Parks and Recreation has erected exclosures around the nests to prevent trampling of the eggs. U.S. Fish & Wildlife Service staff has documented nesting by snowy plovers in recent years along Del Monte Beach, south of the Monterey Beach Hotel, and north of the Ocean Harbor House condominiums. Flocks of wintering plovers have been observed on the beach in the vicinity of the project site. Therefore, as these threatened birds have been found in the Monterey Bay dune system, and the Del Monte Beach area contains the type of habitat favored by the Snowy Plover, it is expected that the Del Monte Beach Tract #2 area will provide additional breeding habitat as the species recovers.

The black legless lizard (*Anniella pulchra nigra*) is a California species of special concern that inhabits coastal dunes in Monterey County between the Salinas and Carmel Rivers. This lizard burrows into loose sand under plants including bush lupine, mock heather, and mock aster. Lizards have been sighted in the Del Monte Beach dune area in 1996 and 1999.

Each of the above-listed plant and animal species is either migratory or intermittent in occurrence. Thus one or more of the above species may occupy a specific site in the dunes periodically. This explains why species that are not found in a specific location one year may be found in that location in subsequent years. This also explains why the entire dune system (and not just the particular location where a rare plant may be growing in a particular year) must be considered an environmentally sensitive habitat area (ESHA).

c. Implementing Sections 30010 and 30240 of the Coastal Act

As described above, the entire area of the Del Monte Beach dunes is environmentally sensitive dune habitat. The proposed development includes development of a 1,440 square foot, two-story single-family residence and includes grading and excavation of approximately 244 cubic yards of material.

None of these development activities are dependent on a location within the sensitive resource area. In addition, this development and its associated activities, individually and collectively, will result in a significant disruption of the environmentally sensitive dune area on site. Therefore, this project cannot



designated) in the General Plan and zoned for single-family residential use. Thus the Applicants, upon determining the zoning of Tract #2 and the developed nature of Dunecrest Avenue and Tract #1, could have legitimately assumed that development of a single-family home on this parcel was a reasonable expectation. Continued development within the Tract #2 subdivision since 1997 and the recent approval of the Del Monte Beach re-subdivision lends further credence to that expectation. Therefore, in view of the other existing and proposed residential uses in the immediate vicinity of this parcel, the Commission finds that the proposed residential use is a reasonable economic use, and also that the resource dependent uses allowed by Coastal Act Section 30240 would not provide an economic use.

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

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

Moreover, while the Applicants may have reasonably anticipated that residential use of the subject properties might be allowed, the Coastal Act and recent Coastal Commission actions on similarly situated lots in the Del Monte Beach Tract #2 (including the recently approved Del Monte Beach re-subdivision) provided notice that such residential use would be contingent on the implementation of measures necessary to minimize the impacts of development on environmentally sensitive habitat. Thus, the Commission must still comply with the requirements of Section 30240 by protecting against the significant disruption of habitat values at the site, and avoiding impacts that would degrade these values, to the extent that this can be done consistent with the direction to avoid a taking of property. Mitigations must also be generally proportionate to the adverse impacts caused by development of a single-family residence.

d. Habitat Values of the Project Site

A botanical survey report was prepared for the site (see Exhibit 6 for survey summary). The report describes the existing vegetation on the project site, evaluates potential environmental impacts, and recommends various measures to mitigate any identified impacts. According to the botanical survey, the project site is in a severely degraded condition. With the exception of the eastern, western, and southern margins, the property is denuded of vegetation. A number of native plant species, however, have spread from adjacent properties onto the eastern and western margins of the project site. Two of these species are protected plant species: Coast wallflower (*Erysimum ammophilum*) and Monterey spineflower



the subject property might be allowed, the Coastal Act and the April 2002 Commission action on the Del Monte Beach re-subdivision, as well as Commission action on individual lots in Tract #2 in recent years (Kass, Boyden, Bram, Seawald, Archer, Archer/Nichols, and Gamble), provided notice that such residential use would be contingent on the implementation of measures necessary to minimize the impacts of development on environmentally sensitive habitat. Thus, the Commission must still comply with the requirements of Section 30240 by protecting against the significant disruption of habitat values at the site, and avoiding impacts that would degrade these values, to the extent that this can be done consistent with the direction to avoid a taking of property. Mitigations must also be generally proportionate to the adverse impacts caused by development of the house and associated infrastructure.

MITIGATION: In situations such as these, there are several conditions that the Commission can adopt that implement Section 30240 without taking the Applicants' property. Appropriate measures include: concentrating residential site coverage so that development covers no more than one-half (1800 sq. ft.) of the parcel; and requiring that the area of the parcel that will not be developed (1800 sq. ft. minimum) shall be preserved in open space, subject to a conservation deed restriction. Special Conditions 3 and 10 of this permit require such measures.

Even with these conditions, development on the parcel will permanently displace dune habitat and prevent revegetation on up to 50% of the lot. There also will be indirect impacts on the undeveloped portions of the lot through construction activity, shadowing and other activities associated with adjacent residential use. Moreover, although the actual square footages at issue in this permit are relatively small (1,710 sq. ft. developed, with the remainder of the lot designated as open space), these impacts are significant given the importance of the Monterey Bay Dune system as a whole. Therefore, several additional conditions are necessary to offset these direct, indirect, and cumulative project impacts.

The Applicants have submitted a landscape restoration plan containing a number of impact assessment and mitigation measures designed to protect existing dune resources (see Exhibit 7 for restoration implementation schedule). Special Condition 1 requires that project construction activities, and future use of the site, comply with these recommendations. In addition, Special Condition 8 requires transplantation of any special status plant species on site (that will be impacted by construction) to a preservation area.

In addition, because the developed half of the lot represents a permanent loss of environmentally sensitive habitat, the permit also has been conditioned in Special Condition 2 to require project mitigation through an in-lieu fee. The purpose of the in-lieu fee is to provide for offsite restoration of degraded environmentally sensitive habitat, to mitigate onsite loss of environmentally sensitive habitat (the lot is too small for substantive onsite restoration). More specifically, the in-lieu fee will provide funds to pay for the cost of restoring an area exactly proportionate to the area of environmentally sensitive habitat that will be destroyed due to construction of the house. The in-lieu fee will be used for future native plant habitat preservation and restoration in nearby dune areas through the acquisition of restoration sites, eradication of invasive exotic vegetation, installation of boardwalks, and other dune restoration measures identified in the planning or LCP process.



opportunities in the coastal zone consistent with sound resource conservation principles and constitutionally protected rights of private property owners.

Section 30211 of the Coastal Act states:

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

Section 30210 of the Coastal Act states:

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

Section 30221 of the Coastal Act states:

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

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

The Commission has a long history of grappling with the issue of public access in Del Monte Beach Tract #2. The findings adopted by the Commission for a 1992 LUP submittal found that the seven and one-half acre Del Monte Beach Tract #2, which includes the project site, has been subject to public use for many years. To finally resolve the question of the extent of potential prescriptive rights existing in this area, the LUP modifications adopted by the Commission required the City to prepare such a study.

While the Commission approved the LUP in 1992 with this and other modifications, the City did not accept these modifications within the six-month time limit; therefore, certification of the resubmitted LUP did not occur and the City declined to conduct a prescriptive rights study (the City's LUP has been re-submitted and is under review at this time). Thus, the Commission must review this application for conformance with the Coastal Act and without the benefit of a prescriptive rights study. Accordingly, it is concluded that the evidence for the subject parcel is indeterminate. Lacking the necessary information, the Commission is unable to find unequivocally that this property has been dedicated entirely or partly for public use.

Recent actions by the Commission have helped to resolve the public access issue in Del Monte Beach



Postgraduate School dunes and beach and the City of Monterey shoreline are available. The proposed development will slightly encroach into these views and may (distantly) impact the views from the public beach to the north, although the view from the beach will be impacted somewhat in the future by development of the Del Monte Beach re-subdivision.

The City has not defined the type of fencing that will be allowed on this site. The Applicants will be required to have additional architectural review prior to issuance of the building permit and fencing will be addressed at that time. Thus this permit is conditioned to require that any permanent fencing, as well as landscaping, will not substantially impair public views of the dunescape (see Special Condition 3). Therefore, as conditioned to restrict fencing that would block or damage public views of the scenic dunescape, the proposed development is consistent with the scenic resource policies of the Coastal Act.

4. Geologic Hazards

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.

The Applicants' site lies on the crest of the Flandrian (late Pleistocene era) dune field that rises from 30 to 80 feet in elevation in this area. Applicable policies in the (uncertified) Del Monte Beach Land Use Plan require site-specific geology/erosion studies, a development setback sufficient to prevent damage from both the expected 100-year shoreline erosion rate and the 100-year storm or tsunami run-up, and preservation of sand dunes wherever feasible.

Because of its distance from the shoreline (approximately 700 ft.), no shoreline erosion rate study was done. However, the potential geotechnical hazards to manmade structures at this site, including ground shaking, ground rupture, landsliding, liquefaction, lateral spreading, and differential compaction, were considered by a geotechnical analysis completed by Tharp & Associates, Inc. in May 2001. Based on this geotechnical evaluation, it was determined that the subject site is suitable for the proposed development provided that the recommendations presented in the report are implemented during grading and construction. Special Condition 6 requires compliance with the recommendations contained in the Tharp & Associates, Inc., May 2001 report. With this condition, the proposed re-subdivision is consistent with Section 30253 of the Coastal Act regarding geologic hazards.

5. Public Services

Section 30250 of the Coastal Act states, in part:

(a) New residential, commercial, or industrial development, except as otherwise provided in this

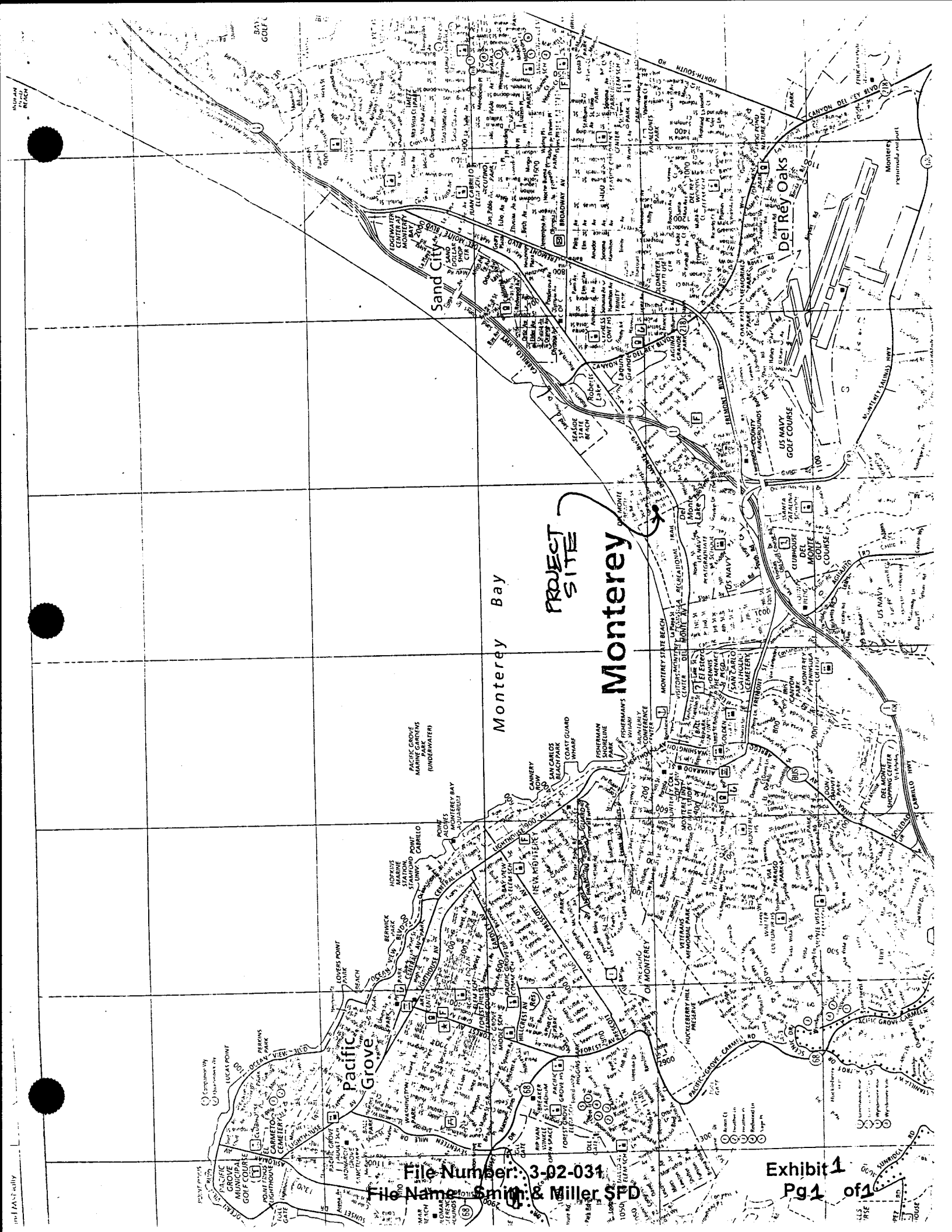


IV. California Environmental Quality Act (CEQA)

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

In response to the environmental review requirements of CEQA, the City certified a Negative Declaration for this project on December 11, 2001. Additional impacts were discovered during the course of this permit review and the recommendation is incorporated in its entirety in this finding. In response, additional mitigation measures are incorporated as conditions. Accordingly, as so conditioned and modified, the Commission finds that the proposed project is consistent with CEQA, as all of its significant environmental impacts will be reduced to a level of insignificance. All public comments received have been addressed.



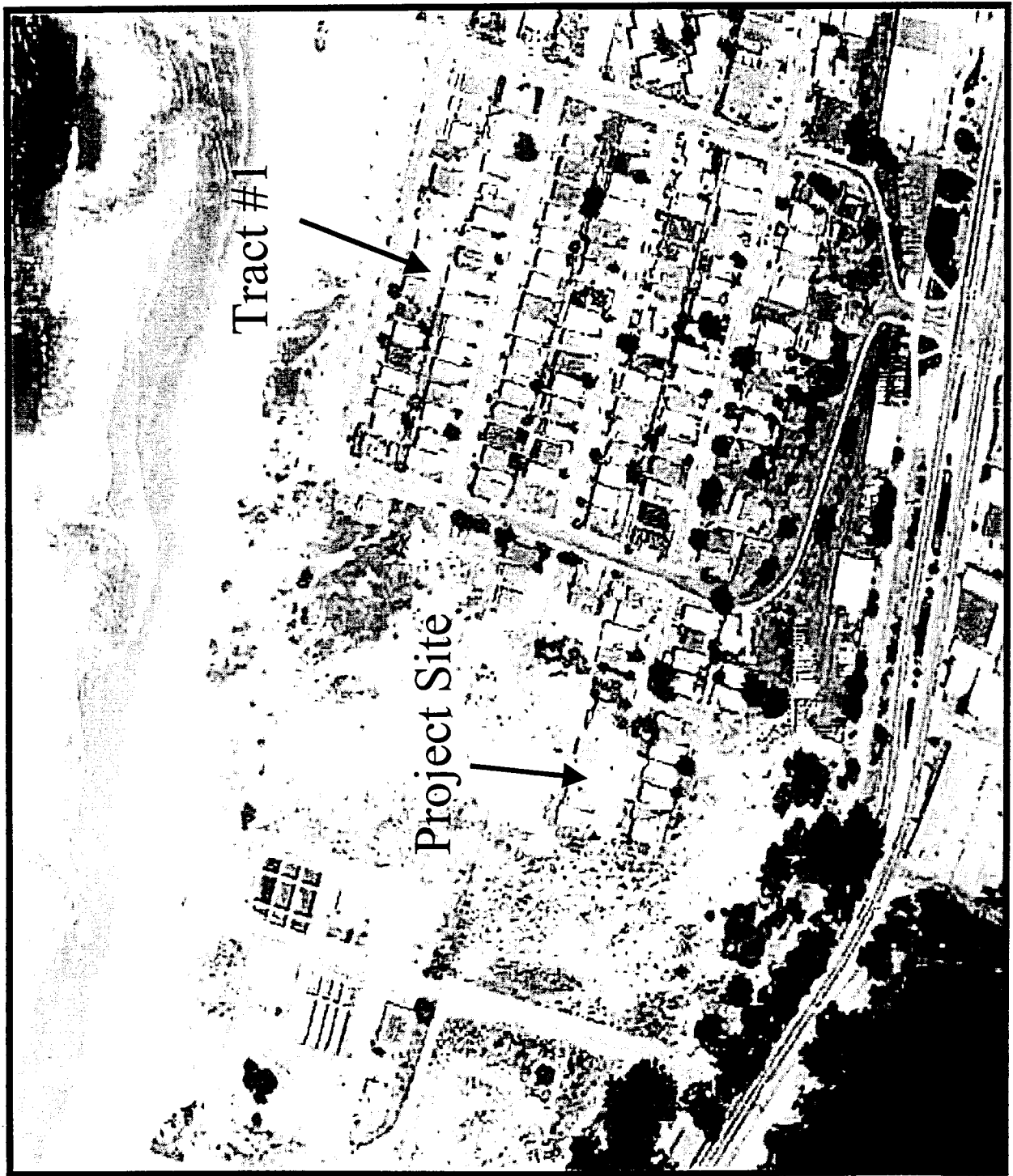


Monterey Bay

PROJECT SITE
Monterey

File Number: 3-02-031
File Name: Smith & Miller SFD

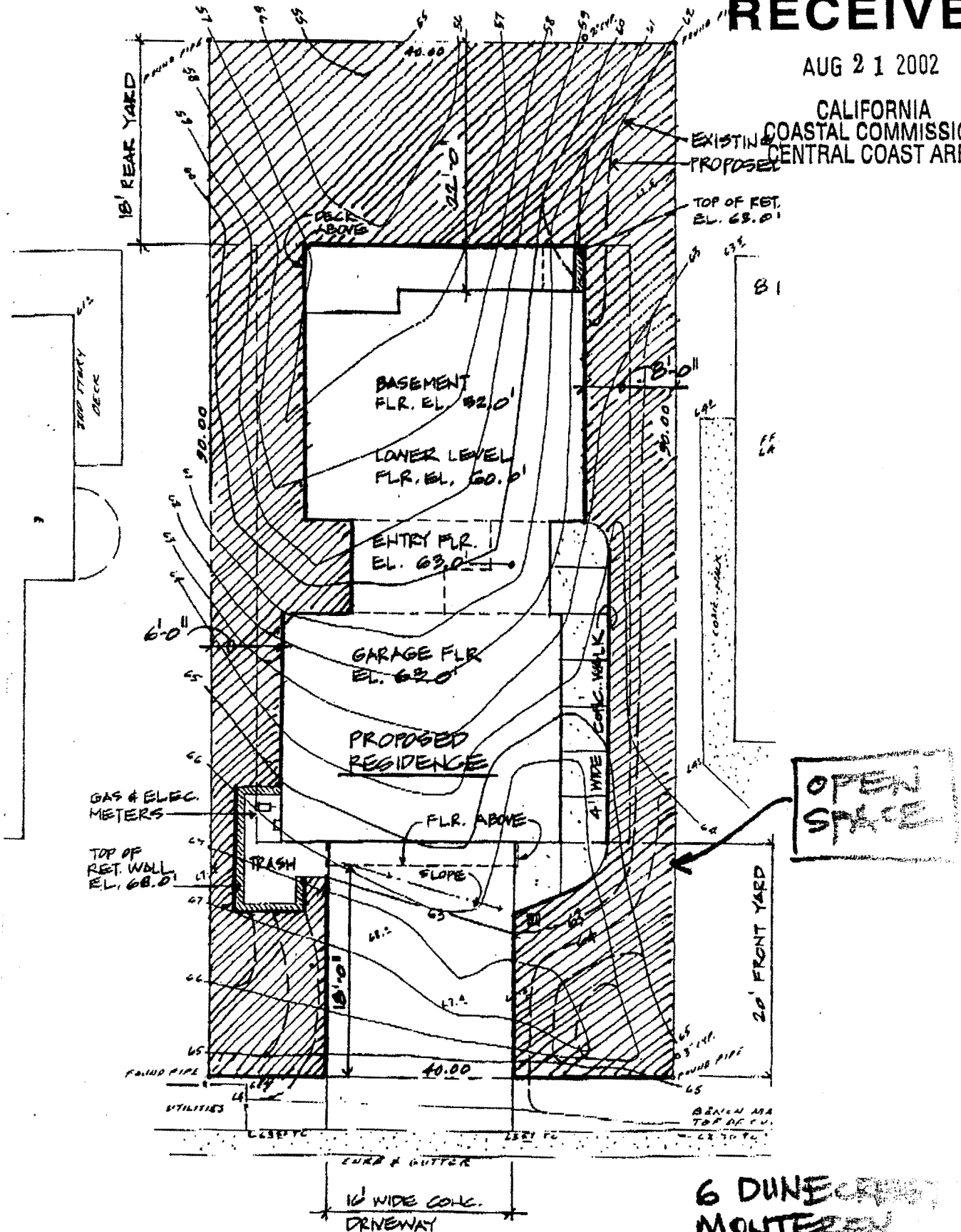
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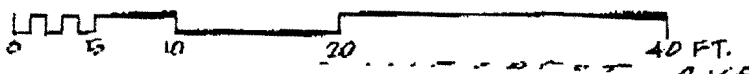
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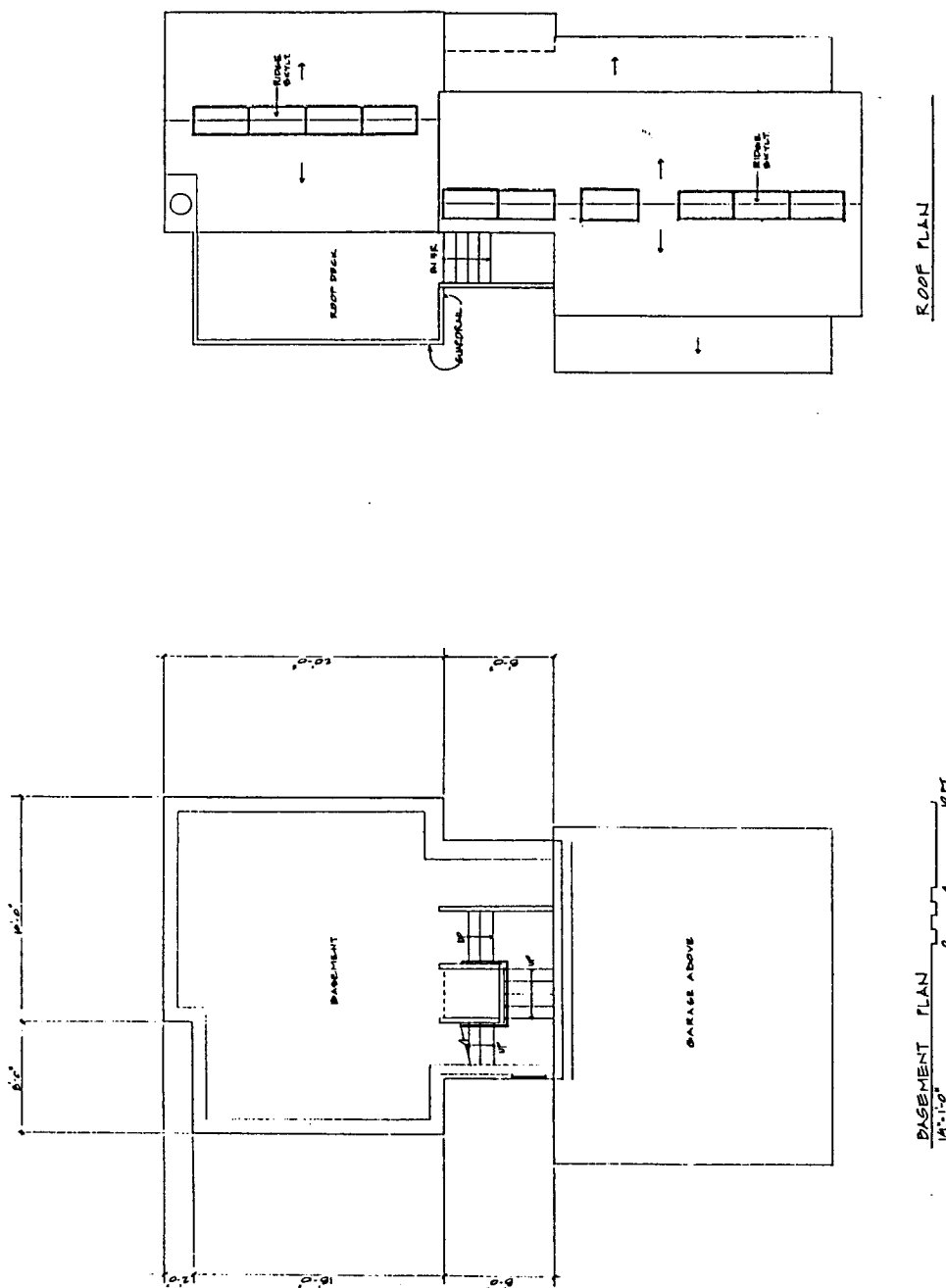


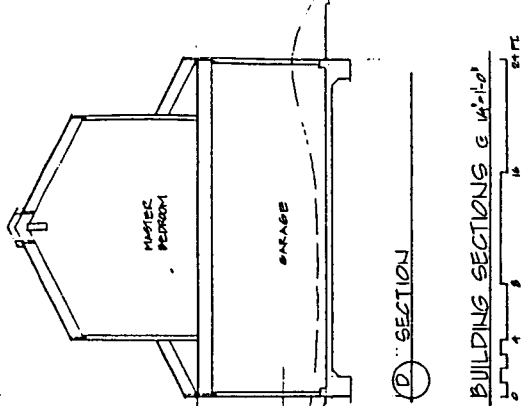
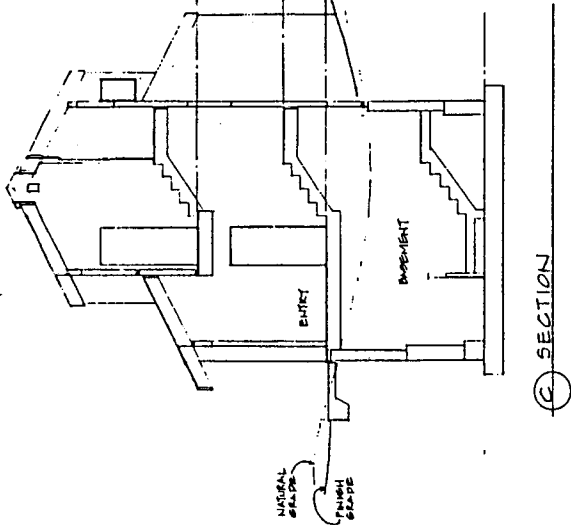
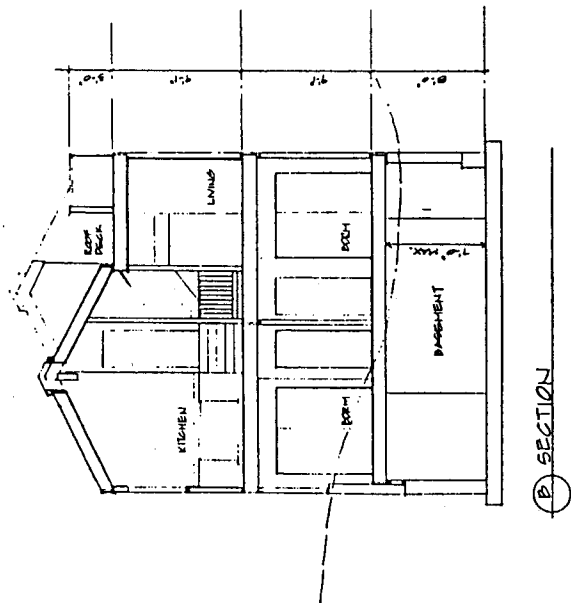
SITE & GRADING PLAN @ 1/8" = 1'-0"



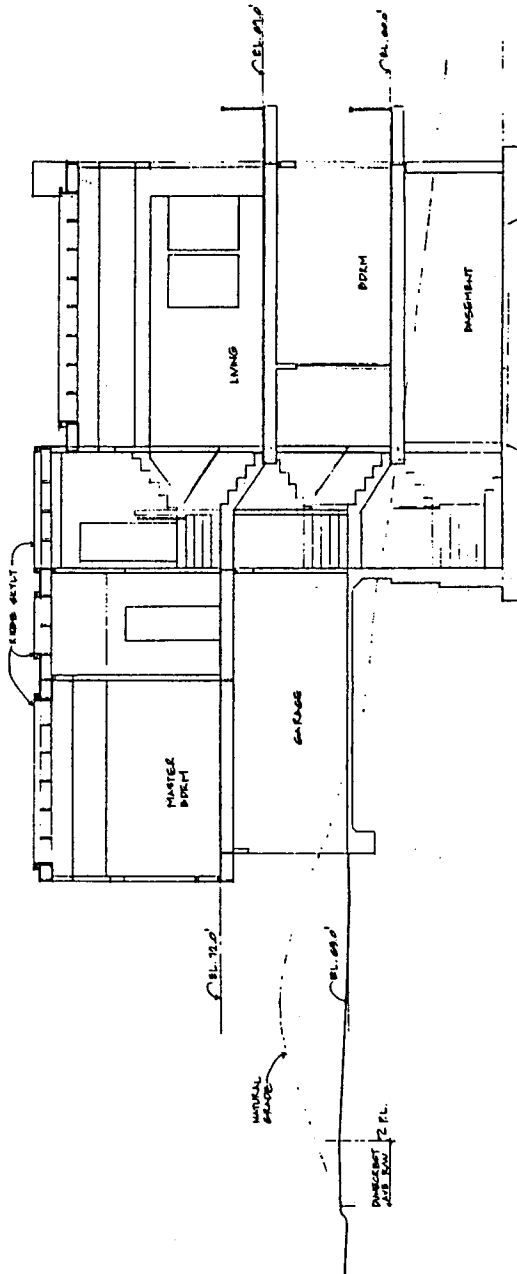
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Exhibit 5
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BUILDING SECTIONS @ 1/4"=1'-0"



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

TABLE 2. IMPLEMENTATION SCHEDULE

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

California Coastal Commission

July 22, 2002

Susan Craig,

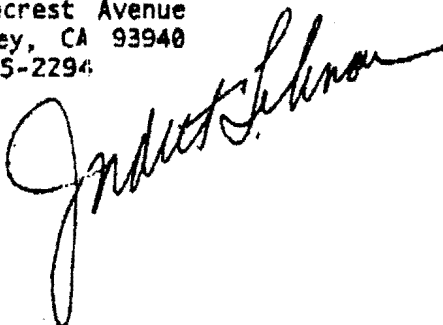
heard this weekend the CCC will be reviewing 6 Dunecrest, as president of the neighborhood and within 300 ft of this project, I have not recieved any information regarding Coastal Review.

Like a previous project at 143 Spray Ave, this sloped lot should have a stepped down design. The view from the beach and Mty Bay should not be subjected to unnecessary visual intrusions when it could follow the sloped lot.

In addition the current design calls for sky lights along the entire roof ridgeline, from front to back, also distracting from the coastal night sky views. The skylights should be eliminated to avoid the light glare directed into the sky.

Sincerely,

Judith Lehman
5 Dunecrest Avenue
Monterey, CA 93940
831-375-2294

**RECEIVED**

JUL 22 2002

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COASTAL COMMISSION
CENTRAL COAST AREA