

**CALIFORNIA COASTAL COMMISSION**

CENTRAL COAST DISTRICT OFFICE  
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# F9a

Filed:	10/11/2007
49th day:	11/29/2007
180 <sup>th</sup> day:	04/08/2007
Staff:	MWatson
Staff report prepared:	10/25/2007
Hearing date:	11/16/2007

## COASTAL DEVELOPMENT PERMIT APPLICATION

**Application number** .....3-05-028, Fisher Restoration Plan

**Applicant**.....Duke Fisher

**Project location** .....1631 Sunset Drive, in the Asilomar Dunes area of Pacific Grove, Monterey County (APN 007-041-021).

**Project description**.....Restoration, enhancement, and long-term maintenance of native dune habitat to mitigate for damage resulting from unauthorized grading on a 23,326 square foot lot in the Asilomar Dunes. Applicant proposes to resolve the violation of coastal permitting requirements within the context of this application.

**File documents**.....Landscape Restoration Plan prepared by Thomas Moss (October 11, 2004; revised March 21, 2005); Coastal Development Permit (CDP) file 3-05-028; City of Pacific Grove certified Land Use Plan (LUP).

**Staff recommendation** ...Approval with Conditions.

**Summary:** The Applicant proposes to restore approximately 8,600 square feet of native dune habitat on a private residential site to resolve a Coastal Act violation stemming from the unauthorized grading (without a CDP) of 1,700 square feet of native dune habitat at 1631 Sunset Drive in the Asilomar Dunes neighborhood of Pacific Grove. The Applicant also proposes to enhance the remaining dune habitat on the site (outside of existing developed areas), and to maintain the restoration and enhancement areas as sandy dune habitat over time. Both the Coastal Act (standard of review) and certified LUP (guidance) ESHA protection policies prohibit any significant disruption of the habitat values within the Asilomar Dunes complex. The entire native Asilomar Dunes dune complex, including the parcel that is the subject of the application, is considered environmentally sensitive habitat area (ESHA).

The Applicant has submitted a Landscape Restoration Plan that will restore the unauthorized graded area, and will mitigate for the unauthorized disturbance by restoring adjacent disturbed dune areas at approximately a 4:1 ratio. The Plan also provides for enhancement of the existing dune area on the site, and for long-term maintenance of both areas. The Plan includes provisions for native seed collection, exotic species eradication, revegetation, landscape protection, maintenance, monitoring, and



**California Coastal Commission**  
**November 16, 2007 Meeting in San Diego**

Staff: Mike Watson Approved by:  
3-05-028 Fisher Restoration Plan stfrrpt 11.16.2007

performance criteria to ensure successful colonization and natural regeneration of the native dune plants. The Plan is consistent with the Commission's generally accepted methodology for Asilomar Dunes restoration. The restoration effort will cover approximately 8,600 square feet of sand dune area, or approximately half of the unimproved portion of the site. The other half of the unimproved portion of the site is relatively undisturbed, growing in a natural state, and not in need of significant additional restoration; modest enhancement/maintenance over time is proposed for this area. In sum, following the restoration, all of the unimproved portion of the site would be in a natural dune state, and the Plan provides for this entire dune area to be maintained as high quality native dune habitat in perpetuity.

In addition, the Applicant has recorded a deed restriction prohibiting any further development (other than ongoing dune habitat maintenance) in the sand dunes surrounding the existing residence, driveway, patio, etc..<sup>1</sup> The deed restriction's restricted area includes all of the unimproved portion of the site that would be brought up to functioning dune habitat (i.e., the restoration area and existing dune area together). Such deed restriction protects against any future residential development in this area, and helps to ensure that it will remain natural dune habitat in perpetuity.

Special conditions are recommended to ensure that restoration, enhancement, and maintenance of the site is timely carried out in accordance with the submitted Landscape Restoration Plan and to implement the deed restriction in coastal permit terms, thus prohibiting any further residential development on the site within the dune area outside of the existing developed area. Staff therefore recommends that the Commission approve a permit with conditions that:

- Requires conformance with the submitted Landscape Restoration Plan;
- Establishes a 6 month time frame to complete the restoration activities;
- Prohibits further development outside of the existing residentially developed area other than restoration, maintenance, and monitoring of the site as authorized under the Landscape Restoration Plan, and limited placement, maintenance, and repair of underground utilities (i.e., similar to the existing deed restriction).

**As so conditioned, staff recommends approval.**

## Staff Report Contents

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<sup>1</sup> Staff originally determined that the application, which includes the Landscape Restoration Plan proposal and recordation of a deed restriction against the property, qualified for a coastal development permit waiver pursuant to section 30624.7 of the Coastal Act. However, the Applicant has been unable to extinguish or subordinate liens that are superior to the deed restriction, as required by Commission standards. Accordingly, the staff report findings and legally enforceable conditions of approval serve to ensure that the unimproved natural dune area on the site (including the restoration area) remains in such natural dune state in perpetuity, consistent with the Coastal Act.



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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 3-05-028 pursuant to the staff recommendation.

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

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



## II. Conditions of Approval

### A. Standard Conditions

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the Permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. **Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the Permittee to bind all future owners and possessors of the subject property to the terms and conditions.

### B. Special Conditions

1. **Conformance with the Landscape Restoration Plan.** All restoration, enhancement, monitoring, and maintenance activities on the site shall be undertaken and completed in accordance with the revised Landscape Restoration Plan prepared by Thomas Moss dated March 21, 2005 (see Exhibit B), with the objective being to ensure a self-sustaining, naturally functioning, high quality dune habitat to the maximum degree feasible. The designated restoration areas on the property shall be revegetated with native species indigenous to the Asilomar Dunes complex. All existing non-native, invasive species (such as ice plant and myoporum) shall be removed and shall be kept from the entirety of the site in perpetuity. Planting of non-native, invasive or ornamental species, such as those listed on the California Invasive Plant Council's Inventory of Invasive plants, is prohibited. All native dune vegetation on the site shall be maintained in a healthy growing condition in perpetuity.

The Permittee shall complete all restoration activities within 6 months of approval of this coastal development permit (i.e., no later than May 16, 2008). No changes to the Landscape Restoration Plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is necessary.



- 2. Future Development in Dunes Prohibited.** By acceptance of this permit, the Permittee acknowledges and agrees, on behalf of himself and all successors and assigns that development, as defined by Section 30106 of the Coastal Act, within the unimproved portion of the site that is to be restored, enhanced, and maintained as native dune habitat (see “Restricted Area” shown on page 9 of Exhibit D) is prohibited, except for: restoration, enhancement, maintenance, and monitoring of the site pursuant to the Landscape Restoration Plan (see Special Condition 1); and placement, maintenance, and repair of underground utilities that cannot feasibly be located within the developed portion of the site, provided such utility work is properly permitted, disturbance to dune areas is avoided as much as possible, and any unavoidable impacts to dune areas are mitigated through restoration and enhancement of such areas.

### III. Recommended Findings and Declarations

The Commission finds and declares as follows:

#### A. Project Description

##### 1. Project Location

The site is located at 1631 Sunset Drive in the Asilomar Dunes neighborhood of the City of Pacific Grove at the western end of the Monterey Peninsula. 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 Exhibit A).

The parcel is located in an area zoned by the City as 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 setback from Sunset Drive approximately 150 feet, leaving a significant portion of the lot in undeveloped dune habitat. In addition to the fact that this neighborhood was developed within a significant dune system, this low-density zoning on relatively large lots is part of what helps to give this area its well known open-space dune character.

Finally, 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 review all coastal development permit applications, with the standard of review being the Coastal Act, although the certified LUP may serve as an advisory document.



## 2. Project Description

The Applicant proposes to restore roughly 8,600 square feet of degraded dune habitat on the site including removing exotic invasive species such as ice plant and myoporum, and replanting bare sandy areas with dune plant species native to the Asilomar dunes. The Applicant also proposes to enhance the remaining dune habitat on the site (outside of existing developed areas), and to maintain all of the restoration and enhancement areas as sandy dune habitat over time. The restoration effort is proposed to resolve a Coastal Act violation stemming from the unauthorized grading (i.e., without coastal permits) of 1,700 square feet of native dune habitat to create a driveway turn-around loop.<sup>2</sup> The Applicant has submitted a Landscape Restoration Plan that will restore the area degraded by driveway grading, and will also mitigate on site for the unauthorized disturbance at approximately a 4:1 ratio. The Plan also provides for enhancement of the existing dune area on the site, and for long term maintenance of both areas. The Plan includes provisions for native seed collection, exotic species eradication, revegetation, landscape protection, maintenance, monitoring, and performance criteria to ensure successful colonization and natural regeneration of the native dune plants. The restoration effort will cover approximately 8,600 square feet of sand dune area or approximately half of the unimproved portion of the site. The other half of the unimproved portion of the site is relatively undisturbed, growing in a natural state, and not in need of significant additional restoration; modest enhancement/maintenance over time is proposed for this area. In sum, following the restoration, all of the unimproved portion of the site would be in a natural dune state, and the Plan provides for this entire dune area to be maintained as high quality native dune habitat in perpetuity.

## B.Coastal Development Permit Determination

### 1. Environmentally Sensitive Habitat Area

#### a. Applicable Coastal Act and LUP ESHA Protection Policies

***Coastal Act Section 30240:*** *Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.*

***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.*

#### b. ESHA Consistency Analysis

Coastal sand dunes constitute one of the most geographically constrained habitats in California. They only form in certain conditions of sand supply and wind energy and direction. Dunes are a dynamic habitat subject to extremes of physical disturbance, drying, and salt spray and support a unique suite of

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<sup>2</sup> Commission enforcement case number V-3-04-019.



plant and animal species adapted to such harsh conditions. Many characteristic dune species are becoming increasingly uncommon. Even where degraded, the Coastal Commission has found this important and vulnerable habitat to be ESHA due to the rarity of the physical habitat and its important ecosystem functions, including that of supporting sensitive species.<sup>3</sup> Areas of coastal dune vegetation and sandy openings on the Monterey Peninsula are both rare and especially valuable due to their important ecosystem functions as those terms are understood in a Coastal Act (and LUP) context. Dunes are also easily disturbed and degraded by human activities and development (e.g., by conversion to residential use, sand extraction, fragmentation trampling of dune vegetation, etc.). In conclusion, such dune areas meet the definition of ESHA under the Coastal Act (and the LUP).

Thus, the entire site is environmentally sensitive habitat area (ESHA), as are all lots located within the Asilomar Dunes area.<sup>4</sup>

In April 2004, approximately 1,700 acres of native sand dune ESHA was graded on the site to create a second driveway access loop from Sunset Drive. This work was done without the benefit of a coastal development permit. The site of the unauthorized development is currently improved with a single family residence, garage, and driveway entrance abutting Sunset Drive. The Applicant was apparently seeking to create a driveway loop to facilitate vehicle turn-around and to prevent having to back out of the driveway onto Sunset Drive. See Exhibit A.

Upon learning of the grading activity, Commission Enforcement Staff contacted the Applicant and directed that the work on the driveway improvements be halted. The Applicant was further directed to contact Commission staff to either seek authorization to retain the second driveway or to restore the disturbed area to its natural condition. Given the pre-Coastal Act residence was already developed at the maximum allowable development intensity,<sup>5</sup> and given the dune ESHA involved, the Applicant was advised that retention of the additional driveway loop could not be rectified to the Coastal Act's ESHA protection policies, and that the Applicant would be required to restore the disturbed area and compensate for the removal of sensitive plant species.

In response, the Applicant submitted a Landscape Restoration Plan that provides for restoration of approximately 8,600 square feet of disturbed dune habitat that includes restoration of the unpermitted driveway grading area, and restoration of an additional area on site at a 4:1 mitigation ratio for the disturbance of ESHA. Because it recognizes the case specific biological issues associated with the dune area on the subject site, including the presence of the invasive myoporum species, the 4:1 ratio is slightly more than the typical 3:1 standard that has been applied elsewhere in the Asilomar Dunes for similar violations involving authorized grading and removal of sensitive habitat.<sup>6</sup> Applying the 3:1

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<sup>3</sup> For example, some ten special status dune plant species and at least one animal species of special concern have been found within the Asilomar Dunes system.

<sup>4</sup> The Commission has historically found this area to be ESHA based on the significance of the dune and related habitats here, and this site is typical of such dune habitat (for example, see also recent coastal development permit application files A-94-78-A1, 3-06-057, and 3-06-031).

<sup>5</sup> Per the LUP, which has been used as guidance by the Commission in this respect for Asilomar Dunes cases.

<sup>6</sup> See, for example, resolution of such issues related to the Spanish Bay Resort and at 1725 Sunset Drive.



standard to the subject site requires restoration of the 1,700 feet of disturbed area, and restoration of an additional 5,100 square feet of native dune habitat (i.e.,  $5,100 = 1,700 \times 3$ ) and results in a total of 6,800 square feet ( $1,700 + 5,100$ ) of restoration. The 4:1 ratio applies at this site because the Applicant also proposes to restore another 1,800 square feet of native dune sand currently occupied by myoporum, an invasive shrub that is growing in front of the residence facing Sunset Drive. If the myoporum is not removed, it would threaten both the proposed restoration area and the remainder of the natural area of the site, potentially undoing both. With the myoporum removal/restoration component added in, it brings the total amount of native dune restoration to 8,600 square feet ( $6,800 + 1,800$ ), or roughly 4:1 when all is said and done. The project biologist indicates that all of the disturbed dune area in need of restoration on the site would be restored by the proposed project. In other words, the restoration area accounts for all of the area of the site in need of restoration; the remaining undeveloped portion of the site already exists in a natural dune state that doesn't require significant restoration; thus modest enhancement/maintenance over time is proposed for this area.

In sum, the restoration and long term maintenance of dune habitat proposed will correct a Coastal Act violation, it will enhance sensitive dune ESHA habitat on this site, and it will incrementally and cumulatively enhance dune habitat within the overall Asilomar Dunes complex given it is a functional part of this system. In order to ensure that the restoration is timely carried out (and the violation timely corrected) and maintained over time consistent with the submitted plan, this approval is conditioned to explicitly acknowledge plan parameters, and to require its initial implementation within 6 months, which should be adequate time to allow the restoration to proceed this year, or at the latest by next spring (see Special Condition 1). Special Condition 1 and the Plan require the site be revegetated with native dune plants endemic to the Asilomar Dunes complex. They further require that all existing non-native, invasive species (such as ice plant) be removed and not allowed to persist on the site, and prohibit the planting of non-native, invasive or ornamental species. All restoration activities must be completed within 6 months, and any proposed changes to the Plan must first be authorized via an amendment to the coastal development permit. Special Condition 1 and the Plan also provide for enhancement of the existing dune area on the site in addition to the restoration area, and for long term maintenance of both areas.

Additionally, the Applicant has recorded a deed restriction that applies to the unimproved portion of the property (see Exhibit D). No further development other than that authorized by the Landscape Restoration Plan (or as necessary for continued habitat maintenance throughout the unimproved portion of the site), and that which is required for utility placement and maintenance (that cannot be accommodated otherwise), is allowed in this area per the restriction. In other words, the restriction requires all residential development to be kept within the current building envelope (the residence, garage, driveway, and immediate outdoor living area are located within this existing building envelope). The deed restriction is similar in form and content to deed restrictions typically applied by the Commission to residential development sites within the Asilomar Dunes area. As such, it should serve to help ensure that the unimproved natural dune area on the site (including the restoration area) remains in such natural dune state in perpetuity, consistent with the Act. As a means of recognizing the applicable terms of this restriction, and to implement its provisions in a coastal permit sense, and to ensure that the objectives of the Landscape Restoration Plan are achieved over the long term (including





long term protection and preservation of the unimproved dune area of the site), Special Condition 2 prohibits future development of the site outside the existing developed area (see also Exhibit D). This condition does allow for restoration activities prescribed by the Landscape Restoration Plan and placement/maintenance of underground utilities that cannot feasibly be located within the developed portion of the site (provided such utility work is properly permitted, disturbance to dune areas is avoided as much as possible, and any unavoidable impacts to dune areas are mitigated through restoration and enhancement of such areas) consistent with the recorded restriction and the Commission's typical allowances in this regard for development that is allowed within the Asilomar Dunes.

Therefore, and only as conditioned to require implementation of the Landscape Restoration Plan and prohibit future development within the unimproved portion of the site, the proposed development can be found consistent with Section 30240 of the Coastal Act and the LUP's ESHA protection policies.

## 2. 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.

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. All public comments received to date have been addressed in the findings above. All above Coastal Act findings are incorporated herein in their entirety by reference.

As such, there are no additional feasible alternatives nor feasible mitigation measures available which would substantially lessen any significant adverse environmental effects which approval of the proposed project, as modified, would have on the environment within the meaning of CEQA. Thus, if so modified, the proposed project will not result in any significant environmental effects for which feasible mitigation measures have not been employed consistent with CEQA Section 21080.5(d)(2)(A).



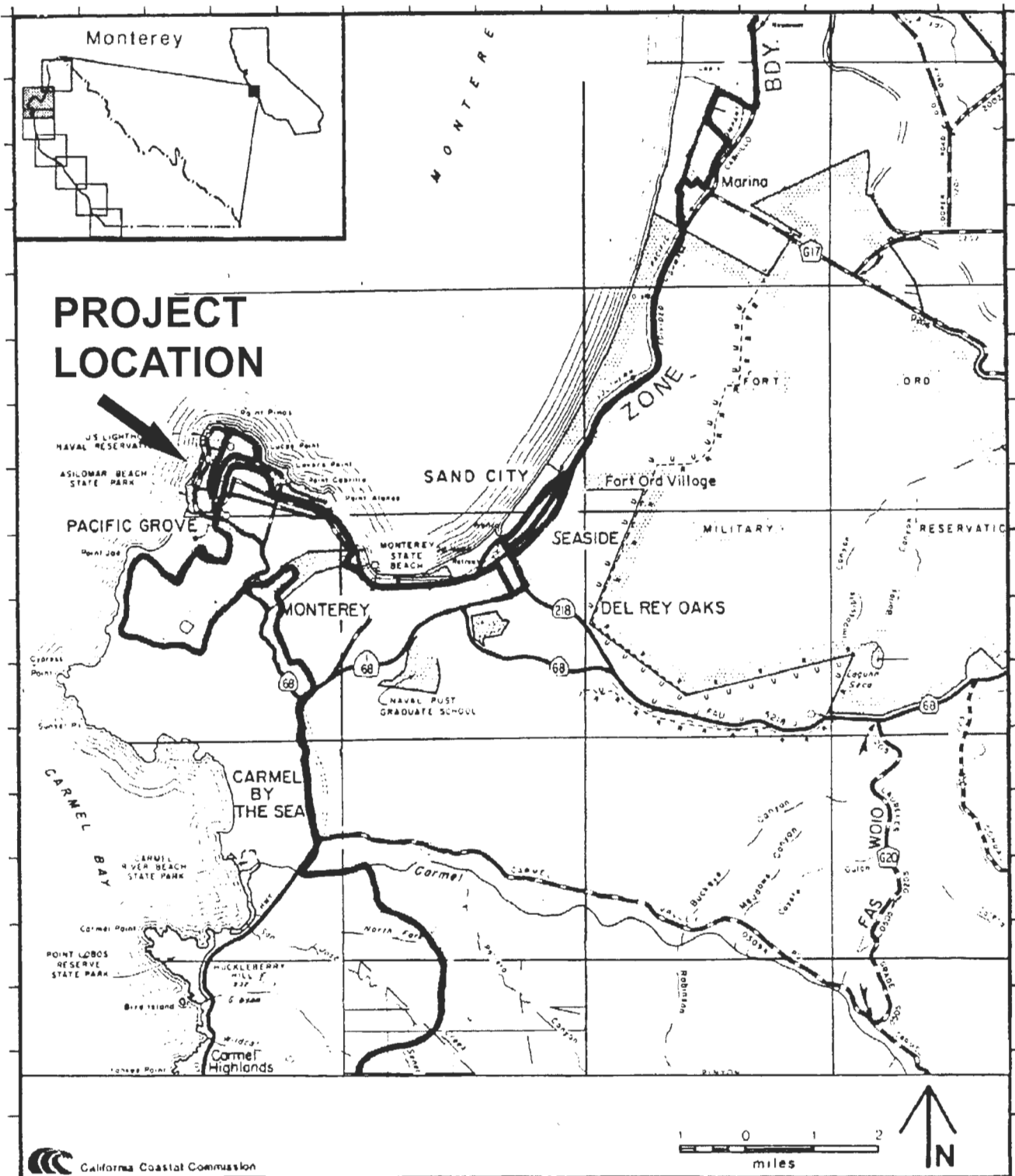


Exhibit A  
Regional Location Map  
Fisher Restoration  
3-05-028

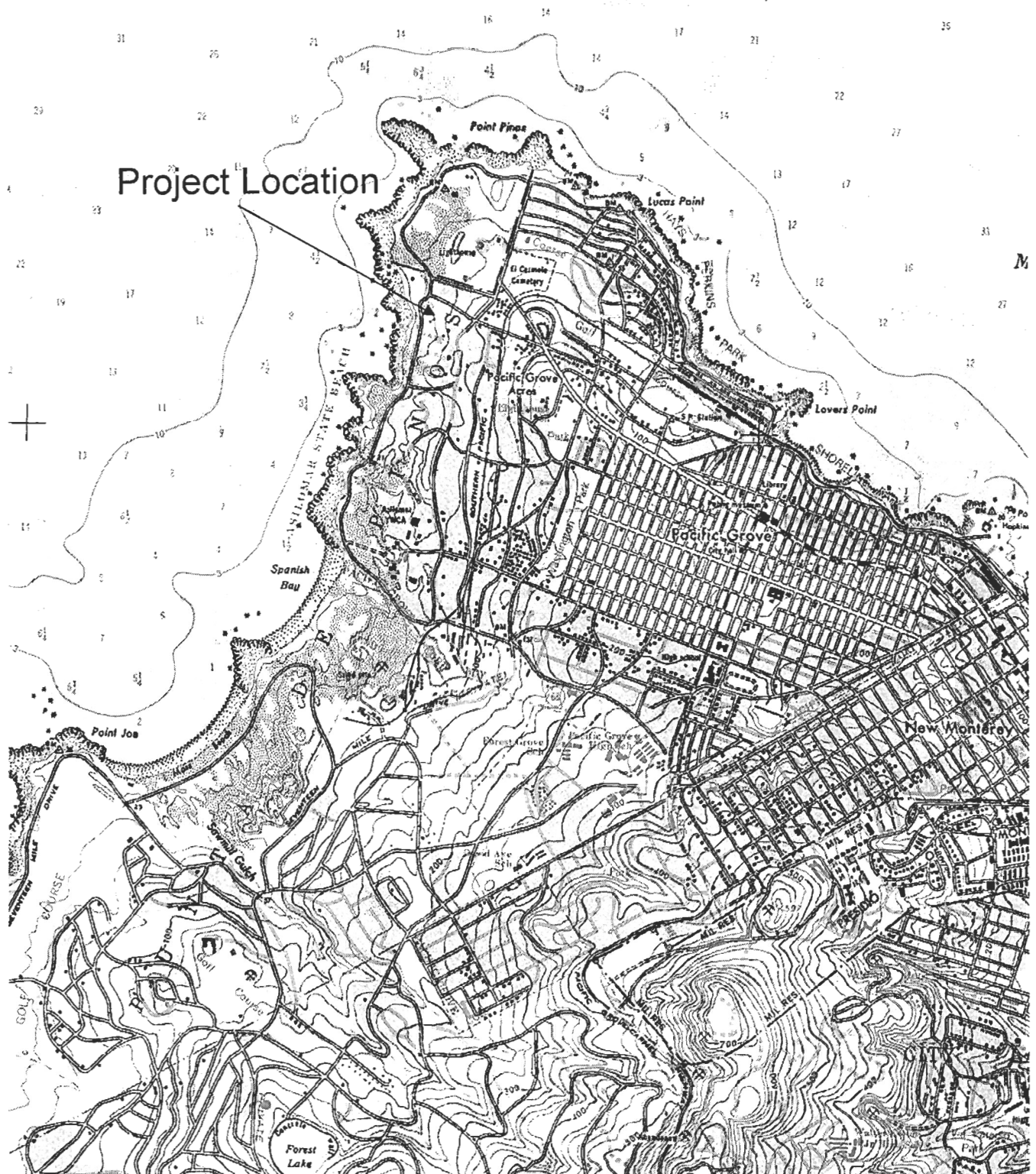
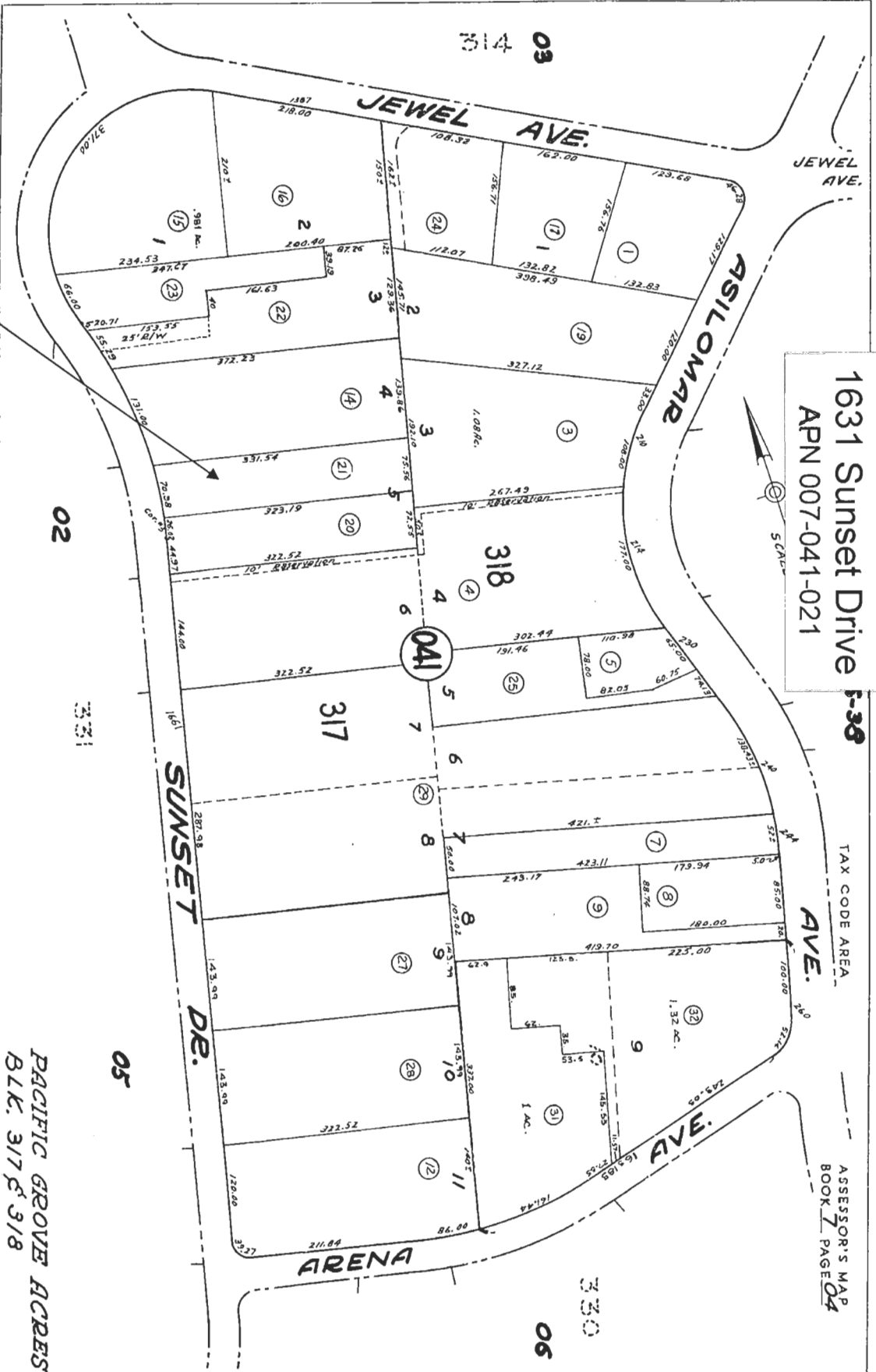


Exhibit A  
Project Vicinity Map  
Fisher Restoration  
3-05-028

Fisher Residence  
 1631 Sunset Drive  
 APN 007-041-021

TAX CODE AREA

ASSESSOR'S MAP  
 BOOK 7 PAGE 04



Project Site

PACIFIC GROVE ACRES  
 B/LK. 317 & 318

Exhibit A  
 Assessors Parcel Map  
 Fisher Restoration  
 3-05-028

*THOMAS K. MOSS*  
*Coastal Biologist*

**RECEIVED**

APR 01 2005

CALIFORNIA  
COASTAL COMMISSION  
CENTRAL COAST AREA

## **LANDSCAPE RESTORATION PLAN**

**FISHER RESIDENCE  
1631 SUNSET DRIVE, PACIFIC GROVE  
(APN 007-041-021)**

**Owners:**

**Duke and Laura Fisher  
1631 Sunset Drive  
Pacific Grove, CA 93950**

**October 11, 2004**

*Revised 3/21/05*

**CCC Exhibit B**  
**(page 1 of 15 pages)**

*3-05-028*

**THOMAS K. MOSS**  
**Coastal Biologist**

Date: March 22, 2005

Subject: Revised Landscape Restoration Plan

Property Owner: Dr. Duke and Laura Fisher

Property Address: 1631 Sunset Drive  
Pacific Grove, CA 93950  
(APN 007-041-021)

To Whom It May Concern:

Based on a preliminary review of the proposed Landscape Restoration Plan (October 11, 2004) by Coastal Commission staff for 1631 Sunset Drive, Pacific Grove, the myoporum shrubs and other exotic plants in the front yard (on the west side of the residence) will be removed and replaced with appropriate native Asilomar dune plant species, as specified in Figure 2. (Landscape Plan – Revised 3/21/05) (attached). The Landscape Restoration Plan is therefore revised to reflect this change.

Sincerely,



Cc: Laura Fisher

**CCC Exhibit** B  
**(page** 2 **of** 15 **pages)**  
3-05-028

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**LANDSCAPE RESTORATION PLAN  
FISHER RESIDENCE  
1631 SUNSET DRIVE, PACIFIC GROVE  
(APN 007-041-021)**

**I. INTRODUCTION**

This Landscape Restoration Plan was requested by Mrs. Laura Fisher and Dr. Duke Fisher, owners of the subject property at 1631 Sunset Drive in Pacific Grove (Figure 1). The purpose of this landscape plan is to help facilitate resolution of a violation that occurred when construction of a new driveway began without first securing a Coastal Development Permit from the California Coastal Commission and a building permit from the City of Pacific Grove. Specifically, this landscape plan proposes to 1) identify a procedure for restoring habitat damaged from unauthorized grading of a new driveway and 2) identify appropriate compensation for mitigating impacts that resulted from construction.

The property is located in the Asilomar Dunes, an area comprised of environmentally sensitive habitat that contains a number of rare and endangered species. As such, the Pacific Grove Local Coastal Program Land Use Plan requires all property owners to submit plans for review to the Pacific Grove Community Development Department and the California Coastal Commission prior to approval and the start of construction for projects that include construction of new buildings, expansion or remodel of existing buildings, grading, and any other activity that could disturb or result in removal of existing natural vegetation.

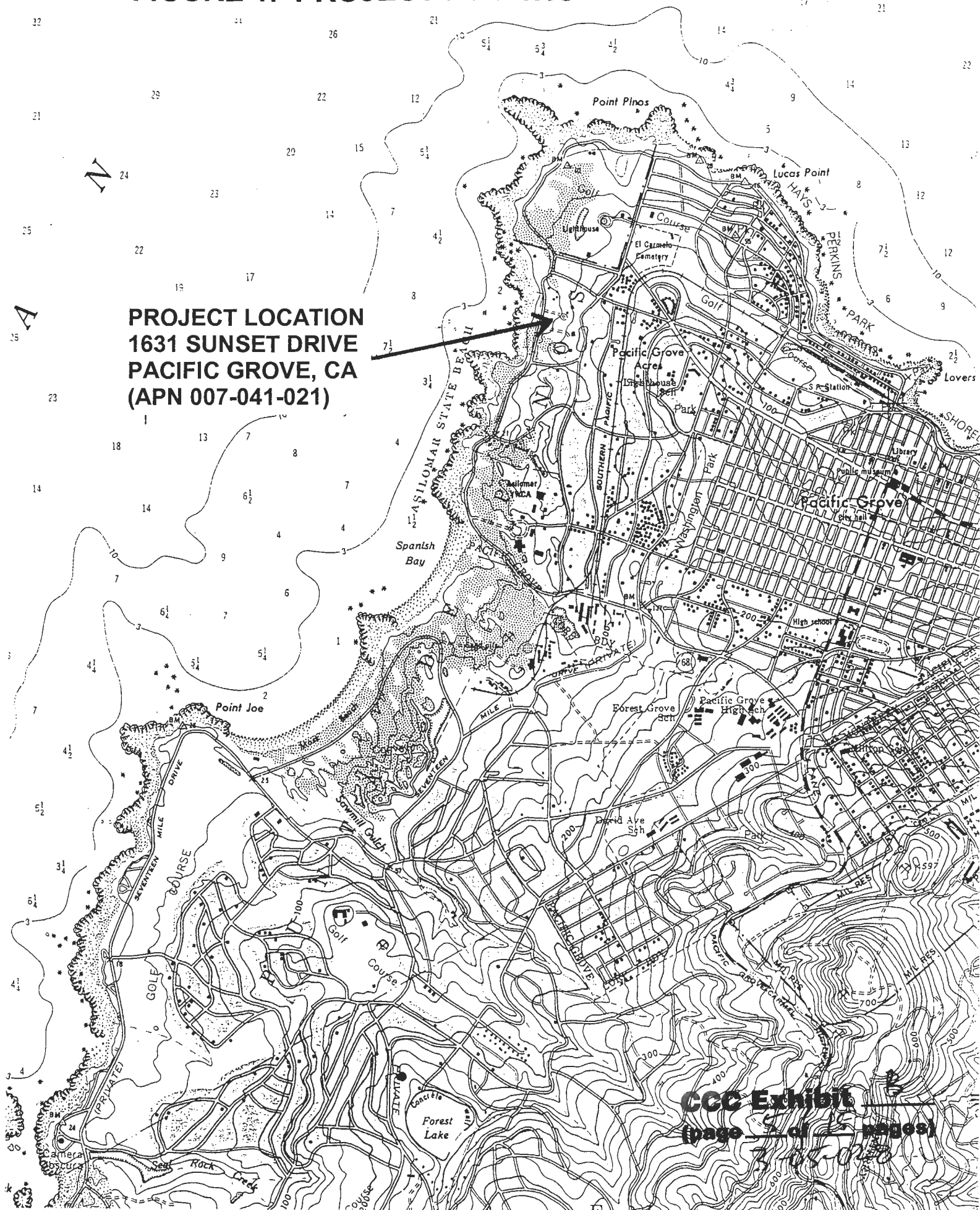
In about April 2004, unauthorized construction began on a new driveway on the subject property. Prior to the work being stopped by the Coastal Commission, the footprint for the new driveway was graded and the excavation spoils were stockpiled on the south side of the house. The area affected by the grading supported a dense cover of various plants that are common in the dune swales of the Asilomar Dune system, including sedges and rushes mixed with coyote brush and yellow bush lupine. Because of the habitat type, it is extremely unlikely that any listed rare plants were affected by the construction. However, because the impacted area represents high-quality habitat for the Black legless lizard (*Anniella pulchra nigra*), a reptile designated by the California Department of Fish and Game as a "California Special Concern Species," it is very likely that some of these lizards were harmed by the work.

The property owners have been directed by the Coastal Commission to prepare a landscape plan for restoring the areas impacted by the unauthorized grading and to identify additional areas on-site to be restored as compensation for the damage. This report satisfies that requirement.



# FIGURE 1. PROJECT LOCATION

**PROJECT LOCATION**  
**1631 SUNSET DRIVE**  
**PACIFIC GROVE, CA**  
**(APN 007-041-021)**



The amount of area impacted by unauthorized grading of the driveway is approximately 1,700 square feet, including 1,500 square feet for the driveway and 200 square feet for the stockpile of excavation spoils.

According to staff of the Coastal Commission, resolution of the violation will require both restoration of the area impacted by the unauthorized driveway and restoration of additional area on the property that equals three times the amount of area impacted by unauthorized grading. This 3 to 1 mitigation/compensation standard has been applied in the past elsewhere in the Asilomar Dunes for similar violations involving unauthorized grading (Spanish Bay Resort and 1725 Sunset Drive). Applying this standard to the subject property will require restoration of an additional 5,100 square feet of native dune habitat on the property, resulting in a total of 6,800 square feet, including the areas impacted by the unauthorized grading.

Figure 2 provides a landscape plan for guiding restoration of the property and resolving this violation. Areas to be restored are delineated in the landscape plan. Restoration procedures and planting specifications are listed for each area.

## **II. RESTORATION GOAL AND OBJECTIVES**

The goal of this Landscape Restoration Plan is to provide procedures and standards for successfully restoring, maintaining and monitoring the indigenous landscape in the areas identified in Figure 2. Relatively undisturbed or "natural" examples of the native plant community that once covered the entire project site remain on some parts of the property and across the street in Asilomar State Beach and Conference Grounds. These areas will serve as models for guiding restoration and maintenance of the native landscape on the property.

Specific objectives for accomplishing the project goal are as follows:

- Revegetate designated areas on the property with an array of native species, establishing a landscape type that is self-sustaining and representative of the project site's native plant community in terms of species composition, percent relative composition and total percent cover.
- Eradicate and control exotic vegetation.
- Prevent damage to the native landscape resulting from human and pet activity.
- Maintain and enhance the existing coniferous forest tree cover.
- Carryout a monitoring program based on quantitative and qualitative standards.
- Establish a long-term management program for maintaining and preserving the undeveloped portion of the property in a natural state.

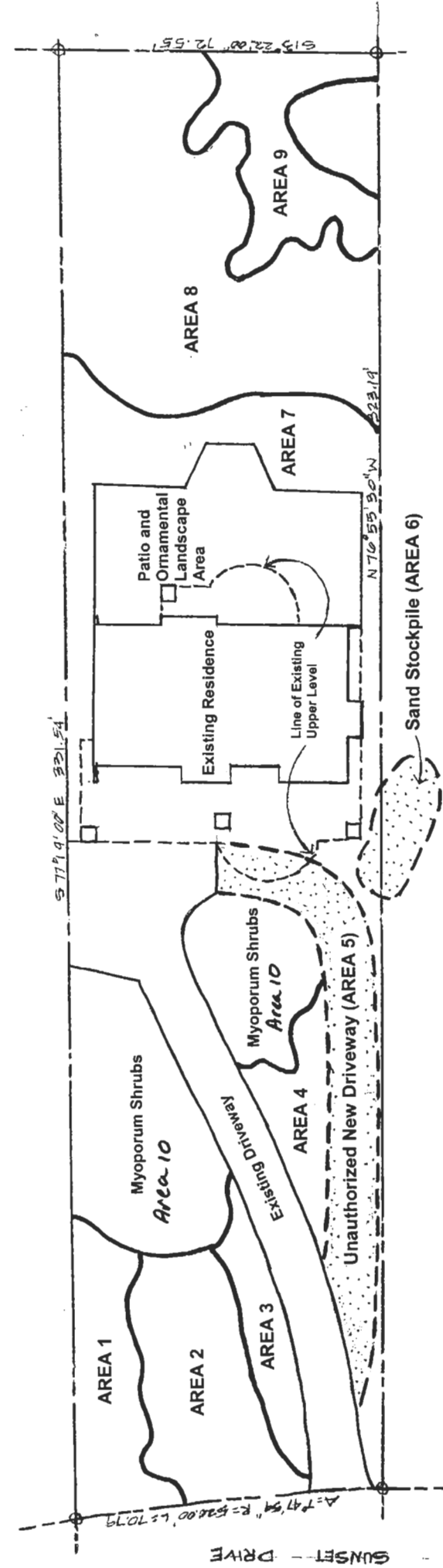
## **III. RESTORATION PROCEDURE**

The following provides descriptions of specific management techniques that will be used to meet the objectives of this restoration project. Implementation of this project will be monitored by a qualified biologist (Project Biologist) approved by the Coastal Commission or the Pacific Grove Community Development Department.

**CCC Exhibit** B  
**(page 6 of 15 pages)**

3-05-028

FIGURE 2. LANDSCAPE PLAN (Revised 3/21/05)



KEY TO RESTORATION AREAS

Restoration Area	Existing Conditions	Size of Area (square feet)	Restoration Procedure
1	Ice plant and native plants mix	750	Remove ice plant (no planting needed)
2	Mowed native plants and annual weeds	1,000	Stop mowing, control weeds and plant appropriate native plants
3	Raked sand area and various ornamental plants	560	Remove exotic plants and plant appropriate native plants
4	Various ornamental plants	182	Remove exotic plants and plant appropriate native plants
5	Bare sand (graded driveway)	1,500	Refill with stockpiled sand and replant with appropriate native plants
6	Bare sand (sand stockpile)	200	Remove sand and replant with appropriate native plants
7	Ice plant mat	960	Remove ice plant and replant with appropriate native plants
8	Native plants and scattered ice plant	748	Remove ice plant (no planting needed)
9	Ice plant mat	900	Remove ice plant and replant with appropriate native plants
10	Myoporum and other exotics	1,800	Remove myoporum and other exotics and replant appropriate native plants.

SITE STATISTICS

Area impacted by driveway construction	1,700 sq. ft.
3:1 mitigation/compensation area(s)	5,100 sq. ft.
Restoration areas (1, 2, 3, 4, 7, 8, 9, 10)	6,400 sq. ft.
Total area to be restored	8,600 sq. ft.

SELECTED PLANT SPECIES FOR REVEGETATION

BOTANICAL NAME	(%)	(#)	(Spacing)
Yarrow ( <i>Achillea millefolium</i> )	18%	148	1' 1'
Pink sand verbena ( <i>Abronia umbellata</i> )	0	0	seed
Beach sagewort ( <i>Artemisia pycnocephala</i> )	8%	58	6"
Coyote brush ( <i>Baccharis pilularis pilularis</i> )	10	140	1' 1'
Dune sedge ( <i>Carex pansa</i> )	18%	148	1' 1'
Seaside daisy ( <i>Erigeron glaucus</i> )	18%	148	2'
Mock heather ( <i>Ericameria ericoides</i> )	10	140	5"
Dune gum plant ( <i>Grindelia latifolia</i> spp. <i>platyphylla</i> )	8%	58	3'
Douglas iris ( <i>Iris douglasiana</i> )	1	1	16'
Monterey pine ( <i>Pinus radiata</i> )	1	1	10-40'
TOTALS	100	1400	1452

\* Monterey cypress (*Cupressus macrocarpa*) is not available for Monterey pine, if pitch canker-resistant Monterey pines are not available.

CCCC Exhibit

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

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

### **1. Native Seed Collection**

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

In order to preserve the genetic integrity of the local flora, all seed for growing plants selected for use in this restoration project will be collected on the project site or, if not available on site, as close as possible to the project site. A total of approximately 10 pounds of seeds will be collected from 10 species, as listed in Table 1.

### **2. Exotic Species Eradication**

Eradicating exotic (non-native) plants and maintaining the landscape in a weed-free condition are primary objectives of this landscape restoration project. Although the property does contain several areas of relatively pristine native plant cover, a significant amount of the property has been converted to ornamental and exotic landscaping, particularly in the front yard (western portion of the property) and in an enclosed backyard area. A number of areas on the property are being overrun by exotic Hottentot fig ice plant (*Carpobrotus edulis*). Large groups of exotic Myoporum shrubs have been established in the front yard to screen the view of the street (Sunset Drive) from the house. Several areas of native plants have been removed in the front yard and replaced with various exotic succulents and ornamental daisy plants. This landscape restoration project proposes to remove the exotic succulents, daisies and ice plant in the front yard and the ice plant in the back and side yards, and replant appropriate native dune plants, as specified in Table 1. The existing Myoporum shrubs in the front yard will be retained.

There are a number of ways to eradicate exotic plants. For this particular project, the most effective approach will be to pull out by hand the various exotic plants and dispose of them in a dumpster. Over the longer-term, it will be vital to the success of this landscape restoration project that exotic seedlings are pulled and removed each year before they flower and produce seeds.

(Revised 3/21/05)

TABLE 1. SELECTED PLANT SPECIES FOR REVEGETATION

BOTANICAL NAME	NURSERY STOCK		
	(%)	(#)	(Spacing)
Yarrow ( <i>Achillea millefolium</i> )	<del>10</del> 9	<del>110</del> 130	1'
Pink sand verbena ( <i>Abronia umbellata</i> )	0	0	seed
Beach sagewort ( <i>Artemisia pycnocephala</i> )	<del>5</del> 4	<del>55</del> 65	3'
Coyote brush ( <i>Baccharis pilularis pilularis</i> )	10	<del>110</del> 146	5'
Dune sedge ( <i>Carex pansa</i> )	<del>45</del> 48	<del>405</del> 695	1'
Seaside daisy ( <i>Erigeron glaucus</i> )	<del>15</del> 13	<del>165</del> 185	2'
Mock heather ( <i>Ericameria ericoides</i> )	10	<del>110</del> 146	5'
Dune gum plant ( <i>Grindelia latifolia</i> spp. <i>platyphylla</i> )	<del>2</del> 4	<del>38</del> 53	3'
Douglas iris ( <i>Iris douglasiana</i> )	1	<del>11</del> 16	3'
Monterey pine ( <i>Pinus radiata</i> )*	1	<del>11</del> 16	10-40'
TOTALS	<u>100</u>	<u><del>1,100</del> 1,452</u>	

\* Monterey cypress (*Cupressus macrocarpa*) may be substituted for Monterey pine, if pitch canker-resistant Monterey pines are not available.

CCC Exhibit B  
(page 9 of 15 pages)  
3-05-028

### 3. Revegetation

Designated areas on the property, as indicated in Figure 2, will be restored according to the specifications and standards defined in this Landscape Restoration Plan.

Only plant species indigenous to the property will be planted. The kind and amount of plants selected for this project have been determined from observations of several relatively undisturbed natural areas, both on the property and across the street in Asilomar State Beach and Conference Grounds.

Restoration of the native plant community on the property is aimed at bringing the landscape back to its "original" condition. Therefore, species composition, percent relative cover and total percent cover will not be manipulated to achieve a particular aesthetic quality or "unnatural" appearance to the landscape.

Several revegetation methods are available for establishing new populations and enhancing existing populations of native vegetation. Based on the relatively small size of the project, planting of nursery stock (container grown plants) will be the revegetation method used for this project.

Nursery stock will be obtained from local nurseries that specialize in the growing of local native species. Most of the plants will be grown from locally collected seeds or cuttings in 7 cubic inch containers (Ray Leach "cone-tainers," called super "stubby" cells). Trees will be planted from one or five gallon containers. Seeds and cuttings from selected species will be provided to the nursery at least six months in advance of the scheduled planting date.

Because of the nature of this landscaping project, it is not possible or desirable to show the precise location of each plant on a landscape drawing or plan, as is typically done for residential landscape projects. To accurately mimic and restore the native plant community, requires that the selected plants be installed in a mixed, random pattern over the project site, according to the quantities and spacing specifications as indicated in Table 1. Following planting, the plants will be allowed to spread or decline in coverage, depending on the suitability of the site for each species. During the first few years after planting, some refining of the landscape may be necessary in order to achieve the stated objectives of the project.

At least 10 Monterey pines will be planted. If pitch canker-resistant Monterey pines are not available, Monterey cypress may be substituted. The average spacing distance between trees will be 25-ft with individual trees planted from ten to 40-ft apart. The trees will be distributed over the entire eastern portion of the property, either in groups or individually, but not concentrated in one or two locations, where the existing trees have died or are declining in health.

Although planting can be done at any time of the year, ideally, it should be initiated in the fall following rainfall that is sufficient to wet the soil. When planting occurs at other times of the year, supplemental watering will be necessary to ensure

successful plant establishment. If planting occurs between May and November, the plants may need to be watered several times per week until winter rains begin, depending on the weather and the condition of the plants.

Plants should be watered immediately following planting using a hand-held hose with a spray nozzle attachment. Depending on weather conditions, periodic watering will be necessary during the first year. Except for the trees, no additional watering should be necessary after the first year. Watering of the trees should continue on a weekly basis through the first two summers following planting. For all of the smaller plants, watering should be discontinued after the first rainy season and the plants allowed to wither and die-back during the summer. Continued watering of any area on the property should be avoided. Sustained application of supplemental water, especially when irrigation systems are used, creates conditions that favor the establishment of various pests and diseases that can negatively affect the native vegetation. In particular, snails greatly benefit from excessive watering around residences, and can cause significant damage to native vegetation.

Installation of the landscape will start either immediately following approval of this project by the Coastal Commission or at the start of the next rainy season. Either way, installation of the landscape is required to be completed within one-year following approval of the project by the Coastal Commission.

Mowing of the native landscape in the front yard will be discontinued. The native landscape will be allowed to grow naturally in an unrestricted manner.

The restored landscape will be monitored and maintained to meet a set of minimum performance standards as listed in Section IV of this plan. Follow-up control of exotic plant seedlings, particularly in the first year after planting, will be a high maintenance priority.

#### **4. Landscape Protection**

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

Specific measures for protecting sensitive species (black legless lizards) and the area surrounding the unauthorized driveway are necessary when heavy equipment is operating on the property, as follows:

- Prior to the start of re-grading activity, the sand pile and the footprint of the excavated area will be searched for black legless lizards. If any lizards are encountered they will be captured and released into suitable habitat immediately adjacent to the construction area.
- Prior to the start of re-grading activity, a guideline fence will be installed by the Project Biologist along the edge of the excavated area and around the

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(page 11 of 15 pages)  
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sand pile, to protect vegetation growing outside of the construction area from damage by heavy equipment.

- Prior to the start of re-grading activity, a pre-construction meeting will be arranged by the property owner, attended by the property owner, the general contractor and the Project Biologist. The meeting shall occur just prior to the start of grading.
- Re-grading of the excavated area will be monitored by the Project Biologist and will be accomplished to the complete satisfaction of the Project Biologist, who shall be present during all grading activity.

To protect young trees from damage by deer or from being blown over by wind, wire fencing and tree stakes will be needed around the trees until they are at least 2-inches in diameter.

## **5. Maintenance**

Maintenance refers to those activities that are necessary to ensure that the project objectives are achieved, including: 1) periodic removal of invasive, exotic plants; 2) revegetation of areas where damage has occurred or plant cover deficiencies are identified; 3) prevention of damage to plants from trampling and deer, and; 4) ensuring adequate care for all trees.

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

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

Mowing of the native landscape in the front yard will be discontinued, and the native landscape will be allowed to grow naturally in an unrestricted manner.

## **6. Monitoring**

Monitoring is necessary to ensure that restoration of the native landscaped is achieved according to the specifications and standards of this Landscape

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Restoration Plan, as required by the Coastal Commission. Monitoring of the landscape will be done to achieve short-term and long-term goals and objectives, as follows: 1) on a daily basis during implementation; 2) on a weekly basis for the first three months after plant installation is completed; 3) on a monthly basis up until one year following completion of plant installation, and; 3) annually for five years following completion of plant installation.

A qualified coastal biologist will be retained by the property owner to guide and monitor implementation of this Landscape Restoration Plan for at least five years, as required by the Coastal Commission. The five-year monitoring period will begin after installation of the landscape is satisfactorily completed.

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

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

#### **IV. MONITORING STANDARDS**

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

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

- Density (Native perennial species only): Average 1 plant per 9 square feet
- Percent total cover (Perennial native species only):
  - 1 year: 25%
  - 2 years: 55%
  - 3 to 5 years: 85%
- Percent relative cover: All species are within normal range.
- Composition: 10 native perennial species.

- Health and vigor: Plants are in good health, exhibit normal flowering, and damage from people, deer or pets is negligible.
- Exotic species: Non-indigenous plants are few in numbers and not evident.
- Monterey pine or Monterey cypress: No less than 10 planted, surviving trees. Trees protected from deer damage.
- Erosion: Not evident.

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

## V. PROJECT IMPLEMENTATION AND MONITORING SCHEDULE

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

Implementation of this landscape restoration project, including exotic species eradication and landscape installation, will be completed within one year after construction is completed. The project biologist will provide to the City of Pacific Grove and the Coastal Commission a letter certifying that installation of the landscape has been satisfactorily completed.

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

Implementation of this Landscape Restoration Plan will be accomplished according to the schedule shown in Table 2.

Modification of the provisions of this Landscape Restoration Plan will be allowed only with written approval from the California Coastal Commission.

Prepared By:  Date: 10/11/04

**TABLE 2. IMPLEMENTATION SCHEDULE**

<b>TASKS</b>	<b>TIMING</b>
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	Prior to start of construction
Install temporary fencing	Prior to start of construction
Survey for black legless lizards	Immediately prior to start of construction
Monitor construction	Daily until construction completed
Broadcast seeds and install nursery plants	Immediately following construction, preferably from December to May
Begin five-year monitoring program and notify (letter) the City of Pacific Grove and the Coastal Commission	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



Fisher Residence  
1531 Sunset Drive  
APN 005-041-021

Area of dune disturbance

Approximate extent  
of property lines.

Sunset Drive

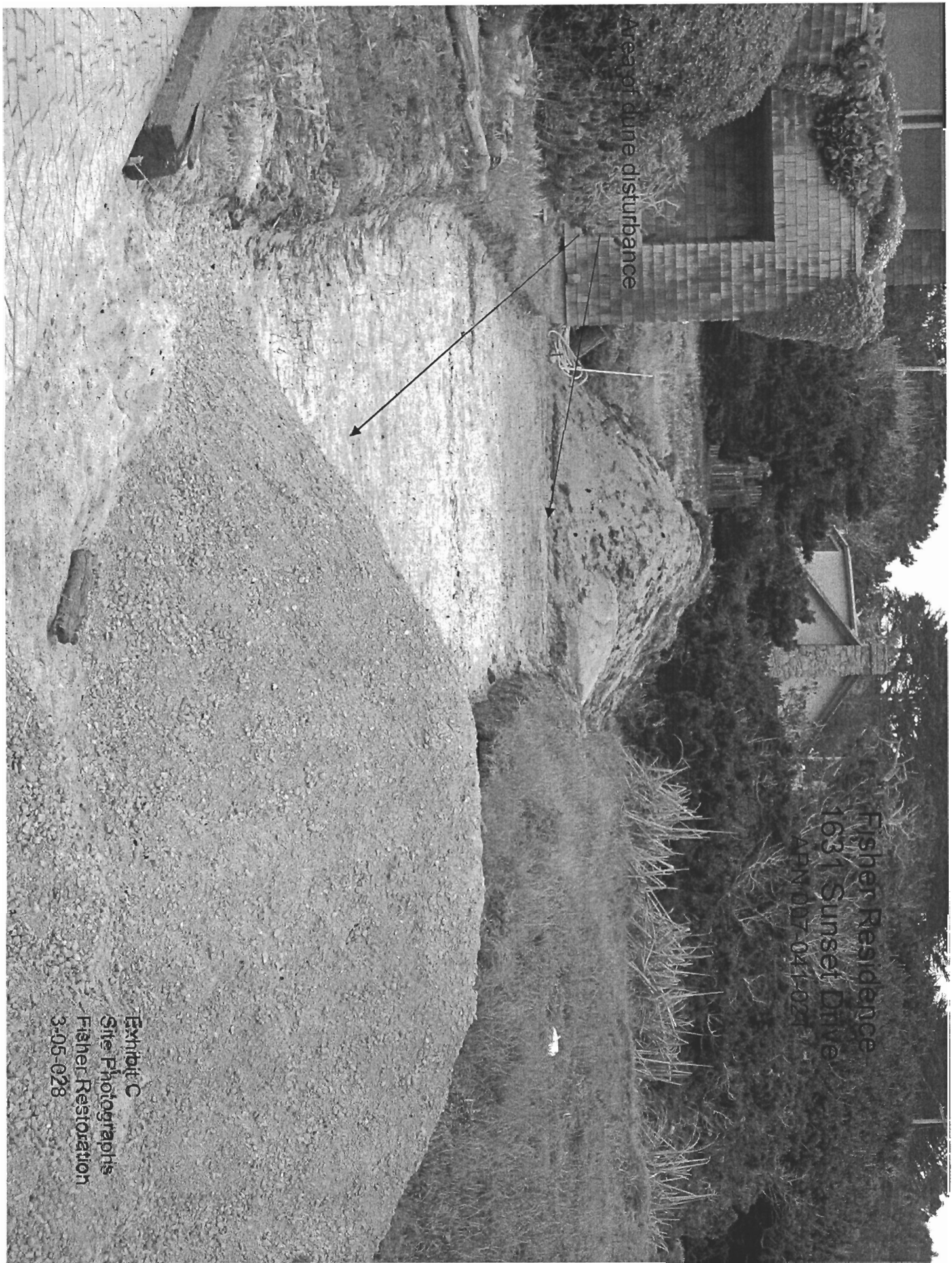
Exhibit C  
Site Photographs  
Fisher Restoration  
3-05-028



Area of dune disturbance

Fisher Residence  
1631 Sunset Drive  
APN 007-041-024

Exhibit C  
Site Photographs  
Fisher Restoration  
3-05-028



**RECORDING REQUESTED BY**  
First American Title Company

**AND WHEN RECORDED MAIL TO:**  
**California Coastal Commission**  
**45 Fremont St., Suite 2000**  
**San Francisco, CA 94105-2219**

CERTIFIED A TRUE COPY OF THE ORIGINAL  
RECORDED IN THE OFFICIAL RECORDS OF  
*Monterey* COUNTY ON *8-23-06*  
UNDER RECORDERS SERIES NO. *2006074224*  
FIRST AMERICAN TITLE INS. CO.  
BY *Maureen Russell*

Space Above This Line for Recorder's Use Only

A.P.N.: 007-041-021-000

**DEED RESTRICTION**

Document Title

THE PURPOSE OF RE-RECORDING THIS DOCUMENT  
IS AS FOLLOWS:

1. CORRECT THE LEGAL DESCRIPTION OF THE PROPERTY ATTACHED AS EXHIBIT "A" TO THE DOCUMENT
2. REMOVE COPY OF GRANT DEED RECORDED IN REEL 2275 PAGE 796, WHICH IS NOT PART OF THE DOCUMENT AND SHOULD NOT HAVE BEEN INCORPORATED
3. REMOVE COPY OF GRANT DEED RECORDED IN REEL 2683 PAGE 395, WHICH IS NOT PART OF THE DOCUMENT AND SHOULD NOT HAVE BEEN INCORPORATED
4. REMOVE FIRST AMENDED DECLARATION OF TRUST OF DUKE D. FISHER 1990 REVOCABLE TRUST WHICH IS NOT PART OF THE DOCUMENT AND SHOULD NOT HAVE BEEN INCORPORATED

SEPARATE PAGE PROVIDED TO COUNTY OF MONTEREY DEED 27361.6

**CCC Exhibit**  
**(page 1 of 10 pages)**

*3-05-028*

1 RECORDING REQUESTED BY:

2  
3 WHEN RECORDED MAIL TO:  
4 California Coastal Commission  
5 45 Fremont St., Suite 2000  
6 San Francisco, CA 94105-2219  
7 Attn: Legal Division

DOCUMENT: **2005065996**



Titles: 1/ Pages: 12

Fees	41.00
Taxes	
Other	4.00
AMT PAID	\$45.00

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### DEED RESTRICTION

I. WHEREAS, Duke D. Fisher, Trustee of Duke D. Fisher 1990 Revocable Trust

, (hereinafter referred to as "Owner(s)," is/are the record owner(s) of the following real property:

See Exhibit A attached hereto and incorporated by reference,

(hereinafter referred to as the "Property"); and

II. WHEREAS, the California Coastal Commission, (hereinafter referred to as the "Commission"), and its Executive Director are acting on behalf of the People of the State of California; and

III. WHEREAS, the subject property is located within the coastal zone as defined in Section 30103 of the California Coastal Act of 1976 (codified as Division 20 of the California Public Resources Code; hereinafter referred to as the "Act"); and

IV. WHEREAS, pursuant to section 30600 of the Act, Owner(s) submitted to the Commission Application No. 3-05-028 (hereinafter, "the Application") for a coastal development permit (hereinafter, "CDP") to undertake certain development, as defined in section 30106 of the Act, on the Property; and

V. WHEREAS, the Owner's(s') development proposal includes as one of its components the recordation of this Deed Restriction; and

VI. WHEREAS, pursuant to section 30624.7 of the Act, the Executive Director of the Commission has determined that the Owner's development proposal qualifies for a waiver of any

**CCC Exhibit D**  
**(page 2 of 10 pages)**  
3-05-028

1 otherwise applicable requirement for a CDP (hereinafter, "Waiver"); and

2 VII. WHEREAS, the Executive Director of the Commission has determined that but for the  
3 recordation of this Deed Restriction the proposed development could not be found to qualify for a  
4 Waiver; and

5 VIII. WHEREAS, Owner has elected to execute and record this Deed Restriction so as to  
6 induce the Executive Director of the Commission to grant a Waiver for the development Owner wishes  
7 to undertake.

8 NOW, THEREFORE, in consideration of the granting of the Waiver to Owner(s) by the  
9 Executive Director of the Commission, Owner(s) hereby irrevocably covenant(s) with the Commission  
10 that there be and hereby is created the following restrictions on the use and enjoyment of said Property,  
11 to be attached to and become a part of the deed to the property.

12 1. COVENANT, CONDITION, AND RESTRICTION. The undersigned Owner(s), for  
13 himself/herself/themselves and for his/her/their heirs, assigns, and successors in interest, covenants and  
14 agrees that:

- 15 a. RESTRICTED AREA. The restrictions contained herein shall apply to those portions of the  
16 Property depicted on the site plan attached as Exhibit "B" and incorporated by reference  
17 (hereinafter, the "Restricted Area").
- 18 b. FURTHER DEVELOPMENT PROHIBITED. Owner shall undertake no further  
19 development, as the term is defined in section 30106 of the Act, attached as Exhibit "C" and  
20 incorporated by reference, in the Restricted Area other than restoration, maintenance, and  
21 monitoring of the site as authorized under the approved Landscape Restoration Plan and the  
22 placement, maintenance, and repair of underground utilities provided that measures are taken  
23 to avoid and minimize any significant adverse impacts to the native dune habitat that may  
24 arise from said activity.
- 25 c. NATURAL GROUND COVER AND WILDLIFE. Except as described in the Application  
26 and the landscape restoration plan prepared by Thomas K. Moss and dated Revised 3/21/05,  
27 no native vegetation or wildlife located in the Restricted Area shall be removed or disturbed.



1 Planting of non-native, ornamental or invasive plant species in the Restricted Area shall be  
2 prohibited.

- 3 d. MAINTENANCE OF LANDSCAPING. All vegetation placed within the Restricted Area in  
4 accordance with the landscape restoration plan referenced in the preceding paragraph, shall  
5 be maintained in a healthy growing condition for the duration of the Deed Restriction  
6 consistent with the provisions of Section 2 below.

7 2. DURATION. This Deed Restriction shall remain in full force and effect during the  
8 period that the Waiver remains effective, and during the period that the development authorized by the  
9 Waiver, remains in existence in or upon any part of, and thereby confers benefit upon, the Property  
10 described herein, and shall bind Owner(s) and all his/her/their assigns or successors in interest.

11 3. TAXES AND ASSESSMENTS. It is intended that this Deed Restriction is irrevocable  
12 and shall constitute an enforceable restriction within the meaning of a) Article XIII, § 8, of the  
13 California Constitution; and b) § 402.1 of the California Revenue and Taxation Code or successor  
14 statute. Furthermore, this Deed Restriction shall be deemed to constitute a servitude upon and burden  
15 to the Property within the meaning of § 3712(d) of the California Revenue and Taxation Code, or  
16 successor statute, which survives a sale of tax-deeded property.

17 4. RIGHT OF ENTRY. The Commission or its agent may enter onto the Property at times  
18 reasonably acceptable to Owner(s) to ascertain whether the use restrictions set forth above are being  
19 observed.

20 5. REMEDIES. Any act, conveyance, contract, or authorization by Owner(s) whether  
21 written or oral which uses or would cause to be used or would permit use of the Property contrary to the  
22 terms of this Deed Restriction will be deemed a violation and a breach hereof. The Commission and  
23 Owner(s) may pursue any and all available legal and/or equitable remedies to enforce the terms and  
24 conditions of this Deed Restriction. In the event of a breach, any forbearance on the part of either party  
25 to enforce the terms and provisions hereof shall not be deemed a waiver of enforcement rights regarding  
26 any subsequent breach.  
27

1           6.     SEVERABILITY. If any provision of these restrictions is held to be invalid, or for any  
2 reason becomes unenforceable, no other provision shall be affected or impaired.  
3

4  
5           Dated: 5/6, 2005  
6

7  
8           Signed: 

Signed: \_\_\_\_\_

9                     Duke Fisher MD

PRINT OR TYPE NAME OF ABOVE

PRINT OR TYPE NAME OF ABOVE

10                    Trustee of Duke & Fisher

11                    1990 Revocable Trust  
12  
13

14           \*\* NOTARY ACKNOWLEDGMENT ON THE NEXT PAGE \*\*  
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1 STATE OF CALIFORNIA

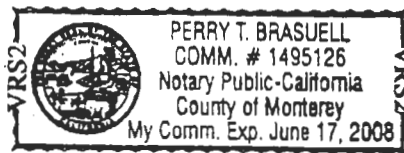
2 COUNTY OF MONTEREY

3  
4 On MAY 6, 2005, before me, PERRY T. BRASUELL, a Notary Public personally  
5 appeared DUKE D. FISHER, personally known to me (or proved to me on the  
6 basis of satisfactory evidence) to be the person(s) whose name(s) is/~~are~~ subscribed to the within  
7 instrument and acknowledged to me that he/~~she~~/~~they~~ executed the same in his/~~her~~/~~their~~ authorized  
8 capacity(~~ies~~), and that by his/~~her~~/~~their~~ signature(s) on the instrument the person(s), or the entity upon  
9 behalf of which the person(s) acted, executed the instrument.

10  
11 WITNESS my hand and official seal.

12  
13 Signature

Perry T. Brasuell



14  
15 STATE OF CALIFORNIA

16 COUNTY OF \_\_\_\_\_

17  
18 On \_\_\_\_\_, before me, \_\_\_\_\_, a Notary Public personally  
19 appeared \_\_\_\_\_, personally known to me (or proved to me on the  
20 basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within  
21 instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized  
22 capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon  
23 behalf of which the person(s) acted, executed the instrument.

24  
25 WITNESS my hand and official seal.


26  
27 Signature \_\_\_\_\_

5  
**CCC Exhibit** D  
**(page** 6 **of** 10 **pages)**  
3-05-028

1 This is to certify that the deed restriction set forth above is hereby acknowledged by the  
2 undersigned officer on behalf of the Executive Director of the California Coastal Commission pursuant  
3 to authority conferred by Section 30624.7 of the California Coastal Act and the Executive Director  
4 consents to recordation thereof by its duly authorized officer.

5  
6 Dated: June 22, 2005

7 CALIFORNIA COASTAL COMMISSION

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9  
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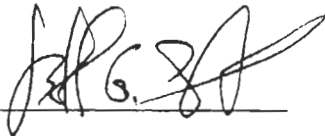
11  
12 STATE OF CALIFORNIA

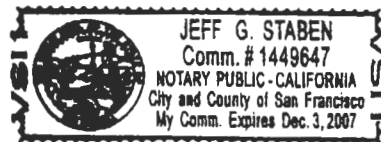
13 COUNTY OF SAN FRANCISCO

14  
15 On 06/22/05, before me, Jeff G. Staben, a Notary Public, personally  
16 appeared John BOWERS, personally known to me (or proved to me on the basis of  
17 satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and  
18 acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and  
19 that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the  
20 person(s) acted, executed the instrument.

21  
22 WITNESS my hand and official seal.

23  
24 Signature





25  
26  
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CCC Exhibit 17  
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3-05-028

### Exhibit "A" PROPERTY DESCRIPTION

Real property in the City of Pacific Grove, County of Monterey, State of California, described as follows:

BEGINNING AT CORNER NO. 3, IN BLOCK 317, IN THE CITY OF PACIFIC GROVE, COUNTY OF MONTEREY, STATE OF CALIFORNIA, AS SHOWN ON THE MAP OF PACIFIC GROVE ACRES, FILED JUNE 2, 1919, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, IN BOOK 3, PAGE 13 OF MAPS OF CITIES AND TOWNS; THENCE

(1) NORTHERLY, CURVING TO THE LEFT, 96.80 FEET ON THE ARC OF A CURVE OF 520 FEET RADIUS (LONG CHORD BEARS NORTH 8° 02' EAST, 96.66 FEET); THENCE

(2) SOUTH 77° 19' EAST, 331.54 FEET; THENCE

(3) SOUTH 13° 22' WEST, 145.11 FEET; THENCE

(4) NORTH 76° 38' WEST, 322.52 FEET; THENCE

(5) NORTH 13° 22' EAST, 44.97 FEET TO THE POINT OF BEGINNING; CONTAINING 1.066 ACRES, MORE OR LESS, AND BEING PORTIONS OF SAID BLOCK 317 AND DEL MAR AVENUE, NOW ABANDONED.

EXCEPTING THEREFROM ALL THAT PORTION CONVEYED TO JAMES Q. BRETT, ET UX, DATED FEBRUARY 17, 1956 AND RECORDED MARCH 20, 1956 IN VOLUME 1692, OFFICIAL RECORDS OF MONTEREY COUNTY AT PAGE 60.

APN: 007-041-021-000

**EXHIBIT B. RESTRICTED AREA (LANDSCAPE RESTORATION AREA)**

3-05-028



### Restricted Area

The Restricted Area shall be protected, maintained and monitored consistent with the provisions of the submitted Landscape Restoration Plan (as revised, 3/21/05). No removing, mowing or disturbing of the native plant vegetation is permitted.

## Exhibit C

### Definition of Development

#### Section 30106: Development

"Development" means, on land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land, including lot splits, except where the land division is brought about in connection with the purchase of such land by a public agency for public recreational use; change in the intensity of use of water, or of access thereto; construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private, public, or municipal utility; and the removal or harvesting of major vegetation other than for agricultural purposes, kelp harvesting, and timber operations which are in accordance with a timber harvesting plan submitted pursuant to the provisions of the Z'berg-Nejedly Forest Practice Act of 1973 (commencing with Section 4511).

As used in this section, "structure" includes, but is not limited to, any building, road, pipe, flume, conduit, siphon, aqueduct, telephone line, and electrical power transmission and distribution line.