

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE
725 FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060
427-4863

**Th5e**

RECORD PACKET COPY

STAFF REPORT: APPEAL

SUBSTANTIAL ISSUE AND

DE NOVO HEARING

Filed: 03/23/99
49th day: 05/11/99
180th day: 09/19/99
Staff: SG
Staff report: 04/21/99
Hearing Date: 05/11 - 14/99
Prior Commission Action
Open & Continue: 04/14/98

Appeal number **A-3-SLO-99-025**

Applicant Richard and Patricia Moon

Appellant Pati Hutchinson

Local government San Luis Obispo County

Local decision Approved with conditions, 03/02/99

Project location 3587 Studio Drive, at its southern intersection with Highway One in the southern part of the community of Cayucos in central San Luis Obispo County (APN: 064-446-04).

Project description Addition to existing single family dwelling consisting of a covered porch, first story addition with enclosed entry area, second story sunroom shell enclosure around existing second story deck; and a variance to exceed the Community Small Scale Design Neighborhood residential size limitations.

File documents San Luis Obispo County certified LCP; San Luis Obispo County permit files D970091D and D970092V.

Staff recommendation... **Denial**

Staff Summary: This is an appeal of the County approval for the remodeling of and addition to a single family residence that currently exceeds the Community Small Scale Design Neighborhood residential size limitation by about 734 square feet. The project would add about 615 square feet to the house and consists of a first floor covered porch, enclosed entryway, and sun room, and a second story sunroom created by the enclosure of an existing deck and landing. The purpose of the addition is to reduce the noise level both outside and inside the house that is generated by the freeway that parallels the house immediately behind it. Exterior noise levels were measured at 73 decibels. The County Noise Element identifies 60 decibels as a threshold for exterior noise, with levels exceeding that identified as generally uncomfortable for most people for outdoor activities. **Staff is recommending that the Commission find that substantial issue exists and then deny the coastal development permit for this development.** The primary reason for this recommendation of denial is that there are other

reasonable alternatives that would substantially improve the exterior and interior noise levels and that would not require adding square footage to a house that already exceeds the maximum size allowed under the Community Small Scale Design Neighborhood standards.

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I. SUMMARY OF APPELLANT'S CONTENTIONS

Appellant Pati Hutchinson contends that the County's approval is inconsistent with the LCP for the following reasons (refer to Exhibit 1 for full text):

- ◆ The project would increase the size of an existing, non-conforming structure.
- ◆ The project will be precedent setting and will be detrimental to the small-scale neighborhood.
- ◆ No special circumstances exist that warrant a variance.

II. LOCAL GOVERNMENT ACTION

On October 8, 1998 the San Luis Obispo County Planning Commission denied an application for a Minor Use Permit (coastal development permit) and a variance for first and second story glass room additions totaling 920 square feet. The variance was requested because the addition was proposed to a house that currently exceeds the maximum allowed size under the Community Small-Scale Design Neighborhood standards. The applicant appealed the Planning Commission's action to the Board of Supervisors. On March 2, 1999, the Board of Supervisors approved a Minor Use Permit and variance for a project totaling about 615 square feet consisting of a first floor covered porch, enclosed entryway, and sun room, and a second story

sunroom created by the enclosure of an existing deck and landing. The Commission's ten-working day appeal period for this action began on March 16, 1999 and concluded at 5:00 p.m. on March 29, 1999.

III. STANDARD OF REVIEW FOR APPEALS

Coastal Act section 30603 provides for the appeal of approved coastal development permits in jurisdictions with certified local coastal programs for development that is (1) between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tideline of the sea where there is no beach, whichever is the greater distance; (2) on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, or stream, or within 300 feet of the top of the seaward face of any coastal bluff; (3) in a sensitive coastal resource area; (4) for counties, not designated as the principal permitted use under the zoning ordinance or zoning district map; and (5) any action on a major public works project or energy facility. This project is appealable because it is within 300 feet of the top of the seaward face of the coastal bluff.

For projects such as this one that are not located between the sea and the first public road paralleling the sea, the grounds for an appeal shall be limited to an allegation that the development does not conform to the certified LCP (Coastal Act Section 30603(b)(1)).

Section 30625(b) of the Coastal Act requires the Commission to hear an appeal unless the Commission determines that no substantial issue is raised by the appeal. If the staff recommends "substantial issue," and no Commissioner objects, the substantial issue question will be considered moot, and the Commission will proceed directly to a de novo public hearing on the merits of the project.

If the staff recommends "no substantial issue" or the Commission decides to hear arguments and vote on the substantial issue question, proponents and opponents will have 3 minutes per side to address whether the appeal raises a substantial issue. It takes a majority of Commissioners present to find that no substantial issue is raised. If substantial issue is found, the Commission will proceed to a full public hearing on the merits of the project. If the Commission conducts a de novo hearing on the permit application, the applicable test for the Commission to consider is whether the proposed development is in conformity with the certified Local Coastal Program.

The only persons qualified to testify before the Commission on the substantial issue question are the applicant, persons who made their views known before the local government (or their representatives), and the local government. Testimony from other persons regarding substantial issue must be submitted in writing. Any person may testify during the de novo stage of an appeal.

IV. STAFF RECOMMENDATION ON SUBSTANTIAL ISSUE AND COASTAL DEVELOPMENT PERMIT

A. *Staff recommendation on Substantial Issue:*

Staff recommends that the Commission, after public hearing, determine that a substantial issue exists with respect to the grounds on which the appeal has been filed, because the County has approved the project in a manner that is inconsistent with the certified Local Coastal Program.

Staff recommends a **NO** vote on the following motion. This would result in a finding of substantial issue and bring the project under the jurisdiction of the Commission for hearing and action. To pass the motion, a majority of the Commissioners present is required.

MOTION: *I move that the Commission determine that Appeal No. A-3-SLO-99-025 raises **NO** substantial issue with respect to the grounds on which the appeal has been filed.*

B. *Staff Recommendation on Coastal Development Permit:*

The staff recommends that the Commission, after public hearing, DENY a coastal development permit for the proposed development.

Staff recommends a **NO** vote on the following motion which would result in denial of the proposed development.

MOTION: *I move that the Commission approve a permit for the proposed development.*

Staff recommends that the Commission adopt the following resolution:

Resolution for Denial

The Commission hereby denies a permit for the proposed development on the grounds that the project as approved by San Luis Obispo County is not in conformity with the provisions of the certified Local Coastal Program.

V. RECOMMENDED FINDINGS AND DECLARATIONS

A. **Project Location and Description**

The site of the proposed project is 3587 Studio Drive, at its southern intersection with Highway One in the southern part of the community of Cayucos in central San Luis Obispo County. At this location, Studio Drive traverses a very narrow strip of coastal terrace immediately seaward of the highway. Only the subject parcel, Studio Drive, and a blufftop parcel lie between Highway One and the beach. Farther north along Studio Drive several parcels lie between it and the highway. The Studio Drive neighborhood is one of two Small Scale Design Neighborhoods in

Cayucos. The other is the Pacific Avenue area farther north in the central part of the community.

The main reason for the project is to buffer the south side yard area from the traffic noise on Highway One. The project would also reduce noise levels inside the house. Being at the intersection of Studio Drive and the highway, the south side of the parcel is open to the highway without any buffer against the traffic noise. The project entails a first floor covered porch, enclosed entryway, and sunroom, and a second story sunroom created by the enclosure of an existing deck and landing. The first floor sunroom would allow gardening in a glass-enclosed area that would be buffered from traffic noise. The project as approved by the Board of Supervisors would add about 615 square feet to the house. The house currently is 2816 square feet. The Community Small-Scale Design Neighborhood standards limit the size of houses to a maximum of 55 percent of the lot size. With a lot size of 4340 square feet, the maximum size allowed is 2387 square feet. Therefore, the existing house is a non-conforming structure.

B. Substantial Issue Findings

The Community Small-Scale Neighborhood standards are found in Chapter 8 of the Estero Area Plan portion of the certified LCP. Table 8-1 lists lot sizes in three ranges: 1) up to 2899 square feet, 2) 2900 to 4999 square feet, and 3) 5000 square feet and above. The subject lot, at 4340 square feet, falls into the 2900 to 4999 square foot lot size category in Table 8-1. Residences on lots in that size range are limited to 55 percent of the lot size, or 2500 square feet, whichever is less. If a new house were proposed on the subject lot, its size would be limited to 55 percent of 4340, or 2387 square feet. The existing house is 2816 square feet in size, exceeding the allowed amount by 429 square feet. The project would add another 615 square feet resulting in a total of 3431 square feet, making the house size 1044 square feet over the allowed size. At that size, the house would be about 79 percent of the lot size. Clearly, such an addition could not be allowed without a variance from the Community Small-Scale Neighborhood standards.

The appellant contends that the required findings for approval of a variance cannot be made. Variances may be granted by the review authority when certain findings can be made, as required by Government Code Section 65906, as set forth in Section 23.01.045(d) of the Coastal Zone Land Use Ordinance. The required findings are as follows:

- a. The variance does not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and land use category in which such property is situated; and
- b. There are special circumstances applicable to the property, related only to size, shape, topography, location, or surroundings, and because of these circumstances, the strict application of this title would deprive the property of privileges enjoyed by other property in the vicinity that is in the same land use category; and
- c. The variance does not authorize a use that is not otherwise authorized in the land use category; and
- d. The variance is consistent with the provisions of the General Plan (LCP); and

- e. The granting of such application does not, under the circumstances and conditions applied in the particular case, adversely affect public health or safety, is not materially detrimental to the public welfare, nor injurious to nearby property or improvements.

The Planning Commission found that the findings required for approval of the variance could not be made. Rather, the Planning Commission found that the variance would constitute a grant of special privileges because many other residences located along Highway One have high noise exposure; that there were not sufficient special circumstances related to the parcel's size, topography, or location to justify varying from the size limitation standards and the strict application of the Community Small Scale Design Neighborhood standards would not deprive the property of privileges enjoyed by other property in the vicinity and same land use category because those other properties do not have a similar increase in the permitted square footage; and that granting the variance would not be consistent with the provisions of the LCP, specifically the Community Small Scale Design Neighborhood standards.

On appeal, the Board of Supervisors reversed the Planning Commission decision, made the required findings and approved the variance. Specifically, the Board found that there would be no grant of special privileges because the subject site is "uniquely exposed to both freeway noise and noise from the Studio Drive intersection" and exceeding the maximum allowed gross structural area "is outweighed by the need to provide viable noise mitigation." The Board further found that "[t]he larger than average site involves two lots with the potential for two residences as opposed to one" and that "the larger site offsets the requested increase in square footage, and includes a larger corner-side yard than would normally be required." The Board found that special circumstances applicable to the property did exist in that the "site is exceptionally and uniquely exposed to both freeway noise and noise from the Studio Drive intersection" and that strict application of land use regulations "without noise mitigation, would deprive the property of privileges enjoyed by other property in the vicinity. . . in the same land use category. . . because they have less noise." Finally, the Board found that granting the variance "would not otherwise conflict with the provisions of the Local Coastal Program. . . ."

The Board found that the parcel's location makes it "uniquely exposed to both freeway noise and noise from the Studio Drive intersection." There are more than one dozen stub streets adjacent to the highway between the subject parcel and another Studio Drive/Highway One intersection to the north. Additional houses adjacent to the highway exist between that intersection and the third, most northerly Studio Drive/Highway One intersection. No measurements of noise levels at other sites between Studio Drive and the highway were included in the record. Studio Drive is a two lane, one mile long street serving a residential area. Although no traffic volume on Studio Drive was included in the record, given the length and width of this local street compared to Highway One's four lanes and regional transportation importance, the Studio Drive traffic volume is relatively insignificant. It is doubtful that traffic on Studio Drive is a significant noise generator. Furthermore, that the subject parcel is "uniquely exposed to both freeway noise and noise from the Studio Drive intersection" is questionable because there are other parcels near the middle Studio Drive/Highway One intersection that are situated similarly to the subject parcel.

The Board's finding that it was necessary to exceed the size limitations in order to provide viable noise mitigation apparently was based on the noise study prepared for the project, which states that the most effective way to achieve the requisite noise reduction "is by adding the proposed sun room." The noise study did not discuss alternatives and did not state that the sunroom was the only way to achieve viable noise mitigation. The Board's finding overlooks planning staff's discussion that there were alternatives to the addition that would not require a variance, including an attractively designed solid wall and that "[e]xcavating the side yard a few feet (like a sunken garden) would also improve the situation." These alternatives would provide sound mitigation and would not require a variance from the planning area standards. Planning staff also discussed alternatives that would require a variance, but would be more in keeping with appearance of the neighborhood, including a detached greenhouse. The Board's finding that the strict application of the land use regulations "without noise mitigation, would deprive the property of privileges enjoyed by other property in the vicinity. . . in the same land use category. . . because they have less noise," does not consider that there may be alternatives to the project.

The Board's finding that "[t]he larger than average site involves two lots with the potential for two residences as opposed to one" and that "the larger site offsets the requested increase in square footage, and includes a larger corner-side yard than would normally be required," is inconsistent with the standards of the Community Small Scale Design Neighborhoods (CSSDN) in that the residential size maximums are applicable only to the lot the on which the project is to occur. Regardless of the number of lots owned or their location, the maximum square footage allowed is determined solely by the size of the lot where the project will occur. The absolute maximum size allowed in the CSSDN is 3500 square feet and that is on lots at least 5000 square feet in size. The applicant's lot where the project would occur is 4340 square feet; the maximum allowed on a lot that size is 55 percent of the lot size, or 2500 square feet, whichever is less. As approved, the house would be 3431 square feet in size, well over the maximum allowed for the size of the lot, and just under the absolute maximum for even the largest of lots in this neighborhood. Allowing a non-conforming house to become even more seriously non-conforming could set a precedent for other houses in similar situations and would be injurious to the intent of the CSSDN, which is to maintain a neighborhood of relatively small houses.

Therefore, a substantial issue is raised regarding the consistency of the County's approval with Coastal Zone Land Use Ordinance Section 23.01.045 (Variances) and with the standards of the Community Small Scale Design Neighborhood.

C. Findings for De Novo Hearing and Denial of the Project

The San Luis Obispo County Local Coastal Program (LCP) contains specific policies and standards for the purpose of protecting public views and small-scale neighborhoods. These LCP requirements were adopted in response to the Coastal Act's visual resource protection policies. Specifically, Coastal Act Section 30251 requires the protection of "scenic and visual qualities of coastal areas. . . as a resource of public importance" and requires that "[p]ermitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas. . . ." And, Coastal Act Section 30253 requires that new development must

protect special coastal communities and neighborhoods that are popular recreational destinations.

The County discussed the issue of visual quality and retention of public ocean views as early as 1980 in its Visual and Scenic Resources Study, one of several background studies prepared as part of the LCP development. Subsequently, the County designated portions of Cayucos, including the Studio Drive neighborhood, as Community Small Scale Design Neighborhoods and developed standards to protect visual qualities and maintain the relatively small scale of houses.

As discussed in the Substantial Issue findings above, the project as approved by the Board of Supervisors is inconsistent with the provisions of the certified LCP. The Community Small-Scale Design Neighborhood (CSSDN) standards limit gross structural area in this case to 55 percent of the lot size, or 2500 square feet, whichever is less. The subject lot is 4340 square feet. The gross structural area allowed at 55 percent is 2387 square feet ($0.55 \times 4340 = 2387$). The existing house is 2816 square feet in size or 429 square feet larger than allowed by the CSSDN standards. The applicant proposes a 615 square foot addition, primarily to reduce noise from the Highway One freeway. Any addition to the house would make it non-conforming to an even greater degree and would therefore require a variance.

However, the project approved by the County is not necessarily the only one that could accomplish the applicant's objective. Various combinations of walls, and possibly excavation of the side yard area, could reduce noise from the highway. There has been no showing that the desired result could not be achieved within the bounds of the CSSDN standards. Approval of the project could result in similar requests from other property owners in the CSSDN whose lots abut the freeway. The overall result could be additional massing and destruction of the small-scale nature of the area. The applicant's desire to reduce freeway noise is certainly understandable. However, there are other possible measures that could be taken to reduce the noise that would not require a variance from the CSSDN standards.

Therefore, the Commission finds that the project does not conform with the requirements of the Local Coastal Program and must be denied.

VI. 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 effects 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 for Resources as being the functional equivalent of environmental review under CEQA. Accordingly, the Commission finds that the proposed project could have significant adverse effects on the environment within the meaning of CEQA; that there are feasible alternatives which would significantly reduce the project's adverse effects; and, accordingly, no finding of conformance with CEQA requirements can be made.

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST AREA OFFICE
725 FRONT STREET, STE. 300
SANTA CRUZ, CA 95060
(831) 427-4863

HEARING IMPAIRED: (415) 904-5200

APPEAL FROM COASTAL PERMIT
DECISION OF LOCAL GOVERNMENT

RECEIVED



MAR 22 1999

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREAPlease Review Attached Appeal Information Sheet Prior To Completing
This Form.

SECTION I. Appellant(s)

Name, mailing address and telephone number of appellant(s):

Pati Hutchinson
2190 Circle Dr. Cayucos, CA
93430 (805) 995-2021
Zip Area Code Phone No.

SECTION II. Decision Being Appealed

1. Name of local/port
government:2. Brief description of development being
appealed: Addition of sunroom to existing dwelling
which exceeds allowed gross structural area in
Cayucos Small Scale Neighborhood to mitigate noise impacts
of Highway 1.3. Development's location (street address, assessor's parcel
no., cross street, etc.): 3587 Studio Dr. Cayucos

4. Description of decision being appealed:

a. Approval; no special conditions:

(b) Approval with special conditions: Board of Supervisors, SLOc. Denial: SLO Planning Commission

Note: For jurisdictions with a total LCP, denial
decisions by a local government cannot be appealed unless
the development is a major energy or public works project.
Denial decisions by port governments are not appealable.

TO BE COMPLETED BY COMMISSION:

APPEAL NO: A-3-SLO-99-025DATE FILED: 3/23/99DISTRICT: Central Coast

EXHIBIT 1

A-3-SLO-99-025

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 2)

5. Decision being appealed was made by (check one):

- a. ☐ Planning Director/Zoning Administrator c. ☐ Planning Commission
b. ☒ City Council/Board of Supervisors d. ☐ Other _____

6. Date of local government's decision: 2 Mar 99

7. Local government's file number (if any): D970091P + D970092V

SECTION III. Identification of Other Interested Persons

Give the names and addresses of the following parties. (Use additional paper as necessary.)

a. Name and mailing address of permit applicant:

Dick & Pat Moon
3587 Studio Dr
Cayucos, CA 93430

b. Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearing(s). Include other parties which you know to be interested and should receive notice of this appeal.

(1) Lou Kluver
1620 Old Creek Rd
Cayucos, CA 93430

(2) Ginger Newman
1933 Pacific Ave
Cayucos, CA

(3) _____

(4) _____

SECTION IV. Reasons Supporting This Appeal

Note: Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section, which continues on the next page.

EXHIBIT 1 p.2

A-3-SLO-99-02

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 3)

State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing.

(Use additional paper as necessary.)

- Project not consistent with Local Coastal Plan.
- Existing structure does not conform to current standards.
- Sunroom addition will add to non conforming size.
- Highway noise is not unique to this property and allowance of additional gross-structural area (gsa) to mitigate the situation is precedent setting and will be utilized by other property owners to the detriment of the established standards the County, local residents and Coastal Commission approved after many years of work in the small-scale neighborhood of Cayucos.

Note: The above description need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

over →

SECTION V. Certification

The information and facts stated above are correct to the best of my/our knowledge.

Dati Neutkindon
Signature of Appellant(s) or
Authorized Agent

Date 18 Mar 99

NOTE: If signed by agent, appellant(s) must also sign below.

Section VI. Agent Authorization

I/We hereby authorize _____ to act as my/our representative and to bind me/us in all matters concerning this appeal.

EXHIBIT 1, p 3

A-3-SLO-99-025

Signature of Appellant(s)

- Project cannot meet all five variance requirements in order to grant variance.
- Revisions to property, in regards to noise mitigation have not been taken, which would not require a variance in order to implement (ie sound deadening siding, dual glaze windows, sound board interior drywall etc)

EXHIBIT 1 p. 4

A-3-SLO-99-025

Project also does not meet standard required in order to grant variance:

- a) Granting variance allows special privileges inconsistent with allowed GSA on other properties in Small Scale Neighborhood.
- b) The proximity of property is not unique in its location on Highway 1. Much of SSN abutts Highway 1.
- c) Variance is not consistent with provisions of LCP.

New construction is usually required to conform to existing standards. As built, the existing structure is non-conforming as to size and articulation of second story walls. Addition to non-conforming structure if non-conforming addition is a double hit.

There are other options available in order to mitigate noise impacts that do not violate the established LCP and that do not require a variance. This project approval would be precedent setting for numerous structures in the Cayucos Small Scale Neighborhood.

Coastal



SAN LUIS OBISPO COUNTY
DEPARTMENT OF PLANNING AND BUILDING

FINAL LOCAL
ACTION NOTICE

REFERENCE # 3-SLO-99-027
APPEAL PERIOD 3/16 - 3/29/99

ALEX HINDS
DIRECTOR

BRYCE TINGLE
ASSISTANT DIRECTOR

ELLEN CARROLL
ENVIRONMENTAL COORDINATOR

BARNEY MCCAY
CHIEF BUILDING OFFICIAL

RECEIVED

MAR 15 1999

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

NOTICE OF FINAL COUNTY ACTION

HEARING DATE: 3/12/99

SUBJECT: D970091D & D970092V/mom

LOCATED WITHIN COASTAL ZONE: (YES) NO

The above-referenced application was approved on the above-referenced date by the following hearing body:



San Luis Obispo Board of Supervisors

A copy of the findings and conditions is enclosed. The conditions of approval must be completed as set forth in this document.

This action is appealable to the California Coastal Commission pursuant to Coastal Act Section 30603 and the County Coastal Zone Land Use Ordinance 23.01.043. These regulations contain specific time limits to appeal, criteria, and procedures that must be followed to appeal this action. This appeal must be made directly to the California Coastal Commission Office. Contact the Commission's Santa Cruz Office at (408) 427-4863 for further information on appeal procedures. If you have questions regarding your project, please contact your planner, Sergio Wahler, at (805) 781-5600. If you have any questions regarding these procedures, please contact me at (805) 781-5600.

Sincerely,

Linda Jones

Linda Jones

CURRENT DEVELOPMENT

EXHIBIT 2

A-3-SLO-99-025

new

IN THE BOARD OF SUPERVISORS
COUNTY OF SAN LUIS OBISPO, STATE OF CALIFORNIA

--Tues-- day --March 2-----, 19--99

PRESENT: Supervisors Shirley Bianchi, Peg Pinard, K.H. "Katcho" Achadjian, Michael P. Ryan,
and Chairperson Harry L. Ovitt

ABSENT: None

RESOLUTION NO. 99-92

RESOLUTION REVERSING THE DECISION OF THE PLANNING COMMISSION
AND PARTIALLY APPROVING THE APPLICATION OF RICHARD AND
PATRICIA MOON FOR VARIANCE D970092V

The following resolution is now offered and read:

WHEREAS, on October 8, 1998, the Planning Commission of the County of San Luis Obispo (hereinafter referred to as the "Planning Commission") duly considered and disapproved the application of Richard and Patricia Moon for Variance D970092V; and

WHEREAS, Richard E. Moon has appealed the Planning Commission's decision to the Board of Supervisors of the County of San Luis Obispo (hereinafter referred to as the "Board of Supervisors") pursuant to the applicable provisions of Title 23 of the San Luis Obispo County Code; and

WHEREAS, a public hearing was duly noticed and conducted by the Board of Supervisors on February 2, 1999, and the matter was continued to and determination and decision was made on March 2, 1999; and

WHEREAS, at said hearing, the Board of Supervisors heard and received all oral and written protests, objections, and evidence, which were made, presented, or filed, and all persons present were given the opportunity to hear and be heard in respect to any matter relating to said appeal; and

WHEREAS, the Board of Supervisors has duly considered the appeal and determined that the appeal should be upheld in part and the decision of the Planning Commission should be reversed and that the application for Variance D970092V should be approved as set forth below.

EXHIBIT 2 , 2

A-3-560-99-095

NOW, THEREFORE, BE IT RESOLVED AND ORDERED by the Board of Supervisors of the County of San Luis Obispo, State of California, as follows:

1. That the recitals set forth hereinabove are true, correct and valid.
2. That the Board of Supervisors makes all of the findings of fact and determinations set forth in Exhibit A attached hereto and incorporated by reference herein as though set forth in full.
3. That this project is found to be categorically exempt from CEQA under the provisions of California Code of Regulations, title 14, section 15303, (class 3).
4. That the appeal filed by Richard E. Moon is hereby upheld in part and the decision of the Planning Commission is reversed and that the application of Richard and Patricia Moon for Variance (D970092V) is hereby partially approved based upon the findings of fact and determinations set forth in Exhibit A attached hereto and incorporated by reference herein as though set forth in full.

Upon motion of Supervisor Bianchi, seconded by Supervisor Ryan, and on the following roll call vote, to wit:

AYES: Supervisors Bianchi, Ryan, Pinard, Achadjian, Chairperson Ovitt

NOES: None

ABSENT: None

ABSTAINING: None

the foregoing resolution is hereby adopted.

HARRY L. OVITT

Chairman of the Board of Supervisors

ATTEST:

Julie L. Rodewald
Clerk of the Board of Supervisors

BY: CHERIE AISPUHO Deputy Clerk

APPROVED AS TO FORM AND LEGAL EFFECT:

JAMES B. LINDHOLM, JR.
County Counsel

By: [Signature]
Deputy County Counsel

Dated: FEBRUARY 19, 1999

STATE OF CALIFORNIA) COUNTY OF SAN LUIS OBISPO) ss
I, JULIE L. RODEWALD, County Clerk of the above entitled County, and Ex-Officio Clerk of the Board of Supervisors thereof, do hereby certify the foregoing to be a full, true and correct copy of an order entered in the minutes of said Board of Supervisors, and now remaining of record in my office.
Witness, my hand and seal of said Board of Supervisors this <u>9</u> day of <u>March</u> 19 <u>99</u>
JULIE L. RODEWALD County Clerk and Ex-Officio Clerk of the Board of Supervisors
By: <u>[Signature]</u> Deputy Clerk

EXHIBIT 2

A-3-SLO-299-025

VARIANCE FINDINGS EXHIBIT - A
MOON D970092V

- A. The variance would not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and land use category that are also located within the Community Small Scale Design Neighborhood and subject to special square footage restrictions based on lot size, because although other residences located along Highway 1 have high noise exposure, this site is exceptionally and uniquely exposed to both freeway noise and noise from the Studio Drive intersection, and although this proposal exceeds the maximum gross structural area set by the Community Small Scale Design Neighborhood Planning Area Standards of the Local Coastal Plan, this is outweighed by the need to provide viable noise mitigation.
- B. The larger than average site involves two lots with the potential for two residences as opposed to one, and although the proposed addition would result in a residence that exceeds the size limitation for the Community Small Scale Design Neighborhood, the larger site offsets the requested increase in square footage, and includes a larger corner-side yard setback than would normally be required.
- C. There are sufficient special circumstances applicable to the property, related to noise/location, to warrant the substantial variation to standards requested, because this site is exceptionally and uniquely exposed to both freeway noise and noise from the Studio Drive intersection, and these special circumstances, with the strict application of this title, and without noise mitigation, would deprive the property of privileges enjoyed by other property in the vicinity that is in the same land use category and located in the Community Small Scale Design Neighborhood because they have less severe noise exposure.
- D. Granting the variance would not otherwise conflict with the provisions of the Local Coastal Program, and is limited to the Community Small Scale Design Neighborhood standards of the Estero Area Plan, Standard 4a because the upper story of the addition is not setback 3 feet from the lower story wall and Standard 4d because the addition exceeds the gross structural area limitation.
- E. The proposed project is found to be categorically exempt from CEQA under the provisions of California Code of Regulations, Title 14, Section 15303, (class 3).

EXHIBIT 2 .4

A-3-510-99-025

Plan

IN THE BOARD OF SUPERVISORS
COUNTY OF SAN LUIS OBISPO, STATE OF CALIFORNIA

Tues day March 2, 19 99

PRESENT: Supervisors Shirley Bianchi, Peg Pinard, K. H. "Katcho" Achadjian, Michael P. Ryan,
and Chairperson Harry L. Ovitt

ABSENT: None

RESOLUTION NO. 99-93

**RESOLUTION REVERSING THE DECISION OF THE PLANNING COMMISSION
AND CONDITIONALLY APPROVING THE APPLICATION OF RICHARD AND
PATRICIA MOON FOR MINOR USE PERMIT/COASTAL
DEVELOPMENT PERMIT D970091P**

The following resolution is now offered and read:

WHEREAS, on October 8, 1998, the Planning Commission of the County of San Luis Obispo (hereinafter referred to as the "Planning Commission") duly considered and disapproved the application of Richard and Patricia Moon for Minor Use Permit/Coastal Development Permit D970091P, a copy of which is on file in the office of the Secretary of the Planning Commission and is incorporated by reference herein as though set forth in full; and

WHEREAS, Richard E. Moon has appealed the Planning Commission's decision to the Board of Supervisors of the County of San Luis Obispo (hereinafter referred to as the "Board of Supervisors") pursuant to the applicable provisions of Title 23 of the San Luis Obispo County Code; and

WHEREAS, a public hearing was duly noticed and conducted by the Board of Supervisors on February 2, 1999, and the matter was continued to and determination and decision was made on March 2, 1999; and

WHEREAS, at said hearing, the Board of Supervisors heard and received all oral and written protests, objections, and evidence, which were made, presented, or filed, and all persons present were given the opportunity to hear and be heard in respect to any matter relating to said appeal; and

WHEREAS, the Board of Supervisors has duly considered the appeal and determined that the appeal should be upheld and the decision of the Planning

Commission should be reversed and that the application should be approved subject to the findings and conditions set forth below.

NOW, THEREFORE, BE IT RESOLVED AND ORDERED by the Board of Supervisors of the County of San Luis Obispo, State of California, as follows:

1. That the recitals set forth hereinabove are true, correct and valid.
2. That the Board of Supervisors makes all of the findings of fact and determinations set forth in Exhibit A attached hereto and incorporated by reference herein as though set forth in full.
3. That this project is found to be categorically exempt from CEQA under the provisions of California Code of Regulations, title 14, section 15303, (class 3).
4. That the appeal filed by Richard E. Moon is hereby upheld and the decision of the Planning Commission is reversed and that the application of Richard and Patricia Moon for Minor Use Permit/Coastal Development Permit D970091P is hereby approved subject to the conditions of approval set forth in Exhibit B attached hereto and incorporated by reference herein as though set forth in full.

Upon motion of Supervisor Blanchi, seconded by Supervisor Ryan, and on the following roll call vote, to wit:

AYES: Supervisors Bianchi, Ryan, Pinard, Achadjian, Chairperson Ovitt

NOES: None

ABSENT: None

ABSTAINING: None

the foregoing resolution is hereby adopted.

HARRY L. OVITT

Chairman of the Board of Supervisors

ATTEST:

Julie L. Rodewald

Clerk of the Board of Supervisors

BY: CHERIE AISPURO Deputy Clerk

EXHIBIT 2 p6

A-3-SLO-99-025

MINOR USE PERMIT FINDINGS EXHIBIT - B (sic)
MOON D970091P

- A. The proposed project or use is consistent with the Local Coastal Program and the Land Use Element of the general plan because it is an addition to a single family residence located in an area designated "Residential Single Family" allowed by Table "O" of the Land Use Element and Local Coastal Plan.
- B. The proposed project satisfies all applicable provisions of this title, as modified by the granting of Variance D970092V.
- C. The establishment and subsequent operation or conduct of the use will not, because of the circumstances and conditions applied in the particular case, be detrimental to the health, safety or welfare of the general public or persons residing or working in the neighborhood of the use, or be detrimental or injurious to property or improvements in the vicinity of the use because the residence will be required to satisfy the provisions of the Uniform Building Code, and the Coastal Zone Land Use Ordinance pertaining to health and safety.
- D. The proposed project or use will not be inconsistent with the character of the immediate neighborhood or contrary to its orderly development because it is a single-family residence located in a residential area with some residences predating current development standards and therefore exceeding the size and design limitations of the Community Small Scale Design Neighborhood; and because the site is larger than most surrounding sites since it includes two lots and is better able to accommodate the larger residence.
- E. The proposed use or project will not generate a volume of traffic beyond the safe capacity of all roads providing access to the project, either existing or to be improved with the project because it is a single family residence located on a local road capable of carrying the traffic generated by the project.
- F. The proposed project would not otherwise conflict with the provisions of the Community Small Scale Design Neighborhood standards of the Estero Area Plan, except for Standard 4a because the upper story of the addition is not setback 3 feet from the lower story wall and Standard 4d because the addition exceeds the gross structural area limitation; the project is otherwise consistent with the planning area standards.
- G. The proposed project is found to be categorically exempt from CEQA under the provisions of California Code of Regulations, Title 14, Section 15303, (class 3).

MINOR USE PERMIT CONDITIONS EXHIBIT - C (sic)
MOON D970091P

Authorized Use

1. This approval authorizes the remodeling of a single family residence described as follows:
 - a) A second story sunroom enclosure of the existing deck and landing measuring 5 feet by 27.5 feet connecting to the existing eave overhang.
 - b) A first floor enclosed entryway measuring 10.75 feet by 27.5 feet.
 - c) A first floor sun room opening into the entryway measuring 5.33 feet by 22 feet.
 - d) A covered porch measuring 10.75 feet by 6 feet not to exceed the level of the first floor of the residence.
2. All permits shall be consistent with the revised Site Plan, Floor Plans, and Elevations dated February 17, 1999 and as further refined by condition number 1 above.

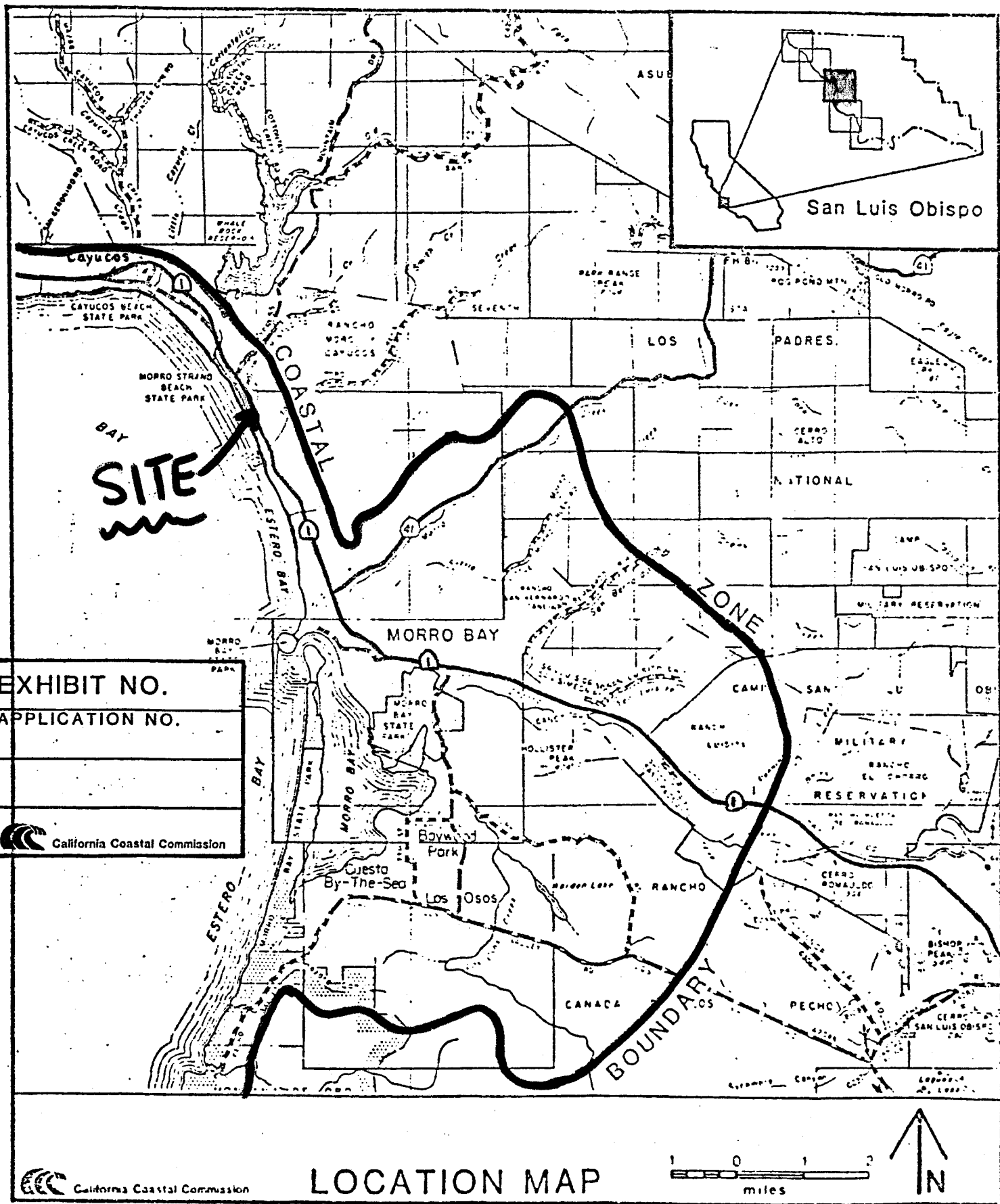
Plans

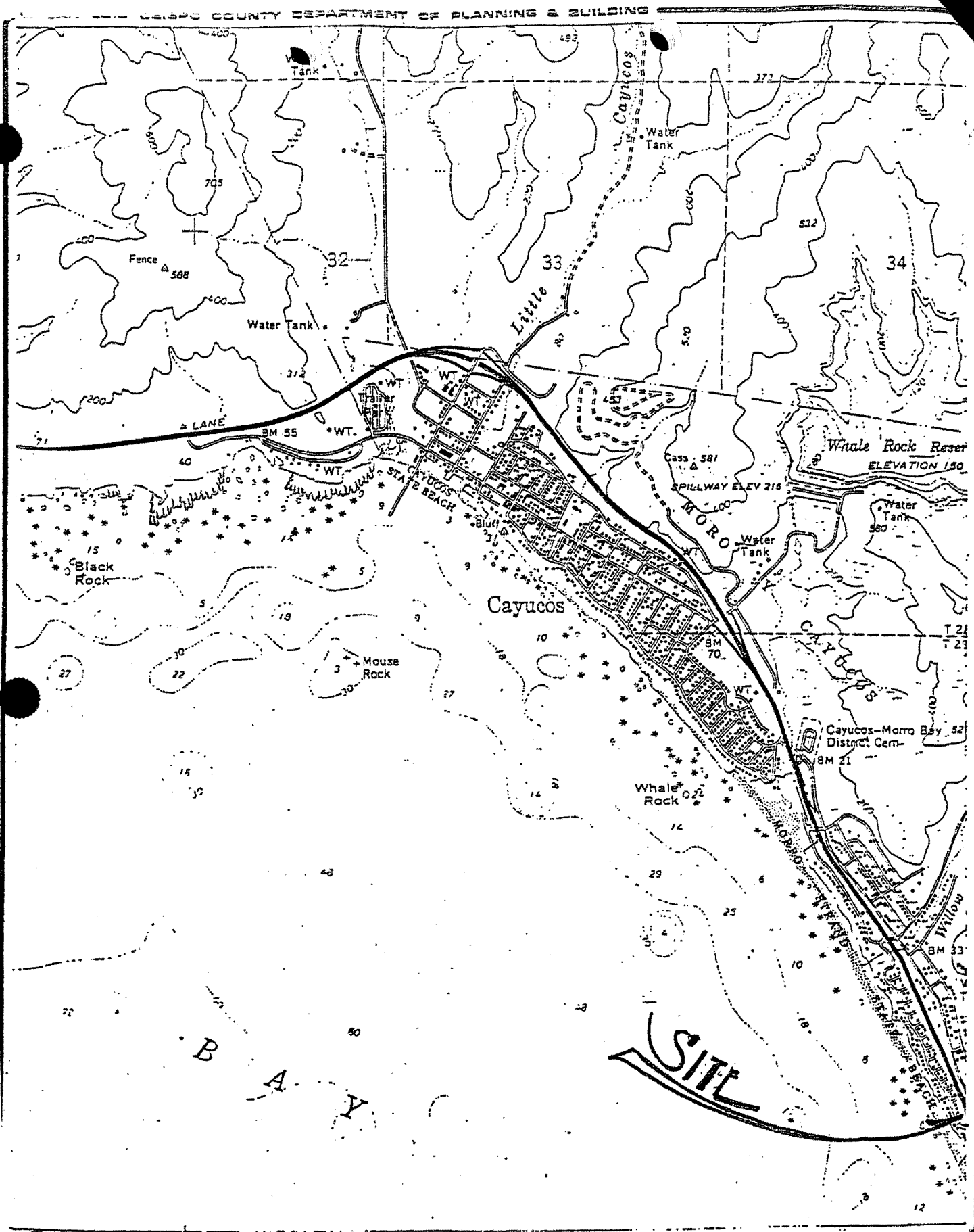
3. Prior to Finaling the Building Permit submit a fencing and landscaping plan consistent with the small scale neighborhood guidelines and the Coastal Zone Land Use Ordinance to the development review section for review and approval. Landscaping to be installed or bonded for prior to finaling the permit for the addition.

Sanitary District Release

4. Prior to issuance of a building permit, obtain a letter from the Cayucos Sanitary District to ensure that the addition conforms to their requirements and is not located within any sewer easements or lateral connections. Submit the letter to development review staff prior to requesting building permit issuance.

EXHIBIT 2 ,8
A-3-510-99-025



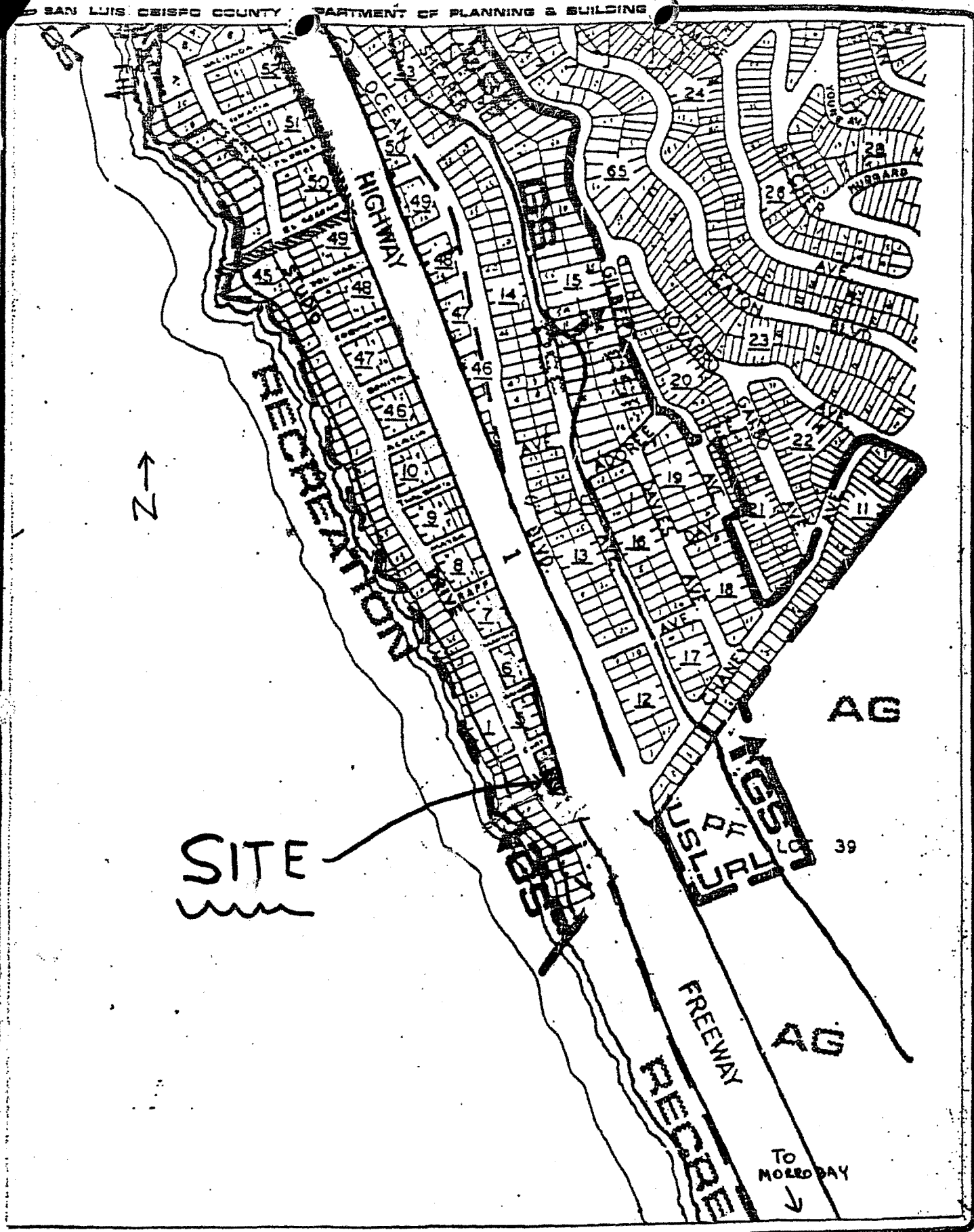


PROJECT
MOON
D970091P & D970092V



EXHIBIT
VICINITY MAP
EXHIBIT 3 p.2
A-3-SLO-19-025

6-8



PROJECT

MOON
D970091P & D970092V



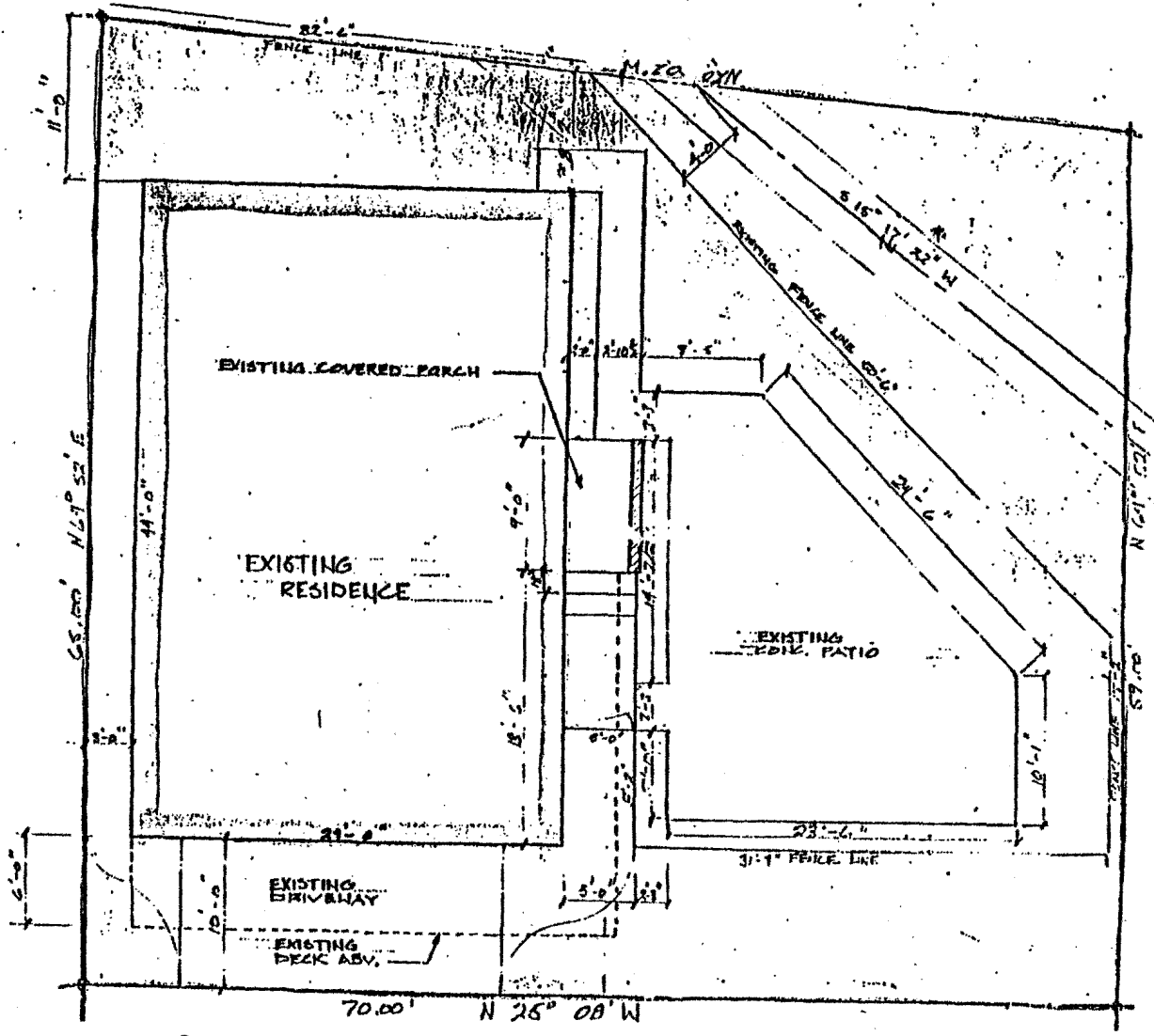
EXHIBIT

EXHIBIT 3 p. 3

A-3-SLO-99-025

HIGHWAY

ONE



PROPOSED SUNROOM ADDITION
DICK & PAT MOON
3587 Studio Drive
Cayucos, CA 93430
(805) 995-1218
the perennial architect & assoc.

Ruel J. Czach A.I.A.
80 N. Ocean Avenue, Suite A — Cayucos

PROJECT
MOON
D970091P & D970092V



EXHIBIT
EXISTING RESIDENCE

EXHIBIT 4
A-3-SLO-99-025

D

The parent and child are associated with the following information:

Directed Business Section, Box
 Dick & Pat Mason
 1587 Studio Drive
 Canyon, Ca.
 (805) 305-1218

FEB 1999
14-10
MAG.
1
- 3

LOWER LEVEL FLOOR PLAN

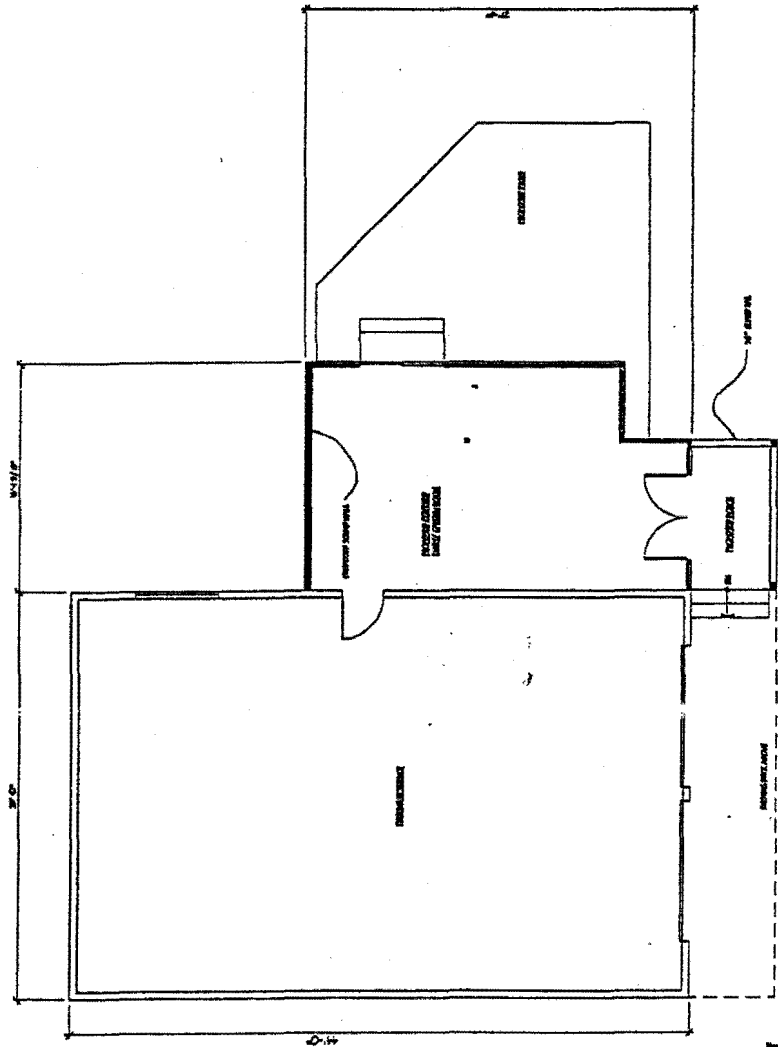


EXHIBIT 5
A-3-SLO-99-025

REV	DATE	BY
1	11-1-79	TLG

Project: Sunbeam Addition, Torrey
 Dick & Pat Moon
 3587 Studio Drive
 Cayucos, Ca.
 (805) 526-1218

The Paramount Architect & Associates
 David J. Cronin, AIA
 Fax: 805 526-2088 Ph: 805 526-4502
 80 N. Ocean Ave., Suite A - P.O. 575 - Cayucos, Ca. 92009

NO	REVISIONS

EXHIBIT
 D

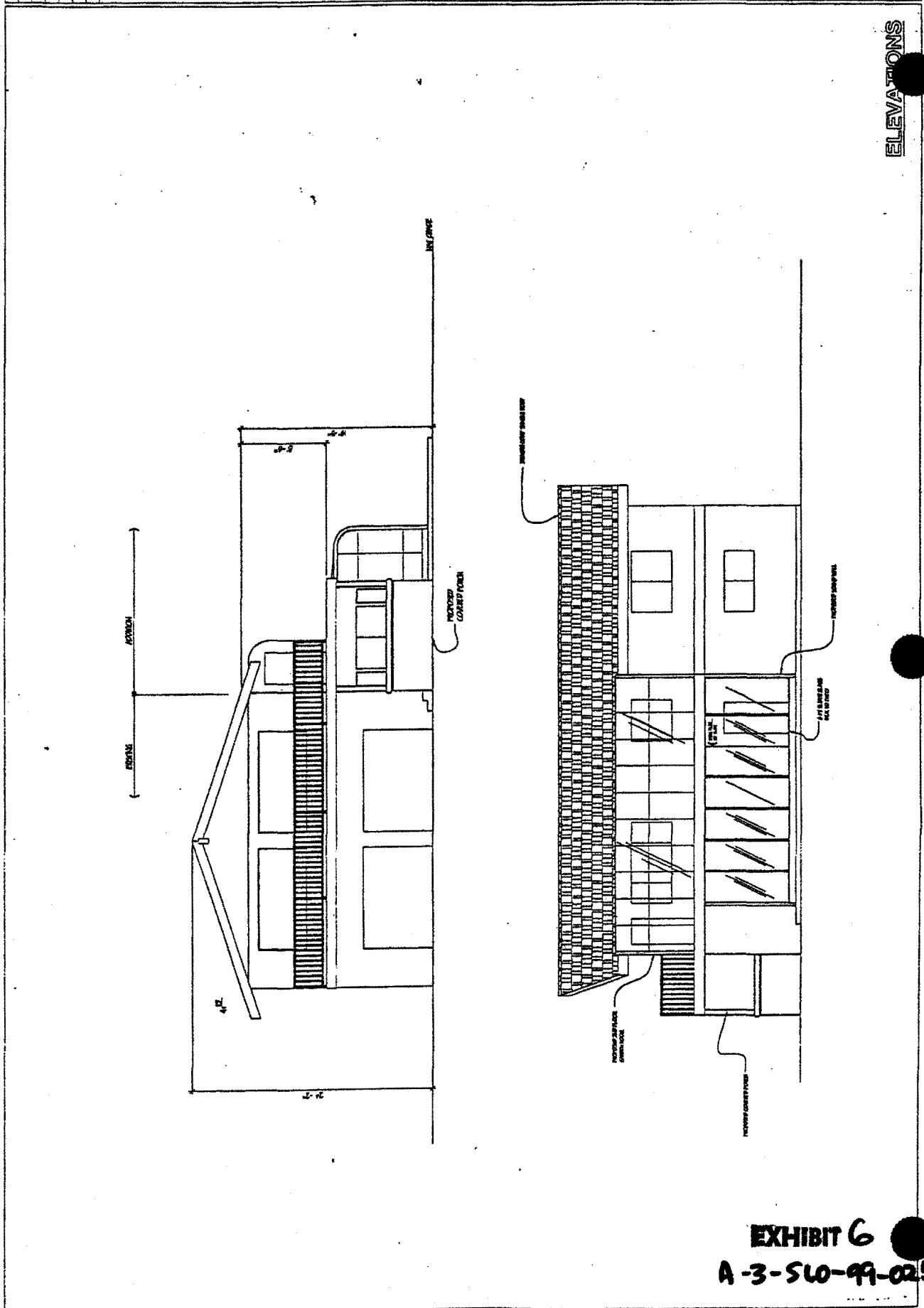


EXHIBIT 6
 A-3-SLO-99-025

2. **Morro Strand State Beach Improvements.** The State Department of Parks and Recreation shall complete the following improvements:

- a. Improvement of a paved parking area south of Old Creek.
- b. Picnic tables and restrooms.
- c. Interpretive signs describing the Old Creek lagoon and riparian habitat.
- d. All improvements at this location shall be consistent with the protection of the sensitive wetland habitat.

RESIDENTIAL MULTI-FAMILY: The following standards apply only to lands within the Residential Multi-Family land use category.

1. **Density.** Maximum residential density for new projects shall be as follows:
 - a. For site greater than one acre, the density shall not exceed 26 units per acre.
 - b. For sites one acre or less the density shall not exceed 15 units per acre.
2. **Height Limitation.** Maximum allowable building height shall be 28 feet, except that lots on the west side of Ocean Avenue shall be a maximum of 22 feet.
3. **Height - Locarno Tract.** The maximum allowable building height shall be 20 feet.
4. **Density - Locarno Tract.** Maximum residential density shall be 15 dwelling units/acres.

RESIDENTIAL SINGLE FAMILY: The following standards apply only to lands within the Residential Single Family land use category.

1. **Height Limitation.** New development shall not exceed 28 feet, unless a more restrictive height limitation is specified in the following standards.
- 2. **Location of Community Small Scale Design Neighborhoods.** Two neighborhoods are subject to the following standards (3, 4 and 6), and guidelines (5).

Pacific Avenue Neighborhood - That area designated Residential Single Family between Ocean Avenue, 13th Street, Cass Avenue, Circle Drive, Highway One, Old Creek, and the ocean.

→ **Studio Drive Neighborhood** - That area designated Residential Single Family between Highway One and the ocean.

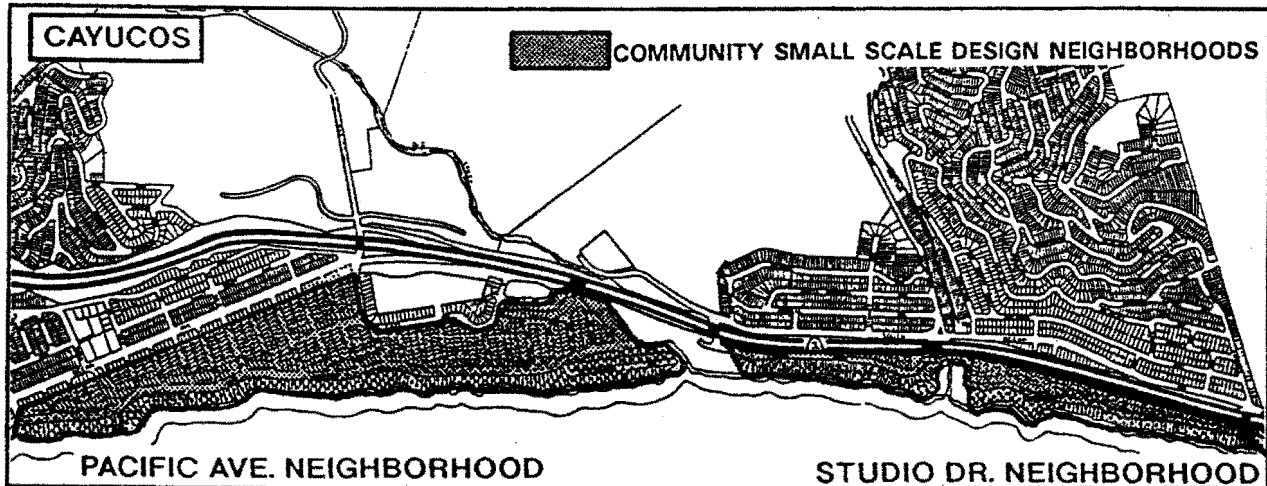


Figure 8-2: Community Small Scale Design Neighborhoods

3. Permit Requirements and Findings.

a. Plot Plan Permit:

- (1) Development with proposed structures that are one-story and do not exceed 15 feet in height, where all the development is located at least 100 feet from any wetland, estuary or stream, and at least 300 feet from the ocean bluff-top.
- (2) Development with proposed structures between 15 feet and 24 feet in height, where all the development is located at least 100 feet from any wetland, estuary or stream, and at least 300 feet from the ocean bluff-top may be approved subject to a maximum gross structural area (including the floor area of all garages) of 45% of usable site area, provided it complies with standards 4a, b, c, e, f(1), and g; and with guideline 5b and finding c.(2), listed below:

b. Minor Use Permit:

- (1) Development that is within 100 feet of any wetland, estuary or stream, or within 300 feet of the edge of the ocean bluff-top. In addition such development is subject to standards, guidelines and findings listed below.
- (2) Development with proposed structures between 15 feet and 24 feet in height except as provided in 3a.(2) above. In addition such development is subject to standards, guidelines and findings listed below.

c. Required Findings:

- (1) The proposed project meets the community small scale design neighborhood standards and is therefore consistent with the character and intent of the Cayucos community small scale design neighborhood.
- (2) For any proposed structure that exceeds 15 feet in height, public view of the ocean from Highway One or the respective neighborhood is not being further limited.

4. Standards.

- a. **Front Setbacks** - The ground level floor shall have setbacks as provided in Cayucos Communitywide Standard 2 and at no point shall a lower story wall exceed 12 feet in height including its above ground foundation. The second floor of proposed two-story construction shall have an additional front setback of at least three feet from the front of the lower wall, except open rail, uncovered decks are excluded from this additional setback and may extend to the lower front wall.
- b. **Side Setbacks** - Single story dwellings shall have setbacks as provided in Cayucos Communitywide Standard 2. Proposed two-story construction (including decks) shall have a lower floor setback on each side of not less than four feet, nor less than the required corner side setback if applicable. An upper story wall setback on each side yard of a minimum of two-and-one-half (2 1/2) feet greater than the lower story wall shall also be required. At no point shall a lower story wall exceed 12 feet in height including its above ground foundation. Thirty percent of the upper story side wall may align with the lower floor wall provided it is within the rear two-thirds of the structure.

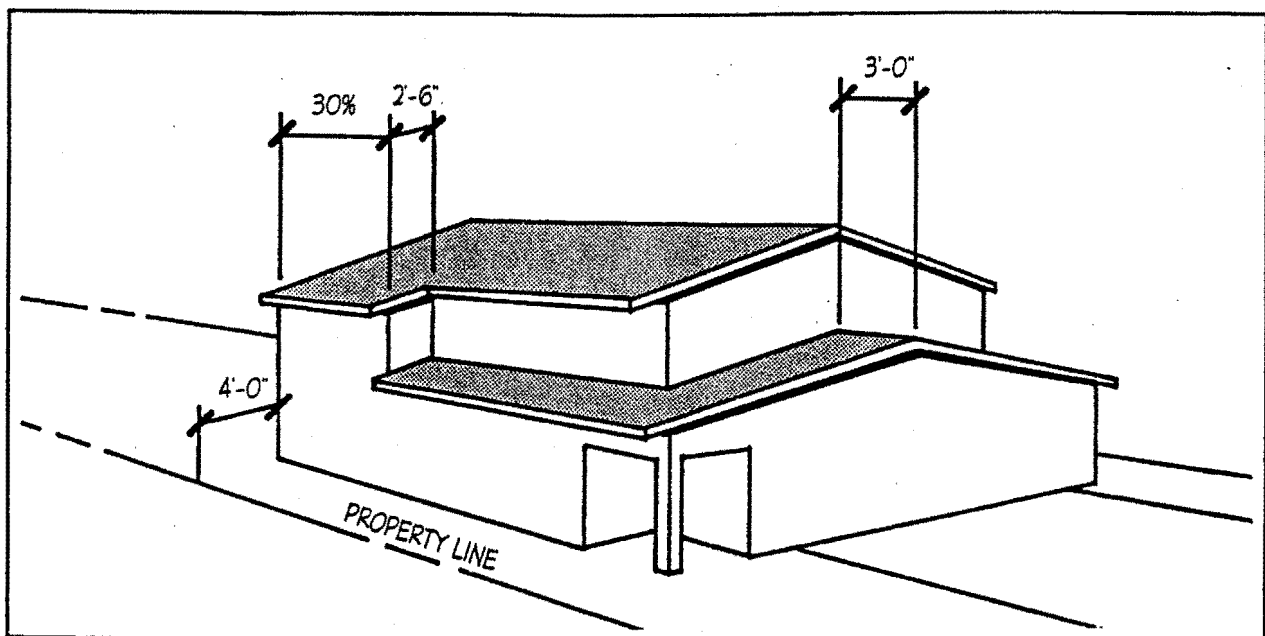


Figure 8-3: Setbacks for Two-Story Structures.

- c. **Building Height Limitations.** Heights shall be measured from the center line of the fronting street (narrowest side for corner lots) at a point midway between the two side property lines projected to the street center line, to the highest point of the roof. In the community small scale design neighborhood area defined in Standard 2, upslope lots shall use average natural grade. All proposed development including remodeling and building replacement is subject to the following limitations:

- (1) **Ocean Front Lots.** 15 feet maximum.
- (2) **Remainder of Community Small Scale Design Neighborhood lots.** Proposed structures, exclusive of chimneys and mechanical vents, are not to exceed 24 feet in height measured as provided above. Sloped (pitched) roofs are encouraged in all structures; however roof heights up to 18 feet shall not be required to have sloped roofs, roof heights exceeding 18 feet but not exceeding 22 feet shall have a roof pitch of at least 4:12 (4 inches of rise per 12 inches of run) and roof heights exceeding 22 feet but not exceeding the maximum height allowed (24 feet) shall have a roof pitch of at least 5:12 (5 inches of rise per 12 inches of run). Mansard or other flat style roofs on buildings over 18 feet are not permitted. Existing residences completed prior to April 25, 1995, with a roof pitch of at least 3:12 (3 inches of rise per 12 inches of run) may have second story roof slopes matching the existing slope where the building height does not exceed 22 feet.

- d. **Gross structural area (GSA).** One-story development, and all development on bluff top sites, is limited to a maximum gross structural area, including the area of all garages, of 3,500 square feet. Other new development or additions, exceeding one story or 15 feet in height, shall not exceed GSA's as provided in Table 8-1 below:

(1) Table 8-1

Lot Size	Percent of Usable Lot	Max. Gross Structural Area
Up to 2899	60%	1595 square feet
2900 - 4999	55%	2500 square feet
5000 +	50%	3500 square feet

- (2) The second story square footage shall be no greater than 60 percent of the first floor square footage.
- e. **Deck rail height** - Rail heights for decks above the ground floor shall not exceed 36 inches. A maximum additional height of 36 inches of untinted, transparent material with minimal support members is allowable except as restricted in 4a above.
- f. **Parking** - New development parking spaces shall comply with the CZLUO for required parking spaces except as follows:
- (1) At least one off-street parking space shall be enclosed with an interior space a minimum size of 10 feet by 20 feet.
- (2) A maximum of one required off-street parking space may be located in the driveway within the required front yard setback area. However, the minimum front yard setback from the property line to the garage is 20 feet if this design is used.
- g. **Driveway Widths** - Driveway widths for proposed development may not exceed 18 feet.
- h. **Streetscape Plan** - A scale drawing showing the front exterior elevation (view) of the proposed project, and the front elevations of the adjacent buildings, is required as part of the application submittal.

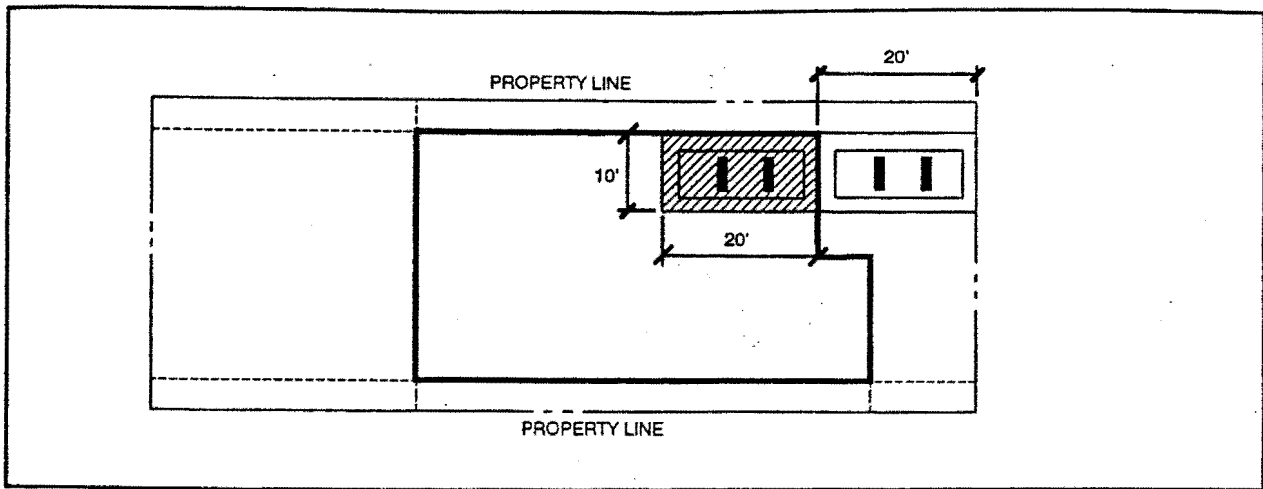


Figure 8-4: Parking Space Shown in Front Yard Area with Minimum 20' Setback to Building.

- i. **Topographic Map** - A topographic map including the elevation of the fronting street, site contours, and existing and proposed drainage patterns is required as part of the application submittal.
5. **Guidelines.** The following are guidelines that should be considered when designing *any* proposed project within the subject areas. A project subject to a Minor Use Permit approval will consider how the design complies with the following objectives:
- a. **Site Layout** - Locate the structure so that it minimizes its impact on adjacent residential structures (such as significantly reducing access to light and air).
 - b. **Building Design** - The design should incorporate architectural details and varied materials to reduce the apparent mass of structures. Such scale reducing design devices include porches, covered entries, dormer windows, oriel and bay windows, multi-pane windows, varying roof profiles, moldings, masonry, stone, brickwork, and wood siding materials. Expansive building facades should be broken up by varied rooflines, offsets, and building elements in order to avoid a box-like appearance. Variations in wall planes, roof lines, detailing, materials and siding should be utilized to create interest and promote a small scale appearance. Roof styles and roof lines for first and second stories should match.
 - c. **Landscaping and Fencing** - The site design should incorporate landscaping materials that help reduce the scale of the proposed structure. This can be done by proper selection and placement of trees, shrubs and other vegetation capable of screening portions of the structure from public viewpoints. The design should consider the use of decorative paving materials, such as aggregate concrete, stamped and/or colored concrete.

The site design should consider effective use of small scale fencing materials in the front yard area to help soften the massing of the building. Fences which present a solid barrier should be avoided except where privacy is desired.

6. **Destroyed structures.** Where a dwelling has been destroyed pursuant to Section 23.09.033a, it may be restored in substantial conformance with the destroyed dwelling within the existing footprint if the proposed dwelling is in conformance with applicable bluff setbacks and fire safe standards. A single story dwelling may not be replaced with a multi-story structure under this provision.
7. **Setbacks - Studio Drive at Willow Creek.** Residential development on the eastern portion of Assessor Parcel Number 64-275-24 (Tract 1078)(Schmitz) shall be setback and buffered from Willow Creek a minimum of 50 feet and shall not allow development within the 100 year flood plain. Any development shall be clustered so as to minimize habitat and scenic/visual quality impacts.
8. **Height - Studio Drive at Willow Creek.** New development shall not exceed 14 feet above the centerline of the fronting street for the northern half of the property and new development shall not exceed 16 feet above the centerline of the fronting street for the southern half of the property.

[Amended 1995, Ord. 2720]

- f. Notice to county of appeal to Coastal Commission.** An appellant shall notify the county when appealing to the Coastal Commission by providing the county a copy of the information required in Section 13111 of Title 14 of the California Administrative Code.

23.01.044 - Adjustment:

- a. When allowed:** When a standard of Chapter 23.04, 23.05 or 23.08, or a planning area standard of the Land Use Element identifies specific circumstances under which reduction of the standard is appropriate, an applicant may request an adjustment to the standard. (For example, Section 23.04.108a(3) provides that a required front setback may be reduced to a minimum of five feet through the adjustment process when the elevation of the lot is seven feet above or below the street centerline at 50 feet from the centerline.)
- b. Application filing and processing:** An adjustment request is to be filed with the Planning Department in the form of an attachment to the project application, with appropriate supporting materials. The request is to specify the Coastal Zone Land Use Ordinance standard requested for adjustment, and document the manner in which the proposed project qualifies for the adjustment. A request for adjustment shall not be accepted for processing by the Planning Department unless the request is within the range of adjustments prescribed in the standard. A request for adjustment shall be approved by the Planning Director when the director finds that the criteria for adjustment specified in the subject standard are satisfied.

→ 23.01.045 - Variance:

A variance from the strict application of the requirements of this title may be requested as provided by this section. For the purposes of this title, a variance is a land use permit.

- a. Limitations on the use of a variance.** A variance shall not be used to:
- (1) Reduce the minimum parcel size required for a new land division by Chapters 23.04 or 23.08 of this title below the range of parcel sizes specified by Chapter 6, Part I of the Land Use Element for the land use category in which the subject site is located; or

- (2) Authorize land uses other than those normally identified as allowable in a particular land use category by Coastal Table O, Part I of the Land Use Element, planning area standards of the Land Use Element, Chapter 22.08 or other chapter of this title, pursuant to Government Code Section 65906.

- b. Application:** A written application for variance shall be filed with the Planning Department on the form provided, accompanied by all graphic information required for Plot Plans by Section 23.02.030b (Plot Plan Content), and any additional information necessary to explain the request. Acceptance of the application is subject to Section 23.01.033a (Consistency with the Land Use Element Required), and 23.02.022 (Determination of Completeness).
- c. Notice and hearing.** After acceptance of a variance application and completion of a staff report, the Planning Commission will conduct a public hearing on the variance request. The notice and scheduling of the hearing shall be pursuant to Section 23.01.060 (Public Hearing).
- d. Action on a variance.** The Planning Commission shall approve, approve subject to conditions, or disapprove a variance as set forth in this subsection. Such decision may be appealed to the Board of Supervisors as set forth in Section 23.01.042 (Appeal).

- **(1) Findings.** Approval or conditional approval may be granted only when the Planning Commission first determines that the variance satisfies the criteria set forth in Government Code Section 65906 by finding that:

- (i) The variance authorized does not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and land use category in which such property is situation; and
- (ii) There are special circumstances applicable to the property, related only to size, shape, topography, location, or surroundings, and because of these circumstances, the strict application of this title would deprive the property of privileges enjoyed by other property in the vicinity that is in the same land use category; and
- (iii) The variance does not authorize a use that is not otherwise authorized in the land use category; and
- (iv) The variance is consistent with the provisions of the Local Coastal Program; and

- (v) The granting of such application does not, under the circumstances and conditions applied in the particular case, adversely affect public health or safety, is not materially detrimental to the public welfare, nor injurious to nearby property or improvements.
- (2) **Conditions of approval.** In approving an application for variance, such conditions shall be adopted as are deemed necessary to enable making the findings set forth in Section 23.01.045d(1).
- (3) **Notice of Final Action.** Where the variance request is appealable to the Coastal Commission pursuant to Section 23.01.043, a Notice of Final Action on the variance shall be provided as set forth in Section 23.02.036d.
- e. **Effective date of variance.** Except where otherwise provided by Section 23.01.043c for projects that may be appealed to the Coastal Commission, an approved variance shall become effective for the purposes of construction permit issuance or establishment of a non-structural use, on the 15th day after the act of Planning Commission approval; unless an appeal to the Board of Supervisors is filed as set forth in Section 23.01.042.
- f. **Time limits and extensions.** An approved variance is subject to the time limits, extension criteria and other provisions of Sections 23.02.040 through 23.02.052 of this title.

[Amended 1995, Ord. 2715]

23.01.050 - Amendment:

The Local Coastal Program (including this title) may be amended whenever the Board of Supervisors deems that public necessity, convenience, or welfare require, pursuant to the procedures set forth in this section.

- a. **Initiation of amendment.** Amendment may be initiated by the Board of Supervisors upon its own motion; or by the Board of Supervisors upon acceptance of a petition from any interested party, including the Planning Director and/or Planning Commission. Petitions shall include a description of the benefit to be derived as a result of the amendment. The Board of Supervisors may refer a proposed amendment to the Planning Director and/or Planning Commission for response before deciding whether to initiate the amendment.