

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE
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Hearing Date: 01/09/02

**STAFF REPORT: APPEAL
SUBSTANTIAL ISSUE DETERMINATION**

APPEAL NUMBER: A-3-SLO-01-115, Demore
LOCAL GOVERNMENT: San Luis Obispo County
DECISION: Approved with conditions, 10/23/01
APPLICANT: William DeMore
APPELLANTS: Robbie Freiler
PROJECT LOCATION: 1370 Las Encinas (Estero Planning Area), Los Osos (San Luis Obispo County) APN 074-492-028.
PROJECT DESCRIPTION: Construct a 872 square foot second-story addition to an existing 2,523 square foot single family residence.
FILE DOCUMENTS: San Luis Obispo County Certified Local Coastal Program; Final Local Action Notice 3-SLO-01-590; San Luis Obispo County Board of Supervisors Resolution No. 2001-425.
RECOMMENDATION: No Substantial Issue

SUMMARY OF STAFF RECOMMENDATION

Staff recommends that the Commission determine that **NO** substantial issue exists with respect to the grounds on which the appeal has been filed. Staff has determined that Minor Use Permit/Coastal Development Permit D000495P, which includes 5 conditions established by the Board of Supervisors, conforms to the standards set forth in the San Luis Obispo County Certified Local Coastal Program, which includes the Estero Area Plan.

The County's action allows for the addition of a second story to a one story single family residence. The project is located in the community of Los Osos within the Coastal Zone of San Luis Obispo



California Coastal Commission
January 2002 Meeting in Los Angeles

Staff: Jonathan Bishop Approved by *C. J. L.* 12/20/01

County (project vicinity and site location maps are shown in Exhibits 1 and 2, respectively). The property (APN 074-492-028) is located at 1370 Las Encinas. The parcel fronts Las Encinas Street and has a north/north-east facing orientation.

The appellant contends that the project does not comply with the San Luis Obispo County Local Coastal Program (LCP) because the project:

- is not harmonious with the character of the surrounding neighborhood. The appellant contends the County failed to use the proper standard to determine "character" of a neighborhood as set out in the Estero Plan.
- will obstruct scenic views;
- will set a dangerous precedent for future development.

These contentions do not raise a substantial issue because:

- the proposed project is in conformance with the Estero Area Plan for development in Residential Single Family areas (p. 8-40), and Coastal Zone Land Use Ordinance (CZLUO) Sections 23.04.120.
- the proposed project is in conformance with Chapter 10 (LUE) Coastal Plan Policies regarding Visual and Scenic Resources.

STAFF REPORT CONTENTS

1. LOCAL GOVERNMENT ACTION.....	3
2. APPEAL PROCEDURES.....	3
3. STAFF RECOMMENDATION ON SUBSTANTIAL ISSUE.....	3
4. RECOMMENDED FINDINGS AND DECLARATIONS.....	4
A. Project Location and Description.....	4
B. Substantial Issue Analysis.....	4
1. Community Character.....	4
2. Visual and Scenic Resources.....	7
5. EXHIBITS	9
1. Vicinity Maps	
2. Site Location Map	
3. Site Plans, Elevations & Model	
4. Neighborhood Photos	
5. San Luis Obispo County Findings and Conditions of	
6. Approval Appellant's Contentions	



1. LOCAL GOVERNMENT ACTION

San Luis Obispo County's Zoning Administrator approved a coastal development permit for the subject development in Los Osos on August 17, 2001, subject to 5 conditions. This action was appealed to the Board of Supervisors by Lois Cleworth, et al. The Zoning Administrator action was upheld and the appeal was denied on October 23, 2001 by a vote of 4 to 1.

2. APPEAL PROCEDURES

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 located between the first public road and the sea.

The grounds for appeal under section 30603 are limited to allegations that the development does not conform to the standards set forth in the certified local coastal program or the public access policies of the Coastal Act. Section 30625(b) of the Coastal Act requires the Commission to conduct a *de novo* coastal development permit hearing on an appealed project unless a majority of the Commission finds that "no substantial issue" is raised by such allegations. Under section 30604(b), if the Commission conducts a *de novo* hearing, the Commission must find that the proposed development is in conformity with the certified local coastal program. Section 30604(c) also requires an additional specific finding that the development is in conformity with the public access and recreation policies of Chapter Three of the Coastal Act, if the project is located between the nearest public road and the sea or the shoreline of any body of water located within the coastal zone. This project is located between the first public road and the sea.

3. STAFF RECOMMENDATION ON SUBSTANTIAL ISSUE

The staff recommends that the Commission determine that no substantial issue exists with respect to the grounds on which the appeal has been filed, pursuant to Coastal Act Section 30603.

MOTION: *I move that the Commission determine that Appeal No. A-3-SLO-01-115 raises a substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act.*

STAFF RECOMMENDATION OF NO SUBSTANTIAL ISSUE:

Staff recommends a **NO** vote on the motion. Failure of this motion will result in a finding of No Substantial Issue and adoption of the following resolution and findings. If the Commission finds No Substantial Issue, the Commission will not hear the application *de novo* and the local action will become final and effective. The motion passes only by an affirmative vote by a majority of the



Commissioners present.

RESOLUTION TO FIND NO SUBSTANTIAL ISSUE:

The Commission finds that Appeal No. A-3-SLO-01-115 does not present a substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

4. RECOMMENDED FINDINGS AND DECLARATIONS

The Commission finds and declares as follows:

A. Project Location and Description

The project is located at 1370 Las Encinas in Los Osos, within the Estero Planning Area of San Luis Obispo County (Exhibit 2). The LCP designates the project area as Single Family Residential.

The project involves the construction of an 872 square foot addition to an existing 2,523 square foot residence (resulting in a 3,415 square foot residence). The additional 872 square feet will be used to enlarge the existing first floor family room, and add a hobby-room and library above the existing garage. The project also includes relocation of an existing half bath to the second floor. The proposed addition is 27'1" feet in height based on the average natural grade of the site. Copies of the project plans are attached to this report as Exhibit 3.

B. Substantial Issue Analysis

The appellant contends that the project does not comply with the San Luis Obispo Local Coastal Program because it is not compatible with the character of the surrounding neighborhood, will obstruct scenic views, and will set a dangerous precedent for future development (see Exhibit 5 for text of appellants' contentions). As discussed below, the approved project is not inconsistent with relevant LCP standards and does not raise a substantial issue in regards to the LCP's community character and visual resource policies.

1. Community Character

Appellant Contentions

With regard to community character, the appellant contends that the project does not comply with the design, massing and character of the surrounding neighborhood structures. The appellant states:

The addition of a second story above street level, in a neighborhood where all the houses on the lower side of the streets are one story above street level, will stick out like a sore thumb.



In addition, the appellant contends:

The County "failed to use the proper standard to determine character of a neighborhood as set out in the Estero Plan...The county standard for determining the character of a neighborhood is much broader. In discussing neighborhoods, the Estero Plan states "[e]ach presents a unique neighborhood feeling that blends to form the community character of South Bay (Estero Plan 6-9)."

In this case, the appellant contends the methodology used by County staff was fundamentally in error. In granting this permit, he feels the County has not appropriately applied its standards to protect the unique character of the community.

Lastly, in relation to community character, the appellant contends that approval of the proposed project will set an adverse precedent for future neighborhood development. He states:

This permit will set a precedent in our neighborhood and in the South Bay area. Now homeowners will seek to renovate their homes, adding libraries and adding on a second story to "get the view". This could start a flood of construction in the older neighborhoods, changing the nature and character, the look and the feel, of the community forever.

Relevant LCP Policies

The LCP standards applicable to this contention can be found at the following sections of the Coastal Zone Land Use Ordinance and Estero Area Plan.

Section 23.04.120 - Heights: *The purpose of the following sections is to limit the height of structures as needed to: support public safety; protect access to natural light, ventilation, and direct sunlight; support the preservation of neighborhood character [emphasis added]; and to preserve viewsheds and scenic vistas.*

Section 23.11.030 - Small Scale Neighborhoods. Neighborhoods that have primary use by residents and secondary use by the general public using accessways to scenic shoreline areas and include:

- a. Baywood Peninsula – the Residential Single-Family category within Tract 40. [Amended 1995, Ord. 2719]
- b. Oceano – Residential Single-Family and Multi-Family categories west of Highway One.

Section 23.11.030 - Special Communities. Areas and communities with unique, visually pleasing characteristics which serve as visitor destination points and include:

- a. Avila Beach - Commercial and Recreation categories along Front Street.
- b. Cambria - Commercial and Recreation categories along Main Street.
- c. Cambria - Commercial and Recreation categories along Moonstone Beach Drive.
- d. Cayucos - Commercial and Recreation categories along Ocean Avenue.
- e. South Bay – Baywood Village Commercial area.



- f. San Luis Bay/Port San Luis – Public Facilities Category.
- g. San Simeon Acres – Residential Single-Family and Residential Multi-Family categories.
- h. San Simeon Village – Commercial category.

Estero Area Plan (Chapter 8) - South Bay Urban Area Standards for Residential Single Family.

1. Height Limitations: *Maximum height shall be 28 feet except where other applicable planning area standards establish other specific height limits.*

Visual and Scenic Resource Policy 6 – Special Communities and Small-Scale Neighborhoods:
Within the urbanized areas defined as small-scale neighborhoods or special communities, new development shall be designed and sited to complement and be visually compatible with existing characteristics of the community which may include concerns for the scale of new structures, compatibility with unique or distinguished architectural historical style, or natural features that add to the overall attractiveness of the community. [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD AND PURSUANT TO CHAPTER 23.11 (DEFINITIONS) OF THE CZLUO.]

Analysis and Conclusion

The proposed project site is located on Las Encinas Street. There are currently one-story and two-story residences on Las Encinas Street. Houses on both sides of the street are primarily two-story. However, due to the slope on the north side of the street these homes appear one story from street level. The proposed project is located on the north side of Las Encinas, and the existing residence is currently one-story. The applicant is proposing a second story above the garage, which will change the height, size, and scale of the dwelling.

The policies and ordinances cited above provide the standards for new development proposed for areas designated Single Family Residential in Los Osos. Typically, these LCP standards are addressed in the course of the County's coastal development permit deliberations, as was the case with this coastal development permit application. In the most recent County action, which is the subject of this appeal, all of the relevant standards were followed.

The appellant is correct in his statement that the text of Chapter 6 of the Estero Plan broadly addresses the community character of South Bay neighborhoods. However, only LCP standards can be used to determine if proposed new development is consistent with the certified LCP. Therefore, Chapter 8 of the Estero Area Plan contains planning area standards that must be considered in an analysis of the proposed project to ensure consistency with the LCP. These standards are "mandatory requirements for development, designed to respond to concerns in an individual community (p.8-1)." The County applied Estero Planning Area Standard 1 of the Residential Single-Family land use category in its review of this project. Therefore, the County has appropriately applied the South Bay Urban Area Standards for Residential Single Family development in determining the projects' compliance with neighborhood character.

Estero Planning Area Standard 1 of the Residential Single-Family land use category and Section 23.04.120 of the CZLUO limit the height of new structures in this area. As previously mentioned, the



purpose of this section is to "support public safety; protect access to natural light, ventilation, and natural sunlight; **support the preservation of neighborhood character** (emphasis added); and to preserve viewsheds and scenic vistas. The planning area standards and ordinances for this site allow a maximum height of 28 feet as measured from the average natural grade. The proposed addition is 27'1" feet in height (nearly one foot lower than the maximum height requirement), and therefore complies with the maximum height limitations set forth in the South Bay Urban Area Standards of the Estero Area Plan.

As conditioned by the County (Exhibit 4), the project includes, but is not limited to the following additional measures intended to mitigate the impacts to the character of the neighborhood, in relation to the height and scale of surrounding structures:

Prior to setting foundation forms (and foundation inspection) the applicant's contractor shall call for a "building height point of measure verification" by setting a height point of measure stake and requesting a field verification by a county building inspector. Maximum height is proposed at 28 feet as measured from average natural grade.

A review of the coastal plan policies regarding Visual and Scenic Resources includes the identification of Special Communities and Small-Scale Neighborhoods in the Estero Planning Area. These areas are deemed an integral part of the experience of the coast (LUE p.10-5), and new development within these areas are subject to specific policies to protect these visually unique and scenic neighborhoods.

Section 23.11.030 of CZLUO defines Special Communities and Small Scale Neighborhoods. The site of the proposed project is not located in a LCP designated Special Community or Small Scale Neighborhood, and therefore does not require a heightened level of review with regards to project design, architecture, and historical significance provided in Visual and Scenic Resources Policy 6. A review of the general Estero Area standards does not reveal any other specific policy that would require a change to the design, style, density, or scale provisions for this project. The county action to approve the project as proposed is therefore consistent with LCP policies.

Finally, the appellant contends that the project, as proposed, will set a dangerous precedent for future development in the surrounding neighborhood and the community of Los Osos. Although no LCP policy specifically addresses this issue, the concern for future development can be analyzed based on the project's compliance with applicable building and design standards. As concluded in the preceding sections, the project conforms to all requirements stated in the Estero Area Plan and CZLUO. The proposed project is substantially in character with existing residential uses. Therefore, the proposed development will not set a dangerous precedent for future development and does not raise a substantial issue with regard to LCP conformance.

2. Visual and Scenic Resources

Appellant Contentions



With regard to visual and scenic resources, the appellant contends that the approved project will block scenic views and is therefore, inconsistent with certified LCP's visual and scenic resource policies. He states:

This development (neighborhood) was designed to protect the views and natural flow of the land. No home would block the view of any other home...This neighborhood was built with thought and care to preserve the natural landscapes, flow of the land, and to enhance all the residents ability to view and appreciate our breathtaking scenes of the ocean, bay and mountains.

Relevant LCP Policies

The certified LCP does not contain specific visual and scenic resource standards related to residential development in this neighborhood. Rather, the Land Use Element (LUE) contains general visual resource policies applicable throughout the County's Coastal Zone. The following LUE policies should be considered in an analysis of the proposed project to ensure consistency with the LCP.

Coastal Plan Policy 1: Protection of Visual and Scenic Resources:

Unique and attractive features of the landscape, including but not limited to unusual landforms, scenic vistas and sensitive habitats are to be preserved, protected, and in visually degraded areas restored where feasible. [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD.]

Coastal Plan Policy 2: Site Selection for New Development

Permitted development shall be sited so as to protect views to and along the ocean and scenic coastal areas. Wherever possible, site selection for new development is to emphasize locations not visible from major public view corridors. In particular, new development should utilize slope created "pockets" to shield development and minimize visual intrusion. [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD.]

Analysis and Conclusion

The proposed development is located on Las Encinas, a local neighborhood street. Views of Estero Bay, Morro Rock and the Morros are visible from street level. The applicant is proposing a second story addition above the garage which may block private coastal views.

Clearly, the intent of the coastal plan Policies 1 and 2 mentioned above are to address public views from public viewing areas. In this case, the applicant appears to be concerned about the impact of the project on private views. Coastal views are primarily enjoyed by residents in the neighborhood and not the general public. The certified LCP does not specifically protect private coastal views. As highlighted in the October 23, 2001 Board of Supervisors Hearing, only private views will be impacted from the proposed project, and there are no significant impacts to public views. Therefore, this concern does not



raise a substantial issue in terms of the project's conformance with the certified LCP's visual and scenic resource policies.

5. EXHIBITS



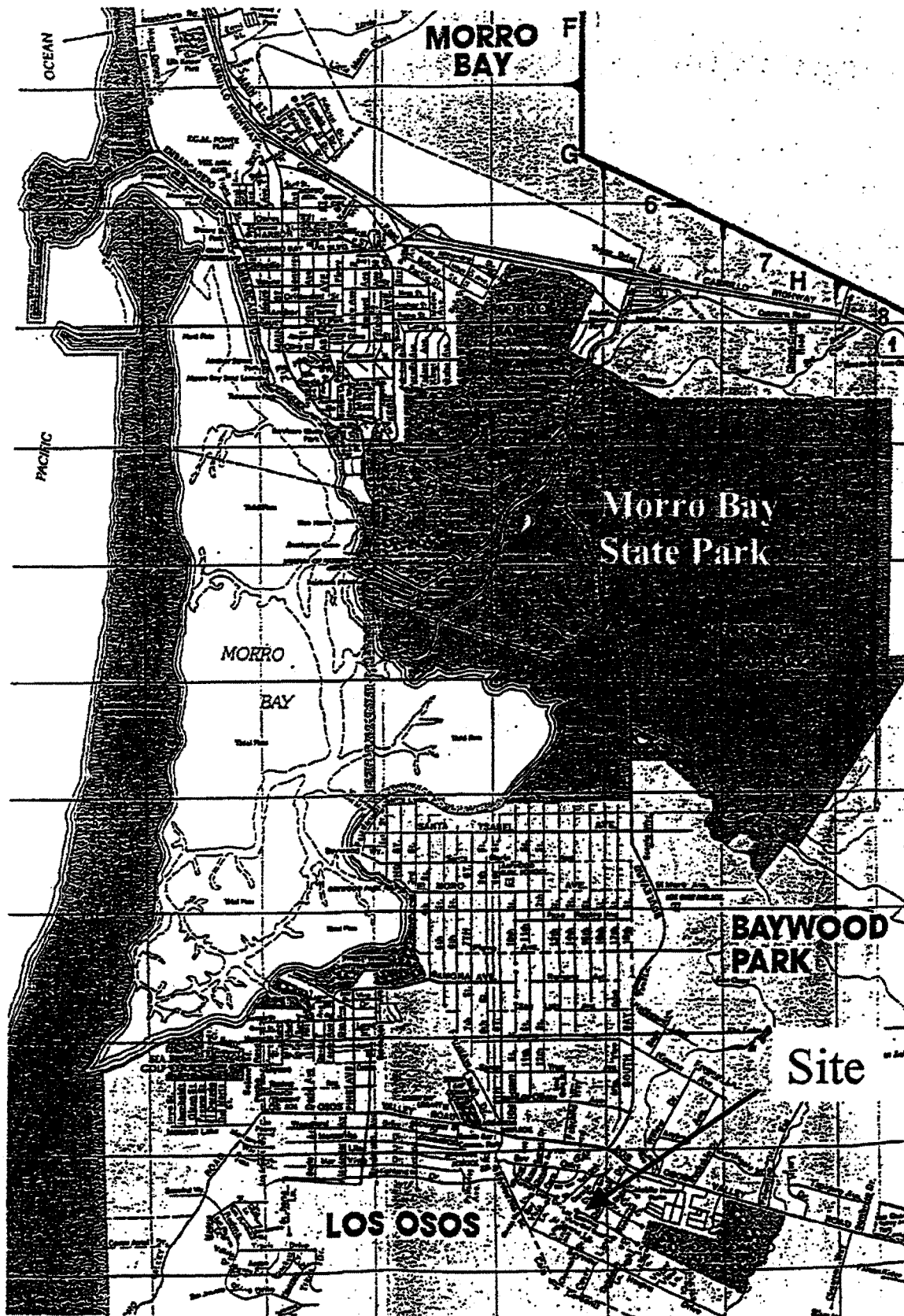


Exhibit 1

Vicinity Map

DeMore (A-3-SLO-01-115)

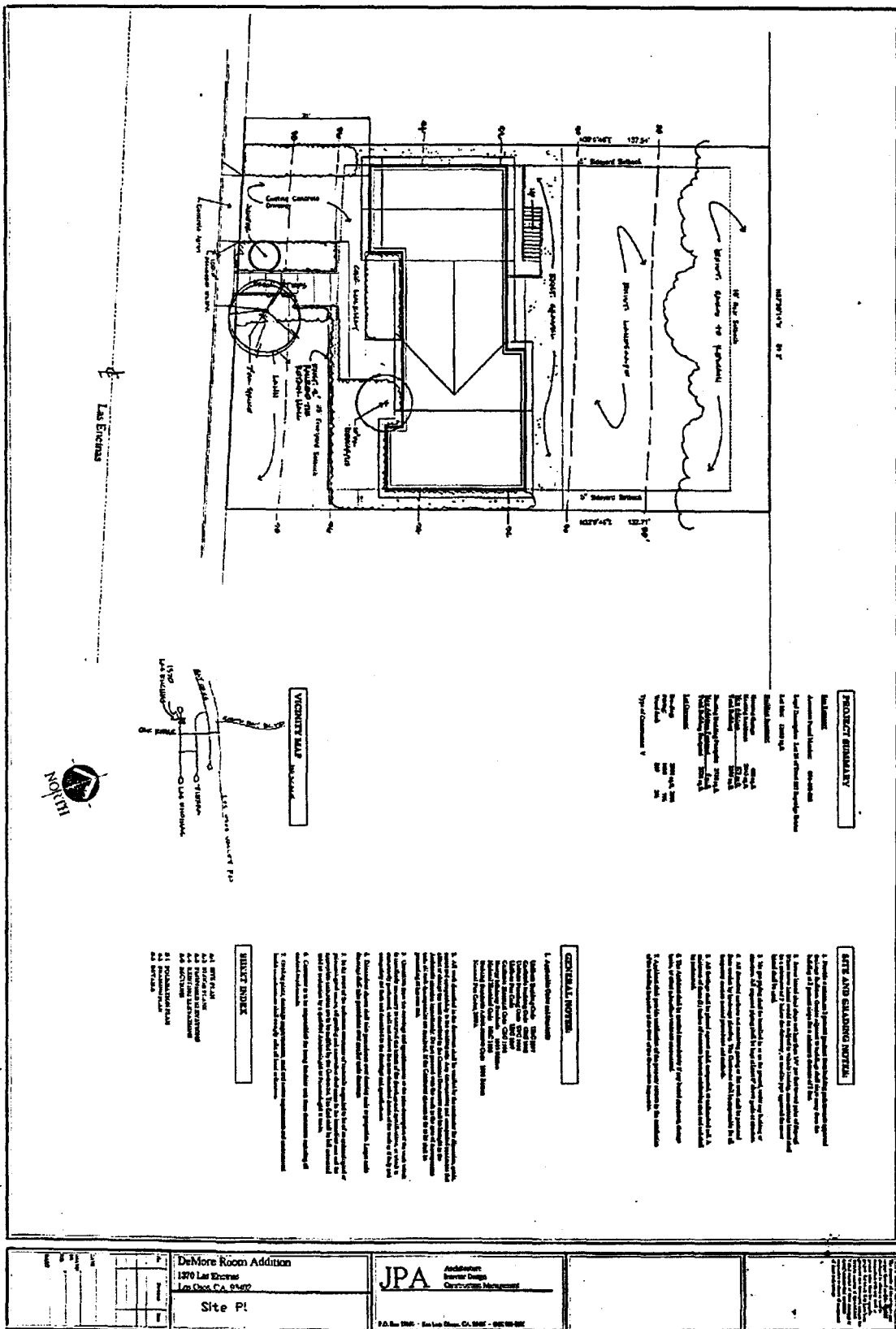


Exhibit 3 1 of 4
 Site Plans
 DeMore (A-3-SLO-01-115)

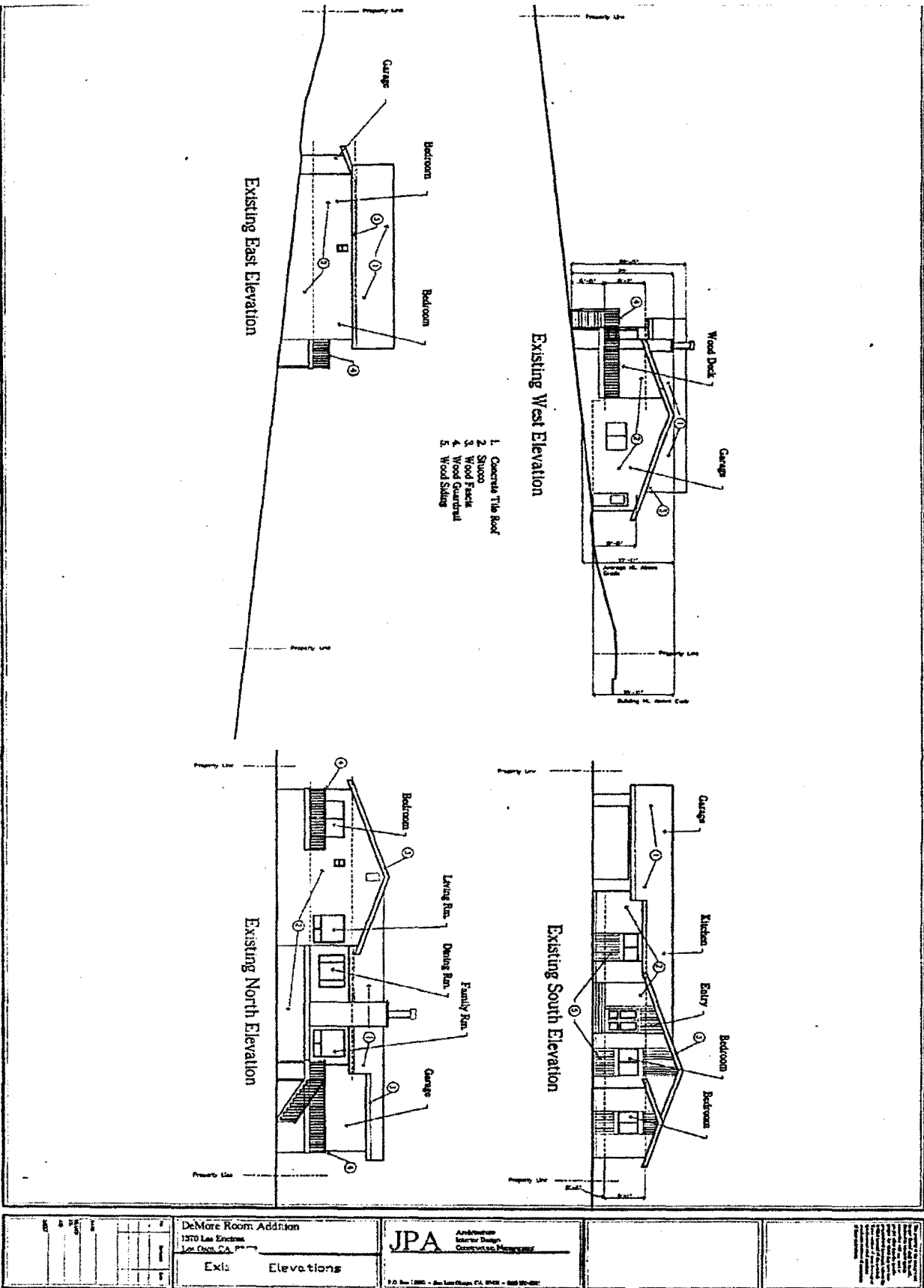
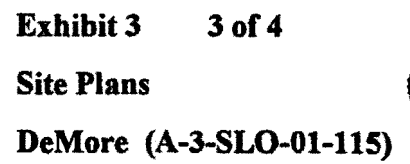


Exhibit 3 2 of 4

Site Plans

DeMore (A-3-SLO-01-115)



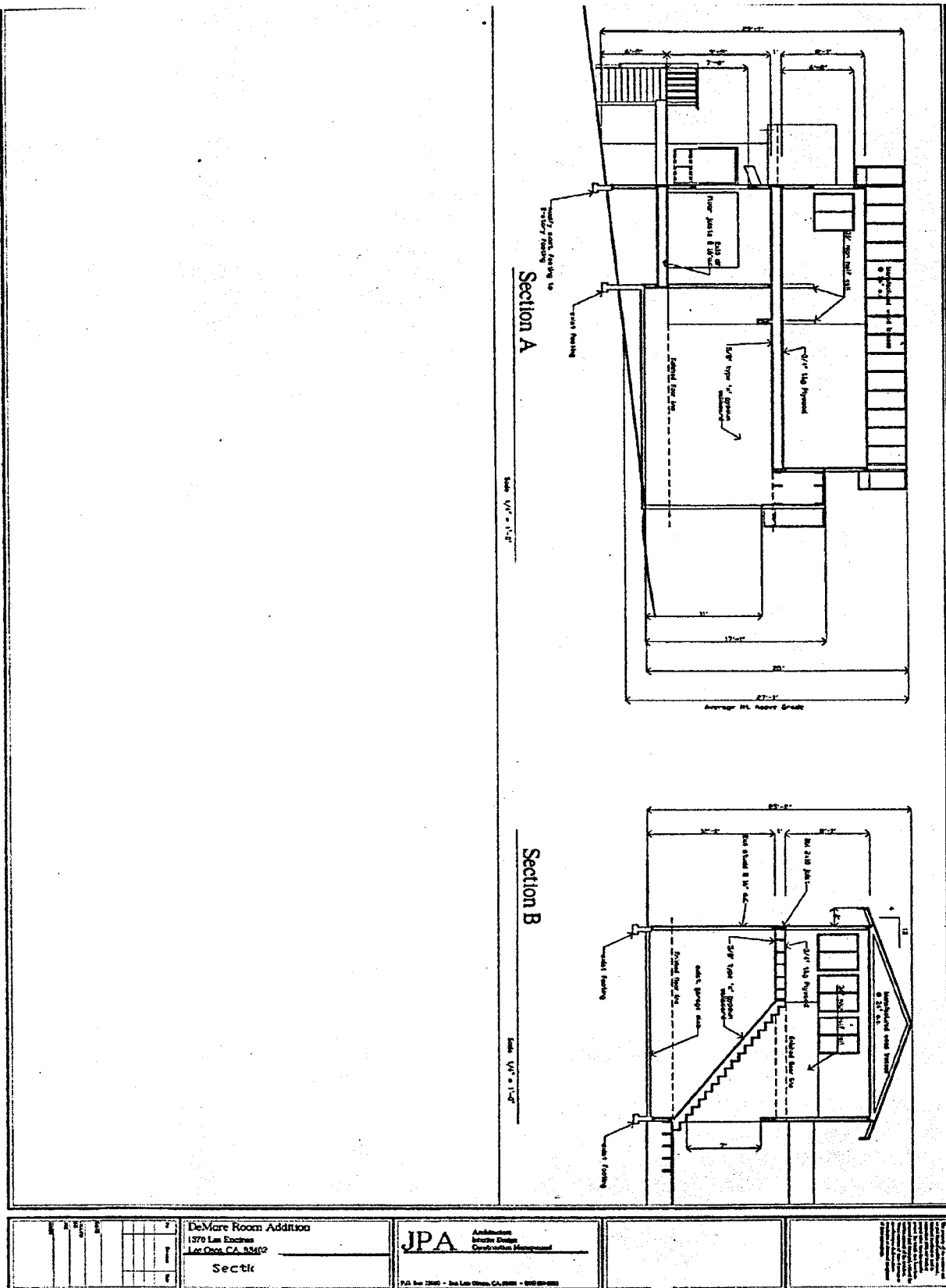


Exhibit 3 4 of 4

Site Plans

DeMore (A-3-SLO-01-115)

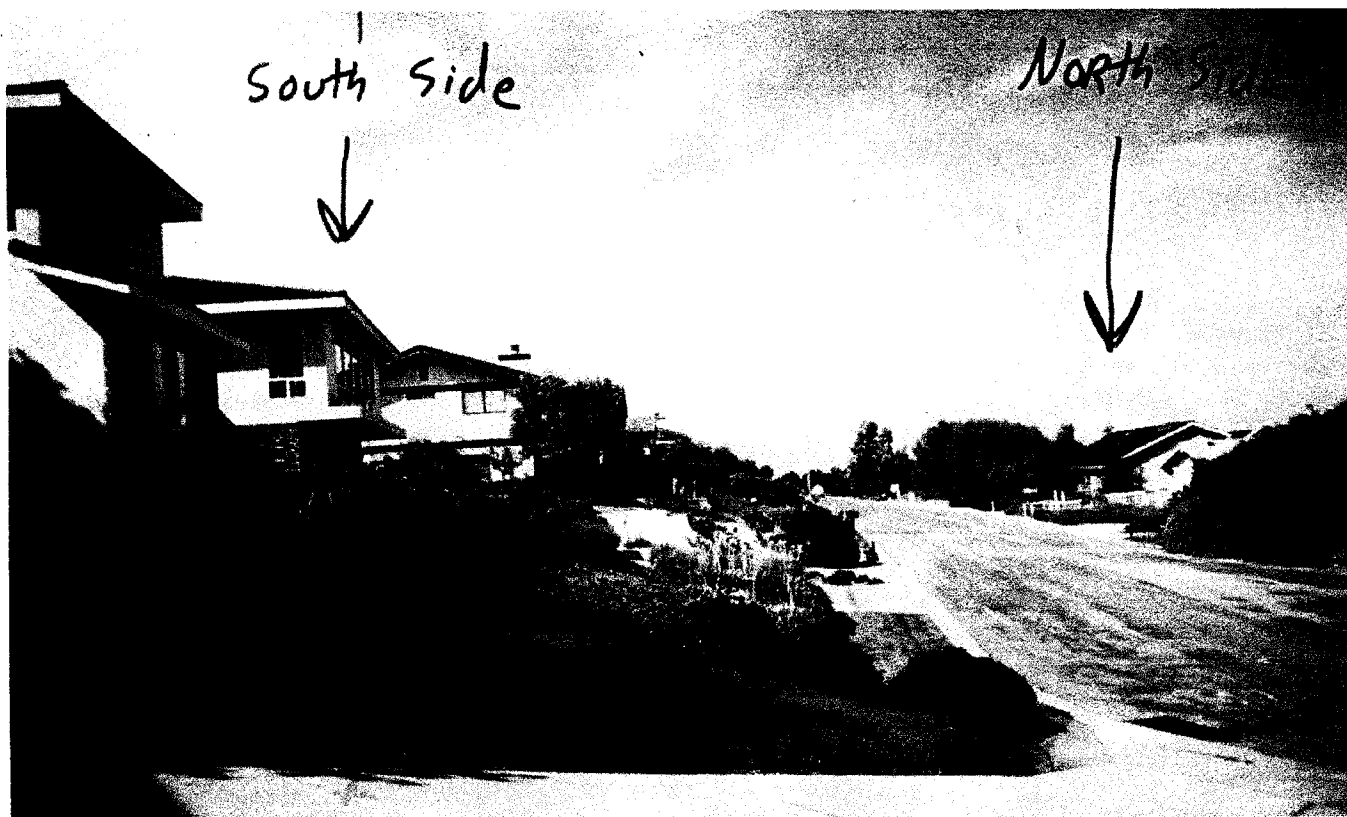
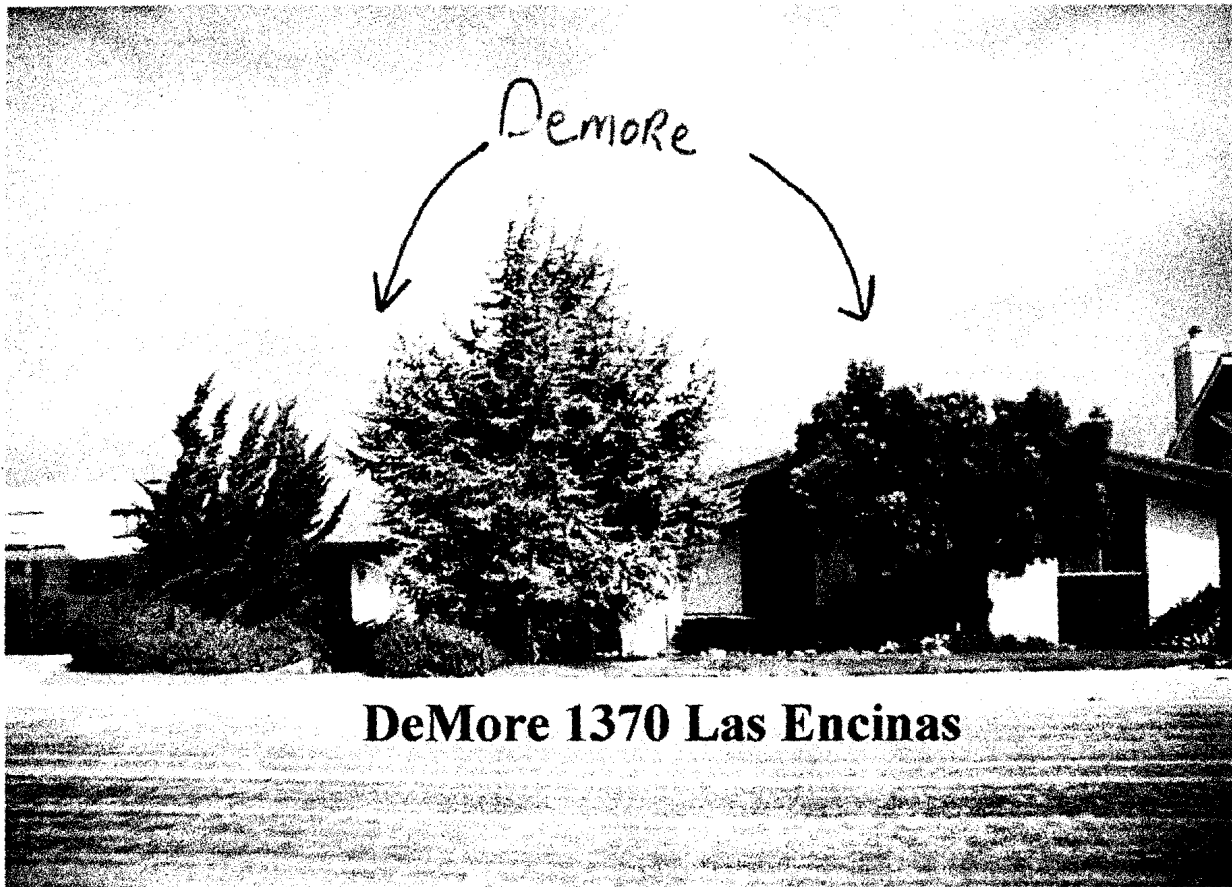
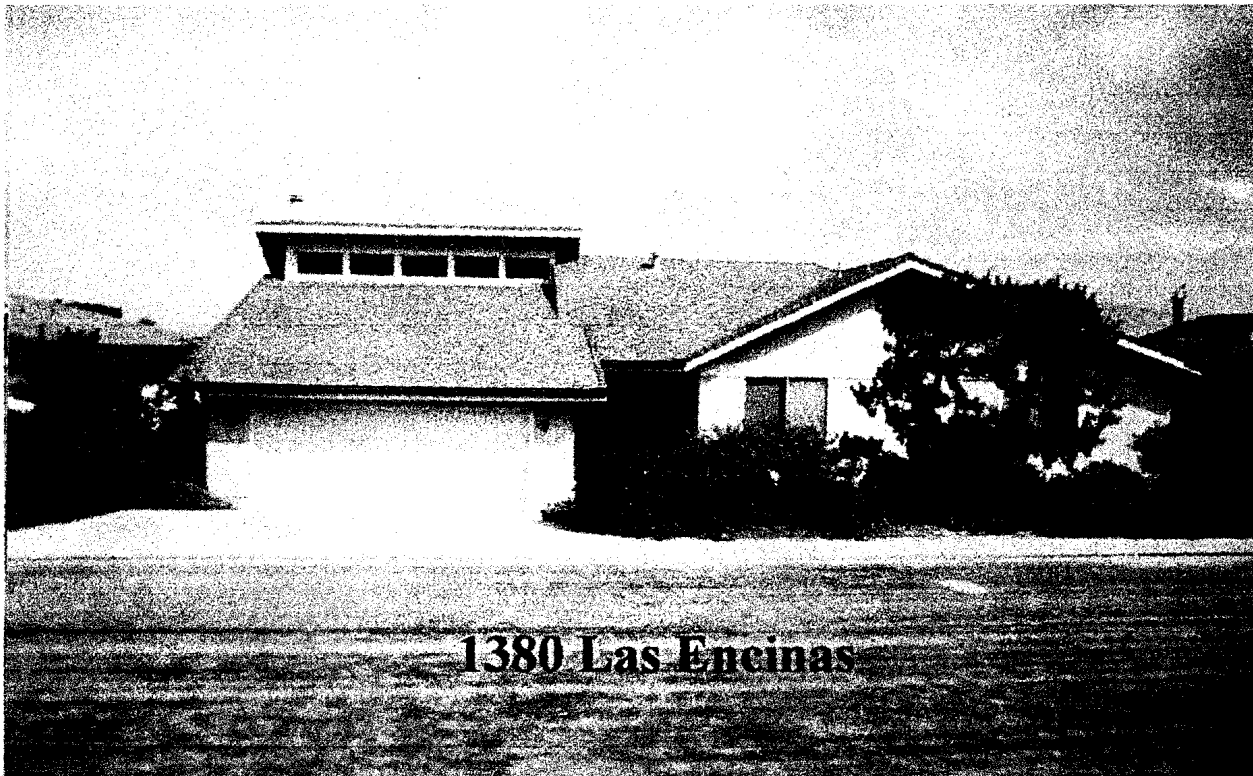


Exhibit 4 1 of 2
Neighborhood Photos
DeMore (A-3-SLO-01-115)



DeMore 1370 Las Encinas



1380 Las Encinas

EXHIBIT B

CONDITIONS - D000495P

Authorized Use

1. This approval authorizes the construction of 872 square foot addition to an existing 2,523 square foot residence (resulting in a 3,415 square foot residence).
2. Site development shall be consistent with the approved site plan, elevations and floor plans.

Height and Verification

3. Prior to setting foundation forms (and foundation inspection) the applicant's contractor shall call for a "building height point of measure verification" by setting a height point of measure stake and requesting a field verification by a county building inspector. Maximum height is proposed at 28 feet as measured from average natural grade.

Fire Safety

4. Prior to issuance of the construction permits, the applicant shall comply with all of the requirements of the South Bay Fire Protection District.

Miscellaneous

5. Prior to final building inspection, the applicant shall remove the closet bend for the water closet and permanently cap the trap arm in the floor (of the half bath being relocated). All other plumbing pipes shall be cut and permanently capped behind the interior wall or floor finish.

EXHIBIT NO. 5
APPLICATION NO.
<i>County Conditions</i>
<i>A-3-S40-01-115</i>

ATTACHMENT**CALIFORNIA COASTAL COMMISSION****Appeal from Coastal Permit Decision of Local Government****Robert Freiler, Appellant,****et. al.,****vs****San Luis Obispo County;****In : DeMore # D000495P**

EXHIBIT NO. 6
APPLICATION NO. A-3-SLO-01-115
Appellant's Contentions
DeMore California Coastal Commission

The undersigned, Robbie Freiler, representing himself and many of his neighbors on Las Encinas Drive, Los Osos, CA., states as follows:

He appeals the granting of permit # D000495P.

Mr. DeMore applied for a permit (to the county of San Luis Obispo) to enlarge his garage door to a height of eleven feet [11], to allow him "to store a travel trailer" and *from the raised ceiling of the garage*, add a second story on his single family home, with a large "hobby room" and "library" on the second floor.

Mr. Freiler, and many of the neighbors of the Bayview Heights subdivision, objected to the granting of this permit; they wrote letters objecting to the permit; attended a hearing at the planning office, and appealed granting of the permit to the Board of Supervisors. They attended a hearing before the Board of Supervisors. The Board of Supervisors upheld the granting of this permit. Appellants bring this appeal to the Coastal Commission.

Appellant Freiler opposes and objects to this permit for the following reasons:

1. it changes the character of the neighborhood; it is not harmonious with the architectural design of the neighborhood; it will obstruct the scenic views; and,
2. the county failed to use proper standard to determine "character" of a neighborhood;
3. it will set a precedent.

1. Allowing this permit will change the nature and character of the neighborhood. The "nature and character of the neighborhood" is the intentional protection of the natural beauty of the landscape and the views it allows.

This neighborhood was developed 25 years ago with a definite plan and character for the area. The developer and the residents wanted to create a beautiful coastal neighborhood, where the houses blended with the natural terrain and no views were obstructed.

All utilities were placed underground. All homes had to have one of two exterior colors and roof materials. The neighborhood was planned to be harmonious, to emphasize the natural beauty. The roof "slope" of each house on this street was (and is) parallel to the street and the street line, **blending with the natural grade of the terrain.** This development was designed to

Exhibit 6

1063

protect the views and natural flow of the land. No home would block the view of any other home.

The Department of Planning found "most of the residences in this development are one story, this project is proposing a second story...." [page 2, Notice of Tentative Action, August 17, 2001]. Our neighborhood sits on the side of a mountain. **The addition of a second story above street level in a neighborhood where all the houses on the lower sides of the streets are one story above street level, will stick out like a sore thumb.**

The roof of Mr. De More's second story will be perpendicular to the street, to the rest of the houses on the street, and to the mountains. **It will not 'flow' and blend with the surrounding nature and environment; it will erode the scenic corridors and view sheds of the neighborhood and coastal views.** Although Mr. DeMore's renovation will not exceed the 28 feet height limitation, it will greatly exceed the height above street level of all the other homes on the north side of Las Encinas.

As of this date, none of the houses on the north side of Las Encinas have more than one story above street level.

2: The county is fundamentally in error; it failed to use the proper standard to determine "character" of a neighborhood as set out in the Estero Plan..

The county used the following standard: **single family homes and height limitation of 28 feet.** [See Notice of Tentative Action, page 1, dated August 17, 2001.]

The criteria of what makes the "character and nature of a neighborhood" is much more than just "single family home, height restriction of 28 feet." The restriction of 28 feet for single family homes is the maximum allowed in **any neighborhood** in the county. That does not make it the appropriate height restriction for an **established coastal subdivision** created to protect and enhance the extraordinary natural beauty of the neighborhood.

In granting this permit the county is failing to apply its standard to protect the unique nature and beauty of our area and to protect the older neighborhoods from growth that does not blend with the natural contours of the neighborhood.

The county standard, [as set out in the Estero Area Plan, Land Use Element, Local Coastal Plan, San Luis Obispo County General Plan,] for determining the character of a neighborhood is much broader. In discussing neighborhoods, the Estero Plan said "[e]ach **presents a unique neighborhood feeling that blends to form the community character of South Bay.**" page 6-9 LUP Estero Plan.

The unique character of this neighborhood has been disregarded. This neighborhood is not a subdivision east of Fresno; it was built with thought and care to preserve the natural landscapes, flow of the land, and to enhance all the residents ability to view and appreciate our breathtaking scenes of ocean, bay, and mountains.

Las Encinas Drive has **unique magnificent views**. From street level one can see Los Osos stretching towards the bay, and then see on across the sand spit to the ocean and the mountains beyond. Everyday members of the public drive up to Las Encinas, and drive down the street and turn around and drive down towards Los Osos so they can see the mountains and the bay views. People ride bikes and walk and even jog on our street, enjoying the views. The hearing officer, John Euphrat, appellant and another objector, "he and his wife sometimes drove up to our street to look out at the incredible views." [after hearing dated 10-23-2001].

The Coastal Commission, in its LCP Review of San Luis Obispo County, found the **primary goals of the LCP was to "protect unique landscapes, ...minimize visual intrusions, ...and blend contours with natural terrain..."**. The report acknowledged that emphasis has "always been placed on protecting views west of Highway One and to the shoreline, rural development...have underscored the importance of protecting the significant view sheds to east and inland ...". "This is particularly true for places like San Luis Obispo County, which has highly scenic rural landscapes throughout the coastal zone." [Chapter 8, Preliminary Report, February 2, 2001]. The report states **"not all of the scenic areas covered by the LCP are visually accessible from Highway One..."**

The intention of the Coastal Commission is to protect the landscapes and views that are unique to this area. In this report the Coastal Commission encourages the County of San Luis Obispo to protect the natural beauty, the unique habitats, and the contrasting landscapes of the county, and to minimize visual intrusion. public view corridors. The report urges the County to require building **"to minimize its visibility from public view corridors. Structures shall be designed (height, bulk, style) to be subordinate to, and to blend with, the rural character of the area."** [Chapter 8, section 306, Preliminary Report, February 2, 2001.]

Approval of this permit will allow Mr. DeMore to have a roof height that **dominates** the neighborhood. His roof will jut out above the existing roof line contours along the entire street.

3: Allowing this permit will set a precedent.

This permit will set a precedent in our neighborhood and in the south bay area. Now homeowners will seek to renovate their homes, adding "libraries" and adding on a second story to "get the view". This could start a flood of construction in the older neighborhoods, changing the nature and character, the look and the feel, of the community forever.

Therefore this permit should be denied. I respectfully request the Coastal Commission to reverse the Board of Supervisors and deny this request for a permit.

November 27, 2001.



Robbie Freiler, Appellant

