



City of Santa Barbara California

CITY OF SANTA BARBARA PLANNING COMMISSION

RESOLUTION NO. 020-16

801 CLIFF DRIVE

COASTAL DEVELOPMENT PERMIT, ZONING MODIFICATIONS

AUGUST 11 2016

APPLICATION OF LAUREL PEREZ, APPLICANT FOR UNKNOWN DREAM LLC, 801 CLIFF DRIVE, APN 045-250-008, R-2 ZONE, LOCAL COASTAL PLAN DESIGNATION: MEDIUM RESIDENTIAL/BUFFER (MST2014-00586)

This item is continued from the April 21, 2016 Planning Commission hearing. The project addresses violations in enforcement case ENF2014-00616 for work done without required City review, approval, and permits at the 97 unit apartment complex located on a 6.72 acre parcel in the Coastal Zone. The violations include tree and other vegetation removal in an environmentally sensitive habitat area (ESHA) along a portion of Honda Valley Creek (including an established Monarch Butterfly overwintering site), as well as unpermitted remodeling of existing buildings, site work, and other landscaping alterations. The current project proposes to abate/correct these violations. While a large part of the site is in the non-appealable jurisdiction of the Coastal Zone, the Honda Valley Creek drainage is within the appealable jurisdiction, and removal or placement of vegetation in this environmentally sensitive habitat area triggers the requirement for a Coastal Development Permit for the project.

The unpermitted work proposed to be permitted consists of the removal of 32 mature Eucalyptus trees which provided Monarch butterfly overwintering habitat, removal of canopy trees and planting of palm trees in areas around buildings, non-permitted stairs near street intersection, other landscaping alterations, replacement of irrigation system, and various exterior building changes, outdoor amenities, bike racks, and parking lot improvements and reconfiguration with 25 additional spaces.

The unpermitted work proposed to be removed consists of a concrete slab and seat wall, concrete pads with gym equipment, non-compliant exterior lighting, prohibited banner signs, entry pilasters with lighting, and eight Mexican Fan Palms planted along driveway near the restoration area.

Proposed new improvements include restoration of Monarch butterfly and riparian habitat, a Monarch Butterfly and riparian habitat maintenance and monitoring program, drainage improvements in the restoration area, tree mitigation planting, removal of Palm trees near Loma Alta, and planting of Cypress trees adjacent to buildings as well as other minor miscellaneous exterior improvements.

The discretionary applications required for this project are:

1. A Coastal Development Permit (CDP2015-00012) to allow the proposed development in the Appealable Jurisdiction of the City's Coastal Zone (SBMC §28.44.060);
2. Two Front Setback Modifications to allow as-built and proposed encroachments into the required 30-foot front setback along Cliff Drive and into the required 30-foot front setback along Loma Alta Drive (SBMC §28.92.110.2);
3. Two Fence Height Modifications to allow the as-built fencing to exceed 3 ½ feet in height within 10 feet of the front lot line along Cliff Drive and within 10 feet of the front lot line along Loma Alta Drive (SBMC §28.92.110.3).

The Environmental Analyst has determined that the project is exempt from further environmental review pursuant to the California Environmental Quality Act Guidelines Section CEQA Guidelines Section 15333, Small Habitat Restoration Projects not exceeding five acres, Section 15303 for New Construction, Section 15304 for Minor Alterations to Land, and Section 15301 for miscellaneous minor alterations to Existing Facilities.

WHEREAS, the Planning Commission has held the required public hearing on the above application, and the Applicant was present.

WHEREAS, 1 person appeared to speak in favor of the application, and 7 people appeared to speak in opposition thereto, with time deferred by 6 people, and the following exhibits were presented for the record:

1. Staff Memorandum with Attachments, August 4, 2016.
2. Staff Report with Attachments, August 4, 2016
3. Site Plans
4. Correspondence received in opposition to the project or with concerns:
 - a. Tama Takahashi, via email
 - b. Gary L. Unruh, via email
 - c. Sue Mellor, Mesa Protection Alliance, via email
 - d. Susan Owens, petition regarding a "Playa Mariposa" project with over 1,100 signatures, via email
 - e. Frank Surber, via email
 - f. Cindy Hoffman, via email
 - g. Mary Turley, via email

NOW, THEREFORE BE IT RESOLVED that the City Planning Commission:

I. Approved the subject application making the following findings and determinations:

A. COASTAL DEVELOPMENT PERMIT (SBMC §28.44.150)

1. The project is consistent with all applicable policies of the Local Coastal Plan, all applicable implementing guidelines, and all applicable provisions of the Code because the unpermitted work is compatible with the area, the unpermitted structures will meet all the City's requirements in the permitting process, and storm water management will comply with current requirements to insure protection of water quality, as described in the Honda Valley Monarch Butterfly Habitat Restoration and Monitoring Plan.
2. The project is consistent with the policies of the California Coastal Act because it proposes to restore and enhance the disturbed habitat with a restoration landscape plan developed with input from qualified biologists with knowledge of monarch butterflies and associated habitats in this area, as well as the history of this site. The landscape plan is designed to provide monarch butterfly habitat restoration while being appropriate for riparian habitat, using native species, and includes monitoring the performance of the habitat restoration. This area will be further protected from any future development beyond restoration and monitoring through a development restriction covenant against the property. The project poses no adverse effects regarding public access to the sea, site stability, or erosion.

B. **ZONING MODIFICATIONS (SBMC §28.92.110.2 & SBMC §28.92.110.3)**

1. The Setback Modifications are consistent with the purposes and intent of the Zoning Ordinance and necessary to secure appropriate improvements on the lot because the large widths of the rights-of-way and the location of the front lot line result in a larger setback from the actual public right-of-way improvements, meeting the intention of the required front setbacks.
2. The Fence Height Modifications are consistent with the purposes and intent of the Zoning Ordinance and necessary to secure appropriate improvements on the lot because the large widths of the rights-of-way and the location of the front lot line result in the fence being setback from the actual public right-of-way improvements, meeting the intention of the fence height requirement.

II. Said approval is subject to the following conditions:

A. **Order of Development.** In order to accomplish the proposed development, the following steps shall occur in the order identified:

1. Obtain all required design review approvals.
2. Pay Land Development Team Recovery Fee (30% of all planning fees, as calculated by staff) at time of building permit application.
3. Provide securities for implementation of the Honda Valley Monarch Butterfly Habitat Restoration and Monitoring Plan.
4. Submit an application for and obtain a Building Permit (BLD) to demolish any structures / improvements and/or perform rough grading. Comply with condition E "Construction Implementation Requirements."
5. Record any required documents (see Recorded Conditions Agreement section).
6. Permits.
 - a. Submit an application for and obtain a Building Permit (BLD) for construction of approved development and complete said development.
 - b. Submit an application for and obtain a Streambed Alteration Agreement (SAA) from the California Department of Fish and Wildlife for work in proximity to Honda Valley Creek and complete all required work. A copy of the approved SAA shall be provided to City Planning Division staff prior to commencement of work in restoration area.
 - c. Submit an application for and obtain a Public Works Permit for the construction and minor encroachment of steps located in the public right-of-way.

Details on implementation of these steps are provided throughout the conditions of approval.

- B. **Recorded Conditions Agreement.** The Owner shall execute a written *instrument*, which shall be prepared by Planning staff, reviewed as to form and content by the City Attorney, Community Development Director and Public Works Director, recorded in the Office of the County Recorder, and

shall include the following:

1. **Approved Development.** The development of the Real Property approved by the Planning Commission on August 11, 2016 is limited to alterations to the existing buildings totaling 97 apartment units, grading and construction of concrete pads for picnic and ping-pong tables, bocce ball court, security fencing and gates, parking lot reconfiguration and painting, trash enclosures, tree replacement and landscaping alterations, two sets of wooden steps, as well as the approved Honda Valley Monarch Butterfly Habitat Restoration and Monitoring Plan to mitigate the unpermitted removal of mature Eucalyptus trees which provided Monarch butterfly and riparian habitat, and the improvements shown on the plans signed by the chairperson of the Planning Commission on said date and on file at the City of Santa Barbara. This monitoring plan shall include five year monitoring and reporting for the 27 new Monterey Cypress trees around the buildings, and the new vines on the chain link fence along the top of creek bank.
2. **Landscape Plan Compliance.** The Owner shall comply with the Landscape Plan approved by the Architectural Board of Review (ABR). Such plan shall not be modified unless prior written approval is obtained from the ABR. The landscaping on the Real Property shall be provided and maintained in accordance with said landscape plan, including any tree protection measures. If said landscaping is removed for any reason without approval by the ABR, the owner is responsible for its immediate replacement. All trees not indicated for removal on the approved landscape plans shall be preserved, protected, and maintained, in accordance with the approved landscape plans.
3. **Honda Valley Monarch Butterfly Habitat Restoration and Monitoring Plan.** Owner shall comply with all provisions of the Honda Valley Monarch Butterfly Habitat Restoration and Monitoring Plan for the project prepared by Lawrence E. Hunt, dated July 8, 2016, for the area of the property identified in the plan, which is below the top of the creek bank as shown on the site plan.
4. **Development Restrictions.** The Owner shall not utilize any portion of the Real Property below the top of the Honda Valley Creek bank, except as designated in the Honda Valley Monarch Butterfly Habitat Restoration and Monitoring Plan in order that those portions of the Real Property remain in their natural or restored state. The Owner shall continue to be responsible for maintenance including trash removal in the restricted area. Any brush clearance shall be performed without the use of mechanized equipment unless as directed in the Honda Valley Monarch Butterfly Habitat Restoration Plan.
5. **Uninterrupted Water Flow.** The Owner shall allow for the continuation of any historic flow of water onto the Real Property including, but not limited to, swales, natural watercourses, conduits and any access road, as appropriate.
6. **Storm Water Pollution Control and Drainage Systems Maintenance.** Owner shall maintain the drainage system and storm water pollution control devices in a functioning state and in accordance with the Storm Water BMP Guidance Manual and Operations and Maintenance Procedure Plan approved by the Creeks Division. Should any of the project's surface or subsurface drainage structures or storm water pollution control methods fail to capture, infiltrate, and/or treat water, or result in increased erosion, the Owner shall be responsible for any necessary repairs to the system and restoration of the eroded area.

Should repairs or restoration become necessary, prior to the commencement of such repair or restoration work, the Owner shall submit a repair and restoration plan to the Community Development Director to determine if an amendment or a new Building Permit and Coastal Development Permit are required to authorize such work. The Owner is responsible for the adequacy of any project-related drainage facilities and for the continued maintenance thereof in a manner that will preclude any hazard to life, health, or damage to the Real Property or any adjoining property.

7. **Pesticide or Fertilizer Usage Near Creeks.** The use of pesticides or fertilizer shall be prohibited except as provided for in the Honda Valley Monarch Butterfly Habitat Restoration and Monitoring Plan.
8. **Areas Available for Parking.** All parking areas and access thereto shall be kept open and available in the manner in which it was designed and permitted.
9. **Gates and Bollards.** Any gates or bollards that have the potential to block access to required parking spaces shall be locked in the open position when the restricted access is not necessary for limited time use of parking areas for special events.

C. **Design Review.** The project, including public improvements, is subject to the review and approval of the Architectural Board of Review (ABR). The ABR shall not grant project design approval until the following Planning Commission land use conditions have been satisfied.

1. **Tree Protection Measures.** The landscape plan shall include the following tree protection measure:

All trees not indicated for removal on the approved landscape plans shall be preserved, protected, and maintained, in accordance with the approved landscape plans, and/or any related conditions of approval.

2. **Screened Backflow Device.** The backflow devices for fire sprinklers, pools, spas and/or irrigation systems shall be provided in a location screened from public view or included in the exterior wall of the building, as approved by the ABR.

D. **Requirements Prior to Permit Issuance.** The Owner shall submit the following, or evidence of completion of the following, for review and approval by the Department listed below prior to the issuance of any permit for the project. Some of these conditions may be waived for demolition or rough grading permits, at the discretion of the department listed. Please note that these conditions are in addition to the standard submittal requirements for each department.

1. **Public Works Department.**

- a. **Water Rights Assignment Agreement.** The Owner shall assign to the City of Santa Barbara the exclusive right to extract ground water from under the Real Property in an *Agreement Assigning Water Extraction Rights*. Engineering Division Staff prepares said agreement for the Owner's signature.

2. **Community Development Department.**

- a. **Recordation of Agreements.** The Owner shall provide evidence of recordation of the written instrument that includes all of the Recorded Conditions identified in

condition B “Recorded Conditions Agreement” to the Community Development Department prior to issuance of any building permits.

- b. **Project Environmental Coordinator Required.** Submit to the Planning Division a contract with a qualified biologist, to be approved by the City, to act as the Project Environmental Coordinator (PEC) for on-going monitoring of the approved Honda Valley Monarch Butterfly Habitat Restoration and Monitoring Plan. Both the PEC and the contract are subject to approval by the City’s Environmental Analyst. The PEC shall be responsible for assuring full compliance with the provisions of the approved Honda Valley Monarch Butterfly Habitat Restoration & Monitoring Plan. The contract shall include the following, at a minimum:

The frequency and/or schedule of the monitoring of the mitigation measures.

A method for monitoring the mitigation measures.

A list of reporting procedures, including the responsible party, and frequency.

A list of other monitors to be hired, if applicable, and their qualifications.

Submittal of written reports prepared by the qualified biologist and submitted to City Creeks Division and Planning Division.

Submittal of a Final Mitigation Monitoring Report to City Creeks Division and Planning Division.

- c. **Performance security.** The Owner shall post a performance security in a form acceptable to the City Attorney and Community Development Director to ensure implementation of the restoration, and monitoring, and maintenance until the City accepts the restoration and monitoring plan as complete. The amount of the security shall be 115% (100% plus 15% contingency fee) of the total estimated cost of completing the implementation of the approved Honda Valley Monarch Butterfly Habitat Restoration and Monitoring Plan. The cost estimate of the approved Honda Valley Monarch Butterfly Habitat Restoration and Monitoring Plan shall be signed off by a licensed landscape architect, a biologist, and the Project Environmental Coordinator (PEC). The amount of the performance security shall be approved by the Community Development Director, and the security shall be posted prior to any building permit for the project approved on August 11, 2016.

- d. **Drainage and Water Quality.** The project is required to comply with Tier 3 of the Storm Water BMP Guidance Manual, pursuant to Santa Barbara Municipal Code Chapter 22.87 (treatment, rate and volume). The Owner shall submit a hydrology report prepared by a registered civil engineer or licensed architect demonstrating that the new development will comply with the City’s Storm Water BMP Guidance Manual. Project plans for grading, drainage, stormwater facilities and treatment methods, and project development, shall be subject to review and approval by the City Building Division and Public Works Department. Sufficient engineered design and adequate measures shall be employed to ensure that no unpermitted construction-related or long-term effects from increased runoff erosion and sedimentation, urban water pollutants (including, but not limited to

trash, hydrocarbons, fertilizers, bacteria, etc.), or groundwater pollutants would result from the project.

e. **Design Review Requirements.** Plans shall show all design, landscape and tree protection elements, as approved by the appropriate design review board and as outlined in Section C "Design Review," and all elements/specifications shall be implemented on-site.

f. **Conditions on Plans/Signatures.** The final Resolution shall be provided on a full size drawing sheet as part of the drawing sets. A statement shall also be placed on the sheet as follows: The undersigned have read and understand the required conditions, and agree to abide by any and all conditions which are their usual and customary responsibility to perform, and which are within their authority to perform.

Signed:

Property Owner Date

Contractor Date License No.

Architect Date License No.

Engineer Date License No.

E. **Construction Implementation Requirements.** All of these construction requirements shall be carried out in the field by the Owner and/or Contractor for the duration of the project construction, including demolition and grading.

1. **Construction Contact Sign.** Immediately after Building permit issuance, signage shall be posted at the points of entry to the site that list the contractor(s) name(s) and telephone number(s), to assist Building Inspectors and Police Officers in the enforcement of the conditions of approval. The font size shall be a minimum of 0.5 inches in height. Said sign shall not exceed six feet in height from the ground if it is free-standing or placed on a fence. It shall not exceed 24 square feet.

2. **Pre-construction Nesting Bird Survey.** A pre-construction survey for nesting birds should be conducted by a qualified biologist to determine if active nests of special-status birds, or common bird species protected by the Migratory Bird Treaty Act and/or the California Fish and Game Code, are present in the construction zone or within 300 feet of the construction zone. The survey should be conducted within one week prior to construction or site preparation activities that would occur during the nesting/breeding season of native bird species potentially nesting on the site (typically March 1 through August 30).

3. **Nesting Bird Buffers and Requirements.** If active nests are found, a no-construction buffer shall be established at a minimum of 100-foot (this distance may be greater depending on the bird species and construction activity, as determined by the biologist)

around the nest site where it overlaps with work areas. Clearing and construction within no-construction buffer shall be postponed or halted, at the discretion of the biologist, until the nest is vacated, juveniles have fledged, and there is no evidence of a second attempt at nesting. In addition, all active nests shall be mapped with a GPS unit and nest locations with 100-foot buffers overlain on aerial photographs to provide regular updated maps.

4. **Unanticipated Archaeological Resources Contractor Notification.** Standard discovery measures shall be implemented per the City master Environmental Assessment throughout grading and construction: Prior to the start of any vegetation or paving removal, demolition, trenching or grading, contractors and construction personnel shall be alerted to the possibility of uncovering unanticipated subsurface archaeological features or artifacts. If such archaeological resources are encountered or suspected, work shall be halted immediately, the City Environmental Analyst shall be notified and the Owner shall retain an archaeologist from the most current City Qualified Archaeologists List. The latter shall be employed to assess the nature, extent and significance of any discoveries and to develop appropriate management recommendations for archaeological resource treatment, which may include, but are not limited to, redirection of grading and/or excavation activities, consultation and/or monitoring with a Barbareño Chumash representative from the most current City qualified Barbareño Chumash Site Monitors List, etc.

If the discovery consists of possible human remains, the Santa Barbara County Coroner shall be contacted immediately. If the Coroner determines that the remains are Native American, the Coroner shall contact the California Native American Heritage Commission. A Barbareño Chumash representative from the most current City Qualified Barbareño Chumash Site Monitors List shall be retained to monitor all further subsurface disturbance in the area of the find. Work in the area may only proceed after the Environmental Analyst grants authorization.

If the discovery consists of possible prehistoric or Native American artifacts or materials, a Barbareño Chumash representative from the most current City Qualified Barbareño Chumash Site Monitors List shall be retained to monitor all further subsurface disturbance in the area of the find. Work in the area may only proceed after the Environmental Analyst grants authorization.

A final report on the results of the archaeological monitoring shall be submitted by the City-approved archaeologist to the Environmental Analyst within 180 days of completion of the monitoring and prior to any certificate of occupancy for the project.

- F. **Prior to Certificate of Occupancy.** Prior to issuance of the Certificate of Occupancy, the Owner of the Real Property shall complete the following:
 1. **Repair Damaged Public Improvements.** Repair any public improvements (curbs, gutters, sidewalks, roadways, etc.) or property damaged by construction subject to the review and approval of the Public Works Department per SBMC §22.60. Where tree roots are the cause of the damage, the roots shall be pruned under the direction of a qualified arborist.
 2. **Complete Public Improvements.** Public improvements, as shown in the public improvement plans or building plans, shall be completed.

G. General Conditions.

1. **Restoration Plan Update.** The Project Environment Coordinator (PEC) shall be required to return to the Planning Commission at a public hearing at year three (3) and at year five (5) to present status reports of the restoration plan.
2. **Compliance with Requirements.** All requirements of the city of Santa Barbara and any other applicable requirements of any law or agency of the State and/or any government entity or District shall be met. This includes, but is not limited to, the Endangered Species Act of 1973 [ESA] and any amendments thereto (16 U.S.C. § 1531 et seq.), the 1979 Air Quality Attainment Plan, and the California Code of Regulations.
3. **Approval Limitations.**
 - a. The conditions of this approval supersede all conflicting notations, specifications, dimensions, and the like which may be shown on submitted plans.
 - b. All buildings, roadways, parking areas and other features shall be located substantially as shown on the plans approved by the Planning Commission.
 - c. Any deviations from the project description, approved plans or conditions must be reviewed and approved by the City, in accordance with the Planning Commission Guidelines. Deviations may require changes to the permit and/or further environmental review. Deviations without the above-described approval will constitute a violation of permit approval.
4. **Litigation Indemnification Agreement.** In the event the Planning Commission approval of the Project is appealed to the City Council, Applicant/Owner hereby agrees to defend the City, its officers, employees, agents, consultants and independent contractors ("City's Agents") from any third party legal challenge to the City Council's denial of the appeal and approval of the Project, including, but not limited to, challenges filed pursuant to the California Environmental Quality Act (collectively "Claims"). Applicant/Owner further agrees to indemnify and hold harmless the City and the City's Agents from any award of attorney fees or court costs made in connection with any Claim.

Applicant/Owner shall execute a written agreement, in a form approved by the City Attorney, evidencing the foregoing commitments of defense and indemnification within thirty (30) days of being notified of a lawsuit regarding the Project. These commitments of defense and indemnification are material conditions of the approval of the Project. If Applicant/Owner fails to execute the required defense and indemnification agreement within the time allotted, the Project approval shall become null and void absent subsequent acceptance of the agreement by the City, which acceptance shall be within the City's sole and absolute discretion. Nothing contained in this condition shall prevent the City or the City's Agents from independently defending any Claim. If the City or the City's Agents decide to independently defend a Claim, the City and the City's Agents shall bear their own attorney fees, expenses, and costs of that independent defense.

III. NOTICE OF MODIFICATION APPROVAL TIME LIMITS:

The Planning Commission action approving the Modifications, shall terminate two (2) years from the date of the approval, per Santa Barbara Municipal Code §28.87.360, unless:

1. An extension is granted by the Community Development Director prior to the expiration of the approval; or
2. A Building permit for the use authorized by the approval is issued and the construction authorized by the permit is being diligently pursued to completion and issuance of a Certificate of Occupancy.

IV. NOTICE OF COASTAL DEVELOPMENT PERMIT TIME LIMITS:

The Planning Commission action approving the Coastal Development Permit shall expire two (2) years from the date of final action upon the application, per Santa Barbara Municipal Code §28.44.230, unless:

1. Otherwise explicitly modified by conditions of approval for the coastal development permit.
2. A Building permit for the work authorized by the coastal development permit is issued prior to the expiration date of the approval.

The Community Development Director grants an extension of the coastal development permit approval. The Community Development Director may grant up to three (3) one-year extensions of the coastal development permit approval. Each extension may be granted upon the Director finding that: (i) the development continues to conform to the Local Coastal Program, (ii) the applicant has demonstrated due diligence in completing the development, and (iii) there are no changed circumstances that affect the consistency of the development with the General Plan or any other applicable ordinances, resolutions, or other laws.

This motion was passed and adopted on the 11th day of August, 2016 by the Planning Commission of the City of Santa Barbara, by the following vote:

AYES: 7 NOES: 0 ABSTAIN: 0 ABSENT: 0

I hereby certify that this Resolution correctly reflects the action taken by the city of Santa Barbara Planning Commission at its meeting of the above date.



Julie Rodriguez, Planning Commission Secretary

8/25/16

Date

PLEASE BE ADVISED:

THIS ACTION OF THE PLANNING COMMISSION CAN BE APPEALED TO THE CITY COUNCIL WITHIN TEN (10) CALENDAR DAYS AFTER THE DATE THE ACTION WAS TAKEN BY THE PLANNING COMMISSION.