



City of Santa Barbara California

II C 3

CITY OF SANTA BARBARA PLANNING COMMISSION

RESOLUTION NO. 018-17 1909 EL CAMINO DE LA LUZ COASTAL DEVELOPMENT PERMIT NOVEMBER 16, 2017

APPLICATION OF NANCY BROCK, OWNER, 1909 EL CAMINO DE LA LUZ, APN 045-100-022, E-3/S-D-2 (ONE-FAMILY RESIDENTIAL AND COASTAL OVERLAY) ZONES, LOCAL COASTAL LAND USE PLAN DESIGNATION: RESIDENTIAL - 5 UNITS PER ACRE (MST2017-00464)

The proposed project involves the prior removal of eight trees (Monterey Cypress and Monterey Pines), the prior planting of approximately 55 Lemonade Berry shrubs, and the future removal of six trees (Monterey Cypress and Aleppo Pines) on a coastal bluff on a 0.86-acre residential parcel. Three additional ornamental trees located north of the bluff were also removed and are part of the permit request. No additional development is proposed. The project would address violations identified in enforcement case ENF2016-00802.

The discretionary application required for this project is a Coastal Development Permit (CDP2017-00005) to allow the proposed development in the Appealable Jurisdiction of the City's Coastal Zone (SBMC §28.44.060).

The Environmental Analyst has determined that the project is exempt from further environmental review pursuant to the California Environmental Quality Act Guidelines Section 15304 (Minor Alterations to Land).

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

WHEREAS, no one appeared to speak in favor or in opposition of the application thereto, and the following exhibits were presented for the record:

1. Staff Report with Attachments, November 9, 2017.
2. Site Plan
3. Correspondence received in support of the project:
 - a. Kim and Joe Finegold, Santa Barbara, CA.
4. Correspondence received in opposition to, or with concerns of, the project:
 - a. Norbert Dall on behalf of Emprise Trust, Santa Barbara, CA.
 - b. Norbert Dall on behalf of Luz Trust, Santa Barbara, CA.

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 the policies of the California Coastal Act as described in Section VI of the Staff Report because removal of the identified trees and planted identified shrubs will not create a significant impact to the bluff's stability and will not impact public views from Cliff Drive or the beach.
2. The project is consistent with all applicable policies of the City's Local Coastal Plan, all applicable implementing guidelines, and all applicable provisions of the Code, as described in Section VI of the Staff Report because removal of the trees and shrub planting will not impact the bluff's stability and will not impact public views from Cliff Drive or the beach.

II. Said approval is subject to the following conditions:

In consideration of the project approval granted by the Planning Commission and for the benefit of the owner(s) and occupant(s) of the Real Property, the owners and occupants of adjacent real property and the public generally, the following terms and conditions are imposed on the use, possession, and enjoyment of the Real Property:

- A. Approved Development.** The development of the Real Property approved by the Planning Commission on November 16, 2017 is limited to the removal of 17 trees and the planting of 55 Lemonade Berry shrubs, as outlined in the staff report and shown on the plans signed by the chairperson of the Planning Commission on said date and on file at the City of Santa Barbara.
- B. Coastal Bluff Liability Limitation.** The Owner understands and is advised that the site may be subject to extraordinary hazards from waves during storms and erosion, retreat, settlement, or subsidence and assumes liability for such hazards. The Owner unconditionally waives any present, future, and unforeseen claims of liability on the part of the City arising from the aforementioned or other natural hazards and relating to this permit approval, as a condition of this approval. Further, the Owner agrees to indemnify and hold harmless the City and its employees for any alleged or proven acts or omissions and related cost of defense, related to the City's approval of this permit and arising from the aforementioned or other natural hazards whether such claims should be stated by the Owner's successor-in-interest or third parties.
- C. Geotechnical Liability Limitation.** The Owner understands and is advised that the site may be subject to extraordinary hazards from landslides, erosion, retreat, settlement, or subsidence and assumes liability for such hazards. The Owner unconditionally waives any present, future, and unforeseen claims of liability on the part of the City arising from the aforementioned or other natural hazards and relating to this permit approval, as a condition of this approval. Further, the Owner agrees to indemnify and hold harmless the City and its employees for any alleged or proven acts or omissions and related cost of defense, related to the City's approval of this permit and

arising from the aforementioned or other natural hazards whether such claims should be stated by the Owner's successor-in-interest or third parties.

- D. Signatures.** The final, signed Resolution shall be provided to the Community Development Department with signatures required below. 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

- 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. **Nesting Birds.** Birds and their eggs nesting on or near the project site are protected under the Migratory Bird Treaty Act and pursuing, hunting, taking, capturing, killing, or attempt to do any of the above is a violation of federal and state regulations. No trimming or removing brush or trees shall occur if nesting birds are found in the vegetation. All care should be taken not to disturb the nest(s). Removal or trimming may only occur after the young have fledged from the nest(s).

F. General Conditions.

1. **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.
2. **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.
3. **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.

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.
3. 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 16th day of November, 2017 by the Planning Commission of the City of Santa Barbara, by the following vote:

AYES: 6 NOES: 0 ABSTAIN: 0 ABSENT: 1

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.

Kathleen Goo, Commission Secretary

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.

DRAFT