



City of Santa Barbara California

CITY OF SANTA BARBARA PLANNING COMMISSION

RESOLUTION NO. 017-18 5 SANTA CRUZ BOULEVARD COASTAL DEVELOPMENT PERMIT JUNE 7, 2018

APPLICATION OF TRISH ALLEN, AGENT FOR STEPHEN ODELL, PROPERTY OWNER, 5 SANTA CRUZ BOULEVARD, APN 045-182-012, E-3/SD-3 SINGLE FAMILY RESIDENCE AND COASTAL OVERLAY ZONES, GENERAL PLAN AND LOCAL COASTAL PROGRAM LAND USE DESIGNATION : LOW DENSITY RESIDENTIAL 5 DU/AC (MST2017-00770)

The request is for a Coastal Development Permit (CDP) to address various as-built structures on the south side of the subject property that are on the bluff top and bluff face. The project proposes to permit the already performed removal of an as-built brick path, steps, and wood viewing deck, and permit the additional removal of a concrete support post that remains. Additionally, the project proposes to permit as-built brick wall with wood fence on the eastern property line and wooden planter walls (“retaining boards”) to remain on the bluff face per recommendation from the geologist. New drought tolerant landscaping on the bluff face is proposed to reduce visibility of the structures to remain and increase stability of the area. No new structures are proposed.

The discretionary application required for this project is a Coastal Development Permit (CDP2017-00014) 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 thereto, and the following exhibits were presented for the record:

1. Staff Report with Attachments, May 31, 2018
2. Site Plans

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

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

COASTAL DEVELOPMENT PERMIT (SBMC §28.44.150)

1. The project is the most consistent with the policies of the California Coastal Act because it is the most protective option that preserves the bluff face and the best way to prevent bluff erosion.
2. The project is most consistent with all applicable policies of the City's Local Coastal Plan, all applicable implementing guidelines, and all applicable provisions of the Code

because it is the most protective option that preserves the bluff face and the best way to prevent bluff erosion.

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. **Order of Development.** In order to accomplish the proposed development, the following steps shall occur in the order identified:
1. Obtain all additional land use approvals. Refer to Condition B “Approval Contingent upon Administrative Height Exception for Over Height Walls.”
 2. Obtain all required design review approvals.
 3. Pay Land Development Team Recovery Fee (30% of all planning fees, as calculated by staff) at time of building permit application.
 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. Submit an application for and obtain a Building Permit (BLD) for demolition/construction of approved development and complete said development.
- Details on implementation of these steps are provided throughout the conditions of approval.
- B. **Approval Contingent Upon Administrative Height Exception.** Approval of the subject project is contingent upon approval of an Administrative Height Exception for the overheight walls that are a part of the project. Submit application materials for the Administrative Height Exception to the Planning Counter at 630 Garden Street.
- C. **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 June 7, 2018 is limited to the previously removed as-built brick path, steps, and wood viewing deck; removal of the concrete support post that previously supported the western portion of the wood deck; conditional retention of the as-built brick wall with wood fence on the eastern property line and wooden planter walls (“retaining boards”) on the bluff face; installation of new drought tolerant landscaping; and the improvements shown on the plans signed by the chairperson of the Planning Commission on June 7, 2018 said date and on file at the City of Santa Barbara.

2. **Development Rights Restrictions on Bluff Face.** The Owner shall not cause or suffer any development on, or make any use of, the bluff face beyond what is identified on the approved plans, in order that the bluff face will remain in its natural state as much as reasonably feasible. The Owner shall not make use of the restricted area including, but not limited to, grading, irrigation, structures, ornamental landscaping, or utility service lines. The restricted areas shall be shown on the landscape plans. The Owner shall continue to be responsible for maintenance of the restricted area, and compliance with orders of the Fire Department. Any brush clearance shall be performed without the use of earth moving equipment.
3. **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.
4. **Landscape Plan Compliance.** The Owner shall comply with the Landscape Plan approved by the Single Family Design Board (SFDB). Such plan shall not be modified unless prior written approval is obtained from the SFDB. 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 SFDB, the owner is responsible for its immediate replacement.
5. **Future Threats to Development.** By acceptance of this permit, the Owner agrees, on behalf of him/herself and all successors and assigns, that the Owner shall remove the development authorized by this permit, including the brick wall with wood fence, wooden planter walls (“retaining boards”) or other structural features that become unearthed in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions, liquefaction, flooding, sea level rise, or any other coastal hazards in the future. In the event that portions of the development fall to the beach before they are removed, the Owner shall remove all recoverable debris associated with the development from the beach and ocean and lawfully dispose of the material in an approved disposal site. Such removal shall require a Coastal Development Permit.
6. **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.
7. **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.

8. **Bluff Stability Evaluation.** For as long as the bluff face improvements remain on the bluff face, owners shall annually obtain a bluff stability observation report prepared by a Certified Engineering Geologist (or equivalent). The report shall evaluate the stability of the bluff face and the improvements located on the bluff face and make recommendations of actions to take to maintain the stability of the bluff and protect public safety. The report shall be prepared following the spring rainy season and be submitted to the Building and Safety Division on or before May 31st of each year.
- D. **Design Review.** The project is subject to the review and approval of the Single Family Design Board (SFDB). The SFDB shall not grant project design approval until the following Planning Commission land use conditions have been satisfied.
1. **Appropriate Plants on Bluff.** Special attention shall be paid to the appropriateness of the existing and proposed plant material on the bluff. All existing succulent plants that add weight to the bluff and/or contribute to erosion shall be removed in a manner that does not disturb the root system and replaced with appropriate plant material in a manner that does not increase the rate of erosion.
 2. **Irrigation System.** The irrigation system shall be designed and maintained with the most current technology to prevent a system failure. Watering of vegetation on the bluff edge shall be kept to the minimum necessary for plant survival. The drip system along the bluff edge shall be removed after one full season of plant growth.
- E. **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. **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 C "Recorded Conditions Agreement" to the Community Development Department prior to issuance of any building permits.
 - b. **Requirement for Archaeological Resources.** The following information shall be printed on the site plan:

If archaeological resources are encountered or suspected, work shall be halted or redirected immediately and the Planning Division shall be notified. The archaeologist shall assess the nature, extent, and significance of any discoveries and 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 Planning Division 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 Planning Division grants authorization.

- c. **Contractor and Subcontractor Notification.** The Owner shall notify in writing all contractors and subcontractors of the site rules, restrictions, and Conditions of Approval. Submit a draft copy of the notice to the Planning Division for review and approval.
- d. **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 D “Design Review,” and all elements/specifications shall be implemented on-site.
- e. **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
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Contractor	Date	License No.
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Architect	Date	License No.
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Engineer	Date	License No.
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- 2. **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 nets(s).

3. **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.

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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. **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.

II. **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 7th day of June, 2018 by the Planning Commission of the City of Santa Barbara, by the following vote:

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

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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.

Krystal M. Vaughn, 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