



BOARD OF SUPERVISORS
AGENDA LETTER

Agenda Number:

Clerk of the Board of Supervisors
105 E. Anapamu Street, Suite 407
Santa Barbara, CA 93101
(805) 568-2240

Department Name: Planning & Development
Department No.: 053
For Agenda Of: August 14, 2018
Placement: Set hearing on August 14, 2018 for August 28, 2018
Estimated Time: 1.0 hour on August, 28, 2018
Continued Item: No
If Yes, date from:
Vote Required: Majority

TO: Board of Supervisors
FROM: Department Director Dianne Black, Director, Planning & Development
(805) 568-2086
Contact Info: Jeff Wilson, Deputy Director, Development Review Division
(805) 568-2518
SUBJECT: Raemer Crest, LLC and Brilliant Projects, LLC, Appeal of Feldman Residence, Case No. 18APL-00000-00011

County Counsel Concurrence

As to form: Yes

Other Concurrence: N/A

Auditor-Controller Concurrence

As to form: N/A

Recommended Actions:

On August 14, 2018, set a hearing for August 28, 2018 to consider the appeal (Case No. 18APL-00000-00011) filed by Marc Chytilo, attorney for the appellants, Raemer Crest, LLC and Brilliant Projects, LLC, of the Planning Commission's April 4, 2018 approval of Case Nos. 13MOD-00000-00001 and 13CDH-00000-00001.

On August 28, 2018, staff recommends that your Board take the following actions:

- a) Deny the appeal, Case No. 18APL-00000-00011;
- b) Make the required findings for approval of the project, Case Nos. 13MOD-00000-00001 and 13CDH-00000-00001, included as Attachment 1, including CEQA findings;

- c) Adopt the MND (15NGD-00000-00006) included as Attachment 6 and adopt the mitigation monitoring program contained in the conditions of approval; and,
- d) Grant *de novo* approval of the project, Case Nos. 13MOD-00000-00001 and 13CDH-00000-00001, subject to the conditions included as Attachment 2.

Summary Text:

A. Proposed Project

The proposed project is for demolition of an existing 1,774 square foot dwelling and the construction of a new 5,995 gross square foot dwelling, with 5,800 gross square feet of lower level storage area, an attached garage of 1,335 gross square foot pool, and hot tub. The project includes a request for a modification to allow the proposed dwelling's roof ridges and peaks to extend to a maximum height of 30.8 feet instead of the allowed 28 feet. The proposed structures would maintain a buffer ranging from 73 to 81 feet from an on-site wetland. No native wetland vegetation would be removed. Vegetation removed in any area less than 100 feet from the wetland (currently occupied by iceplant) is proposed to be replaced with native vegetation pursuant to a proposed Restoration and Habitat Enhancement Plan.

B. Background

The project was approved by the Zoning Administrator on April 7, 2014. An appeal of the Zoning Administrator's approval was filed by the appellant on April 15, 2014. Based on additional information, the Planning and Development (P&D) determined that a Mitigated Negative Declaration (MND) would need to be prepared in order to analyze any environmental impacts associated with the project. The applicant prepared and provided additional geologic analysis to Planning and Development for the preparation of a MND. On August 27, 2015, the California Coastal Commission (CCC) issued a Notice of Violation indicating that the existing rock revetment located on and along the southwest side of the properties located on Sand Point Road was expanded and modified in 1983 without the benefit of permits and, therefore, constituted a violation. Santa Barbara County Public Works is working with the CCC and affected property owners to address the unpermitted revetment modification. Solutions to the unpermitted modification of the revetment may include relocation, redesign, or removal of the revetment. For this reason, and consistent with the State of California Draft Sea Level Rise Guidance, the coastal hazard and wave run-up analysis (Streamline West, December 2016) prepared for the project included an analysis of coastal hazard impacts modeled without the revetment. The applicant team prepared the study, which was reviewed by County and CCC staff, and then finalized.

A Draft Mitigated Negative Declaration (MND) using the December 2016 Streamline West report was published on June 15, 2017. The applicant also agreed to three project description elements (Attachment 2a, Project Description Part 2 through Part 4) recommended by Coastal Commission staff for the purposes of preparing for potential future actions related to the revetment. Those elements require that: 1) if the proposed development is substantially destroyed by inundation, it shall be removed from the site (Project Description Part 2, Condition 2); 2) if the proposed deck is destroyed by inundation, it shall be removed (Project Description Part 3, Condition 3); and, 3) the owner acknowledges that the subject property is subject to coastal hazards, assumes the risks of such hazards (Project Description Part 4, Condition 4).

In their letter responding to the Draft MND, CCC staff indicated that the proposed home should be relocated farther away from the existing revetment and closer to the on-site wetland. In response, the applicant revised the project to relocate the home farther away from the existing revetment and prepared a revised *Sea Level Rise and Wave Run-Up Analysis* (Streamline West, October 2017). CCC staff reviewed the redesign and indicated that the home should be reduced in size to accommodate the increased setback from the rock revetment while also accommodating a 100-foot setback from the on-site wetland (please see the appeal issue 5 staff response, below, for a discussion of why a 100-foot wetland setback is not applicable to the property). The applicant chose to move forward with the project without further redesign. Staff then completed and circulated a revised MND and scheduled the project for a *de novo* appeal hearing before the Planning Commission. On April 4, 2018, the Planning Commission denied the appeal and approved the project (see Attachment 4 Planning Commission Action Letter). The current proposed project and the analysis contained within this Board Letter, the April 4, 2018 Planning Commission staff report, and the Proposed Final MND are based upon the redesign analyzed in the October 2017 Sea Level Rise and Wave Run-Up Analysis.

C. Appellant Appeal Issues and Staff Responses

The appellant filed a timely appeal of the Planning Commission's denial of appeal Case No. 14APL-00000-00003 and *de novo* approval of the Zoning Administrator's approval of the project, Case Nos. 13MOD-00000-00001 and 13CDH-00000-00001. The appeal application (Attachment 3) contains a letter summarizing the issues raised in the appeal to your Board. These issues and staff's responses are summarized below.

Appellant Appeal Issue #1 (CEQA Issues-General; Page 2 Paragraphs 1 and 2): The appellant contends that “. . . substantial evidence, including comments by Coastal Commission staff, supports a fair argument that the Project may result in numerous significant environmental impacts, and accordingly CEQA requires that an Environmental Impact Report (EIR) be prepared . . .”

Issue 1. Staff Response:

As discussed in the Proposed Final Mitigated Negative Declaration (Attachment 6), and incorporated herein by reference, all potentially significant impacts are mitigated to less than significant through the application of feasible mitigation measures. These measures have been incorporated as conditions of approval for the project and enforcement of the measures would be ensured through monitoring by P&D Permit Compliance staff. In addition, as discussed throughout this Board Letter, the appellant has not provided substantial evidence to support a fair argument that the project would result in a significant environmental impact. Because the project would not result in any significant and unavoidable (Class I) impacts and no fair argument has been made, no EIR is required. Further discussion of specific CEQA impact issue areas referenced in the appeal letter is provided below under appeal issues 2 through 8.

Appellant Appeal Issue #2 (CEQA Issues-Coastal Hazards; Page 2 Paragraph 3): The appellant contends that “The Project is located on a site that will be permanently inundated due to projected sea level rise during its expected lifetime based on current projections . . . Proposed and existing infrastructure required for the Project including the access road, sewer line, and electrical service will be at or beneath the sea's surface during the Project's expected life based on projected sea level rise. . . . Immersion of the sewer line can cause sewage discharge, as will rupture at any point in the line during

storm events. Lower portions of the house include storage areas exposed to large waves and storm surges that will discharge debris and jetsam to surrounding waters, posing structural hazards to other structures, impeding first responders and jeopardizing the environmentally sensitive habitat areas in the Carpinteria Salt Marsh and surrounding area.”

Issue 2. Staff Response:

The project site would not be permanently inundated due to projected sea level rise during its expected lifetime. Pursuant to the Wave Run-Up Study (Attachment 7 to the MND [Attachment 6]), neither the intermediate nor the high sea-level rise scenarios would result in flooding within the uninhabitable lower level storage area of the proposed residence. Flooding within the uninhabitable lower level storage area would only occur at the end of project life under a high sea level rise scenario combined with a 100-year storm event (see page 4, Table 2 of the Wave Run-Up Study). A 100-year storm event is a temporary condition that will subside, and is not permanent inundation. In addition, the proposed project description includes provisions (see Attachment 2a Conditions 2 and 3) for removal of structures if they are substantially destroyed by coastal inundation.

Furthermore, the existing environmental setting constitutes the baseline physical conditions by which a lead agency determines whether an impact is significant (2018 CEQA Guidelines Section 15125). In the case of the proposed project, the existing environmental setting includes a single family dwelling with associated services (sewer line, electrical service, access, etc.) and rock revetment located within a geographic location that is currently subject to coastal hazards, and that will be subject to future coastal hazards. Therefore, from a CEQA perspective, potential site constraints associated with sea level rise and storm events are an existing condition, are not caused by the project, and therefore do not represent a CEQA impact.

Appellant Appeal Issue #3 (CEQA Issues-Coastal Hazards; Page 2 Paragraph 3 and Page 3 Paragraph 1): “The entirety of the lot will eventually become part of the public trust and the structure will have to be removed and the site restored.”

Issue 3. Staff Response:

The entirety of the subject lot will not become a part of the “public trust” during the lifetime of the project (75 years). By reference to public trust, the appellant appears to be referring to public trust lands, which generally include tidelands that lie between mean high tide and mean low tide (A Legal Guide to the Public’s Rights to Access and Use California’s Navigable Waters, November 20, 2017 California State Lands Commission). The Wave Run-Up Study (Attachment 7 to the MND [Attachment 6]) incorporated herein by reference, does not find that the property will be permanently inundated by an advancing mean high tide line boundary during the life of the project when considering the presence of the on-site rock revetment as a baseline (existing) condition. Even considering a condition in which the existing revetment is removed, the Wave Run-Up Study concludes that wave action would only affect the subject property on a temporary and intermittent basis associated with storm events occurring concurrently with a high (“king”) tide (see pages 13-15 of the Wave Run-Up Study). Therefore, based upon the findings of the Wave Run-Up Study, the mean high tide will not shift landward and cause the entirety of the property to become public trust lands during the life of the project. In addition, the proposed project description includes provisions (see Attachment 2a Conditions 2 and 3) for removal of structures if they are substantially destroyed by coastal inundation.

Appellant Appeal Issue #4 (CEQA Issues-Coastal Hazards; Page 2 Page 3 Paragraph 1): “. . . the Wave Run-Up Study (Streamline West, October 2017) fails to analyze the potential for storm surges in addition to sea level rise (SLR) and their potential impacts. Mitigation including MM-Geo-01 is both inadequate to reduce coastal hazard related impacts below significant levels, but as discussed in the Coastal Commission’s MND comments, the design including break-away walls itself may cause potentially significant impacts to the environment including the sensitive resources of Carpinteria Slough. The inadequate Wave Run-Up Study and coastal hazard impact analysis and mitigation also results in potentially significant impacts due to conflicts with applicable policies including CLUP Policy 3-1, 3-8, and Coastal Act § 30253 . . .”

Issue 4. Staff Response:

Contrary to the appellants assertion, the Wave Run-Up Study prepared by Streamline West (Attachment 7 to the MND [Attachment 6]) incorporated herein by reference, does analyze storm surges in addition to sea level rise. Tables 7 and 8, and Figure 6 of the Wave Run-Up Study and the accompanying text indicate that under existing baseline conditions (from a CEQA perspective) and under the extreme worst-case scenario, the existing rock revetment prevents significant run-up from storm surges and waves from reaching the proposed residence during its design life (75 years). In addition, as discussed under Appeal Issue #2, above, under an intermediate sea level rise scenario and during a 100 year storm, the living area of the residence would be safe from inundation even without the presence of the rock revetment. MM-Geo-01 is designed to ensure that construction of the project complies with the recommendations of the various geologic and coastal engineering studies prepared for the project. Compliance with those recommendations will ensure that the construction and design of the residence result in a structure safe for occupancy even during extreme storm events and for the life of the project (in scenarios modeled both with and without the existing rock revetment). As discussed further in the Mitigated Negative Declaration, and incorporated herein by reference, this measure would ensure that potential impacts would be reduced to less than significant.

The concern expressed in the Coastal Commission staff letter referenced by the appellant is that the breakaway walls could become “marine debris should the residence be subjected to wave run-up,” and that this would result in adverse impacts to coastal waters. Breakaway walls are a common construction technique used for coastal adjacent structures. Breakaway walls are intended to assist in the protection of structures in the event of extreme storm events and washing away of breakaway walls would not be a regular occurrence. Numerous homes along Sand Point Road and Padaro Lane are equipped with breakaway walls and have been conditioned to include breakaway walls by Santa Barbara County Flood Control. Coastal homeowners throughout the County are not prohibited from using understory areas or ground-level areas of their property for the storage of materials, including cars, boats, lawn furniture, and other large items comparable in size to breakaway walls. Breakaway walls and the storage of large materials with the potential to become marine debris are an existing condition effecting the environment in the project vicinity. The potential additional contribution from the proposed project to this existing condition would be minimal and not cumulatively considerable. The irregular and temporary nature of circumstances under which breakaway walls would be washed away, together with the small contribution from the proposed project, make it clear that no potentially significant impacts would occur as a result of the use of breakaway walls. In addition, the proposed project description includes provisions (see Attachment 2a Conditions 2 and 3) for removal of structures if they are substantially destroyed by coastal inundation. The proposed project would be consistent with CLUP Policies 3-1, 3-8,

and Coastal Act § 30253, as discussed in detail in Section 6.3 of the Planning Commission staff report (Attachment 5) and incorporated herein by reference.

Appellant Appeal Issue #5 (CEQA Issues-Biological Resources; Page 3, Paragraph 2): The appellant contends that, “The Project intrudes into the 100-foot buffer required to protect an environmentally sensitive onsite wetland. While a code exemption may make this permissible, that does not support a conclusion the Project will cause no significant impacts to environmentally sensitive habitat areas. Coastal Commission staff identified potentially significant impacts to biological resources resulting from this intrusion, and requested that the footprint of the residence be scaled back to avoid impacts to the environmentally sensitive on-site wetland and achieve consistency with CLUP Policies 2-11, 3-19 and 9-9 and sections 30230, 30231, and 30240 of the Coastal Act. The Project analyzed in the MND and approved by the Planning Commission continues to intrude into to this sensitive wetland area, resulting in numerous potentially significant impacts.”

Issue 5. Staff Response:

The proposed project does not intrude into a required 100-foot buffer, as the property is not subject to a 100 foot buffer requirement. The Article II Coastal Zoning Ordinance, Section 35-97.9.4 states, “Except for lots which abut the El Estero (Carpinteria Slough), a buffer strip, a minimum of 100 feet in width, shall be maintained in natural condition along the periphery of all wetlands.” Since the parcel abuts El Estero, it is specifically exempted by ordinance from the 100-foot buffer requirement of policy.

The Mitigated Negative Declaration (MND) prepared for the project did not rely upon a code exemption in its assessment of impacts. The MND (Attachment 6) incorporated herein by reference, identifies potentially significant environmental impacts resulting from development occurring less than 100 feet from the wetland and identifies mitigation measures that would reduce those impacts to less than significant levels.

The proposed project would be consistent with all of the Coastal Land Use Plan (CLUP) and Coastal Act policies cited by the appellant as being referenced in the California Coastal Commission (CCC) staff comment letters (Attachment 8). As discussed in Section 6.3 of the Planning Commission staff report (Attachment 5) and incorporated herein by reference, the project would be consistent with Coastal Land Use Plan (CLUP) Policy 9-9 and sections 30231 and 30240 of the Coastal Act. Coastal Plan Policy 2-11 requires that development be regulated to avoid adverse impacts to habitat resources, and states, “Regulatory measures include, but are not limited to, setbacks, buffer zones, grading controls, noise restrictions, maintenance of natural vegetation, and control of runoff.” As discussed in Section 6.3 of the Planning Commission staff report and incorporated herein by reference, conditions of approval include measures such as setbacks, buffer zones, an erosion and sediment control plan, noise restrictions, and restoration of natural vegetation. Therefore the project is consistent with CLUP Policy 2-11.

CLUP Policy 3-19 requires that development not result in water quality degradation and that pollutants not be discharged into or alongside coastal streams or wetlands during or after construction. As discussed in Section 6.3 of the Planning Commission staff report and in Section 4.16 (Water Resources/Flooding) of the Mitigated Negative Declaration, and incorporated herein by reference, the proposed project would not result in water quality degradation. A Stormwater Control Plan prepared for the proposed project includes provisions for runoff to be captured and directed to vegetated areas through storm drain dissipaters in order to treat stormwater runoff and conditions of approval require preparation of an erosion and

sediment control plan (Attachment 2a, Condition 11) and designation of a washout area (Attachment 2a, Condition 25) during construction. These measures would prevent contaminated runoff from exiting the construction site and would help to prevent pollution of surface, ground, and ocean waters. Therefore the project is consistent with CLUP Policy 3-19. Coastal Act Policy 30230 states, "Marine resources shall be maintained, enhanced, and, where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes." The proposed project does not involve the use of marine resources or development within the marine environment. As discussed above, the project would not result in water quality degradation, including to marine waters.

Appellant Appeal Issue #6 (CEQA Issues-Cultural Resources; Page 3, Paragraph 3): The appellant contends that, "The Project is in a known sensitive cultural area. Pylon installation and Project grading will impact areas likely containing cultural resources. The MND does not adequately identify, analyze, or mitigate these potentially significant cultural resource impacts."

Issue 6. Staff Response:

The proposed residence would occupy already disturbed areas of the site. No known archaeological or other cultural sites exist on the property and the potential for undiscovered cultural resources to exist onsite is low, as confirmed by the P&D staff archaeologist. A Phase I Archaeological Assessment (Brent Leftwich, P.h.D., R.P.A, May 2018) incorporated herein by reference, found no cultural resources on-site and found that the potential for undiscovered cultural resources to exist onsite is low. In addition, implementation of Condition 10 of Attachment 2a would require stop work and County notification if any cultural resources are uncovered during construction activities.

Appellant Appeal Issue #7 (CEQA Issues-Visual Resources; Page 3, Paragraph 4): The appellant contends that, "The Project . . . will create a substantial unnatural visual feature within a view corridor that fits the definition of a protected View Corridor Overlay District. § 35-96. The Project's design includes development across the entirety of the lot's frontage from setback to setback, is visually prominent and pronounced. The Project will block views of the Ocean and the horizon from Highway 101, the Amtrak Surfliner, and the new coastal bike path connecting Santa Claus Lane. Conflicts with applicable visual policies also result from the new residence's size, height, and view obstruction including CLUP Policy 4-4 and Coastal Act section 30251. The MND does not adequately identify, analyze, avoid or mitigate these potentially significant visual impacts."

Issue 7. Staff Response:

The project would not create a substantial unnatural visual feature within a view corridor and is not located within a View Corridor Overlay District. County maps indicate the specific location of view corridor overlay areas, and the subject property is not mapped with that designation. The proposed project is located on Sand Point Road. The full length of Sand Point Road, including the subject property, is developed with single family residences, which are an expected visual feature for the area. The proposed residence would continue the pattern of existing residential development along the beach and would not significantly obstruct views of the mountain backdrop from the beach area along Sand Point Road. While the maximum height of the proposed home (30.8 feet) would be higher than

maximum height of the existing home, visibility of the home from public vantage points would not be substantially increased due to viewing distance, the short timeframe of visibility from travel corridors, and existing development and vegetation. Homes on Sand Point Road are distantly visible from Highway 101, which comes within approximately ¼ mile of the subject parcel. While the bike path described by the appellant does not yet exist, and therefore is not a part of the baseline condition (and permits for the path have not been submitted) views from the future bike path would also be distant and are expected to be less than significant. Ocean views are generally not visible over the Sand Point Road community due to the distance, topographic changes from Highway 101 to Sand Point Road, existing vegetation, and existing residential development. Views from Highway 101 and the Amtrak Surfliner are also not significant views due to the short timeframe that the Sand Point Road community (and the subject property specifically) is visible to travelers. The subject property is visible for 5 seconds or less from Highway 101. Visual simulations included as Attachment 7, incorporated herein by reference, place the proposed home in photos taken from Highway 101 and the railroad tracks. These simulations demonstrate that the proposed residence would not significantly disrupt public views, particularly when the short timeframe of visibility is considered. As discussed in the Planning Commission staff report (Attachment 5) and incorporated herein by reference, the project would be consistent with Coastal Act Section 30251. The same discussion applies to the consistency of the project with CLUP Policy 4-4. The visual resources section of the MND, incorporated herein by reference, includes a thorough impact analysis resulting in a determination that aesthetic/visual resource impacts from the project would be less than significant without the need for mitigation and is adequate for the proposed project.

Appellant Appeal Issue #8 (CEQA Issues-Cumulative Impacts; Page 3, Paragraph 5 and Page 4, Paragraphs 1 and 2): The appellant contends that, “The Project’s impacts, combined with the impacts of other known and reasonably foreseeable projects (including but not limited to projects proposed at 501, 645 and 711 Sand Point Road, the removal of the 1983 seawall and modifications to the Casa Blanca seawall, the widening of Highway 101, circulation and recreational improvements at Santa Claus Lane, and the bike path from Santa Claus Lane to Carpinteria Avenue), will have cumulative impacts to visual, biological, cultural and coastal resources and cause cumulative increased coastal hazard risks. These potentially significant cumulative impacts are not adequately identified, analyzed, or mitigated in the MND. Under these circumstances, CEQA requires that an EIR be prepared, which would necessarily include an alternatives analysis . . .”

Issue 8. Staff Response:

The discussion of cumulative impacts within the MND identifies reasonably foreseeable projects located within the project neighborhood and evaluates the contribution of the project to significant cumulative effects. As discussed in the MND and incorporated herein by reference, the proposed project’s contribution to visual, biological, cultural and coastal resource impacts would not be cumulatively considerable. Because the project’s contribution to impacts in these issue areas would not be cumulatively considerable, there would be no potentially significant cumulative impact as a result of the proposed project and no EIR is required.

Appellant Appeal Issue #9 (Coastal Issues; Page 4, Paragraph 3):

The appellant contends that, “The Project approval ignored the existence of an unpermitted 1983 rock revetment seawall that has unnaturally impeded littoral sand movement and damaged coastal resources in violation of the Coastal Act. The Project relies on the existence of another rock revetment seawall allegedly installed in 1964, prior to the Coastal Act. No Vesting Determination has been submitted establishing the extent of the original 1964 seawall, and there is no evidence regarding post-1972 modifications, maintenance and expansions to this seawall. See 14 Cal. Code of Regs. § 13200-13208; Public Resources Code § 30608.”

Issue 9. Staff Response:

The Wave Run-Up Study prepared for the project analyzed two different scenarios. The first scenario, and the one used for the development of mitigation measures, modeled coastal hazard impacts with the assumption that both the 1983 and 1964 revetments *were not* present. This modeling was done at the request of California Coastal Commission staff and showed that the living areas of the proposed home would be safe from inundation throughout the life of the project under an intermediate sea level rise scenario, even during storm events. The Wave Run-Up Study also modeled an absolute worst case situation assuming the absence of the revetment and assuming all of the following circumstances occur concurrently: (1) the highest prediction of sea-level rise would occur, (2) a once in a one-hundred-year storm would occur and (3) the storm would have to occur during a ‘king’ tide event. The likelihood of all of those elements occurring concurrently would be extremely low. In addition, in this extreme theoretical case, sea waters would extend above the first floor by 3.7 inches at year 73 of the home’s project 75-year life and could be mitigated through the addition of a curb wall around the deck.

The second scenario, which represents the currently existing “baseline” site conditions, modeled coastal hazard impacts with the assumption that both the 1983 and 1964 revetments *were* in place. The second scenario shows that the living areas home would be safe from inundation during both high and intermediate sea level rise during storm events. No vesting determination has been sought by the project applicant and the design of the home is not reliant upon the presence of either the 1964 or 1983 rock revetment.

Appellant Appeal Issue #10 (Coastal Issues; Page 4, Paragraph 4): The appellant contends that, “The Project ignores the 2015 Coastal Commission Sea Level Rise Policy Guidance and other authority regulating development in flood-prone areas.”

Issue 10. Staff Response:

The Wave Run-Up Study does follow the 2015 Coastal Commission Sea Level Rise Policy Guidance by using the best available science for sea level rise. Both the County of Santa Barbara's independent coastal reviewer, Geodynamics, Inc., and the Coastal Commission's Senior Coastal Engineer, Lesley Ewing, reviewed the Wave Run-Up Study Analysis and found it to be acceptable, including its analysis of sea level rise. The Coastal Commission Sea Level Rise Policy Guidance recommends the use of a precautionary approach in analyzing sea level rise. The Coastal Commission Sea Level Rise Policy Guidance (page 37) states “Use a precautionary approach by planning and providing adaptive capacity for the highest amounts of possible sea level rise. LCPs and CDPs should analyze the highest projections of sea level rise in order to understand the implications of a worst-case scenario. It may be appropriate to design for the local hazard conditions that will result from more moderate sea level rise scenarios, as long as decision makers and project applicants plan to implement additional adaptation

strategies if conditions change more than anticipated in the initial design. . .[looking] at both the high and low projections allows users to build an understanding of the overall risk sea level rise poses to the region or site.” Consistent with the requirements of the Coastal Commission Sea Level Rise Policy Guidance, both the moderate and high sea level rise scenarios were analyzed. Additionally, the project has been designed to accommodate and withstand the extreme sea level rise, tide, and run-up events (see page 20 and 21 of the Wave Run-Up Study) and not the "more moderate sea level rise scenarios" that the Coastal Commission Sea Level Rise Policy Guidance suggests may be appropriate for design. Some of the design measures proposed to accommodate and withstand the extreme event include moving the structure back further from the shoreline, elevating the inhabited space, and providing breakaway walls for the lower, uninhabited level. In summary, the analysis prepared for the project follows the Coastal Commission Sea Level Rise Policy Guidance and the project design exceeds the requirements of the policy guidance.

Appellant Appeal Issue #11 (Local Planning and Zoning Ordinance Issues; Page 4, Paragraph 5 and Page 5, Paragraph 1): The appellant contends that, “The project parcel has been identified as the site of an illegal, unpermitted seawall that has had significant adverse impacts on coastal resources for over three decades. The seawall falls within the Coastal Act’s broad definition of ‘development’ and it was placed on the sandy beach beyond the allowable setback without the benefit of a CDP. A Notice of Violation has been issued by the Coastal Commission, however the violation remains unabated and there are no approved plans or permits for its remedy. The Project may not be considered for approval until such time as a CDP is issued for the seawall removal, the seawall is removed and thereby the violation is abated and the property becomes [sic] into compliance with ‘all laws and regulations,’ and all fees and penalties are paid.”

Issue 11. Staff Response:

On August 27, 2015, the California Coastal Commission issued a Notice of Violation (NOV) indicating that the existing 3,600 linear foot rock revetment located on and along the southwest side of 501 to 845 Sand Point Road was expanded and modified in 1983 without the benefit of permits. The violation was issued to the Sandyland Protective Association and the County of Santa Barbara Public Works Department. It was not issued to the individual property owner at 755 Sandpoint Road. The required findings for approval of the Coastal Development Permit pursuant to the Article II Coastal Zoning Ordinance include the following finding, “The subject property and development on the property is in compliance with all laws, rules and regulations pertaining to zoning uses, subdivisions, setbacks and any other applicable provisions of this Article. . .” The reference made to “all laws and regulations” by the appellant is derived from this finding and pertains to violations of the County’s Article II Coastal Zoning Ordinance. The property is not subject to a violation of the Article II Coastal Zoning Ordinance and therefore, the required finding for approval can be made (please refer to Attachment 1, Findings, for additional discussion).

Santa Barbara County Public Works is working with the California Coastal Commission and Sandyland Protective Association to remedy the NOV. In addition, the Wave Study prepared for the proposed project demonstrates that the project can withstand sea level rise and wave uprush in the absence of the rock revetment and the home is located approximately 45 feet away from the existing revetment. Consequently, the construction of the project would in no way impede potential future solutions to the violation such as revetment removal or relocation.

Appellant Appeal Issue #12 (Local Planning and Zoning Ordinance Issues; Page 5, Paragraph 2):

The appellant contends that, “The Mitigation Measures and Conditions of Approval are inadequate to mitigate the Project’s impacts and assure conformity with applicable land use policy requirements and regulatory requirements. The Findings are inadequate to support approval of the project.”

Issue 12. Staff Response:

As discussed within this Board Agenda Letter, the findings for approval (Attachment 1), the Planning Commission staff report (Attachment 5), and the MND (Attachment 6), the proposed mitigation measures would reduce all impacts to a less than significant level, the project (as conditioned) would be consistent with all applicable policies and regulations, and the findings to support approval of the proposed project can be made.

Fiscal and Facilities Impacts:

Budgeted: Yes No appeal fee is required for appeals of projects located within the Appeal’s Jurisdiction of the Coastal Zone. Staff time to process the appeal is funded in the Planning and Development Permitting Budget Program, as shown on page D-272 of the adopted 2018-2019 FY budget. Total costs for processing the appeal are approximately \$12,430 (55 hours).

Special Instructions:

The Clerk of the Board shall fulfill all noticing requirements. The notice shall appear in the Santa Barbara News Press and mailed to neighboring property owners (labels attached). A minute order of the hearing shall be forwarded to the Planning and Development Department, Hearing Support, Attention: David Villalobos. A second minute order of the hearing shall be forwarded to the Planning and Development Department, Development Review, Attention: Nicole Lieu.

Attachments:

1. Board of Supervisors Findings
2. Conditions of Approval
 - a. Conditions of Approval for Case No. 13CDH-00000-00001 with Attached Departmental Letters
 - b. Conditions of Approval for Case No. 13MOD-00000-00001
3. Appeal Application to the Board of Supervisors
4. Planning Commission Action Letter, dated April 4, 2018
5. Planning Commission Staff Report, dated March 14, 2018
6. Proposed Final Mitigated Negative Declaration
7. Visual Simulations
8. California Coastal Commission Staff Comment Letters

Authored by:

Nicole Lieu, Senior Planner, (805) 884-8068
Development Review Division, Planning and Development Department

