

EMERGENCY PERMIT

23EMP-00016



Montecito:

Subject to the requirements of Section 35.472.080 of the Santa Barbara County Montecito Land Use & Development Code

Case Name: Freston Emergency Permit
Case Number: 23EMP-00016
Site Address: 2300 Bella Vista Drive, Santa Barbara, CA 93108
APN: 007-020-061
Applicant/Agent Name: Jennifer Siemens
Owner Name: Thomas Freston

ZONING PERMIT
ISSUED
SANTA BARBARA COUNTY PLANNING & DEVELOPMENT

PERMIT APPROVAL:

This is to inform you that an Emergency Permit has been approved for:

The proposed project is for the replacement and reinforcement of an existing concrete swale and asphalt concrete driveway. The driveway segment to be replaced and reinforced is located near the west property line and will be approximately 140 feet long. The concrete swale to be replaced and reinforced is located near the existing residence and will be approximately 190 feet long. The driveway and swale will each be reinforced by a secant pile wall embedded below grade a minimum of 27 feet. A 4.5-foot-tall retaining wall will be above grade over the secant pile wall reinforcing the swale. All visible portions of the retaining wall will be finished using earth-tone colors, textures, and materials. The 2023 winter storms damaged the existing driveway, resulting in numerous erosion issues and surficial slope failures of the steep slopes on the subject parcel. The slopes are at risk of further failure, threatening to cut off access to the parcel. Grading for the road replacement will include approximately 20 cubic yards of cut and 20 cubic yards of fill. No trees are proposed for removal. The work is expected to be completed within 5 months of permit issuance. The parcel will continue to be served by an existing onsite well, a septic system, and the Montecito Fire Protection District. Access will continue to be provided off of Bella Vista Drive. The property is a 40-acre parcel zoned RMZ-40 and shown as Assessor's Parcel Number 007-020-061, located at 2300 Bella Vista Drive in the Montecito Community Plan area, First Supervisorial District.

Therefore, this situation constitutes an emergency in accordance with the applicable Development Code indicated above and immediate action is warranted. As the required findings (listed below) can be made, the emergency work is hereby approved, subject to compliance with the attached conditions of approval. The project is exempt from environmental review pursuant to CEQA Guidelines Section 15269(c), which exempts "specific actions necessary to prevent or mitigate an emergency" (see Attachment C). This permit is not valid until signed by the owner/applicant and subsequently issued by the Department upon verification that all conditions of approval requiring action prior to permit issuance are satisfied.

Sincerely,



Lisa Plowman, Director

APPROVAL DATE: November 29, 2023

BACKGROUND:

The proposed project is located at 2300 Bella Vista Drive in the Montecito Community Plan area. The subject property is developed with a single-family dwelling, garage, and guest house approved under Case No. 98-LUS-282. The project will address the emergency situation created by the winter 2023 storms, which damaged the existing concrete swale and asphalt concrete driveway, resulting in numerous erosion issues and surficial slope failures of the steep slopes on the subject parcel. The slopes are at risk of further failure, threatening to cut off access to the parcel. The project will allow the replacement of the concrete swale and a segment of the existing driveway. The replaced swale and driveway segment will be reinforced by secant pile walls. Reconstruction of the driveway is necessary to maintain access to the parcel, including the residence on the parcel.

FINDINGS OF APPROVAL (Montecito):

1. The approval of this project shall not be held to permit or to be an approval of a violation of any provision of any County Ordinance or State Law.

The approval of this Emergency Permit will not permit or approve any violation of County Ordinance or State Law. Condition of Approval No. 2 requires that an application for the required permits necessary to validate the emergency work as permanent be submitted by the applicant no later than 30 days following the issuance of the Emergency Permit. Processing of the required follow-on permit will ensure that the project is reviewed for, and completed in compliance with, applicable regulations.

2. In compliance with Subsection 35.472.090.E.2 of the Montecito Land Use and Development Code, prior to the approval or conditional approval of an application for an Emergency Permit the Director shall first make all of the following findings:

- a. An emergency exists and requires action more quickly than provided for by the customary procedures for permit processing.*

The proposed project to replace and reinforce the existing concrete swale and asphalt concrete driveway is an emergency because the winter 2023 storm events damaged the existing driveway, resulting in numerous erosion issues and surficial slope failures of the steep slopes on the subject parcel. The slopes are at risk of further failure, threatening to cut off access to the parcel.

- b. The action proposed is consistent with the policies of the Comprehensive Plan, including the Montecito Community Plan and the requirements of this Development Code.*

The proposed project is consistent with all applicable policies of the Comprehensive Plan, including the Montecito Community Plan, and the Montecito Land Use and Development Code (MLUDC). Selected policies are discussed in detail below.

MLUDC Section 35.422.010.B Intent of the Resource Protection Zone: *The intent is to limit development because of extreme fire hazards, minimum services, and/or environmental constraints, and to encourage the preservation of these areas for uses including grazing,*

scientific and educational study, and limited residential uses.

Consistent. The project is consistent with the intent of the Resource Protection Zone because the work will serve the existing residential development on the parcel. The replacement and reinforcement of the concrete swale and a segment of the existing driveway will prevent further erosion and slope failure on the parcel.

Montecito Community Plan Development Standard AQ-M-1.3.2: *The applicant shall minimize the generation of fugitive dust during construction activities by observing the following:*

- a. Minimize the amount of disturbed area;*
- b. Utilize water and or dust palliatives; and*
- c. Revegetate/stabilize disturbed area as soon as possible.*

Consistent. The proposed project is consistent with the policy requirement to minimize the amount of disturbed area and generation of fugitive dust because grading for the project will be limited to the existing driveway area and will include less than 50 cubic yards of earth movement. The project will be completed in conformance with Condition of Approval Air-01, which requires that the owner comply with dust control measures.

Montecito Community Plan Policy GEO-M-1.2: *Grading from future ministerial and discretionary projects in Montecito shall be minimized to the extent feasible in order to prevent unsightly scars in the natural topography due to grading, and to minimize the potential for earth slippage, erosion, and other safety risks.*

Consistent. The proposed project is consistent with the policy requirement to minimize grading and the potential for earth slippage and erosion because grading for the project will be limited to the existing driveway area and will include less than 50 cubic yards of earth movement. The replacement and reinforcement of the driveway and swale will prevent earth slippage and erosion and will maintain access to the existing residence.

Montecito Community Plan Development Standard GEO-M-1.5.2: *A drainage plan shall be required for all development on slopes of 20 percent or greater to minimize landslide, soil creep and erosion hazards.*

Consistent. The proposed project is consistent with the policy requirement to provide a drainage plan to minimize landslide, soil creep, and erosion hazards because the project includes a drain and swale to provide drainage for the driveway and to minimize landslide, soil creep, and erosion hazards. The replacement and reinforcement of the driveway and swale will prevent further erosion and slope failure on the parcel.

Land Use Development Policy 4: *Prior to issuance of a development permit, the County shall make the finding, based on information provided by environmental documents, staff analysis, and the applicant, that adequate public or private services and resources (i.e., water, sewer, roads, etc.) are available to serve the proposed development. The applicant shall assume full responsibility for costs incurred in service extensions or improvements that are required as a result of the proposed project. Lack of available public or private services or resources shall be grounds for denial of the project or reduction in the density otherwise indicated in the land use plan.*

Consistent. The proposed project is consistent with the policy requirement to have adequate services and resources to serve the proposed development because the project is to reestablish safe access to the parcel by replacing and reinforcing the existing driveway. The parcel will continue to be served by the existing onsite water well, the existing septic system, and the Montecito Fire Protection District.

Land Use Element Hillside and Watershed Protection Policy 1: Plans for development shall minimize cut and fill operations. Plans requiring excessive cutting and filling may be denied if it is determined that the development could be carried out with less alteration of the natural terrain.

Land Use Element Hillside and Watershed Protection Policy 2: All developments shall be designed to fit the site topography, soils, geology, hydrology, and any other existing conditions and be oriented so that grading and other site preparation is kept to an absolute minimum. Natural features, landforms, and native vegetation, such as trees, shall be preserved to the maximum extent feasible. Areas of the site, which are not, suited to development because of known soil, geologic, flood, erosion or other hazards shall remain in open space.

Consistent. The proposed project is consistent with the policy requirements to minimize grading and fit the site topography because grading for the project will be limited to the existing driveway area and will include less than 50 cubic yards of earth movement. The replacement and reinforcement of the driveway and swale will prevent future earth slippage and erosion and will maintain access to the existing residence.

Noise Element Policy 1: In the planning of land use, 65dB Day-Night Average Sound Level should be regarded as the maximum exterior noise exposure compatible with noise-sensitive uses unless noise mitigation features are included in the project design.

Consistent. The proposed project is consistent with the policy requirement to limit the noise exposure to 65 dB because the project will be completed in conformance with Condition of Approval Noise-02, which requires that noise generating construction activity is limited to the hours of 7:00 am and 4:30 pm on weekdays only, not including state holidays. No noise generation beyond the maximum exterior noise exposure compatible with noise-sensitive uses is expected from the continued residential use of the parcel.

MLUDC Section 35.428.040.F Development standards – Streams:

- 1. Stream habitat buffer.*** The minimum buffer strip for development near streams and creeks in Rural Areas as designated on the Comprehensive Plan maps shall be presumptively 100 feet from the top of bank and 50 feet for streams in Urban Areas as designated on the Comprehensive Plan maps. These minimum buffers may be adjusted upward or downward on a case-by-case basis but the buffer shall not preclude reasonable development of a lot. To protect the biological productivity and water quality of streams, each buffer shall be established based on an investigation of the following factors, and after consultation with the California Department of Fish and Wildlife and California Regional Water Quality Control Board:

- a. Soil type and stability of stream corridors;*

- b. How surface water filters into the ground;*
- c. Slope of land on either side of the stream;*
- d. Location of the 100-year flood plain boundary; and*
- e. Consistency with adopted plans, particularly Biology/Habitat policies of the Montecito Community Plan.*

2. Prohibition on development within a riparian corridor. *No structure shall be located within a stream corridor except:*

- a. Public trails that would not adversely affect existing habitat;*
- b. Dams necessary for water supply projects;*
- c. Flood control projects where no other method for protecting existing structures in the floodplain is feasible, and where the protection is necessary for public safety;*
- d. Other development where the primary function is for the improvement of fish and wildlife habitat; and*
- e. Other development where this requirement would preclude reasonable development of a lot.*

Culverts, fences, pipelines, and bridges (when support structures are located outside the critical habitat) may be permitted when no alternative route/location is feasible. All development shall incorporate the best mitigation measures feasible to minimize the impact to the greatest extent.

3. Limitation on development, revegetation required. *All development, including dredging, filling, and grading within stream corridors shall be limited to activities necessary for the construction of uses specified in Subsection F.2 (Prohibition on development within a riparian corridor) above.*

- a. Development shall be in compliance with the following:*
 - (1) When development requires the removal of riparian plant species, re-vegetation with local native plants shall be required on both banks and extending outward 25 feet from each top of bank, except where it would preclude reasonable development of a lot.*

4. Riparian protection measures. *Riparian protection measures shall be based on the project's proximity to riparian habitat and the project's potential to directly or indirectly damage riparian habitat through activities related to a Land Use Permit such as grading, brushing, construction, vehicle parking, supply/equipment storage, or the proposed use of the property. Damage could include vegetation removal/disturbance, erosion/sedimentation, trenching, and activities which hinder or prevent wildlife access and use of habitat. Prior to issuance of a Land Use Permit, the applicant shall include a*

note on the grading and building plans stating the following riparian habitat protection measures:

- a. A setback of 50 feet from either side of top-of-bank of the creek, that precludes all ground disturbance and vegetation removal; and*
- b. That protective fencing shall be installed along the outer buffer boundary at the applicant's expense prior to initiation of any grading or development activities associated with a Land Use Permit. Storage of equipment, supplies, vehicles, or placement of fill or refuse, shall not be permitted within the fenced buffer region.*
 - (1) This measure may be modified or deleted in the event that the Director finds that it is not necessary to protect biological resources (e.g., due to topographical changes or other adequate barriers).*

5. Onsite restoration required. *Onsite restoration of any project-disturbed buffer or riparian vegetation within a creek shall be mandatory. A riparian revegetation plan, approved by the Director, shall be developed by a County approved biologist (or other experienced individual acceptable to the Director) and implemented at the applicant's expense. The revegetation plan shall use native species that would normally occur at the site prior to disturbance. The plan shall contain planting methods and locations, site preparation, weed control, and monitoring criteria and schedules.*

Consistent. The proposed project is consistent with the development standards for development within the Environmentally Sensitive Habitat Overlay Zone because the project will not increase the encroachments into the 100-foot buffer from the top of bank on the parcel. The project is for the replacement and reinforcement of an existing driveway and concrete swale. The replaced swale will be located completely outside the 100-foot buffer. The existing driveway encroaches into the 100-foot buffer and is approximately 80 feet from the top of bank and edge of riparian habitat. The replaced driveway will be a minimum of 80 feet from the top of bank and edge of riparian habitat and an 80-foot buffer from the top of bank and edge of riparian habitat will be maintained at all times during construction. Encroachments into the 100-foot buffer will not be expanded. Construction storage and staging will also occur outside the 80-foot buffer. Furthermore, as required by Condition No. 9, a biological monitor will monitor all construction activities within the 100-foot buffer to ensure no special status plant species nor special status wildlife is disturbed by the construction. Consistent with MLUDC Section 35.428.040.F.1, and as required by Condition No. 8, the applicant will formally pursue a formal buffer reduction as a part of the follow-on permit.

c. Public comment on the proposed emergency action has been reviewed.

No public comment on the proposed emergency action has been received. A mailed notice was sent to all owners within 300 feet of the parcel on November 22, 2023. Three notice placards for the proposed development have been posted onsite.

3. This action is not subject to the provisions of the California Environmental Quality Act, pursuant to State CEQA Guidelines Section 15269, statutory exemption for emergency projects.

EMERGENCY PERMIT CONDITIONS OF APPROVAL

1. This Emergency Permit is based upon and limited to compliance with the project description, and the conditions of approval set forth below. Any deviations from the project description or conditions must be reviewed and approved by the County for conformity with this approval. Deviations without the above-described approval will constitute a violation of permit approval. If it is determined that project activity is occurring in violation of any or all of the following conditions, the Director may revoke this permit and all authorization for development. The decision of the Director to revoke the Emergency Permit may be appealed to the Commission/Montecito Commission.

The project description is as follows:

The proposed project is for the replacement and reinforcement of an existing concrete swale and asphalt concrete driveway. The driveway segment to be replaced and reinforced is located near the west property line and will be approximately 140 feet long. The concrete swale to be replaced and reinforced is located near the existing residence and will be approximately 190 feet long. The driveway and swale will each be reinforced by a secant pile wall embedded below grade a minimum of 27 feet. A 4.5-foot-tall retaining wall will be above grade over the secant pile wall reinforcing the swale. All visible portions of the retaining wall will be finished using earth-tone colors, textures, and materials. The 2023 winter storms damaged the existing driveway, resulting in numerous erosion issues and surficial slope failures of the steep slopes on the subject parcel. The slopes are at risk of further failure, threatening to cut off access to the parcel. Grading for the road replacement will include approximately 20 cubic yards of cut and 20 cubic yards of fill. No trees are proposed for removal. The work is expected to be completed within 5 months of permit issuance. The parcel will continue to be served by an existing onsite well, a septic system, and the Montecito Fire Protection District. Access will continue to be provided off of Bella Vista Drive. The property is a 40-acre parcel zoned RMZ-40 and shown as Assessor's Parcel Number 007-020-061, located at 2300 Bella Vista Drive in the Montecito Community Plan area, First Supervisorial District.

2. An application(s) for the required permits necessary to validate the emergency work as permanent shall be submitted by the applicant to the Department no later than 30 days following the issuance of this Emergency Permit. The permits required for the proposed emergency work include a Development Plan and Land Use Permit pursuant to Sections 35.472.080 and 35.472.110 of the Montecito Land Use Development Code.
3. Any materials required for a completed application, as identified in the initial review of the original application required pursuant to Condition #2 above, shall be submitted within 90 days

after written notification of the application deficiencies is provided to the applicant. This time period may be extended by the Director.

4. Only that emergency work specifically requested and deemed an emergency for the specific property mentioned is authorized. Any additional emergency work requires separate authorization from the Director. The work authorized by this permit must be commenced within 30 days of the date of issuance of the emergency permit.
5. This permit does not preclude the necessity to obtain authorization and/or permits from other Departments or agencies.
6. The Director may order the work authorized under this emergency permit to stop immediately if it is determined that unanticipated and substantial adverse environmental effects may occur with continued construction.
7. **Air-01 Dust Control.** The Owner/Applicant shall comply with the following dust control components at all times including weekends and holidays:
 - a. Dust generated by the development activities shall be kept to a minimum with a goal of retaining dust on the site.
 - b. During clearing, grading, earth moving, excavation, or transportation of cut or fill materials, use water trucks or sprinkler systems to prevent dust from leaving the site and to create a crust after each day's activities cease.
 - c. During construction, use water trucks or sprinkler systems to keep all areas of vehicle movement damp enough to prevent dust from leaving the site.
 - d. Wet down the construction area after work is completed for the day and whenever wind exceeds 15 mph.
 - e. When wind exceeds 15 mph, have site watered at least once each day including weekends and/or holidays.
 - f. Order increased watering as necessary to prevent transport of dust off-site.
 - g. Cover soil stockpiled for more than two days or treat with soil binders to prevent dust generation. Reapply as needed.
 - h. If the site is graded and left undeveloped for over four weeks, the Owner/Applicant shall immediately:
 - i. Seed and water to re-vegetate graded areas; and/or
 - ii. Spread soil binders; and/or
 - iii. Employ any other method(s) deemed appropriate by P&D or APCD.

TIMING: The dust control components apply from the beginning of any grading or construction throughout all development activities until Final Building Inspection Clearance is issued.

8. **Bio-03 Biological Report Requirement.** The Owner/Applicant shall hire a P&D-approved biologist to evaluate impacts to the riparian habitat on the parcel resulting from the proposed project. The biologist report shall make the findings to support the proposed buffer reduction and make recommendations for mitigating any impacts that result from the project. **PLAN REQUIREMENTS:** The Owner/Applicant shall submit the above report to P&D for review and approval. **TIMING:** The Owner/Applicant shall submit the above report as a part of their

application for the permits necessary to validate the emergency work as permanent. Recommendations in the report shall be incorporated into the project as required by P&D.

9. **Bio-07 Habitat Setback.** All ground disturbances and vegetation removal shall be prohibited in a 50 foot setback from either side of the top-of-bank of Buena Vista creek, a sensitive riparian habitat area. The area shall be fenced with a fencing type and in a location acceptable to P&D. TIMING: Fencing shall be installed prior to any Construction Activities. MONITORING: A P&D approved biologist shall monitor all construction activities within 100 feet of the top-of-bank of Buena Vista creek.
10. **Bio-20 Equipment Storage-Construction.** The Owner/Applicant shall designate one or more construction equipment filling and storage areas to contain spills, facilitate cleanup and proper disposal and prevent contamination from discharging to the storm drains, street, drainage ditches, creeks, or wetlands. The areas shall be no larger than 50 x 50 foot unless otherwise approved by P&D and shall be located at least 100 feet from any storm drain, waterbody or sensitive biological resources. PLAN REQUIREMENTS: The Owner/Applicant shall designate the storage locations on-site in accordance with this condition. TIMING: The Owner/Applicant shall install the area prior to commencement of construction.
11. **Bio-20a Equipment Washout-Construction.** The Owner/Applicant shall designate one or more washout areas for the washing of concrete trucks, paint, equipment, or similar activities to prevent wash water from discharging to the storm drains, street, drainage ditches, creeks, or wetlands. Note that polluted water and materials shall be contained in these areas and removed from the site as needed. The areas shall be located at least 100 feet from any storm drain, waterbody or sensitive biological resources. PLAN REQUIREMENTS: The Owner/Applicant shall designate the storage locations on-site in accordance with this condition. TIMING: The Owner/Applicant shall install the area prior to commencement of construction.
12. **CulRes-09 Stop Work at Encounter.** The Owner/Applicant and/or their agents, representatives or contractors shall stop or redirect work immediately in the event archaeological remains are encountered during grading, construction, landscaping or other construction-related activity. The Owner/Applicant shall immediately contact P&D staff, and retain a P&D approved archaeologist and Native American representative to evaluate the significance of the find in compliance with the provisions of the County Archaeological Guidelines and conduct appropriate mitigation funded by the Owner/Applicant.
13. **Noise-02 Construction Hours.** The Owner/Applicant, including all contractors and subcontractors shall limit construction activity, including equipment maintenance and site preparation, to the hours between 7:00 a.m. and 4:30 p.m. Monday through Friday. No construction shall occur on weekends or State holidays. Non-noise generating interior construction activities such as plumbing, electrical, drywall and painting (which does not include the use of compressors, tile saws, or other noise-generating equipment) are not subject to these restrictions.
Any subsequent amendment to the Comprehensive General Plan, applicable Community or Specific Plan, or Zoning Code noise standard upon which these construction hours are based

shall supersede the hours stated herein. **PLAN REQUIREMENTS:** The Owner/Applicant shall provide and post a sign stating these restrictions at all construction site entries. **TIMING:** Signs shall be posted prior to commencement of construction and maintained throughout construction.

14. **SolidW-03 Solid Waste-Construction Site.** The Owner/Applicant shall provide an adequate number of covered receptacles for construction and employee trash to prevent trash & debris from blowing offsite, shall ensure waste is picked up weekly or more frequently as needed, and shall ensure site is free of trash and debris when construction is complete. **PLAN REQUIREMENTS:** The site is to remain trash-free throughout construction.
15. **Rules-05 Acceptance of Conditions.** The Owner/Applicant's acceptance of this permit and/or commencement of use, construction and/or operations under this permit shall be deemed acceptance of all conditions of this permit by the Owner/Applicant.
16. **Rules-23 Processing Fees Required.** Prior to issuance of Emergency, the Owner/Applicant shall pay all applicable P&D permit processing fees in full as required by County ordinances and resolutions.
17. **Rules-33 Indemnity and Separation.** The Owner/Applicant shall defend, indemnify and hold harmless the County or its agents or officers and employees from any claim, action or proceeding against the County or its agents, officers or employees, to attack, set aside, void, or annul, in whole or in part, the County's approval of this project.

Attachments:

- A. Project Plans
- B. CEQA Exemption