



# County of Santa Cruz

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## DEPARTMENT OF COMMUNITY DEVELOPMENT AND INFRASTRUCTURE

701 OCEAN STREET, FOURTH FLOOR, SANTA CRUZ, CA 95060-4070  
Planning (831) 454-2580      Public Works (831) 454-2160

September 15, 2023

Zoning Administrator  
County of Santa Cruz  
701 Ocean Street, 4<sup>th</sup> Floor  
Santa Cruz, CA 95060

**Subject: Public hearing to consider Appeal of Administrative Approval of Application 231048 for a Coastal Development Permit, a proposed to recognize construction of a six foot high redwood fence located on the southwest side of the property within 50 feet of the a coastal bluff at 4200 Opal Cliff Drive, Santa Cruz (O'Neill).**

Dear Zoning Administrator:

On April 4, 2023, Coastal Development Permit 231048, a proposal to construct a six-foot-high portion of side yard fencing located within 50 feet of the edge of a coastal bluff, was submitted to the County of Santa Cruz.

On July 20, 2023, the above referenced application was approved based on the Findings and Conditions contained in the attached staff report (Exhibit 1B) and a determination was made that the project was exempt from further environmental review under the California Environmental Quality Act (CEQA).

On August 3, 2023, a letter of appeal was submitted by Jerry Houston ("Appellant") (Exhibit 1A). The primary issue raised in the appeal letter is that fence height standards have been applied inconsistently between the Appellant's property and the proposed development. Specifically, the Appellant asserts that his project located at 4190 Opal Cliff Drive, approved under Coastal Development Permit 201279, was conditioned to restrict the fencing along the rear 50 feet of the property to 42 inches in height, whereas the proposed development has been authorized to exceed 42-inches in height (six feet in height).

Planning staff reviewed the administrative record for the Appellant's project on the adjoining property. Staff concluded that the Appellant's proposal at 4190 Opal Cliff Drive, approved under CDP 201279, did not include a proposal to replace/construct a fence within 50 feet of the bluff edge. Further, the Coastal permit was not conditioned to limit height of fencing to 42 inches. After the approval of the Appellant's Coastal Development Permit, Building Permit B-216707 was issued for construction of the approved project. Notations on the Building Permit plans indicate construction of a fence within 50 feet of the bluff edge, with a maximum height of 42-inches. It is unclear in reviewing the record what transpired between issuance of the Coastal Development Permit and issuance of the Building Permit.

The subject property, located at 4200 Opal Cliff Drive in the coastal zone, abuts a coastal bluff. Pursuant to Santa Cruz County Code Section (SCCC) 13.20. 061, improvements to single-family residences, including structures on the property normally associated with single-family residences, such as fences, within 50 feet of a coastal bluff require a Coastal Development Permit.

Regarding fencing height, pursuant to SCCC 13.10.552 (Fence height regulations), the maximum allowable fence height is eight-feet along side and rear property lines on residentially zoned parcels.

County Code relies on the adopted Coastal regulations contained in SCCC 13.20 to determine the appropriate height of fencing in areas that could result in adverse impacts to coastal resources. It should be noted that Coastal regulations do not otherwise specify a maximum height of fencing within 50 feet of the edge of a coastal bluff. Appropriate fence height shall be determined on a case-by-case basis subject to findings contained in SCCC chapters 13.20 and 18.10 of the County Code.

As indicated in the Findings for Approval (Exhibit 1B) and contained in the attached Staff Report (Exhibit 1D), the proposed project would not result in adverse impacts to coastal resources. Further, the proposed fence would not conflict with existing conditions of approval related to projects in the vicinity.

### **Staff Recommendation**

Based on the review of the issues being appealed, the staff recommendation is that the Zoning Administrator take the following actions:

1. Confirm that the project is exempt from further environmental review under the California Environmental Quality Act;
2. Deny the appeal of the Administrative action, Approving application 231048 based on the Findings and Conditions contained in the Administrative Staff Report.

Should you have further questions concerning this application, please contact me at:  
(831) 454-3118 or e-mail: [nathan.macbeth@santacruzcounty.us](mailto:nathan.macbeth@santacruzcounty.us)

Sincerely,

*Nathan MacBeth*

Nathan MacBeth  
Project Planner  
Development Review

Exhibits:

- 1A. Appeal Letter prepared by Jerry Houston, dated August 3, 2023
- 1B. Findings for Approval
- 1C. Recommended Conditions of Approval
- 1D. Administrative Staff Report, approved July 20, 2023
- 1F. Comments & Correspondence

## NOTICE TO APPEAL

AUGUST 3, 2023

Re; Application #231048

DATE APPLICATION APPROVED: JULY 20, 2023

APPLICANT; MATSON BRITTON ARCHITECTS

APN: 033-171-09

PHYSICAL ADDRESS: 4200 OPAL CLIFF DR. SANTA CRUZ CA .

APPEALANT : JERRY HOUSTON,

RESIDENT 4190 OPAL CLIFF DR. ADJOINING NEIGHBOR OF THE  
FENCE IN QUESTION

*Mailing - P.O. Box 1637  
Los Gatos, CA 95030*

THE FOLLOWING IS PERTAINING TO THE DECISION APPROVED BY  
PLANNER, NATHAN MCBETH. REQUEST IS FOR A 6" WOOD FENCE  
WITHIN THE COASTAL 50' BLUFF SETBACK .

PERTINENT FACTS ARE AS FOLLOW;

- 1) THERE IS AN EXISTING NON PERMITTED 8' FENCE WITHIN IN THE 50" COASTAL SETBACK THAT WAS INSTALLED IN APPROXIMATELY 2018. PRIOR TO THAT THERE WAS AN ORIGINAL 42 " CHAIN LINK FENCE FOR THE FIRST 50" FROM THE BLUFF AND A 6' FENCE THAT RAN THE ENTIRE LENGTH BETWEEN 4200 AND 4190 OPAL CLIFF. THE CURRENT OWNER PURCHASED THE HOME IN 2017 AND SHORTLY AFTER , WITHOUT OBTAINING PERMITS, REMOVED AN EXISTING 42" CHAIN LINK GOOD NEIGHBOR FENCE AND REPLACED IT WITH A NEW 8' WOOD FENCE. THE NEW 8' FENCE EXTENDS ALL THE WAY TO THE BLUFF AND HAS ENCROACHED THE 50 ' COASTAL SETBACK.
- 2) IN THE PAST 5 YEARS THERE HAVE BEEN 4 NEW HOMES BUILT ON THE BLUFF SIDE OF OPAL CLIFF. THEY ARE 4760 OPAL CLIFF DR, 4780 OPAL CLIFF DR, 4740 OPAL CLIFF DR AND 4190 OPAL CLIFF. ALL OF THOSE PROPERTIES WERE RESTRICTED TO 42" HIGH

FENCES WITHIN THE 50' BLUFFS EDGE. THE REMAINING FENCE ON THE SIDES ARE 7'-8' (SEE PICTURES). TWO OF THE HOMES WERE DESIGNED BY THE APPLICANT COVE BRITT.

3) THE APPROVED PLANS FOR THE CONSTRUCTION OF OUR NEW HOME( NEXT TO THE SUBJECT PROPERTY THAT IS IN QUESTION) SPECIFICALLY CALL OUT THAT A MAX 42" FENCE IS TO BE INSTALLED WITHIN 50 ' OF THE BLUFF. IT IS TO REPLACE THE EXISTING 8' FENCE THAT WAS ILLEGALLY INSTALLED . THE BUILD SET PLANS CLEARLY STATE THAT IT IS REQUIRED PRIOR TO US TO OBTAIN FINAL SIGN OFF. UNFORTUNATELY, THE 8' GOOD NEIGHBOR FENCE IS CURRENTLY OCCUPYING THAT SPACE. IN AN ATTEMPT TO RESOLVE THIS QUAGMIRE , I HAD SEVERAL MEETINGS WITH THE OWNER AND ONE WITH COVE BRITT . HOWEVER , WE HAD NO SUCCESS SO, MY ONLY VIABLE OPTION WAS TO FILE A VIOLATION FOR THE NON-PERMITTED FENCE.

4) PRIOR TO THE VIOLATION BEING FILED , I REACHED OUT TO RESPECTED AND EXPERIENCED PROFESSIONALS , MARK MASSARA, A LAND USE ATTORNEY AND DEREK VANALSTINE ,A LOCAL ARCHITECT . IN ADDITION, I HAD CONVERSATIONS WITH THE SANTA CRUZ COASTAL COMMISSION. THEY ALL STATED THAT WITHIN 50' OF THE BLUFF THE MAXIMUM HEIGHT FOR FENCING AND VEGETATION, TREES SHALL NOT EXCEED 42" . THIS WAS CONSISTENT WITH MY CURRENT APPROVED PLANS AND THE 3 OTHER NEW HOMES RECENTLY BUILT ON THE BLUFF. ALL RESTRICTED TO A MAX OF 42" FENCE WITHIN 50' OF THE BLUFF.

ISSUES OF THE APPEAL ARE AS FOLLOWS:

1) HOW ARE THE SETBACK AND HEIGHT ORDINANCES DIFFERENT FROM NEW CONSTRUCTION TO EXISTING CONSTRUCTION, WHEN THE NON PERMITTED FENCE IN QUESTION IS IN VIOLATION , MY RESEARCH COULD NOT FIND ANY ORDINANCE THAT STATES AN EXCEPTION BETWEEN EXISTING AND NEW CONSTRUCTION.

2) COMMUNICATION WAS ATTEMPTED ON AT LEAST 5 TIMES TO NATHAN MCBETH VIA E MAIL AND BY PHONE. IN JUST ONE PHONE

CALL FROM HIM AND ONE EMAIL SAYING "HE HAD BEEN IN TOUCH WITH PATRICIA MORENO, WHO WAS ASSIGNED TO THE VIOLATION THAT WAS FILED." I ASKED IF I COULD HAVE A MEETING WITH HIM" AND HE FELT IT WAS NOT NECESSARY. HOWEVER, COMMUNICATION AND FOLLOW UP WAS NOT GOOD. THE ONE PHONE CALL WAS SOMEWHAT PRODUCTIVE. IT GAVE ME A LITTLE INSIGHT ON WHERE HE STOOD REGARDING THIS MATTER. DURING THE PHONE CONVERSATION , " HE STATED THAT COASTAL ORDINANCE STATES THAT THE FENCE MUST BE A MINIMUM HEIGHT OF 42" FOR SAFETY REASONS AND THAT THE ORDINANCE DID NOT RESTRICT FOR TALLER FENCING OR VEGETATION WITHIN THE 50' COASTAL SETBACK . IF THAT IS THE ORDINANCE THEN "WHY DO THE APPROVED PLANS FOR 4190 OPAL CLIFF CLEARLY STATE THAT THE MAX FENCE HEIGHT IS TO BE A MAX OF 42"WITHIN 50 FEET OF THE BLUFF". THIS IS A CONDITION AND MUST BE INSTALLED PRIOR TO PLANNING SIGNING THE FINAL PERMIT. HE RESPONDED THAT" THE INTERNAL APPROVAL FROM COASTAL MADE NO COMMENT ABOUT A FENCE RESTRICTION." I RESPONDED "THEN WHY IS IT A CONDITION ON MY PLANS? " HE SAID "THAT IT MUST OF HAD BEEN REQUIRED BY THE PLANNING DEPARTMENT." THIS IS CONFUSING BECAUSE , WHY IS ONE PLANNER REQUIRING A FENCE RESTRICTION AND ANOTHER PLANNER APPROVES A 6' FENCE WITHIN THE BLUFF SETBACK? WHY ARE NEWLY CONSTRUCTED HOMES REQUIRED TO ADHERE TO THE 42" AND EXISTING HOMES ARE NOT? WHY IS THE APPLICANT APPLYING FOR A 6 FOOT FENCE AND NOT ASKING THAT THE EXISTING 8' FENCE BE APPROVED? HOW WAS THE ARBITRARY 6 FOOT FENCE DECIDED ON? WHY NOT A 4 FOOT OR A 5 FOOT ? IT SEEMS CALCULATED.

IN CONCLUSION, BEING A RESIDENT OF THIS COMMUNITY, I BELIEVE THE APPLICANT HAS RECEIVED A BIASED APPROVAL BASED ON THE STATEMENTS ABOVE. ALL PLANNERS SHOULD BE UNBIASED AND CONSISTENT IN ENFORCING AND APPLYING THE COUNTY AND COASTAL ORDINANCES

THANKS IN ADVANCE FOR TAKING TIME DEALING WITH THIS ISSUE.

RESPECTFULLY,

JERRY HOUSTON



4760 4780 8 PM CLIPP DV

4720 d

4780 8 PM CLIPP



4760 Spinal Cliff

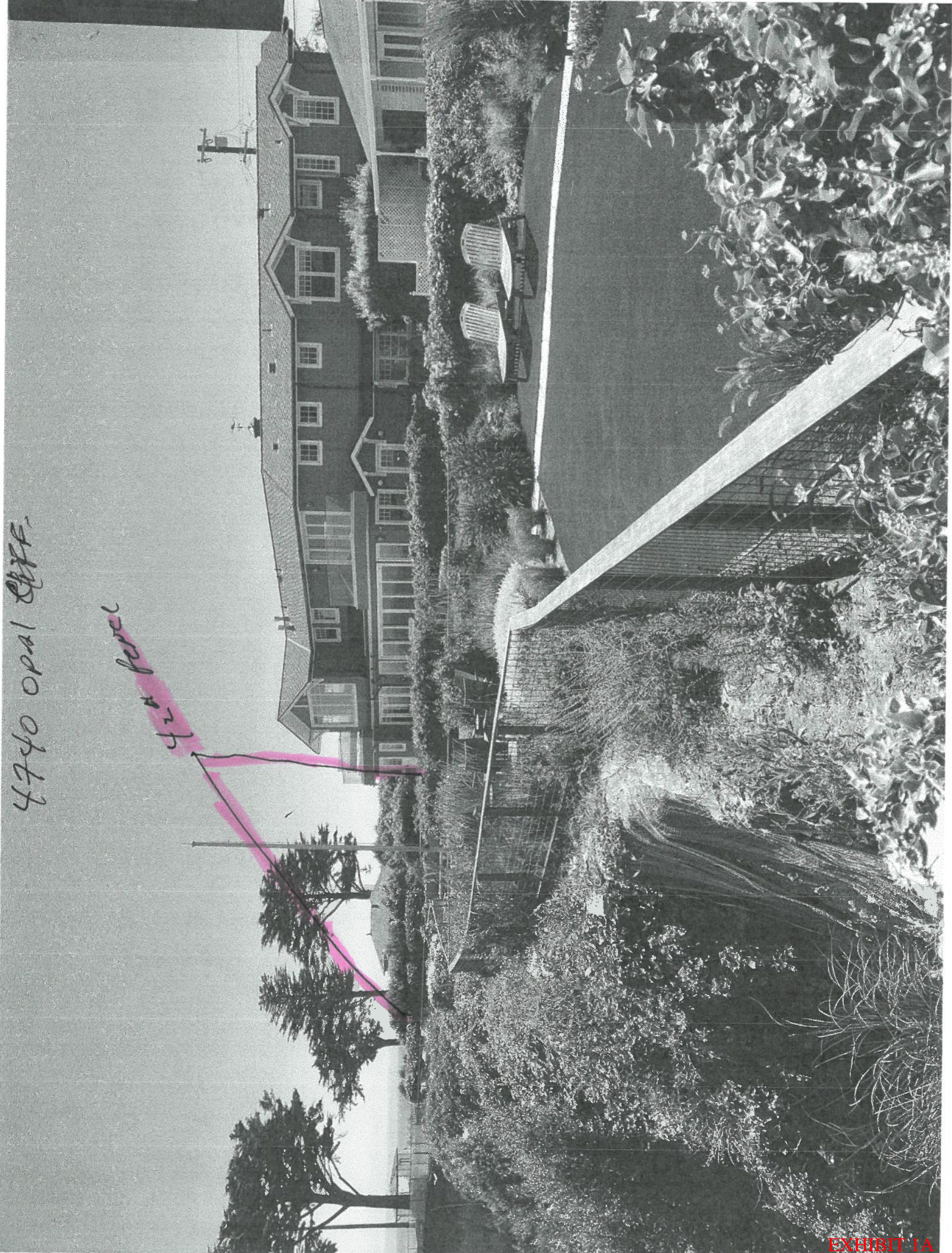
10/2/22





4740 opal cliff-

42nd level





4780 opa cliff on



4780 opa cliff on



4780 OPA1 C118E AN  
8' reduced to 42" with  
B310H





## Coastal Development Permit Findings

1. That the project is a use allowed in one of the basic zone districts that are listed in LCP Section 13.10.170(D) as consistent with the LCP Land Use Plan designation of the site.

This finding can be made, in that the property is zoned R-1-5 (Single family residential (5,000 square foot minimum parcel)), a designation which allows Residential uses. The proposed fence is associated with a principal permitted use within the zone district, and the zoning is consistent with the site's R-UM (Urban Medium Density Residential) General Plan designation. As proposed, the height of the fence complies with the allowed height of fencing within a side and rear yard. Further, the location of the fence will not result in adverse impacts to public view sheds or public access to the beach.

2. That the project does not conflict with any existing easement or development restrictions such as public access, utility, or open space easements.

This finding can be made, in that no such easements or restrictions are known to encumber the project site.

3. That the project is consistent with the design criteria and special use standards and conditions of this chapter pursuant to SCCC 13.20.130 and 13.20.140 et seq.

This finding can be made, in that the development is consistent with the surrounding neighborhood in terms of architectural style; the site is surrounded by lots developed to an urban density; the colors will be natural in appearance and complementary to the site. The development site is located on a bluff top however, the location and design of the section of fence would not adversely impact public views as it is surrounded by and predominantly screened by mature vegetation.

4. That the project conforms with the public access, recreation, and visitor-serving policies, standards and maps of the LCP Land Use Plan, including Chapter 2: Section 2.5 and Chapter 7.

This finding can be made, in that the project site is not identified as a priority acquisition site in the County Local Coastal Program and public beach access is available at the Hook Beach located approximately 920 feet west of the project site.

5. That the project conforms to all other applicable standards of the certified LCP.

This finding can be made, in that the proposed section of six foot high fence is sited and designed to be visually compatible and integrated with the character of the surrounding neighborhood. Additionally, residential uses (fences) are allowed uses in the R-1-5 (Single family residential (5,000 square foot minimum parcel)) zone district, as well as the General Plan and Local Coastal Program land use designation. Developed parcels in the area contain single family dwellings and similar site improvements such as fencing. Size and architectural styles vary in the area, and the design submitted is consistent with the pattern of development within the surrounding neighborhood.

6. If the project is located between the nearest through public road and the sea or the shoreline of any body of water located within the Coastal Zone, that the project conforms to the public access and public recreation policies of Chapter 3 of the Coastal Act.

This finding can be made, in that the project site is located between the shoreline and the first public road however, the proposed side yard fence will not interfere with public access to the beach, ocean, or any nearby body of water. Existing beach access is located approximately 920 feet to the west of the project site at the Hook Beach. Further, the project site is not identified as a priority acquisition site in the County Local Coastal Program.

7. In the event of any conflicts between or among the required findings, required findings in subsections (E) and (F) of this section shall prevail.

This finding can be made, in that there are no conflicts among the required Coastal Development Permit findings.



## Development Permit Findings

1. That the proposed location of the project and the conditions under which it would be operated or maintained will not be detrimental to the health, safety, or welfare of persons residing or working in the neighborhood or the general public, and will not result in inefficient or wasteful use of energy, and will not be materially injurious to properties or improvements in the vicinity.

This finding can be made, in that the project is located in an area designated for Residential uses. Construction will comply with prevailing building technology, the California Building Code, and the County Building ordinance to ensure the optimum in safety and the conservation of energy and resources.

2. That the proposed location of the project and the conditions under which it would be operated or maintained will be consistent with all pertinent County ordinances and the purpose of the zone district in which the site is located.

This finding can be made, in that the proposed location of the fence and the conditions under which it would be operated or maintained will be consistent with all pertinent County ordinances and the purpose of the R-1-5 (Single family residential (5,000 square foot minimum parcel)) zone district as the primary use of the property will be one single family dwelling and Accessory Dwelling Unit with associated site improvements including the proposed fence that meets all current site standards for the zone district.

3. That the proposed use is consistent with all elements of the County General Plan and with any specific plan which has been adopted for the area.

This finding can be made, in that the proposed residential use is consistent with the use and density requirements specified for the R-UM (Urban Medium Density Residential) land use designation in the County General Plan.

The proposed fence will not adversely impact the light, solar opportunities, air, and/or open space available to other structures or properties, and meets all current site and development standards for the zone district as specified in Policy 8.1.3 (Residential Site and Development Standards Ordinance), in that the fence will not adversely shade adjacent properties, and will meet current setbacks for the zone district.

The proposed fence will be properly proportioned to the parcel size and the character of the neighborhood as specified in General Plan Policy 8.6.1 (Maintaining a Relationship Between Structure and Parcel Sizes), in that the proposed fence will comply with the site standards for the R-1-5 zone district (including setbacks, lot coverage, floor area ratio, height, and number of stories) and will result in a structure consistent with a design that could be approved on any similarly sized lot in the vicinity.

A specific plan has not been adopted for this portion of the County.

4. That the proposed use will not overload utilities, and will not generate more than the acceptable level of traffic on the streets in the vicinity.

This finding can be made, in that the proposed fence is to be constructed on an existing developed lot served by existing utilities. Existing level of traffic generated by the site is not anticipated to increase and no additional draw on utilities is expected.

5. That the proposed project will complement and harmonize with the existing and proposed land uses in the vicinity and will be compatible with the physical design aspects, land use intensities, and dwelling unit densities of the neighborhood.

This finding can be made, in that the proposed structure is located in a mixed neighborhood containing a variety of architectural styles, and the proposed fence is consistent with the land use intensity and density of the neighborhood.

6. The proposed development project is consistent with the Design Standards and Guidelines (sections 13.11.070 through 13.11.076), and any other applicable requirements of this chapter.

This finding can be made, in that the proposed fence will be of an appropriate scale and type of design. The location of the proposed fence is heavily screened by existing mature vegetation and will enhance the aesthetic qualities of the surrounding properties. The proposed project will not reduce or visually impact available open space in the surrounding area.



## Conditions of Approval

Exhibit A: Project plans, prepared by Matson Britton Architects, dated 7/19/22.

- I. This permit authorizes the construction of a six foot high section of wood board fence as indicated on the approved Exhibit "A" for this permit. This approval does not confer legal status on any existing structure(s) or existing use(s) on the subject property that are not specifically authorized by this permit. Prior to exercising any rights granted by this permit including, without limitation, any construction or site disturbance, the applicant/owner shall:
  - A. Sign, date, and return to Santa Cruz County Planning one copy of the approval to indicate acceptance and agreement with the conditions thereof.
- II. All construction shall be performed according to the approved plans. The applicant/owner must meet the following conditions:
  - A. Meet all requirements of and pay Zone 5 drainage fees to the County Department of Public Works, Stormwater Management. Drainage fees will be assessed on the net increase in impervious area.
    1. The discretionary application has not been reviewed for compliance with Part 3 of the County Design Criteria. Prior to issuance of a building, grading, or other permit, final Stormwater Management documents shall be submitted for review and approval by Stormwater Management Section that adhere to the County Design Criteria and County Code 7.79.
    2. Pre-development runoff patterns and rates shall be maintained, and safe stormwater overflow shall be incorporated into the project design.
    3. New and/or replaced impervious and/or semi-impervious surface area shall not exceed 5,000 square feet.
  - B. Meet all requirements of the Environmental Planning section of Santa Cruz County Planning.
    1. If the project is modified such that a building permit is required or the project is otherwise determined to be considered "development" pursuant to SCCC 16.10.040, an amendment to this permit shall be required.
  - C. Pursuant to Sections 16.40.040 and 16.42.080 of the County Code, if at any time during site preparation, excavation, or other ground disturbance associated with this development, any artifact or other evidence of an historic archaeological resource or a Native American cultural site is discovered, the responsible persons shall immediately cease and desist from all further site excavation and notify the Sheriff-Coroner if the discovery contains human remains, or the Planning Director if the discovery contains no human remains. The procedures established in Sections 16.40.040 and 16.42.080, shall be observed.

### III. Operational Conditions

- A. In the event that future County inspections of the subject property disclose noncompliance with any Conditions of this approval or any violation of the County Code, the owner shall pay to the County the full cost of such County inspections, including any follow-up inspections and/or necessary enforcement actions, up to and including permit revocation.

### IV. Indemnification

The applicant/owner shall indemnify, defend with counsel approved by the COUNTY, and hold harmless the COUNTY, its officers, employees, and agents from and against any claim (including reasonable attorney's fees, expert fees, and all other costs and fees of litigation), against the COUNTY, its officers, employees, and agents arising out of or in connection to this development approval or any subsequent amendment of this development approval which is requested by the applicant/owner, regardless of the COUNTY's passive negligence, but excepting such loss or damage which is caused by the sole active negligence or willful misconduct of the COUNTY. Should the COUNTY in its sole discretion find the applicant's/owner's legal counsel unacceptable, then the applicant/owner shall reimburse the COUNTY its costs of defense, including without limitation reasonable attorney's fees, expert fees, and all other costs and fees of litigation. The applicant/owner shall promptly pay any final judgment rendered against the COUNTY (and its officers, employees, and agents) covered by this indemnity obligation. It is expressly understood and agreed that the foregoing provisions are intended to be as broad and inclusive as is permitted by the law of the State of California and will survive termination of this development approval.

- A. The COUNTY shall promptly notify the applicant/owner of any claim, action, or proceeding against which the COUNTY seeks to be defended, indemnified, or held harmless. The COUNTY shall cooperate fully in such defense.
- B. Nothing contained herein shall prohibit the COUNTY from participating in the defense of any claim, action, or proceeding if both of the following occur:
  - 1. COUNTY bears its own attorney's fees and costs; and
  - 2. COUNTY defends the action in good faith.
- C. Settlement. The applicant/owner shall not be required to pay or perform any settlement unless such applicant/owner has approved the settlement. When representing the COUNTY, the applicant/owner shall not enter into any stipulation or settlement modifying or affecting the interpretation or validity of any of the terms or conditions of the development approval without the prior written consent of the COUNTY.
- D. Successors Bound. The "applicant/owner" shall include the applicant and/or the owner and the successor(s) in interest, transferee(s), and assign(s) of the



applicant and/or the owner.

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Minor variations to this permit which do not affect the overall concept or density may be approved by the Planning Director at the request of the applicant or staff in accordance with Chapter 18.10 of the County Code.

**Please note: This permit expires three years from the effective date listed below unless the conditions of approval are complied with and the use commences before the expiration date.**

Approval Date: 07/20/23

Effective Date: 08/03/23

Expiration date: 08/03/26



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## Staff Report & Development Permit Level 4 – Administrative Review

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Application Number: **231048**

APN: **033-171-09**

Applicant: **Matson Britton Architects**

Owner: **O'Neill**

Site Address: **4200 Opal Cliff Drive, Santa Cruz**

### Proposal & Location

Proposal to recognize construction of a six foot high redwood fence located on the southwest side of the property, within 50 feet of a coastal bluff. Requires a Coastal Development Permit.

Property located on the south side of Opal Cliff Drive approximately 550 feet east of the intersection with 41<sup>st</sup> Avenue (4200 and 4198 Opal Cliff Drive).

### Analysis

The subject property is approximately 32,000 square feet in size and zoned Single Family Residential (5,000 square foot minimum) (R-1-6) which is consistent with the General Plan designation of Urban Medium Residential density (R-UM).

This application is intended to address an existing code violation for construction of a six foot high portion of fencing located within 50 feet of a coastal bluff without benefit of a Coastal Development Permit. As proposed, the height and of the fence would comply with County fence regulations contained in SCCC 13.10.554.

Public comment has been received from the adjoining neighbor to the west of the project site (attached). The neighbor presently has a residence under construction asserts his project was held to a higher standard with regards to construction of side yard fencing than the subject property owner. Additional concerns were raised regarding the perceived reduction in private views as seen from the neighboring property. Upon review of the administrative record for the adjoining neighbor's project (CDP 201279), a request for a taller fence was not made as part of that Coastal Development Permit nor was the project conditioned restrict the height of his fence. Consequently, the proposed project would not be in conflict with existing conditions of approval related to projects in the vicinity.

County Code and the Local Coastal Program (LCP) do not contain language limiting height of fencing within 50 feet of the coastal bluff. County Code does, however, require a Coastal Development Permit (CDP) for structures normally associated with a single family residence (fencing etc.) that are located within the 50 foot setback to the bluff. As is the case with the subject application, a CDP has been applied for to recognize the installation of the portion of six foot high fence located within 50 feet of the edge of the coastal bluff.



As proposed, the six foot high fence would not result in adverse impacts to coastal resources including public views (from the beach) and public access to the beach. The design is consistent with side yard fencing found in the vicinity of the project site. Generally, the pattern of development in the Coastal Zone is characterized by lower 42 inch high fences in the rear yard areas within 50 feet of the coastal bluff; however, it is not uncommon for property owners to request side yard fencing greater than 42 inches in height in conjunction with a Coastal Development Permit application. Due to the location and configuration of the subject parcel, a six foot high section of fence within 50 feet of the coastal bluff would not be in conflict with applicable codes and policies. Additionally, existing vegetation on the project site and adjacent to the proposed fence exceeds the height of the proposed fence. Consequently, the fence itself would not result in a visual impact.

Findings are on file with Santa Cruz County Planning.

### Staff Recommendation

Santa Cruz County Planning has taken administrative action on your application as follows:

  X          Approved (if not appealed).  
              Denied (based on the attached findings).

NOTE:        This decision is final unless appealed.

See below for information regarding appeals. You may exercise your permit after signing below and meeting any conditions which are required to be met prior to exercising the permit. If you file an appeal of this decision, permit issuance will be stayed and the permit cannot be exercised until the appeal is decided.

**Please note: This permit will expire unless exercised prior to the expiration date.  
(See the Conditions of Approval below for the expiration date of this permit.)**

If you have any questions about this project, please contact Nathan MacBeth at:  
(831) 454-3118 or [nathan.macbeth@santacruzcounty.us](mailto:nathan.macbeth@santacruzcounty.us)

Report Prepared By: Nathan MacBeth  
Nathan MacBeth  
Santa Cruz County Planning  
701 Ocean Street, 4th Floor  
Santa Cruz CA 95060

Report Reviewed By: Jocelyn Drake  
Jocelyn Drake  
Principal Planner  
Santa Cruz County Planning

Owner: ONeill  
Application #: 231048  
APN: 033-171-09

Page 3

Mail to: Matson Britton Architects  
728 N Branciforte  
Santa Cruz, CA 95062

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### **Appeals**

In accordance with Section 18.10 et seq of the Santa Cruz County Code, the applicant or any aggrieved party may appeal an action or decision taken on a Level IV project such as this one. All appeals shall be made in writing and shall state the nature of the application, your interest in the matter and the basis on which the decision is to be considered to be in error. Appeals must be made no later than fourteen (14) calendar days following the date of publication of the action from which the appeal is being taken and must be accompanied by the appropriate filing fee.



## Conditions of Approval

Exhibit A: Project plans, prepared by Matson Britton Architects, dated 7/19/22.

- I. This permit authorizes the construction of a six foot high section of wood board fence as indicated on the approved Exhibit "A" for this permit. This approval does not confer legal status on any existing structure(s) or existing use(s) on the subject property that are not specifically authorized by this permit. Prior to exercising any rights granted by this permit including, without limitation, any construction or site disturbance, the applicant/owner shall:
  - A. Sign, date, and return to Santa Cruz County Planning one copy of the approval to indicate acceptance and agreement with the conditions thereof.
- II. All construction shall be performed according to the approved plans. The applicant/owner must meet the following conditions:
  - A. Meet all requirements of and pay Zone 5 drainage fees to the County Department of Public Works, Stormwater Management. Drainage fees will be assessed on the net increase in impervious area.
    1. The discretionary application has not been reviewed for compliance with Part 3 of the County Design Criteria. Prior to issuance of a building, grading, or other permit, final Stormwater Management documents shall be submitted for review and approval by Stormwater Management Section that adhere to the County Design Criteria and County Code 7.79.
    2. Pre-development runoff patterns and rates shall be maintained, and safe stormwater overflow shall be incorporated into the project design.
    3. New and/or replaced impervious and/or semi-impervious surface area shall not exceed 5,000 square feet.
  - B. Meet all requirements of the Environmental Planning section of Santa Cruz County Planning.
    1. If the project is modified such that a building permit is required or the project is otherwise determined to be considered "development" pursuant to SCCC 16.10.040, an amendment to this permit shall be required.
  - C. Pursuant to Sections 16.40.040 and 16.42.080 of the County Code, if at any time during site preparation, excavation, or other ground disturbance associated with this development, any artifact or other evidence of an historic archaeological resource or a Native American cultural site is discovered, the responsible persons shall immediately cease and desist from all further site excavation and notify the Sheriff-Coroner if the discovery contains human remains, or the Planning Director if the discovery contains no human remains. The procedures established in Sections 16.40.040 and 16.42.080, shall be observed.

### III. Operational Conditions

- A. In the event that future County inspections of the subject property disclose noncompliance with any Conditions of this approval or any violation of the County Code, the owner shall pay to the County the full cost of such County inspections, including any follow-up inspections and/or necessary enforcement actions, up to and including permit revocation.

### IV. Indemnification

The applicant/owner shall indemnify, defend with counsel approved by the COUNTY, and hold harmless the COUNTY, its officers, employees, and agents from and against any claim (including reasonable attorney's fees, expert fees, and all other costs and fees of litigation), against the COUNTY, its officers, employees, and agents arising out of or in connection to this development approval or any subsequent amendment of this development approval which is requested by the applicant/owner, regardless of the COUNTY's passive negligence, but excepting such loss or damage which is caused by the sole active negligence or willful misconduct of the COUNTY. Should the COUNTY in its sole discretion find the applicant's/owner's legal counsel unacceptable, then the applicant/owner shall reimburse the COUNTY its costs of defense, including without limitation reasonable attorney's fees, expert fees, and all other costs and fees of litigation. The applicant/owner shall promptly pay any final judgment rendered against the COUNTY (and its officers, employees, and agents) covered by this indemnity obligation. It is expressly understood and agreed that the foregoing provisions are intended to be as broad and inclusive as is permitted by the law of the State of California and will survive termination of this development approval.

- A. The COUNTY shall promptly notify the applicant/owner of any claim, action, or proceeding against which the COUNTY seeks to be defended, indemnified, or held harmless. The COUNTY shall cooperate fully in such defense.
- B. Nothing contained herein shall prohibit the COUNTY from participating in the defense of any claim, action, or proceeding if both of the following occur:
1. COUNTY bears its own attorney's fees and costs; and
  2. COUNTY defends the action in good faith.
- C. Settlement. The applicant/owner shall not be required to pay or perform any settlement unless such applicant/owner has approved the settlement. When representing the COUNTY, the applicant/owner shall not enter into any stipulation or settlement modifying or affecting the interpretation or validity of any of the terms or conditions of the development approval without the prior written consent of the COUNTY.
- D. Successors Bound. The "applicant/owner" shall include the applicant and/or the owner and the successor(s) in interest, transferee(s), and assign(s) of the



applicant and/or the owner.

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Minor variations to this permit which do not affect the overall concept or density may be approved by the Planning Director at the request of the applicant or staff in accordance with Chapter 18.10 of the County Code.

**Please note: This permit expires three years from the effective date listed below unless the conditions of approval are complied with and the use commences before the expiration date.**

Approval Date: 07/20/23

Effective Date: 08/03/23

Expiration date: 08/03/26

## Coastal Development Permit Findings

1. That the project is a use allowed in one of the basic zone districts that are listed in LCP Section 13.10.170(D) as consistent with the LCP Land Use Plan designation of the site.

This finding can be made, in that the property is zoned R-1-5 (Single family residential (5,000 square foot minimum parcel)), a designation which allows Residential uses. The proposed fence is associated with a principal permitted use within the zone district, and the zoning is consistent with the site's R-UM (Urban Medium Density Residential) General Plan designation. As proposed, the height of the fence complies with the allowed height of fencing within a side and rear yard. Further, the location of the fence will not result in adverse impacts to public view sheds or public access to the beach.

2. That the project does not conflict with any existing easement or development restrictions such as public access, utility, or open space easements.

This finding can be made, in that no such easements or restrictions are known to encumber the project site.

3. That the project is consistent with the design criteria and special use standards and conditions of this chapter pursuant to SCCC 13.20.130 and 13.20.140 et seq.

This finding can be made, in that the development is consistent with the surrounding neighborhood in terms of architectural style; the site is surrounded by lots developed to an urban density; the colors will be natural in appearance and complementary to the site. The development site is located on a bluff top however, the location and design of the section of fence would not adversely impact public views as it is surrounded by and predominantly screened by mature vegetation.

4. That the project conforms with the public access, recreation, and visitor-serving policies, standards and maps of the LCP Land Use Plan, including Chapter 2: Section 2.5 and Chapter 7.

This finding can be made, in that the project site is not identified as a priority acquisition site in the County Local Coastal Program and public beach access is available at the Hook Beach located approximately 920 feet west of the project site.

5. That the project conforms to all other applicable standards of the certified LCP.

This finding can be made, in that the proposed section of six foot high fence is sited and designed to be visually compatible and integrated with the character of the surrounding neighborhood. Additionally, residential uses (fences) are allowed uses in the R-1-5 (Single family residential (5,000 square foot minimum parcel)) zone district, as well as the General Plan and Local Coastal Program land use designation. Developed parcels in the area contain single family dwellings and similar site improvements such as fencing. Size and architectural styles vary in the area, and the design submitted is consistent with the pattern of development within the surrounding neighborhood.



6. If the project is located between the nearest through public road and the sea or the shoreline of any body of water located within the Coastal Zone, that the project conforms to the public access and public recreation policies of Chapter 3 of the Coastal Act.

This finding can be made, in that the project site is located between the shoreline and the first public road however, the proposed side yard fence will not interfere with public access to the beach, ocean, or any nearby body of water. Existing beach access is located approximately 920 feet to the west of the project site at the Hook Beach. Further, the project site is not identified as a priority acquisition site in the County Local Coastal Program.

7. In the event of any conflicts between or among the required findings, required findings in subsections (E) and (F) of this section shall prevail.

This finding can be made, in that there are no conflicts among the required Coastal Development Permit findings.

## Development Permit Findings

1. That the proposed location of the project and the conditions under which it would be operated or maintained will not be detrimental to the health, safety, or welfare of persons residing or working in the neighborhood or the general public, and will not result in inefficient or wasteful use of energy, and will not be materially injurious to properties or improvements in the vicinity.

This finding can be made, in that the project is located in an area designated for Residential uses. Construction will comply with prevailing building technology, the California Building Code, and the County Building ordinance to ensure the optimum in safety and the conservation of energy and resources.

2. That the proposed location of the project and the conditions under which it would be operated or maintained will be consistent with all pertinent County ordinances and the purpose of the zone district in which the site is located.

This finding can be made, in that the proposed location of the fence and the conditions under which it would be operated or maintained will be consistent with all pertinent County ordinances and the purpose of the R-1-5 (Single family residential (5,000 square foot minimum parcel)) zone district as the primary use of the property will be one single family dwelling and Accessory Dwelling Unit with associated site improvements including the proposed fence that meets all current site standards for the zone district.

3. That the proposed use is consistent with all elements of the County General Plan and with any specific plan which has been adopted for the area.

This finding can be made, in that the proposed residential use is consistent with the use and density requirements specified for the R-UM (Urban Medium Density Residential) land use designation in the County General Plan.

The proposed fence will not adversely impact the light, solar opportunities, air, and/or open space available to other structures or properties, and meets all current site and development standards for the zone district as specified in Policy 8.1.3 (Residential Site and Development Standards Ordinance), in that the fence will not adversely shade adjacent properties, and will meet current setbacks for the zone district.

The proposed fence will be properly proportioned to the parcel size and the character of the neighborhood as specified in General Plan Policy 8.6.1 (Maintaining a Relationship Between Structure and Parcel Sizes), in that the proposed fence will comply with the site standards for the R-1-5 zone district (including setbacks, lot coverage, floor area ratio, height, and number of stories) and will result in a structure consistent with a design that could be approved on any similarly sized lot in the vicinity.

A specific plan has not been adopted for this portion of the County.

4. That the proposed use will not overload utilities, and will not generate more than the acceptable level of traffic on the streets in the vicinity.



This finding can be made, in that the proposed fence is to be constructed on an existing developed lot served by existing utilities. Existing level of traffic generated by the site is not anticipated to increase and no additional draw on utilities is expected.

5. That the proposed project will complement and harmonize with the existing and proposed land uses in the vicinity and will be compatible with the physical design aspects, land use intensities, and dwelling unit densities of the neighborhood.

This finding can be made, in that the proposed structure is located in a mixed neighborhood containing a variety of architectural styles, and the proposed fence is consistent with the land use intensity and density of the neighborhood.

6. The proposed development project is consistent with the Design Standards and Guidelines (sections 13.11.070 through 13.11.076), and any other applicable requirements of this chapter.

This finding can be made, in that the proposed fence will be of an appropriate scale and type of design. The location of the proposed fence is heavily screened by existing mature vegetation and will enhance the aesthetic qualities of the surrounding properties. The proposed project will not reduce or visually impact available open space in the surrounding area.

# CALIFORNIA ENVIRONMENTAL QUALITY ACT

## NOTICE OF EXEMPTION

The Santa Cruz County Planning Division has reviewed the project described below and has determined that it is exempt from the provisions of CEQA as specified in Sections 15061 - 15332 of CEQA for the reason(s) which have been specified in this document.

Application Number: 231048

Assessor Parcel Number: 033-171-09

Project Location: 4200 Opal Cliff Drive, Santa Cruz

**Project Description: Construct a six foot heigh fence.**

**Person or Agency Proposing Project: Matson Britton Architects**

**Contact Phone Number: (831) 425-0544**

- A. ☐ The proposed activity is not a project under CEQA Guidelines Section 15378.  
B. ☐ The proposed activity is not subject to CEQA as specified under CEQA Guidelines Section 15060 (c).  
C. ☐ **Ministerial Project** involving only the use of fixed standards or objective measurements without personal judgment.  
D. ☐ **Statutory Exemption** other than a Ministerial Project (CEQA Guidelines Section 15260 to 15285).  
E. ☒ **Categorical Exemption**

Specify type: Class 2 – Replacement or Reconstruction (Section 15302); Class 3 - New Construction or Conversion of Small Structures (Section 15303)

**F. Reasons why the project is exempt:**

Class 2 – Replacement or reconstruction of existing fence where the new structure will be located on the same site as the structure replaced and will have substantially the same purpose and capacity as the structure replaced.

Class 3 - Construction of a new fence including site improvements normally associated with a single family dwelling in an area designated for residential uses

In addition, none of the conditions described in Section 15300.2 apply to this project.

Nathan MacBeth  
Nathan MacBeth, Project Planner

Date: 07/20/23



## Nathan MacBeth

**From:** Houston Group Realtors <houstongroup11@gmail.com>  
**Sent:** Thursday, June 29, 2023 12:43 PM  
**To:** rainegraven@coastal.cal.gov; Nathan MacBeth; Patricia Moreno  
**Subject:** 4200 Opal Cliif Dr violation

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**Houston Group Realtors <houstongroup11@gmail.com>**

12:01 PM (37 minutes ago)

to rainey.graeven, Nathan, Patricia, Derek, bcc: HOUSTONGROUP11



Rainey,

Hope all is well with you.

We had a conversation about 10 months ago regarding my adjoining neighbor encroaching within the 50' coastal bluff setback. In 2017, They installed an 8' fence and plantings of mature trees and shrubs exceeding the 42" limits within the setback. Prior to the installation there was a 42 cyclone fence and low vegetation. I filed a violation about a year ago and the planner, Nathan MacBeth, is about to make a decision on an application for a CDP by Cove Britt, In an attempt to rectify the violation., they are requesting to install a 6' fence encroaching the 50' coastal set back. Nathan has stated that Coastal prefers a 42" fence but planning can approve a higher fence. My understanding of the Coastal Ordinance is that any encroachment within 50' of the Bluff, whether fencing or vegetation SHALL NOT exceed 42". Can you clarify, since my past conversations with Coastal, Mark Massara, and Derek VanAlstine had stated that if a permit were issued it would not-exceed the 42" max height. Your prompt attention to this issue would be greatly appreciated as a decision is imminent.

Kindest Regards,

Jerry Houston

408-891-9976

Houston Group

[www.houstongrouprealtors.com](http://www.houstongrouprealtors.com)

T. Jerry 408.891.9976

T. Andy 650.218.5508

BRE #01975100

BRE #00553642



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## Nathan MacBeth

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**From:** Houston Group Realtors <houstongroup11@gmail.com>  
**Sent:** Wednesday, June 28, 2023 7:40 PM  
**To:** Nathan MacBeth  
**Cc:** markmassara@coastaladvocates.com  
**Subject:** Fwd: fences

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Nathan,  
Please see response from DEREK Van Alstine . IHe had asked Jennifer Degrassi about fences within the 50' setback. She had asked Nate in Planning and this was his response.  
This was an email sent to me in Jan 2022  
Just for your FYI  
Jerry

Sent from Houston Group Realtors

Begin forwarded message:

**From:** Dianne Pereira <Dianne@lifesabeach.com>  
**Date:** January 6, 2022 at 5:20:34 PM PST  
**To:** Houston Group Realtors <houstongroup11@gmail.com>  
**Subject:** Re: fences

 looks good

Dianne Pereira  
Bailey Properties  
BRE 01308046  
831-818-5939  
Dianne@lifesabeach.com  
Www.lifesabeach.com

Please forgive typos sent from my ipad

On Jan 6, 2022, at 3:24 PM, Houston Group Realtors <houstongroup11@gmail.com> wrote:

Sent from Houston Group Realtors

Begin forwarded message:

**From:** Jerry Houston <jerry.houston54@icloud.com>  
**Date:** January 4, 2022 at 4:24:04 PM PST  
**To:** houstongroup11@gmail.com  
**Subject:** Fwd: fences

Sent from Houston Group Realtors

Begin forwarded message:

**From:** dvrd33@gmail.com  
**Date:** September 4, 2019 at 6:45:35 PM PDT  
**To:** Jerry Houston <jerry.houston54@icloud.com>  
**Subject:** Fwd: fences

Jerry , I think this should suffice. Derek

Sent from my iPhone

Begin forwarded message:

**From:** Jessica deGrassi  
<Jessica.deGrassi@santacruzcounty.us>  
**Date:** September 4, 2019 at 6:21:13 PM PDT  
**To:** Derek Van Alstine  
<derek@vanalstine.com>  
**Subject:** RE: fences

I asked Nate about this and he replied:

*Not knowing which neighbor Derek is referring to, I looked into the permit history for the up coast and down coast properties. Neither property has a permit for an 8 foot high fence. Normally, 8 ft high fencing in the rear yard does not require a permit however, when fencing is located within 50 feet of the edge of a coastal bluff, a CDP is required. Typically staff would discourage fencing in excess of the required 42 inch safety railing within such close proximity to the bluff and as you are aware needs to comply with SCCC 16.10. A code complaint would need to be filed in order for staff to address this issue.*



Let me know if you have further questions,

Jessica

**From:** Derek Van Alstine  
<derek@vanalstine.com>

**Sent:** Tuesday, September 3, 2019 1:51 PM

**To:** Jessica deGrassi  
<Jessica.deGrassi@santacruzcounty.us>

**Subject:** fences

Jessica, Thanks for "sitting in on the discussion" the other day regarding the property I am working on on Opal Cliff. I had one question regarding fences. The neighbor constructed a fence approx. 8' high starting at the bluff edge and running about 50' back towards Opal Cliff. The fence obstructs the view from my clients property and he would like to know if it conforms to the zoning regulations. Please let me know,  
Thanks, Derek

## Nathan MacBeth

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**From:** Jerry Houston <jerry.houston54@icloud.com>  
**Sent:** Tuesday, May 23, 2023 1:16 PM  
**To:** rainey.graeven@coastalca.gov; Nathan MacBeth; Patricia Moreno  
**Subject:** 4200 Opal Cliff Dr Santa Cruz

\*\*\*\*CAUTION:This is an EXTERNAL email. Exercise caution. DO NOT open attachments or click links from unknown senders or unexpected email.\*\*\*\*

Dear Rainey,

I am writing this email to address an issue regarding a non permitted 8' fence and excess vegetation, plantings of over 42" within the coastal 50' Bluff setback @ 4200 Opal Cliff Dr,Santa Cruz.

I am the neighbor who is being impacted by the 8' fence and shrubbery. My wife and I attempted to work out this situation with our neighbor but , ahe chose not to engage and hired Cove Britt to represent and deal with the issue. I met with him and he was very adamant and held strongly that he was going to apply for and obtain a CDP ; which he did . I have lived in 3 separate houses on the bluff on Opal Cliff and all 3 had 42" high side and rear fencing within 50' of the bluff. On the advice of my Architect , he said the only way to remedy the issue , is to file a violation for an illegal not permitted fence within the setback; which I did in mid 2022.

It has been over 10 months and I see that they did file for a CDP just last week 5/23 Application #231048. Nathan Macbeth is the planner . They are requesting a permit for a 6' fence within coastal while , there is currently an existing 8' fence within the coastal set back. There have been 5 recent remodel and new builds on Opal Cliff since 2020 and all of them had to comply to the 42" Coastal setback ordinance. In fact , the house in which we are in the process of completing at 4190 Opal Cliff Dr (next door to 4200 Opal Cliff ) , is requiring as a condition, prior to final sign off ; to comply to the coastal 42 "fence ordinance within Coastal guidelines So my question is how can they be allowed to obtain a CDP on an existing residence with an illegal 8'fence and not have to comply to the Coastal ordinance.

If you need documentation regarding the violation , contact Patricia Moreno at Santa Cruz County Code violations . She has a file of photos which , showed an old existing 42 " prior to the current new fence between our properties being installed in approximately 2017. In addition , there are photos of new fencing material photos circa 2017-2019 and realtor photos at the time of sellers purchase in 2017 showing 42" fencing and low vegetation of no more than fence height between the properties.

Thanks for taking time to address this issue.

It is appreciated!

Jerry Houston

Sent from Houston Group Realtors

















EXHIBIT 1D



















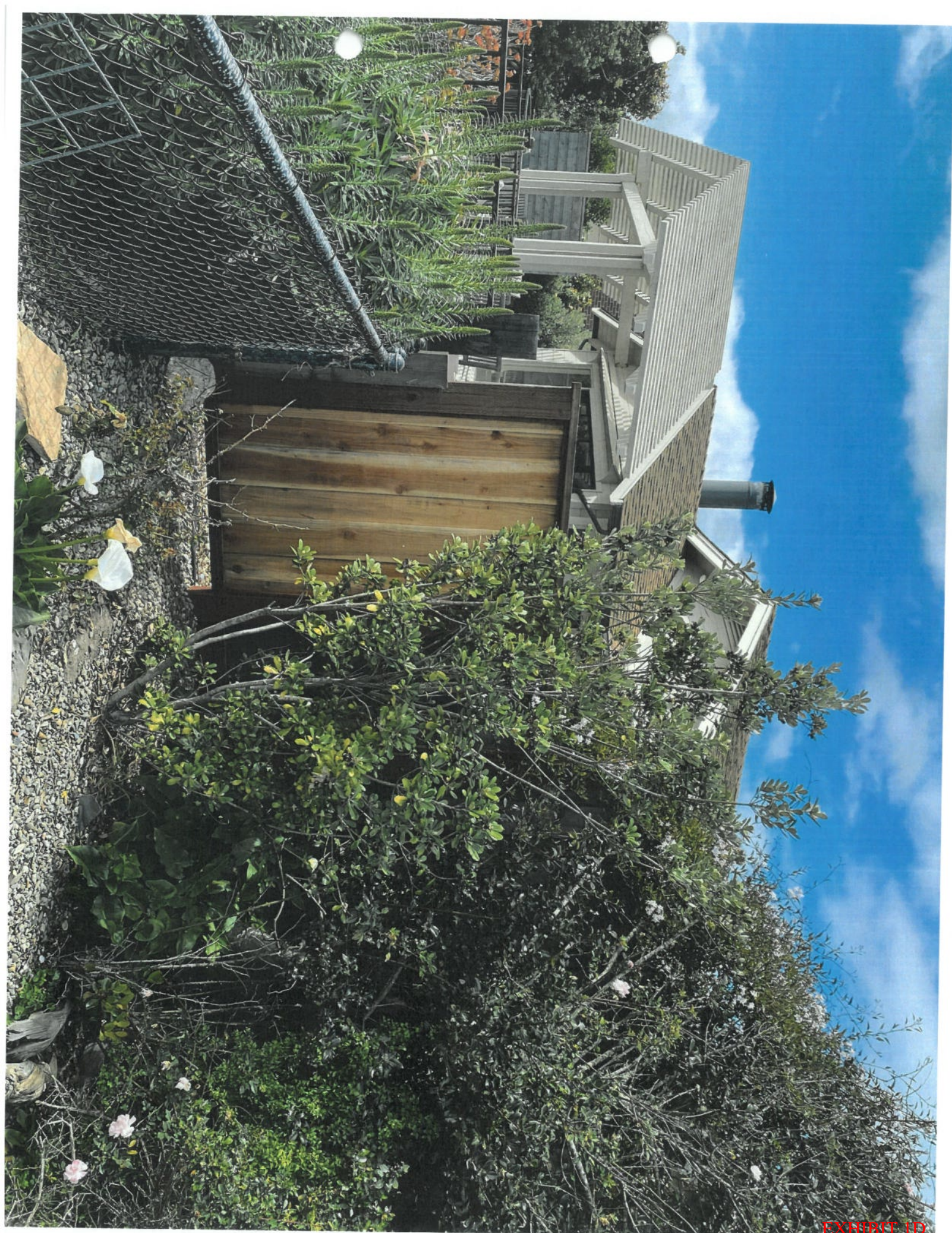


EXHIBIT 10