

COASTAL ENCROACHMENT POLICY

On September 19, 2017, the Board of Supervisors approved Resolution 204-2017 concerning Coastal Trail and Beach Access maintenance, operations, and enforcement in Santa Cruz County, which established authority to authorize, remove and/or replace unpermitted development and/or encroachments within County-owned easements and County-managed rights-of-way that involve coastal trails, shoreline properties, coastal access, beach trails, and beach access and which provide beach or coastal public access or which are located ocean-ward and/or perpendicular or parallel to residential ocean properties. This policy is intended to establish a procedure for approval of permitted encroachments, removal of prohibited encroachments, limit the extent of encroachments, and clarify improvements permitted within each encroachment.

A. Objective Statement:

The purpose of the Coastal Encroachment Policy is to maximize public access and recreational opportunities within the County's coastal zone consistent with the State and Federal Constitutions, the California Coastal Act, and the County's Local Coastal Program. Accordingly, all encroachments, encroachment permits, encroachment fees, potential use of fees, and all decisions on these Policy elements and others related to implementation of this policy shall be understood in relation to this objective.

B. Definitions:

- a. *Encroachment* shall mean and include any obstruction, tower, pole, pole line, pipe, wire, cable, conduit, wall, fence, balcony, deck, paving, stand or building, tree, landscaping, seawall or other revetment or any structure or object of any kind or character which is placed in, along, under, over or across any County-owned easement or public right-of-way that involve coastal trails, shoreline properties, coastal access, beach trails, and beach access and which provide beach or coastal public access or which are located ocean-ward and/or perpendicular or parallel to residential ocean properties.
- b. *Existing encroachment* shall mean any encroachment or improvement existing before June 30, 2018.
- c. *New encroachment* shall mean any encroachment or improvement installed or constructed after July 1, 2018.
- d. *Exclusive encroachment* shall mean any encroachment over which the public does not have access. Examples shall include exclusive patio or deck areas, walled or fenced areas, buildings or landscaping which prevents public use. Seawalls or revetments which do not preserve adequate public access as determined by the County shall be considered exclusive encroachments.

- e. *Non-exclusive encroachment* shall mean any encroachment which is not an exclusive encroachment.
 - f. *Coastal Zone* means that portion of the Coastal Zone, as established by the Coastal Act of 1976 and as it may subsequently be amended, which lies within the unincorporated area of Santa Cruz County, as defined in SCCC 13.20.040.
 - g. *Local Coastal Program (LCP)* means the County's land use plans, zoning ordinances, zoning maps and implementing ordinances and actions certified by the Coastal Commission as the County's LCP meeting the requirements of the California Coastal Act of 1976.
 - h. *Coastal development permit exemption* means, pursuant to the California Coastal Act and Title 14, Division 5.5 of the California Code of Regulations, a class of development for which no coastal development permit is required. The categories of exempted development are referenced in SCCC 13.20.060 et seq.
 - i. *Width of Access* shall generally meet the following minimum requirements as required for public access and referenced in SCCC 15.01.070 unless otherwise permitted through this process:
 - i. Shoreline access easements shall be a minimum of five feet wide.
 - ii. Easements along proposed trail corridors or adopted trail corridors or for blufftop lateral access shall be a minimum of 10 feet wide.
 - j. *Encroachment permit* shall mean the permit issued by the Parks Director authorizing the maintenance or installation of encroachments or improvements within the encroachment zones described in this policy.
 - k. *Application* shall mean any application for an encroachment permit pursuant to the provisions of this policy and the land use plan of the local coastal program.
 - l. *Special Areas and Special Communities* shall mean areas along the coast that have been set aside because of their unique scenic, historical, or beach-front character. Improvements in these areas are subject to special design standards that will preserve their unique qualities as designated in SCCC 13.20.140-.147
- C. Encroachment Zones. Subject to compliance with the provisions of this policy:

South County Encroachment Zone:

The oceanward length of County Supervisorial District 2

Mid County Encroachment Zone:

The oceanward length of County Supervisorial District 1

North County Encroachment Zone

The oceanward length of County Supervisorial District 3

D. Prohibited encroachments.

- a. Any existing encroachment or improvement for which no application has been filed on or before May 31, 2019, and any new encroachment or improvement for which no application is filed prior to installation is prohibited.
- b. Any new or existing encroachment or improvement which, on or after July 1, 2019 is not in conformance with this policy is prohibited and may be abated by the County in accordance with County Code and any other provision of applicable law, including but not limited to an action to quiet title.
- c. Any new or existing encroachment or improvement for which there is no currently valid (unexpired) encroachment permit.

E. Permitted Encroachment/Improvements. Subject to compliance with the provisions of this policy, the following improvements may be permitted and when possible shall be uniform in appearance and construction:

- a. Patio slabs or decks no higher than six inches above grade or the finished floor grade of the adjacent residence and which do not impede required width of access as required herein. The Parks Director may approve minor dimensional tolerances for existing patio slabs and decks only upon a finding that the improvement is consistent with the spirit and intent of this policy and the cost of strict compliance is disproportionate to the extent of the nonconformity.
- b. Balconies that do not interfere with public use or exceed the depth of encroachment as required herein, subject to any and all required building permits or coastal development permits.
- c. Walls and/or fences less than 36 inches in height above grade or the finished floor grade of the existing residence that do not exceed the dept of encroachment as required herein. The Parks Director may approve minor dimensional tolerances for existing walls and/or fences upon a finding that the improvement is consistent with the spirit and intent of

- this policy and the cost of strict compliance is disproportionate to the extent of the nonconformity.
- d. Existing improvements which were constructed in conjunction with development for which a building permit was issued may be approved by the Parks Director upon a finding that the improvement does not impede required width of access and is consistent with the spirit and intent of this policy and the cost of strict compliance is disproportionate to the extent of the nonconformity. Applicants shall be solely responsible for compliance with any requirements to obtain a coastal development permit, if no coastal development permit exemption applies.
 - e. Seawalls or other shoreline protection structures, subject to any requirements to obtain a building or coastal development permit, where public access is maintained to the maximum extent possible.
 - f. In no event shall the Parks Director approve a permit for an encroachment or improvement that varies more than 12 inches from the horizontal dimensional standards of this policy.

F. Prohibited Improvements.

1. Any encroachments requiring a coastal development permit or building permit for which all required permits have not been granted.
2. Pressurized irrigation lines and valves.
3. Trees, landscaping or vegetation, exclusive of the following:
 - a. trees planted by the County of Santa Cruz; or
 - b. any landscaping or vegetation that does not negatively impact coastal access and subject to the following:
 - The vegetation or landscaping was installed prior to the first effective date of this policy;
 - The vegetation or landscaping does not block views from adjoining property;
 - The vegetation or landscaping does not impair or affect the health, safety or welfare of persons using any trail or pathway, nearby property owners, or residents of the area.
 - New plant materials that have been approved under a separate California Coastal Commission permit.

Notwithstanding the provisions of this Subparagraph, the County reserves the right to reduce the height of any existing landscaping at any time, upon a determination by the Parks Director, and after notice to the owner of property on which the vegetation or landscaping exists, that a reduction in height is necessary or appropriate given the purposes of this policy.

G. Permit Process.

1. An encroachment permit shall be required for all permitted improvements. Such application shall be filed with the Parks Department on a form provided by the County.
The application shall be signed by the owner of the property, or an agent of the owner if the application is accompanied by a document, signed by the owner, granting the agent the power to act for the owner with respect to the property.

The application shall be accompanied by a site plan, drawn to scale and fully dimensioned, which accurately depicts the location, height, nature and extent of all proposed improvements and objects within the encroachment.

Applications with incomplete information, inadequate drawings and/or without receipt of application fee will not be accepted.

2. Applications for existing encroachments must be filed on or before May 31, 2019. Applications for new encroachments shall be filed before any encroachment or improvement is installed. No new encroachments or improvements shall be installed without an encroachment permit.
3. Application fee shall be due and payable upon permit application submittal.
4. Upon receipt of the application, the Parks Director shall, within thirty (30) days after the date of filing, determine if the application is complete or if additional information is necessary or appropriate to an evaluation of the application. In the event the application is incomplete or additional information is necessary, written notice to that effect shall be sent to the property owner within forty-five (45) days after the application is filed.
5. With respect to applications for existing encroachments, an inspection shall be conducted of all improvements within the encroachment zone before a permit is issued by the Parks Director in order to ensure the objectives of the Coastal Encroachment Policy are being met. With respect to applications for new encroachments, an onsite inspection will be conducted after installation of the improvements to ensure conformity with provisions of the permit and this policy.

6. The Parks Director shall approve the permit upon a determination that the encroachments proposed to be constructed, or to remain, are permitted by, and consistent with the objectives of this policy, the applicant has agreed to abide by all of the terms and conditions imposed on the permit, and the applicant has paid all fees required by this policy. A dimensional tolerance not to exceed 12 inches may be allowed in determining the appropriate fee to be paid by persons with existing encroachments.
7. The Parks Director shall have the authority to condition his/her approval of the encroachment permit as necessary or appropriate to ensure compliance with the provisions of this policy. The Parks Director shall have the specific authority to condition approval of an encroachment permit on the removal of nonconforming improvements within a specified period of time.
8. The Parks Director shall notify the applicant of his/her decision within sixty (60) days after the application is filed and the decision of the Parks Director shall be final.
9. Nothing in his policy is intended to supplant the requirement for a coastal development permit as required by County Code Chapter 13.20.

H. Term.

Annual encroachment permits shall expire on June 30 of each calendar year.

I. Renewal.

1. Annual renewal fees shall be due and payable on or before May 31 preceding the annual term of the permit.
For example: Annual renewal fees due on May 31, 2018, are for the period July 1, 2018 through June 30, 2019
2. The Parks Director shall approve annual renewal if:
 - a. The applicant has complied with all standard and special conditions of approval;
 - b. The applicant has constructed only those improvements and encroachments authorized by the permit;
 - c. The applicant is in compliance with all of the provisions of this policy.

J. Standard Conditions.

1. The Parks Director shall impose standard conditions of approval on all encroachment permits. These standard conditions shall include the following:
 - a. The obligation of permittee to comply with all of the provisions of this policy and all conditions imposed upon the permit.
 - b. The right of the Parks Director to revoke any permit after notice and hearing if the permittee is in violation of this policy or conditions to the permit.
 - c. The right of the County to summarily abate encroachments or improvements which are prohibited by this policy or conditions on the permit upon fifteen (15) days' written notice.
 - d. The obligation of permittee to pay all costs incurred by the County in summarily abating any prohibited improvement.
 - e. Permittee will indemnify, defend and hold harmless the County of Santa Cruz, its elected and appointed Boards, Commissions, Officers, Agents, and Employees from any claims, suits, losses or damages for injury to persons or property arising from or connected to the use or existence of the improvements or encroachment.
 - f. Permittee's waiver of any right to contest the County's easement or other right-of-way over property within the encroachment.
 - g. The right of the Parks Director or his designee to inspect improvements within the encroachment without notice to the permittee.
 - h. The right of the County to cancel or modify any, or all, encroachment permit(s) upon a determination by the Board of Supervisors to construct a public facility or improvement within or adjacent to the encroachment.
 - i. In the event of cancellation or modification of an encroachment permit, the Parks Director shall give the permittee written notice specifying that the improvement must be removed from the public right-of-way and specifying in the notice a reasonable time within which the encroachment must be removed not to exceed ninety (90) days.
2. The construction of any seawall, revetment or other device necessary to control erosion, shall occur as close to private property as feasible. Erosion control devices shall not be placed or installed closer to the ocean to protect improvements or encroachments.

3. The Parks Director may impose additional standard conditions necessary or appropriate to ensure compliance with or facilitate County administration of this policy.

K. Permit Fee

A non-refundable permit fee of \$1080 will be submitted annually at the time of application for any encroachment.

L. Annual Fee

1. The fees shall be based on the square footage of encroachment and shall be included in the Uniform Fee Schedule. The Parks Director shall have discretion to determine the appropriate fee for any encroachment permitted under this policy based on the nature and size of the encroachment and may allow discounts based on the reduction of previously existing structural encroachment area (such as by decreasing the footprint of a shoreline protection structure), replacement of encroachment area with additional access, or other relevant factors.
2. The annual fee shall be due and payable upon submittal of the application for the initial encroachment permit. Renewal fees shall be due May 31 of each year. The fee shall be considered delinquent thirty (30) days thereafter. Delinquent fees shall be established by resolution of the Board of Supervisors.
3. By written agreement executed by the Parks Director the fee for a seawall or other permanent structural encroachment may be payable up to twenty (20) years in advance or the duration of a coastal development permit issued for the encroachment. The agreement shall be binding on the Permittee's successors in interest and may be recorded against the Permittee's property at the County's option. The agreement shall provide that in the event of cancellation of the encroachment permit as provided herein, the County shall refund of the proportional amount of the fee at the time the encroachment permit is cancelled.
4. The annual fee shall be used to defray County costs of administration, incidental costs of the management, maintenance and improvement of County-owned easements and County-managed public rights-of-way that involve coastal trails, coastal access, beach trails, and beach access, including but not limited to those uses defined under "Park" in Chapter 10.04, Section 10.04.020(F), to the Department of Parks, Open Space and Cultural Services, as provided herein, to ensure coastal access is consistently managed, regulated, supervised, and provided for in the County of Santa Cruz.

5. There will be a 2% cost of living increase assessed annually to all fees associated with this encroachment policy.
6. Fees collected from encroachments within each zone shall be utilized to improve Coastal access and recreational opportunities within that zone. Within these constraints, the Parks Director shall have authority to determine appropriate use of encroachment fees within each zone.

M. Violations/ Remedy.

The County shall, in addition to any right or remedy provided by law, have the right to do any or all of the following in the event a permittee is in violation of the provisions of this policy or any condition to the permit, or any encroachment or improvement violates the provisions of this policy:

1. Revoke the permit after giving the permittee notice and an opportunity to be heard upon a determination that there is substantial evidence to support a violation of this policy. The Parks Director shall establish the specific procedures designed to ensure that permittee receives due process of law.
2. Summarily abate any encroachment or improvement in violation of this policy after giving the permittee or property owner fifteen (15) days' written notice of its intention to do so in the event the permittee or property owner fails to remove the encroachment or improvement. The permittee or property owner shall pay all costs incurred by the County in summarily abating the encroachment or improvement. The determination of the Parks Director with respect to abatement shall be final.