
ATTACHMENT 1

DRAFT FINDINGS AND CONDITIONS

2733 Buena Vista Way – Tuft’s House #3

Structural Alteration Permit #LMSAP2022-0004

Structural Alteration Permit #LMSAP2022-0004 to change the roof materials on a City Landmark building in the Hillside neighborhood.

FINDINGS REQUIRED UNDER CEQA

1. The project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA, Public Resources Code §21000, et seq. and California Code of Regulations, §15000, et seq.) pursuant to Section 15331 of the CEQA Guidelines (“Historic Resource Restoration/Rehabilitation”). Furthermore, none of the exceptions in CEQA Guidelines Section 15300.2 apply, as follows: (a) the site is not located in an environmentally sensitive area, (b) there are no cumulative impacts, (c) there are no significant effects, (d) the project is not located near a scenic highway, and (e) the project site is not located on a hazardous waste site pursuant to Government Code Section 65962.5.

FINDINGS RELATED TO THE SECRETARY OF THE INTERIOR’S STANDARDS

Regarding the Secretary of the Interior’s Standards for Rehabilitation, the Landmarks Preservation Commission of the City of Berkeley makes the following findings:

1. The property will continue its historic use as a residence.
2. The historic character of Tuft’s House #3 design may be preserved through retention of its character-defining and careful replacement of elements, such as the wood roof shingles with matching materials or other materials that resemble the details, textures and colors.
3. The synthetic roof tiles attempt to replicate the appearance of the historic materials and to blend with architectural features and design of Tuft’s House #3; by blending rather introducing conjectural elements, the proposal would not create a sense of false historicism.
4. No changes to this property that have acquired significance in their own right are present or would be affected by the subject proposal.
5. This proposal includes the removal of a distinctive architectural feature and an example of craftsmanship. To lessen the potential impact of this change, the project has been conditioned to require the selection of materials that more closely match the tone and texture of the original hand-sawn wood shingles.

6. The deteriorated wood roof shingles have been removed and the applicant is encouraged to replace them in-kind. Alternatively, the project is permitted to replace the wood material with synthetic tiles that simulate the texture, color and design of the original shakes.
7. The applicant does not propose chemical or physical treatments. However, standard conditions of Structural Alteration Permit approval would require that any chemical or physical treatments be undertaken using the gentlest means possible.
8. This proposal does not require grading or ground disturbance and, therefore, is not likely to affect significant archaeological resources.
9. The project has been conditioned to ensure that the new materials are compatible with the architectural features of the subject building and to resemble the natural historical wood shingles.
10. If the proposed synthetic tiles were removed in the future, they would not permanently impair the integrity or essential form of the Maybeck design.

FINDINGS REQUIRED UNDER LANDMARK PRESERVATION ORDINANCE

10. As required by Section 3.24.260 of the Landmarks Preservation Ordinance, the Commission finds that the proposed work is an alternative to in-kind replacement under the circumstances. Specifically:
 - A. The applicant is encouraged to replace the cedar roof shingles in-kind or, alternatively, shall match the appearance of the natural wood materials as closely as possible.
 - B. If in-kind replacement is not undertaken, then replacement with roof tiles that most closely resemble the texture and tone of the original cedar shakes would better preserve the character and aesthetic value of the subject Maybeck residence.

STANDARD CONDITIONS

The following conditions, as well as all other applicable provisions of the Landmarks Preservation Ordinance, apply to this Permit:

1. Conditions Shall be Printed on Plans

The conditions of this Permit shall be printed on the *second* sheet of each plan set submitted for a building permit pursuant to this Permit, under the title 'Structural Alteration Permit Conditions'. *Additional sheets* may also be used if the *second* sheet is not of sufficient size to list all of the conditions. The sheet(s) containing the conditions shall be of the same size as those sheets containing the construction drawings; 8-1/2" by 11" sheets are not acceptable.

2. Plans and Representations Become Conditions

Except as specified herein, the site plan, floor plans, building elevations and/or any additional information or representations, whether oral or written, indicating the proposed structure or manner of operation submitted with an application or during the approval process are deemed conditions of approval.

3. Subject to All Applicable Laws and Regulations

The approved use and/or construction is subject to, and shall comply with, all applicable City Ordinances and laws and regulations of other governmental agencies. Prior to construction, the applicant shall identify and secure all applicable permits from the Zoning Adjustments Board or Zoning Officer, Building and Safety Division, Public Works Department and other affected City divisions and departments.

4. Exercise and Lapse of Permits (Section 23.404.060.C)

- A. A permit for the construction of a building or structure is deemed exercised when a valid City building permit, if required, is issued, and construction has lawfully commenced.
- B. A permit may be declared lapsed and of no further force and effect if it is not exercised within one year of its issuance, except that permits for construction or alteration of structures or buildings may not be declared lapsed if the permittee has: (1) applied for a building permit; or, (2) made substantial good faith efforts to obtain a building permit and begin construction, even if a building permit has not been issued and/or construction has not begun.

5. Indemnification Agreement

The applicant shall hold the City of Berkeley and its officers harmless in the event of any legal action related to the granting of this Permit, shall cooperate with the City in defense of such action, and shall indemnify the City for any award of damages or attorneys fees that may result.

ADDITIONAL CONDITIONS

The following additional conditions are attached to this Permit:

- 10. The proposed project is approved as shown on the drawings dated "received May 18, 2022" subject to the conditions herein.
- 11. No changes can be made to these approved plans without prior approval.
- 12. Repair and replacement of character-defining features. Deteriorated historic features shall be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature shall match the old or historic

feature in design, color, texture, and, where possible, materials. Replacement of missing features will be substantiated by documentary and physical evidence.

13. Chemical or physical treatments, if appropriate, shall be called out in the scope or work for any building permit for this project and shall be undertaken using the gentlest means possible. Treatments causing damage to historic materials shall not be used.
14. Prior to Landmarks plan checker sign-off of the Building Permit set of drawings, the applicant shall submit color and materials information for review and approval by Landmarks staff, in coordination with the LPC Chair as needed.
15. The applicant shall be responsible for identifying and securing all applicable permits from the Building and Safety Division and all other affected City divisions/departments prior to the start of work.
16. The applicant is responsible for complying with all the above conditions. Failure to comply with any condition could result in construction work being stopped, issuance of citations, as well as further review by the Landmarks staff, which may modify or impose additional conditions, or revoke approval.
17. All building permit drawings and subsequent construction shall substantially conform to the approved plans as outlined in Condition #1. Any modifications must be reviewed by the Landmarks plan checker to determine whether the modification requires approval.
18. The applicant shall hold harmless, defend, and indemnify the City of Berkeley and its officers, agents, and employees against any and all liability, damages, claims, demands, judgments or other losses (including without limitation, attorney's fees, expert witness and consultant fees and other litigation expenses), referendum or initiative relating to, resulting from or caused by, or alleged to have resulted from, or caused by, any action or approval associated with the project. The indemnity includes without limitation, any legal or administrative challenge, referendum or initiative filed or prosecuted to overturn, set aside, stay or otherwise rescind any or all approvals granted in connection with the Project, any environmental determination made for the project and granting any permit issued in accordance with the project. This indemnity includes, without limitation, payment of all direct and indirect costs associated with any action specified herein. Direct and indirect costs shall include, without limitation, any attorney's fees, expert witness and consultant fees, court costs, and other litigation fees. City shall have the right to select counsel to represent the City at Applicant's expense in the defense of any action specified in this condition of approval. City shall take reasonable steps to promptly notify the Applicant of any claim, demand, or legal actions that may create a claim for indemnification under these conditions of approval.