

ATTACHMENT A DISCUSSION

INTRODUCTION

The project site is a 2.165 acre parcel located on a remnant native sand dune on Signal Hill in Pebble Beach. The dune is protected as an environmentally sensitive habitat area by the policies of the Del Monte Forest Area Land Use Plan (LUP). The site is in an existing residential neighborhood and is developed with a single-family dwelling that overlooks the Cypress Point Golf Course, 17-Mile Drive and the Pacific Ocean. This project consists of an after-the-fact Coastal Development Permit and Restoration Plan to clear a code violation (CE090288) for the removal of two landmark size Monterey cypress trees, extensive pruning of three Monterey cypress trees which may be injurious to their health, and dune disturbance in an environmentally sensitive habitat area. The project was approved by the Planning Commission on August 29, 2012.

On September 17, 2012 Sam Reeves filed a timely appeal (**Attachment D**) from the decision of the Planning Commission (**Attachment E**) approving the Coastal Development Permit and Restoration Plan. The appeal is brought on the basis that the decision or findings or conditions is not supported by the evidence and is contrary to law.

On December 4, 2012, Board of Supervisors held a public hearing on the project. The appellant submitted a proposal (**Attachment J**) for revisions to the requirements of the restoration plan. The Board supported the proposed modifications to **Condition 4** with the exception that the replacement trees should be a minimum of 48-inch box size rather than “specimen size.” At the conclusion of the hearing, the Board adopted a motion of intent to grant the appeal and directed staff to return with the condition language modified and revised findings and evidence to support this decision. The Board also gave staff leave to review the proposed language and to revise as technically necessary.

On December 12, 2012, the applicant’s attorney, John Bridges, submitted a letter (**Attachment J**) informing the County that the applicant is no longer willing to implement dune restoration and that the offer to do so is withdrawn. The applicant requests that Condition No. 4, Part 3 be deleted as well as any compliance actions and/or findings related thereto.

On January 15, 2013, at a public hearing by the Board of Supervisors, the Board continued the hearing to February 5, 2013 to allow staff time to evaluate the new information submitted by the applicant and prepare a staff report.

STAFF’S RECOMMENDED CONDITION NO. 4

Staff reviewed the modifications to Condition No. 4, Parts 1 and 2 that were submitted by the appellant’s attorney during the December 4, 2012 hearing and the modification to Condition No. 4, Part 3 that was requested by the applicant’s attorney in the December 12, 2012 letter and recommends that Condition No. 4 be revised to read as follows:

4. PDSP001 – RESTORATION PLAN (NON-STANDARD)

The applicant/owner shall adhere to all of the requirements of the Restoration Plan attached as Exhibit 1 to the February 5, 2013 Board Report and as conditioned by this permit. The Restoration Plan requires:

1. Planting of two replacement trees and implementation of a five-year monitoring program in order to restore the visual screening of the home from 17-Mile Drive and other public viewing areas. The replacement trees shall be Monterey cypress, minimum 48-inch box

size. Two trees shall be located to the west and southwest of the existing residence, as near as feasible to the location of the trunks of the trees that were removed but in no case may the trees be more than 20 feet from the location of the trees that were removed and no farther south or west than the location of the southernmost removed tree. A third tree may be planted to the southwest of the existing residence as shown on the Tree Replacement Plan to provide additional screening at the applicant's discretion. Quarterly monitoring of the replacement trees by a Certified Arborist for 3 years and annual monitoring thereafter is required. The monitoring program shall remain in place for five years or until such time as the tree canopy of the replacement trees approximates the 2007 tree canopy, whichever is longer. The trees may only be removed with the approval of a Coastal Development Permit. If any replacement trees fail to survive, they shall be replaced and a new monitoring program is required.

2. Quarterly monitoring of the health of the 3 pruned Monterey cypress trees by a qualified arborist for a minimum of 3 years and annual monitoring for an additional 2 years is required, with provisions for replacement trees to be planted should any of the pruned trees fail or decline to the point where either 50% or more of the remaining live foliage is affected or if pruning wounds decay and invade the main stems to a point where 50% of the stem diameter is affected. The replacement trees shall be Monterey cypress, 36-inch box size or larger. The monitoring program for the replacement trees shall remain in place for five years. The trees may only be removed with the approval of a Coastal Development Permit. If any of the replacement trees fails to survive it shall be replaced and a new five-year monitoring program is required.
3. Implementation of a Dune Restoration Plan for the approximately 2,500 square feet of disturbed area as identified by the project biologist (The Plan) is required. Within 30 days of the approval of this permit, the owner shall submit a revised restoration plan to the RMA-Planning Department for review and approval which shall be modeled after the "Remnant Dune Restoration Plan" dated August 2012 and shall also include:
 - Success criteria for the eradication of non-native species within the 2,500 square foot disturbed area shall be 100 percent eradication of non-natives within the area by the end of the 5-year monitoring period.
 - Success criteria for the planting of native species shall be 50 percent cover of natives throughout the restoration area by the end of the 5-year monitoring period.
 - Quarterly monitoring of the dune restoration by the Project Biologist for an initial 3-year period and annual monitoring for an additional 2 years is required. If the success criteria are not met by the end of the 5-year monitoring period, additional measures to ensure success developed by the Project Biologist shall be implemented by the owner/applicant and monitoring shall continue until the success criteria are met.
 - The Restoration Plan shall be bonded.

Appellant's Proposed Modifications to Condition 4, Part 1

The language proposed by the appellant for modifications to Condition No. 4, Parts 1 and 2 is shown below, as submitted to the Board. Staff's analysis/comments appear below each part of the condition in footnote format.

"The applicant/owner shall adhere to all of the requirements of the Restoration Plan. The Restoration Plan requires:

1. Planting of three^a replacement trees and implementation of a five-year monitoring program^b in order to restore the visual screening of the home from 17-Mile Drive and other public viewing areas. The replacement trees shall be specimen size^c Monterey cypress, ~~minimum 36-inch box size^d or larger.~~ Two trees ~~to be~~ shall be located to the west and southwest of the existing residence, - as near as feasible to the location of the trunks of the trees that were removed but in no case may the trees be ~~no~~ more than 20 feet from the location of the trees that were removed and no farther south or west than the location of the southernmost removed tree. ~~The third tree to be located to the north of the existing residence as shown on the Tree Replacement Plan dated July 30, 2012.~~ A ~~fourth~~ third tree may be planted to the southwest of the existing residence as shown on the Tree Replacement Plan to provide additional screening ~~at the applicant's discretion^e.~~ Quarterly monitoring of the replacement trees by a Certified Arborist for 3 years and annual monitoring ~~for an additional two years thereafter~~ is required. The monitoring program shall remain in place for five years or until such time as the tree canopy of the replacement trees approximates the 2007 tree canopy, whichever is longer. After that time^f the trees may only be removed with the approval of a Coastal Development Permit. If ~~the any~~ replacement trees fail to survive, ~~additional replacement plantings they shall be replaced and implementation of a new five-year monitoring program will be~~ is required.”

Staff Responses to Proposed Modifications to Condition 4, Part 1:

^{a.} As stated in the project description, the violation being remedied by the proposed Restoration Plan includes the removal of only two landmark size Monterey cypress trees. CIP Section 20.147.050.C.6 calls for “replacement on-site equating to an equal number of trees of the same variety, provided such replacement will not result in an overcrowded, unhealthy forest environment...”. In this case, the tree replacement plan submitted by the applicant included additional Monterey cypress trees planted to the north and southwest of the existing residence, in part because the conditions in those locations were identified by the arborist as being optimal for the survival of smaller Monterey cypress. Staff previously recommended that a replacement tree to the north be required because that location was near the existing Monterey cypress trees that had been pruned. A tree planted in the proposed location to the north of the existing residence would have become part of the small group of three Monterey cypress trees that were pruned and those trees would have provided screening from the wind. With the deletion of the third required replacement tree from the language of the condition, staff recommends that the number of required replacement trees be reduced from three to two.

^{b.} Staff recommends that the phrase “of a five-year monitoring program” be reinstated in order for the sentence to make sense. It appears that this language was deleted by the appellant’s attorney in error.

^{c.} Staff recommends that the words “specimen size” be deleted as being vague and difficult to enforce. Staff supports the Board’s suggestion to require minimum 48-inch box size trees.

^{d.} As requested by the Board, Staff recommends that the phrase describing the size of the required replacement trees be reinstated and the size be changed to “minimum 48-inch box size.”

^{e.} The third replacement tree is not required. Staff recommends that the deleted phrase “at the applicant’s discretion” be reinstated.

^{f.} The phrase “after that time” limits the property owner’s ability to submit a Coastal Development Permit application to remove the replacement trees until after the replacement trees have been monitored for five years or until such time as the tree canopy of the replacement trees

approximates the 2007 tree canopy, whichever is longer. Staff recommends that the phrase “After that time” be deleted. Removal of the trees at any point in the future would be subject to a new application with a separate review and public hearing process.

Appellant’s Proposed Modifications to Condition 4, Part 2

“2. Quarterly monitoring of the health of the 3 pruned Monterey cypress trees by a qualified arborist for a minimum of 3 years and annual monitoring for an additional 2 years is required, with provisions for replacement trees to be planted should any of the pruned trees fail or decline to the point where either 50% or more of the remaining live foliage is affected or if pruning wounds decay and invade the main stems to a point where 50% of the stem diameter is affected. The replacement trees shall be Monterey cypress, 36-inch box size or larger. The monitoring program^g shall remain in place for five years or until such time as the tree canopy of the replacement trees approximates the 2011 tree canopy, whichever is longer.^h After that time, the trees may only be removed with the approval of a Coastal Development Permit.ⁱ If any of the replacement trees fails to survive it shall be replaced and a new five year monitoring program is required. ~~Free replacement will be in the form of the largest available native Monterey cypress from Pebble Beach Company stock at a 3-to-1 ratio.~~”

Staff Responses to Proposed Modifications to Condition 4, Part 2:

^g Staff recommends that the words “for the replacement trees” be inserted at this point to clarify that the monitoring program referred to is the program for the replacement trees only.

^h Del Monte Forest Area Land Use Plan Policy 35 states: “Trimming, where not injurious to the health of the tree(s), may be performed, including to reduce safety and fire hazards.” In this case, the property owner has stated that trimming of the three Monterey cypress trees was done in response to her understanding of direction from the Fire District. However, a significant number of large diameter lower branches were removed and according to the project arborist, the amount of branch/foliage removal and quality of the pruning cuts were not within standard arboricultural standards. If the health of any of the trees was injured or if any of the trees should die as a result of the pruning, a violation has occurred. The arborist has stated “trees that have been excessively pruned may not express decline for a number of years” and recommended a 5-year monitoring program, with criteria for replacement should the trees fail. The pruning by itself is not a violation unless the health of the trees is affected. There is no way to know whether or not the health of the trees will be affected without monitoring, therefore staff recommends that monitoring be required, as recommended by the arborist, to verify the effects of the pruning on the trees. The requirement for replacement trees to be planted if any of the trees should fail to survive is consistent with conditions of approval that are required for any tree removal permit. However, a requirement that monitoring of any replacement trees be extended until the tree canopy of the replacement trees approximates the tree canopy at any particular point in the past cannot be justified given that trimming of trees, which could modify the canopy, is allowed as long as it is not injurious to the health of the tree. Staff recommends that the phrase “or until such time as the tree canopy of the replacement trees approximates the 2011 tree canopy, whichever is longer” be deleted.

ⁱ As discussed above in ^e, the phrase “after that time” limits the property owner’s ability to submit a Coastal Development Permit application to remove the replacement trees until after the replacement trees have been monitored for five years. Staff recommends that the phrase “After that time” be deleted as being unnecessary. Removal of the trees at any point in the future would be subject to a new application with a separate review and public hearing process.

Staff Response to Letter From John Bridges Dated December 12, 2012

In a letter dated December 12, 2012 addressed to Delinda Robinson, (**Attachment J**) John Bridges, attorney for the applicant, states that the applicant's offer to voluntarily implement a Dune Restoration Plan over most of her property has been withdrawn. He states that the offer was made in the context of an overall package to address code enforcement questions that included the planting of replacement trees for the removed Monterey cypress trees in the locations recommended by her arborist. Because of the December 4, 2012 decision by the Board to require minimum 48-inch size replacement trees in essentially the same location as the removed trees, Ms. Mehdipour is no longer willing to implement dune restoration. Bridges requests that Condition 4, Part 3 be deleted as well as any compliance actions and/or findings related thereto. Staff responses to issues found in the letter follow.

Issue No. 1: Definition of Development

The applicant contends that the removal of a small patch of beach grass from Ms. Mehdipour's property did not require a permit because it did not constitute development as defined in LCP Section 20.06.310.8 (Definition of Development) because non-native beach grass is not major vegetation.

The definition of Development found in Section 20.06.310.8 includes "*removal or harvesting of major vegetation including land clearing pursuant to Chapter 16.12 and removal of natural vegetation specified in the applicable ordinances as requiring a coastal development permit.*" Pursuant to Monterey County Code Chapter 16.12.030.13 "*Land clearing means the removal of vegetation down to duff or bare soil, by any method.*" The definition does not specify that the vegetation removed must be major or native. In this case there is evidence in the record that vegetation in an area of approximately 2,500 square feet was removed down to bare soil on the dune below the residence. A Preliminary Biological Reconnaissance of the site conducted on behalf of Samuel T. Reeves by Zander Associates (from the adjacent property) dated October 22, 2009 makes reference to "some evidence of sand excavation and movement in the vicinity of flagged survey stakes on a lower terrace." Bare sand and the survey stakes are visible in Photo 2 of that report (**Attachment I**).

Zander prepared subsequent biological reports on behalf of the applicant on June 8, 2010, September 28, 2011 and December 21, 2011 (**Attachment K**) and a Restoration Plan in June of 2011. The June 8, 2010 report states: "The mapped open sand habitat just downslope and westerly of the existing house occurs as a small terrace on deep, loose sands that appears to have been created through sand excavation or movement relatively recently." Photographs 3 and 4 in that report show the open sand areas that are identified as "recent open sandy terrace." The September 28, 2011 and December 21, 2011 reports (**Attachment K**) quantify the disturbed area as approximately 2,500 square feet and illustrate the disturbance with aerial photographs from 2000 and 2009. Staff also conducted site visits to confirm the existence of the cleared area and reviewed historical aerial photographs available through the County Geographic Information System to verify that at some point between 2007 and 2009, vegetation in the subject area had disappeared along with the Monterey cypress trees. Staff concludes that the removal of the vegetation down to bare soil in this area constitutes land clearing as defined in MCC Section 16.12.030.13 and is thus considered to be development as defined in Section 20.06.310.8. The site is located within remnant native dune habitat that is known to be rare and is specifically protected by LUP ESHA policies. Development within 100 feet of mapped or field identified environmentally sensitive habitat (ESHA) is listed in Section 20.14.030 as Non-Exempt Development requiring a Coastal Development Permit regardless of which category of allowed uses it falls into. Therefore, a Coastal Development was required for the vegetation removal.

Issue No. 2: Exception to Exemption From Requirement for Coastal Development Permit

The applicant contends that the exception to the exemption from a requirement for a Coastal Development Permit for this portion of the project cited in the staff report (20.70.120.A.2) does not apply because there was no development in the first place.

As discussed above, development did occur. Pursuant to Section 20.70.025 “All development as defined by Section 20.06.310 shall require a Coastal Development Permit except development exempted by Section 20.70.120.” Sections 20.70.120.A and B exempt certain types of development including additions to structures and construction of small accessory structures except for certain classes of development which require a permit because they involve a risk of adverse environmental impact. Sections 20.70.120.A.2 and 20.70.120.B.2 except from exemption “Any significant alteration of landforms **including removal or placement of vegetation on a beach, wetland or sand dune, or within 50 feet of the edge of a coastal bluff.**” The vegetation removal was development as discussed above. The removal of vegetation on a sand dune is specifically excepted from the exemption from the requirement for a Coastal Development Permit.

Issue No. 3: Species of Removed Plants

The applicant contends that the only plants removed were non-native, invasive beach grass and that the County has offered no specific evidence (only speculation and conjecture), that anything other than beach grass was removed.

As discussed above, the type of vegetation removed during the land clearing is irrelevant. However, the June 8, 2010 Zander report identifies Coastal dune scrub vegetation as occurring in some areas as the dominant cover in a matrix of iceplant, beach grass and dune sedge. Figure 2 (Vegetation Types) found in the August 2012 Dune Restoration Plan (**Attachment B, Exhibit 1**) calls out the disturbed area as “Open Sand” while areas to the north, east and west of it are called out as “Beach Grass Dominant” and “Coastal Scrub” in the immediately adjacent area to south.

Issue No. 4: No Evidence to Support Assertion That “Terracing” Occurred

The applicant contends that the record contains no specific evidence to support the staff report assertion that there were 2,500 square feet of “terracing” done on Ms. Mehdipour’s property.

The description of the disturbed area as an approximately 2,500 square foot “terrace” is found in the Zander biological reports dated December 21, 2011 and September 28, 2011 submitted by the applicant. The June 8, 2010 Zander report, also submitted by the applicant, refers to the disturbed area as “a small terrace that appears to have been created through sand excavation or movement relatively recently”.

Issue No. 5: Restoration With Native Plants Not Required

The applicant contends that even if a permit was required to remove the beach grass, the applicable standard is to return the property to its “pre-violation state”. The beach grass has already regenerated and nature has returned the property to its original state. Restoration by revegetation of native plants is required only when native plants are removed (20.90.130).

The language in Section 20.90.130 regarding restoration reads as follows: “Restoration” of the property shall include, **but not be limited to**, the revegetation of native plants and trees and the reconstruction of natural features of the land which have been removed or changed in violation of County ordinances regulating grading, vegetation removal or tree removal.’ Restoration is not

limited to the revegetation of native plants and trees. However in this case, the record documents the possibility that native plants were present in the subject area prior to the disturbance and the likelihood that absent intervention, the area will be 100% covered by the non-native, invasive European beach grass within a short time period (**Attachment I**). As discussed above, the land clearing on the dune required a Coastal Development Permit, which is a discretionary approval. The development standards for environmentally sensitive habitat areas found in the Del Monte Forest Coastal Implementation Plan (CIP) Section 20.147.040.C.2 require that *“Land uses and development adjacent to environmentally sensitive habitat areas shall be compatible with long-term maintenance of the habitat area, and such land use and development shall be sited and designed to prevent impacts that would significantly degrade habitat areas. All land use and development shall be set back a minimum of 100 feet from environmentally sensitive habitat areas. Within this setback area, only uses and development that are consistent with the above long-term habitat area maintenance and impact prevention criteria are allowed (e.g., habitat maintenance activities, limited passive recreational access, etc.). Uses permitted in the setback area shall be required to: a) minimize removal of vegetation; b) conform to natural topography; c) minimize erosion potential; d) make provisions to keep run-off and sedimentation from exceeding pre-development levels; e) **remove invasive and non-native plant species and replant with native and non-invasive species**; f) prevent discharge of toxic substances, such as fertilizers and pesticides; and, g) include other requirements specific to habitat area needs (e.g., limit noise and activity adjacent to sensitive receptors).*

As stated above, the entire property is located within ESHA. Therefore, pursuant to CIP Section 20.147.040.C.2(e), it is appropriate to require that invasive and non-native plant species be removed from the area of development and that the area be replanted with appropriate native and non-invasive species.

Issue No. 6: Restoration Requirement

The letter concludes by saying that the applicant will not restore the dune landscape on her property as a component part of this code enforcement action but that she does intend to later restore the dune in conjunction with development of a new home on the property.

As stated above, staff concludes that a Coastal Development Permit was required for land clearing on the dune and that it is appropriate to require restoration of that area, which the applicant’s own consultant has identified as being approximately 2,500 square feet in area. Given that the applicant has withdrawn her voluntary offer to restore 1.63 acres, staff recommends that Condition 4, Part 3 be amended to reduce the dune restoration area to 2,500 square feet as follows (recommended deletions shown in strike-through, insertions shown underlined):

3. Implementation of a Dune Restoration Plan for the approximately 2,500 square feet of disturbed area as identified by the project biologist ~~the “Remnant Dune Restoration Plan”~~ (The Plan) ~~dated August 2012~~ is required. ~~with the following additional requirements:~~ Within 30 days of the approval of this permit, the owner shall submit a revised restoration plan to the RMA-Planning Department for review and approval which shall be modeled after the “Remnant Dune Restoration Plan” dated August 2012 and shall also include:
 - Success criteria for the eradication of non-native species within the 2,500 square foot disturbed area shall be 100 percent eradication of non-natives within the area by the end of the 5-year monitoring period.
 - Success criteria for the planting of native species shall be 50 percent cover of natives throughout the restoration area by the end of the 5-year monitoring period.
 - Quarterly monitoring of the dune restoration by the Project Biologist for an initial 3-year period ~~as outlined in The Plan~~ and annual monitoring for an additional 2 years is required. If

the success criteria are not met by the end of the 5-year monitoring period, additional measures to ensure success developed by the Project Biologist shall be implemented by the owner/applicant and monitoring shall continue until the success criteria are met.

- The Restoration Plan shall be bonded.