

Attachment C

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DRAFT RESOLUTION

Before the Board of Supervisors in and for the County of Monterey, State of California

In the matter of the application of:

BARDIS, CHRIS & SARA (PLN170482)

RESOLUTION NO. ----

Resolution by the Monterey County Board of
Supervisors:

- 1) Denying the Appeal filed by Tracy Alford from the Chief of Planning's decision approving the application by Christopher & Sara Bardis for a Design Approval to replace a stucco fence with a wood fence at the end of an existing driveway;
- 2) Finding the project Categorical Exempt per Section 15301; and
- 3) Approving a Design Approval to replace a stucco fence with a wood fence at the end of an existing driveway.

[PLN170482, BARDIS, Chris & Sara, 1525 Riata Road, Pebble Beach, Del Monte Forest Land Use Plan (APN: 008-341-026-000)]

The appeal by Tracy Alford from the Chief of Planning's approval of the Design Approval application (Christopher & Sara Bardis/PLN170482) came on for public hearing before the Monterey County Board of Supervisors on July 25, 2017. Having considered all the written and documentary evidence, the administrative record, the staff report, oral testimony, and other evidence presented, the Board of Supervisors finds and decides as follows:

FINDINGS

1. **FINDING:** **CONSISTENCY/SITE SUITABILITY** – The Project, as conditioned, is consistent with the applicable plans and policies which designate this area as appropriate for development. The site is physically suitable for the use proposed.
EVIDENCE:
 - a) The project has been reviewed for consistency with the text, policies, and regulations in Chapter 20.44 of the Monterey County Zoning Ordinance (Title 20). No conflicts were found to exist. No communications were received during the course of review of the project indicating any inconsistencies with the text, policies, and regulations in this Chapter.
 - b) The property is located at 1525 Riata Road, Pebble Beach (Assessor's Parcel Number 008-341-026-000), Del Monte Forest Land Use Plan. The parcel is zoned Low Density Residential, Coastal Zone [LDR/1.5 - D (CZ)], which allows residential development. This resolution grants a Design Approval to allow replacement of a stucco fence with a wood

fence at the end of an existing driveway. Fences are allowed in the residential zone as accessory structures to the residential use.

- c) The fence replacement is consistent with the purpose of the Design Control Zoning District (Chapter 20.44). The Design Control District is provided for the regulation of the location, size, configuration, materials, and colors of structures in areas of the County where the design review of structures is appropriate to assure protection of the public viewshed, neighborhood character, and to assure the visual integrity of certain developments without imposing undue restriction on private property. In this case, the Design Approval granted by the Chief of Planning allowed a four-foot-tall beige stucco retaining wall to be replaced with a four-foot-tall wood fence in the same location, at the terminus of an existing driveway. The location and size are appropriate (within the same location), the colors and materials are appropriate (wood), the fence is not visible to the public, and the wood fence will not impact neighborhood character.

- 2. **FINDING:** **NO VIOLATIONS** - The subject property is in compliance with all rules and regulations pertaining to zoning uses, subdivision, and any other applicable provisions of the County's zoning ordinance. No violations exist on the property.
EVIDENCE:
 - a) Staff reviewed Monterey County RMA - Planning and Building Services Department records and is not aware of any violations existing on subject property.
 - b) Resource Management Agency received a complaint that violations exist with respect to the "patio/courtyard" that was formerly a portion of the driveway area. That complaint was amended to allege that the roof deck was not built in strict compliance with approved plans. Planning and Code Enforcement staff have reviewed permit records together with the alleged violations and conducted a site visit. The allegations were found to have no merit, and work performed at the Bardis property is in compliance with issued permits for the site. RMA-Code Enforcement has closed the investigation and found no violation. The Board of Supervisors, in connection with the driveway expansion application, also found no violation. (Board of Supervisors' Resolution No. 17-222)
 - c) There are no known violations on the subject parcel.
- 3. **FINDING:** **CEQA (Exempt):** - The project is categorically exempt from environmental review because the project includes a minor alteration to an existing private fence.
EVIDENCE:
 - a) California Environmental Quality Act (CEQA) Guidelines Section 15301, categorically exempts minor public and/or private alterations in to facilities involving negligible or no expansion of use beyond that existing at the time.
 - b) The project involves a minor alteration to an existing fence by changing it from stucco to wood. It does not include expansion of the use or the structure.

- c) No adverse environmental effects were identified during staff review of the development application during a various site visits conducted by RMA-Planning.
- d) None of the exceptions under CEQA Guidelines Section 15300.2 apply to this project. There is no substantial evidence of an unusual circumstance because there is no feature or condition of the project that distinguishes the project from others in the exempt class. The project does not involve a designated historical resource, a hazardous waste site, development located near or within view of a scenic highway, or unusual circumstances that would result in a significant effect or development that would result in a cumulative significant impact.
- e) See preceding and following Findings and Evidence.

4. **FINDING:** **PROCEDURAL BACKGROUND** – The project has been processed in compliance with County regulations, and due process has been afforded to the applicant and the public.

- EVIDENCE:**
- a) On May 16, 2017, Christopher & Sara Bardis filed an application for a Design Approval to replace a stucco fence with a wood fence near the end of an existing driveway. The Design Approval was approved over-the-counter on that same day, in accordance with Section 20.44.040.D of Title 20 which allows the Director of Planning to approve “small structures such as structure additions, accessory structures, and similar minor structures.”
 - b) The Design Approval is appealable to the Board of Supervisors. Section 20.44.050.B of Title 20 provides that no public notice is required for actions of the Director of Planning for minor Design Approvals, and the approval was not noticed. However, section 20.44.070 provides that “appeals to any action taken by an Appropriate Authority pursuant to this Chapter may be appealed to the Board of Supervisors.” County interprets these provisions as allowing an appeal to the Board of Supervisors.
 - c) The County has also determined that the appeal was timely filed because the appeal was filed within 10 days of actual notice. The appellant had on file with Resource Management Agency a written request to be notified of any permit approval or issuance, but notice was not sent. On or around June 14, 2017, the appellant and their representative became aware of the Director of Planning’s decision on the subject Design Approval and filed an appeal of that decision on June 23, 2017. Since the approval of the Design Approval was not noticed, and in the interest of due process, the appeal has been accepted as timely.
 - d) The Board of Supervisors held a public hearing on the appeal on July 25, 2017. At least 10 days prior to the public hearing on July 25, 2017, notices of the public hearing were published in the *Monterey County Weekly* and were posted on and near the property and mailed to the property owners within 300 feet of the subject property as well as interested parties.
 - e) Information and documents in Planning file PLN170482.

5. **FINDING:** **APPEAL AND APPELLANT CONTENTIONS** – The appellant requests that the Board of Supervisors grant the appeal and deny the Design Approval (PLN170482). The appeal alleges: there was a lack of fair or impartial hearing, the findings or decision or conditions are not supported by the evidence, and the decision was contrary to law. The contentions are listed below with responses. The Board of Supervisors denies the appeal based on the following findings regarding the appellant’s contentions and the findings and evidence set forth above.

Contention 1 – The applicant misrepresented the project:

The appellant contends that the applicant misrepresented the project in the project description. The project was not for “replacement” of an existing wall of the same length and in the same location.

Response:

The evidence does not support the assertion that the applicant misrepresented the project. RMA staff reviewed and approved an application which included photographs and a site plan for the replacement of a stucco fence with a wood fence. The facts are that a stucco fence existed near the terminus of the exiting driveway and that stucco fence has been replaced with a wood fence. The configuration and exact location of the stucco fence are the subject of debate but the argued differences do not change the result or impacts in any substantive way. The subject fence has been shown in several different plans for the Bardis site including, most notably, in a revision to the issued Building Permit approved in December of 2015 (13CP00559) which allowed a minor change to the fence location. Having visited the site, staff physically verified that the approved wood fence location is in the same general location as the remnants of the stucco wall foundation along the back of the driveway, as was indicated in the description of the approved Design Approval. Moreover, the small realignment of the fence shown in the site plan has not been constructed to date although the realignment has been approved as part of a separate appeal (see contention 2).

Contention 2 – Separate Appeal:

The appellant contends the existing length and location of the wall purportedly being replaced is the subject of a separate pending appeal (PLN140715-AMD1) and a pending code enforcement complaint (17CE00153). The project should not have been acted upon until resolution of the pending appeal and code enforcement action.

Response:

The separate appeal for a driveway expansion (PLN140715-AMD1) was not dependent on the subject the fence replacement (PLN170482) and that separate appeal for the driveway expansion has since been resolved at the Board of Supervisors on July 11, 2017 (Resolution No. 17-222). The code enforcement complaint was found to have no merit and the case has since been closed. (See Finding 2.)

Contention 3 – Notice:

The appellant they have a standing written request for notification of all matters regarding the Bardis property yet they were not notified of either the application nor the approval of it. The appeal was filed within 10 days of the appellant’s actual notice of the approval which was received on June 14, 2017.

Response:

The County accepted the appeal and determined it was timely filed. (See Finding 4 above.)

DECISION

NOW, THEREFORE, based on the above findings and evidence, the Monterey County Board of Supervisors does hereby:

1. Deny the Appeal filed by Tracy Alford from the Chief of Planning’s decision approving the application by Christopher & Sara Bardis for a Design Approval to allow replacement of a stucco fence with a wood fence at the end of an existing driveway; and
2. Find the project Categorically Exempt per Section 15301 of the CEQA Guidelines; and;
3. Approve a Design Approval to allow the replacement of a stucco fence with a wood fence at the end of the existing driveway.

This project is approved in general conformance with plans dated December 2015 and subject to the conditions of approval, both being attached hereto and incorporated herein by reference.

PASSED AND ADOPTED this 25th of July 2017 upon motion of _____, seconded by _____, by the following vote:

- AYES:
- NOES:
- ABSENT:
- ABSTAIN:

I, Gail T. Borkowski, Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof of Minute Book _____ for the meeting on _____.

Dated:

Gail T. Borkowski, Clerk of the Board of Supervisors
County of Monterey, State of California

By _____

Deputy

Monterey County RMA Planning

DRAFT Conditions of Approval/Implementation Plan/Mitigation Monitoring and Reporting Plan

PLN170482

1. PD001 - SPECIFIC USES ONLY

Responsible Department: RMA-Planning

Condition/Mitigation Monitoring Measure: This Design Approval (PLN170482) replacement of an existing stucco fence at the end of existing driveway with a wood fence of the same height and length, in the same location. The property is located at 1525 Riata Road, Pebble Beach (Assessor's Parcel Number 008-341-026-000), Del Monte Forest Land Use Plan. This permit was approved in accordance with County ordinances and land use regulations subject to the terms and conditions described in the project file. Neither the uses nor the construction allowed by this permit shall commence unless and until all of the conditions of this permit are met to the satisfaction of the Director of RMA - Planning. Any use or construction not in substantial conformance with the terms and conditions of this permit is a violation of County regulations and may result in modification or revocation of this permit and subsequent legal action. No use or construction other than that specified by this permit is allowed unless additional permits are approved by the appropriate authorities. To the extent that the County has delegated any condition compliance or mitigation monitoring to the Monterey County Water Resources Agency, the Water Resources Agency shall provide all information requested by the County and the County shall bear ultimate responsibility to ensure that conditions and mitigation measures are properly fulfilled. (RMA - Planning)

Compliance or Monitoring Action to be Performed: The Owner/Applicant shall adhere to conditions and uses specified in the permit on an ongoing basis unless otherwise stated.

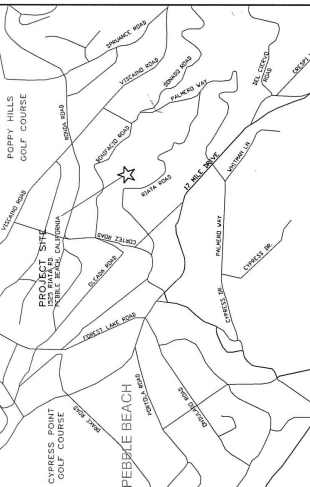
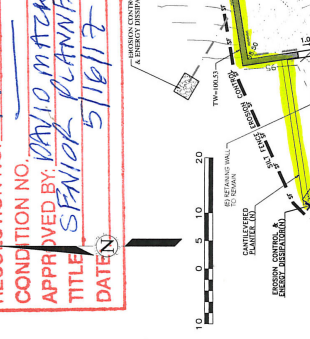
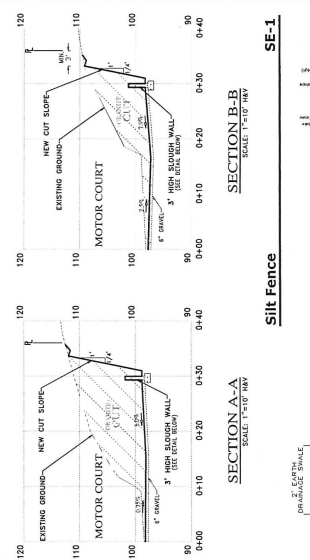
2. CC01 INDEMNIFICATION AGREEMENT

Responsible Department: County Counsel

Condition/Mitigation Monitoring Measure: The property owner agrees as a condition and in consideration of approval of this discretionary development permit that it will, pursuant to agreement and/or statutory provisions as applicable, including but not limited to Government Code Section 66474.9, defend, indemnify and hold harmless the County of Monterey or its agents, officers and employees from any claim, action or proceeding against the County or its agents, officers or employees to attack, set aside, void or annul this approval, which action is brought within the time period provided for under law, including but not limited to, Government Code Section 66499.37, as applicable. The property owner will reimburse the County for any court costs and attorney's fees which the County may be required by a court to pay as a result of such action. The County may, at its sole discretion, participate in the defense of such action; but such participation shall not relieve applicant of his/her/its obligations under this condition. An agreement to this effect shall be recorded upon demand of County Counsel or concurrent with the issuance of building permits, use of property, filing of the final map, recordation of the certificates of compliance whichever occurs first and as applicable. The County shall promptly notify the property owner of any such claim, action or proceeding and the County shall cooperate fully in the defense thereof. If the County fails to promptly notify the property owner of any such claim, action or proceeding or fails to cooperate fully in the defense thereof, the property owner shall not thereafter be responsible to defend, indemnify or hold the County harmless. (County Counsel)

Compliance or Monitoring Action to be Performed: Upon demand of County Counsel or concurrent with the issuance of building permits, use of the property, recording of the final/parcel map, or recordation of Certificates of Compliance, whichever occurs first and as applicable, the Owner/Applicant shall submit a signed and notarized Indemnification Agreement to the County Counsel for review and signature by the County.

Proof of recordation of the Indemnification Agreement, as outlined, shall be submitted to the Office of County Counsel.



RESOLUTION NO. 170482
 CONDITION NO. 170482
 APPROVED BY: DAVID MACK
 TITLE: SENIOR PLANNER
 DATE: 5/16/17

GENERAL NOTES:

- 1) GENERAL DESIGN SHEET IN INFORMATION PROVIDED AND SHOWN ON THE SITE PLAN FOR 1525 RITA ROAD SHEET A1.0 PREPARED BY INTERNATIONAL DESIGN GROUP, DATED 12/15/15.
- 2) WITH THE SURFACE ARE SHOWN, SUB-SURFACE UTILITY LINES DRAWN MAY NOT BE COMPLETE. THE CONTRACTOR SHALL VERIFY THE LOCATION AND DEPTH OF ALL UTILITIES PRIOR TO CONSTRUCTION.
- 3) THIS MAP PORTRAYS THE SITE AT THE TIME OF THE SURVEY AND DOES NOT SHOW SOILS OR ANY OTHER ITEMS NOT SPECIFICALLY REQUESTED BY THE PROPERTY OWNER.
- 4) THIS MAP DOES NOT REPRESENT A BOUNDARY SURVEY, SURVEY PERFORMED BY OTHERS.

DRIVEWAY RECONSTRUCTION:

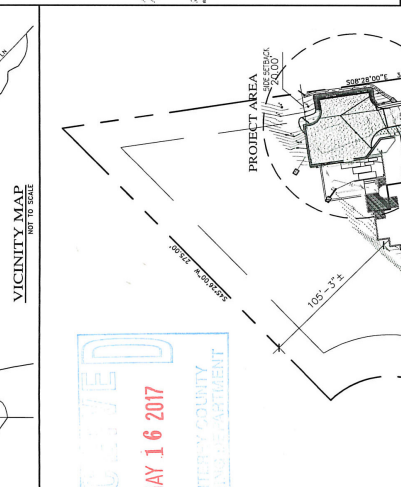
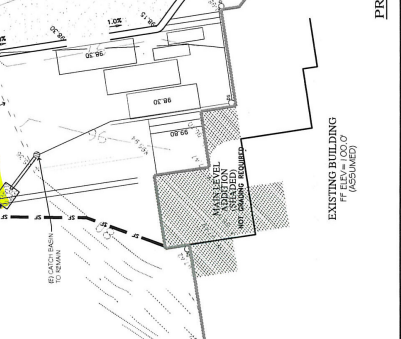
THERE IS APPROXIMATELY 180 SQ. FT. OF EXISTING PAVEMENT TO BE REMOVED AND REPLACED WITH NEW ASPHALT PAVEMENT. THE EXISTING DRIVEWAY SHALL BE RECONSTRUCTED TO A MINIMUM OF 10% OF EXCAVATION AND 10% OF FILL SURPLUS MATERIAL SHALL BE HAULLED OFF-SITE.

GRADING & DRAINAGE NOTES:

- 1) ALL GRADING SHALL CONFORM TO THE COUNTY OF MONTEREY GRADING ORDINANCE AND EROSION CONTROL ORDINANCE, THE LATEST VERSION OF THE CALTRANS SPECIFICATIONS, THE COVERING BY FORCE ENGINEERING, INC., AND THE LATEST VERSION OF THE CALTRANS SPECIFICATIONS, THE COVERING BY FORCE ENGINEERING, INC.
- 2) A COPY OF ALL COMPACTION TESTS AND FINAL GRADING REPORT SHALL BE SUBMITTED TO THE COUNTY OF MONTEREY PLANNING AND BUILDING INSPECTION DEPARTMENT AT SCHEDULED INSPECTIONS.
- 3) BUILDINGS AT 2% FOR A MINIMUM DISTANCE OF 10 FEET, IF PHYSICAL OBSTRUCTIONS OR LOT LINES ARE PRESENT, THE MINIMUM DISTANCE SHALL BE 10 FEET. THE MINIMUM DISTANCE SHALL BE APPROVED ALTERNATIVE METHOD OF DRAINING WATER AWAY FROM THE FOUNDATION. SOAK PITS SHALL BE SLOPED AT A MINIMUM OF 1% AND SHALL BE LOCATED WITHIN 10 FEET OF THE FOUNDATION. SOAK PITS SHALL BE SLOPED AT A MINIMUM OF 1% AND SHALL BE LOCATED WITHIN 10 FEET OF THE FOUNDATION. SOAK PITS SHALL BE SLOPED AT A MINIMUM OF 1% AND SHALL BE LOCATED WITHIN 10 FEET OF THE FOUNDATION.
- 4) STORM DRAINAGE SHALL BE COLLECTED BY DRAINAGE SWALES OUTLETTING IN A NON-EROSIVE MANNER INTO EXISTING CONCRETE SWALE.
- 5) DRAINAGE SWALES SHALL BE CONSTRUCTED IN A NON-EROSIVE MANNER AND SHALL BE COLLECTED AND PIPED TO DAYLIGHT IN A NON-EROSIVE MANNER.
- 6) UTILITY TRENCHES WITHIN THE BUILDING PAD OR ANY NEW PAVED AREAS SHALL BE BACKFILLED WITH GRANULAR FILL. THE TOP OF TRENCH SHALL BE CAPPED WITH WHITE SOIL. A NON-PAVED AREA SHALL BE SLOPED AT A MINIMUM OF 1% AND SHALL BE LOCATED WITHIN 10 FEET OF THE FOUNDATION.
- 7) ALL WORK IS SUBJECT TO APPROVAL BY THE PUBLIC WORKS SUPERINTENDENT INSPECTION AND ACCEPTANCE.

EROSION & SEDIMENT CONTROL NOTES:

- 1) ALL EROSION CONTROL MEASURES SHALL CONFORM WITH THE COUNTY OF MONTEREY EROSION CONTROL ORDINANCE.
- 2) THE EROSION CONTROL MEASURES SHALL BE INSTALLED PRIOR TO ANY EROSION CONTROL MEASURES BEING REMOVED OR MODIFIED. THE EROSION CONTROL MEASURES SHALL BE MAINTAINED THROUGHOUT THE LIFE OF THE PROJECT DURING ALL CONSTRUCTION ACTIVITIES.
- 3) ALL SLOPES SHALL BE PROTECTED WITH STRAW MULCH OR SIMILAR MEASURES TO PROTECT AGAINST EROSION UNTIL SUCH SLOPES ARE PERMANENTLY STABILIZED.
- 4) AND/OR BATCH BAGS TO PREVENT THE ESCAPE OF SEDIMENT FROM THE SITE.
- 5) EROSION CONTROL PLANTINGS AND MULCH SHALL BE CLOSELY MONITORED THROUGHOUT THE WINTER AND ANY PROBLEMS IDENTIFIED SHALL BE CORRECTED PROMPTLY. SEE (LANDSCAPE PLAN).
- 6) DISTURBED SURFACES NOT INVOLVED IN THE IMMEDIATE GRADING OPERATIONS MUST BE PROTECTED BY MULCHING AND/OR OTHER EFFECTIVE MEANS OF SOIL PROTECTION.
- 7) EROSION CONTROL MEASURES SHALL BE MAINTAINED AND IN PLACE AT THE END OF CONSTRUCTION AND THROUGHOUT THE LIFE OF THE PROJECT DURING ALL CONSTRUCTION ACTIVITIES.
- 8) ANY SURFACE ORGANICS STOCKPILE SHALL BE PROTECTED FROM EROSION.



CONTACT INFORMATION:

LANDSET ENGINEERS, INC.
 11500 RIVERVIEW DRIVE, SUITE 100
 SAN DIEGO, CALIFORNIA 92121
 TEL: 619-594-1111
 FAX: 619-594-1111

SECONDARY ARCHITECT:
 MR. CHRIS BARDS
 11500 RIVERVIEW DRIVE, SUITE 100
 SAN DIEGO, CALIFORNIA 92121
 TEL: 619-594-1111
 FAX: 619-594-1111

RECEIVED
 MAY 16 2017
 MONTEREY COUNTY
 PLANNING DEPARTMENT