

Attachment J
Miscellaneous Project Correspondence
Received since
December 3, 2012

Signal Hill LLC
(Mehdipour)
PLN100418



ATTACHMENT J
ANTHONY LOMBARDO & ASSOCIATES
A PROFESSIONAL CORPORATION

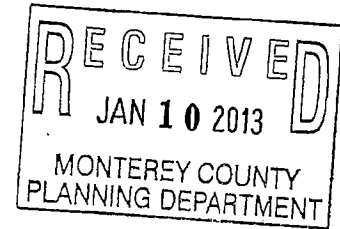
ANTHONY L. LOMBARDO
KELLY MCCARTHY SUTHERLAND
DEBRA GEMGNANI TIPTON

450 LINCOLN AVENUE, SUITE 101
SALINAS, CA 93901
(831) 751-2330
FAX (831) 751-2331

January 9, 2013

File No. 01599.001

Ms. Delinda Robinson
Monterey County Planning
168 W. Alisal Street, Second Floor
Salinas, CA 93901



Re: **Mehdipour Restoration**

Dear Delinda:

During the course of the December 4, 2012 Board of Supervisors hearing, you stated that "Staff did consult with the consultant that the appellant refers to in their, um, in their letter and in their appeal and was told that restoration on this site with trees of the exact size is not actually feasible ..."

Since this was different than our conversations with David Cox of Environmental Design and critical to our appeal, we provided Mr. Cox a transcript of your comments. His response is attached. In his response, he states that while the two of you talked, he "...did not say transplanting major trees to the site is not feasible." He does say that "... transplanting of mature Monterey Cypress to the Mehdipour property and placing those trees in the location of the illegally removed trees is clearly feasible." He goes on to say "Based on my knowledge of the site, the reported soil conditions, the expected healthy condition of 48" box specimens and subsequent routine care of the trees, I see no reason the replacement trees cannot and should not be planted in the same location as the illegally removed trees. And, with routine care and monitoring there is no reason to believe the replacement trees would not survive."

Mr. Cox's letter is clear. Transplanting of mature Monterey Cypress to the Mehdipour site is feasible and there is no reason the replacement trees should not be planted in the same location as the trees that were illegally removed. The conditions of the permit, consistent with the direction of the Board, should be equally clear in requiring the 48" box specimen trees to be planted in the same location as the illegally removed trees.

Sincerely,

Dale Ellis
Director of Planning and Permit Services
DLE:ncs
Enclosure

Ms. Delinda Robinson
Monterey County Planning
January 9, 2013
Page 2

cc: Mr. Fernando Armenta
Mr. Lou Calcagno
Mr. Simon Salinas
Ms. Jane Parker
Mr. Dave Potter
Mr. Sam Reeves
Mr. Mike Novo



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December 19, 2012

Anthony L. Lombardo
ANTHONY LOMBARDO & ASSOCIATES
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Phone (831) 751-2330
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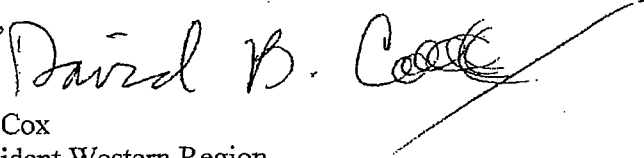
Re: Monterey Cypress loss replacement 1170 Signal Hill

Dear Mr. Lombardo,

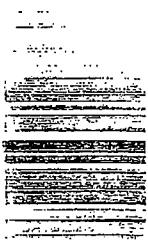
Thank you for providing me the portion of Delinda Robinson's presentation to the Board of Supervisors where she tells the Board "Staff did consult with the consultant that the appellant refers to in their, um, in their letter and in their appeal and was told that restoration on this site with trees of the exact size is not actually feasible ..." Ms. Robinson and I did talk, but to be very clear, I did not say transplanting major trees to the site is not feasible. As I have written before, I have viewed the site and based on my knowledge and direct experience in transplanting mature Monterey Cypress in the Pebble Beach area, it is my opinion that transplanting of mature Monterey Cypress to the Mehdipour property and placing those trees in the location of the illegally removed trees is clearly feasible.

It is my understanding that the Board of Supervisors has decided to allow replacement of the removed trees with 48" boxed specimen Monterey Cypress. Based on my knowledge of the site, the reported soil conditions, the expected healthy condition of 48" box specimens and subsequent routine care of the trees, I see no reason the replacement trees cannot and should not be planted in the same location as the illegally removed trees. And, with routine care and monitoring there is no reason to believe the replacement trees would not survive.

Sincerely,

A handwritten signature in cursive script that reads "David B. Cox". The signature is written in dark ink and is positioned to the right of the word "Sincerely,". A long, diagonal slash is drawn through the signature, extending from the top right towards the bottom left.

David B. Cox
Vice President Western Region
Environmental Design



FENTON & KELLER

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

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TROY A. KINGSHAVEN
KATHERINE M. HOGAN
ELIZABETH R. LEITZINGER
JOHN E. KESECKER
CHRISTINA J. LENON

December 12, 2012

JOHN S. BRIDGES

JBridges@FentonKeller.com
ext. 238

Delinda Robinson
Monterey County Planning Department
168 W. Alisal Street, 2nd Floor
Salinas, CA 93901

Re: Mehdipour Site Restoration (PLN 100418) – Proposed Condition 4
Our File: 33428.30989

Dear Delinda:

This letter is submitted with regard to proposed Condition 4, Part 3. As you will recall, Ms. Mehdipour voluntarily offered to implement a Dune Restoration Plan over most of her property even though such was not legally required (ref. our August 3, 2012, submittal of the Plan). That offer was made in the context of an overall package to address code enforcement questions. At the time the offer was made, Ms. Mehdipour understood that the required replacement trees (for the two cypress trees that were removed without permit) could be located consistent with her arborists' recommendation. The decision of the Board of Supervisors on December 4 changed that. Because the tree replacement location component of the overall code enforcement remedy has been changed, Ms. Mehdipour is now no longer willing to implement dune restoration and hereby withdraws that offer. Accordingly, we request that Condition 4, Part 3 be deleted as well as any compliance actions and/or findings related thereto.

As you know, it is our legal position that 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 that term is defined in the LCP (§ 20.06.310.8). Non-native invasive beach grass is not major vegetation. Accordingly, removal of the beach grass was not in violation of the code. Your staff report citation to section 20.70.120.A.2 is misplaced as the exemption exception you cite does not apply in this case (no exemption is required because there was no development in the first place).

Even if by some strained reading of the code a permit was required to remove the beach grass, the applicable restoration standard is to return the property to its "pre-violation state." In this case, the beach grass has already regenerated and nature has returned the property to its original state. Restoration by revegetation of native plants is only required when native plants are removed (§ 20.90.130).

Under the County's code enforcement regulations, the burden of proof is squarely on the County to prove, by a preponderance of evidence, that a violation has occurred. The County has offered no

Delinda Robinson
December 12, 2012
Page 2

specific evidence (only speculation and conjecture), that anything other than beach grass was removed. The staff report admits it is not possible to verify what types of plants were removed. Such speculation would certainly fail to satisfy a preponderance test. Similarly, the record contains no specific evidence to support the staff report assertion that there was 2,500 square feet of "terracing" done on Ms. Mehdipour's property. The suggestion of an appearance from the perspective of another property by a biologist is not substantial evidence.

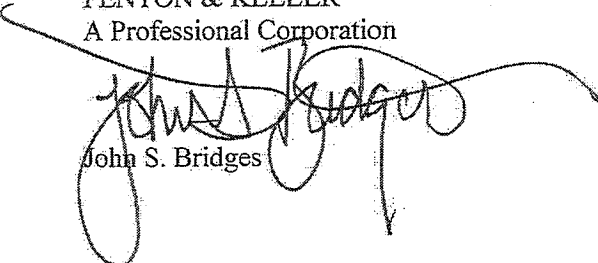
Attached hereto is a sworn declaration from Massy Mehdipour which attests to the fact that only beach grass was removed and that no grading, terracing, or other sand removal took place on the property (Attachment 1). While it is possible (though not certain) that some sand may have been moved to accommodate preliminary staking and flagging of an earlier project design and/or during geological testing on the property, such activities do not require coastal development permits and, again, no major vegetation was removed.

Ms. Mehdipour is resigned to the fact that she must accept the Board of Supervisor's decision about the replacement tree location but she will not restore the dune landscape on her property as a component part of this code enforcement action. Ms. Mehdipour does, however, intend to later restore with native plants the undisturbed dune areas of her property in conjunction with development of a new home on her property.

Please call me if you have any questions with regard to this request.

Very truly yours,

FENTON & KELLER
A Professional Corporation



John S. Bridges

JSB:kmc

Enclosure

cc: Board of Supervisors c/o Clerk of the Board
Supervisor Fernando Armenta
Supervisor Louis Calcagno
Supervisor Simon Salinas
Supervisor Jane Parker
Supervisor Dave Potter
Massy Mehdipour

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STATE OF CALIFORNIA
COUNTY OF MONTEREY

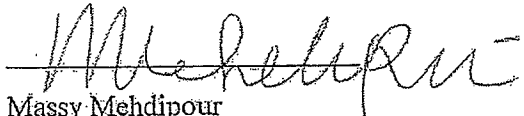
**DECLARATION OF
MASSY MEHDIPOUR**

I, Massy Mehdi pour, hereby declare:

1. I am the owner of the property at 1170 Signal Hill Road in Pebble Beach, California.
2. To the best of my information and belief no vegetation, except a small area of non-native invasive beach grass was removed from the dune area of my property. A small patch of beach grass was removed by my contractor when staking and flagging an early concept design for my new home.
3. To the best of my information and belief no sand removal, grading, or terracing took place in the dune area on my property. My grandchildren played in the area and would slide down the sand dune. My contractor erected staking and flagging of a concept design for my house in the area. My geologist did some sample soil boring in the area. As a result of these activities apparently a small amount of beach grass was removed and a small amount of sand may have also been pushed aside or leveled. Nothing else occurred.

I declare under penalty of perjury under the laws of the State of California, that the foregoing is true and correct, except as to those matters based on information and belief, and as to those matters I believe them to be true, and that if called as a witness I could and would competently testify thereto.

Executed on this 12 day of December, 2012 at Menlo Park California.

By: 
Massy Mehdi pour

CONDITION 4

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

1. Planting of three 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 specimen size Monterey cypress, minimum 36-inch box size 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. 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 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.

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 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. After that time the trees may only be removed with the approval of a Coastal Development Permit. If any of the replacement tree fails to survive it shall be replaced and a new five year monitoring program is required. Tree replacement will be in the form of the largest available native Monterey cypress from Pebble Beach Company stock at a 3 to 1 ratio.

24
12/4/11

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| Received by Clerk to the Board Additional Material for | |
| Board Agenda Date of: <u>12-4-12</u> | Item No: <u>24</u> |
| Dist 1 <input checked="" type="checkbox"/> | CAO <input type="checkbox"/> |
| Dist 2 <input checked="" type="checkbox"/> | County Counsel <input checked="" type="checkbox"/> |
| Dist 3 <input checked="" type="checkbox"/> | |
| Dist 4 <input checked="" type="checkbox"/> | |
| Dist 5 <input checked="" type="checkbox"/> | |



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August 27th, 2012

Anthony L. Lombardo
 ANTHONY LOMBARDO & ASSOCIATES
 A Professional Corporation
 450 Lincoln Avenue, Suite 101
 Salinas, CA 93901
 Phone (831) 751-2330
 Fax (831) 751-2331
 Email tony@alombardolaw.com

Re: Monterey Cypress loss replacement 1170 Signal Hill

Dear Mr. Lombardo,

I have received your request to clarify any ingress/egress issues involved in replacing the lost trees on the above-mentioned property. Having viewed the property and its proximity to the protected dunes, I can assure all concerned parties our company has considered means and methods to perform the tree replacement task. We would be able to prepare the site and transplant major trees without significant disruption of the dune habitat. The site is readily accessible for the equipment we would use from the existing driveway then along the rear side of the house to the locations of the removed trees.

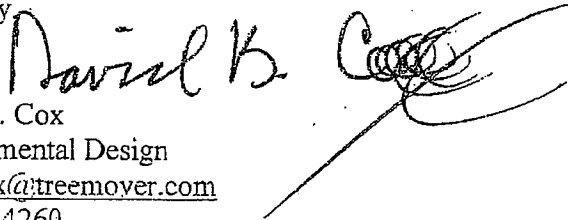
I viewed the Mehdipour property from surrounding adjacent properties on Wednesday July 25th 2012. The purpose of this site visit was to evaluate accessibility, slope conditions, sand dune protection areas and general plant health care conditions. In comparing satellite photos from 2007, 2009 and the present state, it is clear that a significant portion of the Monterey Cypress canopy has been removed. Three large stumps in excess of 24" diameter were visible from a distance of 100' or more. More badly pruned Monterey Cypress trees are evident. In comparing the satellite photos, I believe at least 5 and possibly 7 or more trees have been removed unnecessarily.

I read the reports from Maureen Hamb and Steven Staub. Ms. Hamb states and Mr. Staub seems to agree that one of the reasons seedlings failed was the presence of *Phytophthora* and *Pythium* in the soil as a result of the decaying roots from the removed trees. *Phytophthora* and *Pythium* are routinely encountered in the remaining root systems of the trees being replaced. I cannot confirm the existence of either of *Phytophthora* or *Pythium*. I can confirm that both are very common, readily correctable soil conditions. In transplanting trees most of the old root system and surrounding soil, and therefore the fungus, is removed to make room for the root ball of the new tree. Real keys to success are removing the old root systems, properly preparing and treating the soil and regular care for 3-5 years after transplanting.

In situations where significant trees have been lost, it is our opinion that the canopy should be replaced in as near its original condition as possible. In this instance, replacement is a viable option. Monterey Cypress is readily transplanted from available stock in the immediate area. Significant size trees have proven their proclivity to sustain a transplanting with minimal impact to future plant health and growth. Our company regularly transplants Monterey Cypress in like conditions to the subject property with a high degree of success. (See Photo below of large Cypress moved in 2003)

In conclusion, I can see no reason that mature Monterey Cypress trees cannot be successfully transplanted to this site.

Sincerely



David B. Cox
Environmental Design
davidcox@treemover.com
281 376 4260
281-850-7365



Planning for Success.

| | |
|--------------------------------|----------------|
| Received by Clerk to the Board | |
| Additional Material for | |
| Board Agenda Date of: | Item No: |
| 12-4-12 | 24 |
| Dist 1 | CAO |
| Dist 2 | County Counsel |
| Dist 3 | |
| Dist 4 | |
| Dist 5 | |

November 30, 2012

Mr. Dale Ellis
Anthony Lombardo & Associates
450 Lincoln Avenue, Suite 101
Salinas, CA 93901

Re: Monterey Cypress Tree Replacement Review for Signal Hill Property

Dear Dale:

I have conducted a tree replacement review for the residential property located at 1170 Signal Hill Road in the Pebble Beach area of unincorporated Monterey County. The property is in the Del Monte Forest Area Land Use Plan planning area, within the Coastal Zone, and zoned low density residential (one acre per unit). The property contains a single-family residence, and overlooks the ocean, Cypress Point Golf Course, and 17-Mile Drive.

I reviewed the *Signal Hill Planning Commission Staff Report for the Hearing of August 29, 2012* (reference planning file number PLN100418) for the two non-permitted landmark Monterey cypress tree (*Hesperocyparis [Cupressus] macrocarpa*) removals on the site, including available background materials (i.e. technical reports, restoration plans, maps, photographs, and correspondence) and the two letters from Environmental Design. I also observed the site from 17-Mile Drive and Signal Hill Road.

The Planning Commission project description is an "*after-the-fact permit to clear a code violation (CE090788); the permit consisting of a Coastal Development Permit and Restoration Plan per Section 20.90.130 of the Monterey County Coastal Implementation Plan Part 1 (Title 20 Zoning Ordinance) for the removal of two landmark Monterey cypress trees...*"

The 41-inch and 30-inch diameter, landmark sized Monterey cypress trees were removed without a Coastal Development Permit in 2009, which according to the staff report, significantly reduced screening of the residence from the protected 17-Mile Drive viewshed; further; the trees were located adjacent to an Environmentally Sensitive Habitat Area.

EMC PLANNING GROUP INC.
A LAND USE PLANNING & DESIGN FIRM

301 Lighthouse Avenue Suite C Monterey California 93940 Tel 831-649-1799 Fax 831-649-8399
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The Monterey County Zoning Coastal Implementation Plan – Title 20, Section 20.90.130: Restoration of Land Required before Application Deemed Complete, states that: *"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. Alternatives to restoration of the property shall not be considered unless the applicant can show that restoration would endanger the public health or safety, or that restoration is unfeasible due to circumstances beyond the control of the applicant or the property owner."*

The Monterey County Zoning Coastal Implementation Plan – Title 20, Section 20.06.560: Feasible, states that: *"Feasible means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technical factors."*

An attempt to replace the trees was undertaken in October 2010 with the planting of five replacement seedlings propagated from local Pebble Beach genetic stock. Certified arborist Maureen Hamb planned this restoration, and in September 2011 the seedlings were determined by her to be in poor health, declining due to *"a fungal infection related to the decay of the original tree roots"*. The decaying roots of the trees that were removed without permit thus caused the on-site fungal infection in the soil. She re-planted the seedlings in areas more protected from the strong coastal winds and salt spray influences, and farther from the decaying roots, but this was not effective. In September 2011, biologist Michael Zander prepared an evaluation of the site's disturbed slope and dune habitat, which led to a dune restoration planning effort for the site.

In March 2012, Ms. Hamb recommended planting small replacement trees outside the area where the fungal infection was present, and although she estimated a 40-foot radius from each stump, it is not known how far this fungal infection extends on the property. In May 2012, the applicant's agent and planning consultant Maureen Wruck submitted a revised Restoration Plan and associated technical reports to the County that included the planting of 10 replacement Monterey cypress trees of local genetic stock.

County Planning staff then determined that restoration of the property to its pre-violation state was not feasible due to the fungal infection surrounding the removed tree locations, and recommended alternative restoration/tree replacement. I did not find anything in the reviewed materials to indicate that the County considered the feasibility of transplanting mature Monterey cypress trees to the site as a means of restoration. The applicant's revised August 2012 Tree Replacement Plan would replace the two removed trees with three

minimum-sized 36-inch box nursery trees; this plan includes five years of monitoring. It is not clear, however, what remedial measures will be required if these trees do not survive and maintain good health conditions throughout this monitoring period.

Two of the trees would be located to the west and southwest of the residence not more than 20 feet from the tree removal locations and not farther south than the southernmost removed tree. The third tree would be located north of the residence and east of existing on-site trees. The revised replacement locations were chosen to replace viewshed screening values and ensure long-term tree survival.

Larger Monterey cypress tree plantings would likely be better able to survive the site's existing fungal infection in the soil as compared to young seedlings or small container plants. According to arborists that have evaluated the site, it is assumed that given the constrained reproductive biology of the species, replacement trees from non-local stock would not harm the genetic integrity of regional native cypress forests. Also, soil reclamation (removal and replacement) in attempt to abate the fungal infection near the remaining stumps is not considered by them to be warranted or feasible, although there is nothing that indicates that the soil has been tested to determine the extent of the fungal infection. Nor is there any information on any alternative means of soil remediation or its potential cost.

Monterey cypress trees are known for successful transplantation survival on Pebble Beach golf courses. In fact, according to local historian and Pebble Beach Company employee Neal Hotelling, a quite notable 200-year-old, 65-foot tall, 400,000-pound Monterey cypress tree was transplanted by Environmental Design in 2001 from the 1st fairway, to the right of the famous 18th green (about 2,000 yards away) on the Pebble Beach Golf Links course. Mr. Hotelling stated that this tree is presently in very good health, and may have grown to as much as 85 feet in height. According to Mr. Hotelling, the Golf Links course's professional forestry crew also transplants smaller mature Monterey cypress trees, with good survival rates throughout the golf course.

Environmental Design, a professional tree transplant company that has successfully transplanted mature Monterey cypresses in the Pebble Beach area, has observed the property and stated that transplanting mature trees to the site is feasible. It is therefore possible and feasible to transplant large trees onto the site with placement proximate to the removal locations with a high likelihood of success, if healthy tree specimens are available (possibly from nearby golf courses).

Mr. Dale Ellis
Anthony Lombardo & Associates
November 30, 2012, Page 4

In summary, it is my opinion that restoration of the tree removals from the site by the transplantation of mature Monterey cypress trees at or very near the location of the removed trees is feasible, if suitable transplant specimens can be obtained. If suitable transplant specimens cannot be obtained, then I recommend that the currently proposed tree replacements (three 36-inch box nursery specimens) positioned in close proximity to the removed trees be installed, maintained, and regularly monitored throughout the five-year monitoring period to ensure successful establishment and eventual tree sizes that would be comparable to the pre-violation state as far as landmark tree presence and screening of the residence.

Please let me know if I can be of further assistance.

Sincerely,

Andrea Edwards

Andrea Edwards
ISA Certified Arborist No. WE-9727A

Dale Ellis

From: Leighton, Margaret <Leightom@pebblebeach.com>
Sent: Tuesday, June 26, 2012 2:35 PM
To: Robinson, Delinda x5198
Cc: Love, Eric
Subject: Massy Mehdipour Tree Removal

In reference to the up-coming hearing on the Massy Mehdipour retroactive permits for Monterey Cypress Trees removed without permits, Pebble Beach Company has not issued any retroactive permits for the removal of these trees. We have provided seedlings from our endemic stock for replanting, but these trees we believe did not survive and were not planted in the location where the trees were removed which is the usual requirement for trees that are removed when they are dead or dangerous. We believe these trees were neither dead nor dangerous.

The trees received no water or inadequate water and no on-going care and that is why they did not survive.

We prefer larger trees planted in the location of the removed trees and a monitoring program to ensure their survival and growth.

Margaret E. Leighton

Pebble Beach Company
Manager, Architectural Review
PO Box 1767
Pebble Beach, CA 93953

831-625-8455
831-625-8412 (fax)

www.pebblebeach.com
leightom@pebblebeach.com

Please consider the environment before printing this email - Thank you

Restoration Required

No application for a discretionary land use permit under the authority of the Director of Planning and Building Inspection, the Zoning Administrator, the Minor Subdivision Committee, the Planning Commission or the Board of Supervisors, except for a restoration project, shall be deemed complete if there is a violation on said property of a County ordinance which regulates grading, vegetation removal or tree removal until restoration has been implemented on that property and monitoring agreements are in place.

"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. Alternatives to restoration of the property shall not be considered unless the applicant can show that restoration would endanger the public health or safety, or that restoration is unfeasible due to circumstances beyond the control of the applicant or the property owner. (MCC 20.90.130 , portion)