



Monterey County

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Board Order

Motion 1:

Upon motion of Supervisor Parker, seconded by Supervisor Salinas and carried by those members present, the Board of Supervisors hereby:

Denied request to continue hearing.

PASSED AND ADOPTED on this 8th day of April 2014, by the following vote, to wit:

- AYES: Supervisors Armenta, Calcagno, Salinas and Parker
- NOES: None
- ABSENT: Supervisor Potter

Motion 2:

Upon motion of Supervisor Salinas, seconded by Supervisor Parker and carried by those members present, the Board of Supervisors hereby:

Held a public hearing and adopted Resolution No. 14-097 to deny the appeal by Sam Reeves from the Planning Commission decision denying Sam Reeves' appeal of an administrative determination by the Director of RMA-Planning that Signal Hill LLC/(Mehdipour) complied with Condition No. 4 of its Coastal Development Permit and Restoration Plan relating to restoration. [Combined Development Permit REF140032/Signal Hill LLC (Mehdipour), 1170 Signal Hill Road, Pebble Beach, Del Monte Forest Area Land Use Plan, Coastal Zone; Exempt from CEQA.]

PASSED AND ADOPTED on this 8th day of April 2014, by the following vote, to wit:

- AYES: Supervisors Armenta, Calcagno, Salinas and Parker
- NOES: None
- ABSENT: Supervisor Potter

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 77 for the meeting on April 8, 2014.

Dated: April 9, 2014
File Number: RES 14-041

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

By  Deputy

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

In the matter of the application of:

SIGNAL HILL LLC (REF140032/PLN100418)

Resolution No. 14-097

Resolution by the Monterey County Board of)
Supervisors:)
1) Adopting a resolution to deny the appeal by Sam)
Reeves from the Planning Commission decision)
denying Sam Reeves’ appeal of an administrative)
determination by the Director of RMA-Planning that)
Signal Hill LLC/(Mehdipour) complied with)
Condition No. 4 of its Coastal Development Permit)
and Restoration Plan.)
[REF140032, Signal Hill LLC, 1170 Signal Hill)
Road, Pebble Beach, Del Monte Forest Area Land)
Use Plan (APN: 008-261-007-000)].....)

The appeal by Sam Reeves of the Planning Commission decision denying Sam Reeves’ Appeal of administrative interpretation by the Director of RMA-Planning determining Coastal Development Permit and Restoration Plan No. PLN100418 Condition No. 4 (related to restoration) is in compliance came on for public hearing before the Monterey County Board of Supervisors on April 8, 2014. 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:** **DESCRIPTION and BACKGROUND** – This is an Appeal pursuant to Chapter 20.88 (Appeals to Administrative Determinations) of the Planning Commission Decision upholding the Director of RMA-Planning determination finding that restoration efforts to date are in compliance with Condition No. 4 of Coastal Development Permit and Restoration Plan No. PLN100418.

- EVIDENCE:**
- a) In 2009, the owner of the subject property, Signal Hill LLC/Mehdipour, illegally removed two landmark size Monterey cypress trees that were located to the west and southwest of the existing residence.
 - b) On August 29, 2012 an after-the-fact Coastal Development Permit and Restoration Plan (PLN100418) was approved by the Planning Commission. The after-the-fact permit (PLN100418) was required to clear the code violation (CE090288) for the removal of two landmark size Monterey cypress trees, extensive pruning of three Monterey cypress trees, and dune disturbance in an environmentally sensitive habitat area. Condition No. 4 specifies the actions required to be taken by the owner to restore the site to the pre-violation state, including

monitoring and reporting to verify compliance, and addressing the planting of trees to replace the two removed-Monterey cypress.

- c) On September 17, 2012 Sam Reeves filed an appeal from the decision of the Planning Commission approving the Coastal Development Permit and Restoration Plan.
- d) The board held a public hearing on the appeal on December 4, 2012, January 15, 2013 and February 5, 2013. At the hearing on December 4, 2012 appellant Reeves suggested modifications to the language of Condition 4.
- e) On February 5, 2013: The Board of Supervisors granted the appeal and approved the project with modified Conditions of Approval (Resolution No. 13-021).
- f) Condition No. 4, Part 1 from Board of Supervisors Resolution No. 13-021 reads as follows:

“The owner/owner shall adhere to all of the requirements of the Draft 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, as determined by the project arborist, 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 owner'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.”

Compliance and monitoring actions required to be completed within 60 days of project approval included:

- Installation of the required replacement trees and submittal of verifying documentation;
- Submittal of a copy of a contract with a Certified Arborist to

- implement the restoration plan and provide the required monitoring program. The monitoring program shall include at a minimum: 1) Quarterly monitoring inspections by a Certified Arborist of the replacement trees for a minimum of 3 years and annual inspections for a minimum of 2 additional years; and
- Post a bond with the RMA-Planning Department in the amount equivalent to the cost of restoring the site and monitoring for a minimum of 5 years as required by the condition.
- g) On March 21, 2013 the owner planted two 48-inch box size Monterey cypress trees on the site to comply with the first part of Condition 4. Replacement Tree C-2 was planted further west of the original southernmost tree than the condition specified. The County accepted the location of Tree C-2 as being in conformance with the condition because: 1) the location met the other criteria (no further south and not more than 20 feet from the tree that was replaced); 2) the owner submitted evidence from the arborist showing that there is not a feasible location for the tree that would comply with the condition due to site constraints; and 3) moving the tree further east would not better achieve the goal of visually screening the home. Replacement tree C1 was initially planted further south than the original tree and that location did not comply with the requirements of the condition.
- h) Staff required Tree C1 be moved to a new location no further south than the original tree in order to comply with the condition. The owner attempted to re-locate the tree on April 30, 2013 but during excavation for the tree, previously unknown buried electrical conduit was damaged and the relocation stopped for safety reasons. In an arborist report dated April 30, 2013, Maureen Hamb recommended that the tree remain in the March 21, 2013 location, in part because PG&E requires a 5-foot setback from high voltage supply sources for excavation and the planting of trees and because evidence of *Phytophthora* fungal infection were found in the other areas available for planting. Hamb also noted in her report dated March 26, 2013 that during her inspection of roots of the original tree, diseased and blackened roots, similar to roots affected by the *Phytophthora* fungus, (the same conditions found when seedlings previously planted in the area died,) were found in the area. At the time the electrical line was repaired, it was also relocated to the north, nearer to the house.
- i) The County again required that Tree C1 be moved to a new location no further south than the original tree in order to comply with the condition. Tree C1 tree was later relocated five feet to the north of the original location and on May 22, 2013, the County received a report and "as planted" plan prepared by arborist Maureen Hamb documenting that tree C1 was replanted 17 feet directly east of the field located stump of the original tree. The planting site for Tree C1 was located in the field using a compass that was not adjusted for magnetic declination, resulting in the tree being planted approximately 4 feet further south than allowed by Condition No. 4. The County accepted the location of Tree C1 as being in substantial conformance with the condition because:

- 1) the location met the other criteria (no further west and not more than 20 feet from the tree that was replaced); 2) the owner submitted evidence from the arborist showing that there is not a feasible location for the tree that would comply with the condition due to site constraints; and 3) moving the tree 4 feet further north would not, in staff's estimation, better achieve the goal of visual screening of the home.
- j) On April 1, 2013, the owner submitted to the RMA-Planning Department a copy of a contract with Maureen Hamb, a Certified Arborist, to provide care and monitoring of the replacement trees as required by the condition.
- k) On April 3, 2013, cash bonds totaling \$16,000 (the cost estimate for all restoration and monitoring,) were posted by the owner as required by the condition.
- l) Condition 4 requires monitoring until such time as the replacement tree canopy approximates the 2007 size of the canopy of the trees removed. The County and the Owner agreed to use the volume of the canopies of the trees to determine compliance with the condition. The owner's arborist estimates that the volume of each replacement tree canopy would be 9,100 cubic feet in 5 years time. On April 16, 2013, the owner submitted calculations of the approximate volume of the canopy of the trees that were illegally removed (C1 & C2) prepared by Richard Weber, a Licensed Civil Engineer and based on analysis of historical photos of the property. The estimated volume of the canopy of the first tree was 28,882 cubic feet and the estimated volume of the canopy of the second tree was 32,061 cubic feet. Continued monitoring of the replacement trees will required until the volume of the replacement trees is equal to the volume of the original trees.
- m) In August of 2013 the County determined that restoration had been implemented as required by Condition 4 and all monitoring agreements were in place. Staff concluded Condition 4 is currently in compliance. All other conditions of approval for PLN100418 have been satisfied or are in "Ongoing" status.
- n) In August of 2013, the code violation case CE090288 was closed.
- o) The application, project plans, and related support materials submitted by the project owner to the Monterey County RMA-Planning Department and records of the Planning Commission and Board of Supervisors for the Coastal Development Permit (PLN100418.); Board of Supervisors Resolution No. 13-021.

2. **FINDING:** **PROCESS** – The County's processing of the subject Appeal of Director's Decision (REF140032) complies with all applicable procedural requirements.

EVIDENCE: a) On September 24, 2013, Dale Ellis on behalf of the Appellant submitted a request for a Director's determination regarding the status of compliance with Part 1 of Condition No. 4 of Coastal Development Permit and Restoration Plan No. PLN100418 (Board of Supervisors Resolution No. 13-021) related to restoration pursuant to Monterey County Code Chapter 20.88 (Appeals to Administrative Interpretations).

- b) On October 4, 2013, the Director of RMA-Planning provided a written Decision specifying that the owner was in compliance with the conditions of approval and stating that any appeal must be filed by 5:00 pm on October 18, 2013, which was 10 business days after the date of mailing of the Director's Decision.
- c) On October 14, 2013, Dale Ellis requested a 10-day extension for filing an appeal to the Director's Decision.
- d) On October 15, 2013, the Director of RMA-Planning granted the 10-day extension for filing an appeal to the Director's Decision from October 18, 2013 to October 28, 2013.
- e) On October 28, 2013, Anthony Lombardo on behalf of Sam Reeves ("Appellant"), filed an appeal from the October 4, 2013 Director's Decision.
- f) On February 12, 2014, the Planning Commission denied the appeal, upholding the Director of RMA-Planning's decision that restoration efforts to date are in compliance with Condition No. 4 of Coastal Development Permit and Restoration Plan No. PLN100418.
- g) On February 24, 2014, Anthony Lombardo on behalf of Sam Reeves ("Appellant"), timely filed an appeal from the February 12, 2014 Planning Commission Decision. The Notice of Appeal is attached as **Attachment H** of the April 8, 2014 Board of Supervisors Staff Report.
- h) The public hearing on the appeal was scheduled for April 8, 2014, by mutual agreement of the Appellant and the Owner.
- i) Public notices for the appeal hearing were published in the Monterey County Herald, mailed to neighbors within 300 feet, and posted in three different public places pursuant to Monterey County Code Chapter 20.84.
- j) The Appeal submitted by the Appellant to the Monterey County RMA - Planning Department and related support materials found in Project File REF140032.

3. **FINDING:**

APPEAL – The Appellant contends that the Planning Commission decision denying the Appeal by Sam Reeves (REF140015) of an administrative interpretation made by the Director of RMA-Planning regarding Coastal Development Permit and Restoration Plan No. PLN100418 Condition No. 4 relating to restoration and finding the project in compliance with the terms of Condition No. 4, Part 1, is not supported by the evidence and is contrary to law. Upon consideration of the documentary information in the files, the staff report, the oral and written testimony and all other evidence presented before the Board of Supervisors, the Board of Supervisors responds, as follows, to the Appellant's contentions:

EVIDENCE a) *Appellant's Contention No. 1: Replacement Canopy – The condition is to "...restore the visual screening of the home from 17-Mile Drive and other public viewing areas..." and required monitoring for "...five years or until such time as the tree canopy of the replacement trees approximates the 2007 tree canopy, whichever is longer." These requirements were discussed and agreed to by Ms. Mehdipour's*

representatives John Bridges and David Armanasco. We were told in Mr. Novo's determination that "it is unlikely that the replacement trees will ever replicate the screening that was provided by the original trees." This is in direct contradiction to the Board's requirements. The Planning Commission found, contrary to the Director's earlier statements that it was "...premature to make the determination that they [the trees] will never provide screening for the house or that the project is not in compliance with the condition. The trees will not look the same, but monitoring will not be complete until the performance criteria are achieved." There is however no performance criteria other than approximation of the 2007 canopy. That canopy is clearly shown in aerial photographs and photographs from 17-mile drive (sic). The "performance criteria" is apparently an agreement between the staff and that the owner (sic) to use some sort of a volumetric calculation rather than the screening and canopy replacement criteria required by the Board.

Response No. 1: The purpose of the condition is to restore the visual screening of the home. The success criteria specified in the condition is "five years or until such time as the tree canopy approximates the 2007 tree canopy, whichever is longer." The owner submitted a contract with a Certified Arborist to provide care and monitoring of the replacement trees for a minimum of 5 years with a provision for the contract to be renewed in the event of mortality of any of the trees. As required by the condition, cash bonds in the amount of \$16,000 (the cost estimate for the entire restoration and monitoring), were posted by the owner on April 3, 2013. As noted in the Director's Decision, the C1 replacement tree would have provided better screening had the owner been allowed to plant it further west where it would have been between 17-Mile Drive and the house. Planting of a third replacement tree would provide additional screening; however, at the Appellant's request, the condition adopted by the Board of Supervisors requires only two. These trees may never be the same as the original trees that grew to maturity in the windy coastal environment. Trees grown in a protected nursery environment have a more columnar shape and may never achieve the shape or diameter of the original trees. It will take far more than 5 years to replace the canopies of 50 year old trees. The use of the calculated volume of tree canopy will provide the "performance criteria" needed to determine when the trees have sufficiently grown to satisfy the conditions of approval. The County will continue to require monitoring until the volume of the canopies is equivalent to the volume of the original trees.

Appellant's Contention No. 2: Location of the Southernmost Tree: The Board's condition stated "...in no case may be (sic) 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." The planted trees fail to meet this requirement on two points:

- *The southernmost tree is farther south than approved by the Board. During the board's hearings the Board was shown a plan with the north arrow parallel to the western walls of the house. The Board based their decision on that plan. Now the Department has agreed to use what we are told is "magnetic north" which is approximately 20 degrees off the north arrow on the Board's plan. Plans showing that polar shift are attached to this appeal.*
- *The northernmost tree is clearly much farther west than the "...southernmost removed tree..." as approved by the Board.*

Response No. 2: The arborist report received by the County states that the southernmost replacement tree (Tree C1) was relocated 17 feet directly east of the original stump location. The owner has confirmed that the compass used in the field to determine the location of the replacement tree measured "magnetic north". It was not the type that could be adjusted to account for magnetic declination, which is approximately 13.5 degrees in Pebble Beach. This did result in the tree being planted approximately 4 feet further south than it would have been had the compass been adjusted and the measurement made using "true north". The condition language requires that the replacement tree be planted as near as feasible to the location of the original tree *as determined by the project arborist*, but no further than 20 feet from the original tree or further south or west than the original tree. The original tree was located approximately 14 feet south of the house, between the driveway and the southwestern corner of the house, leaving a very limited area available for the replacement tree. The arborist determined that it was necessary to plant the tree the maximum possible distance away from the original stump to avoid the *Phytophthora* fungus in the soil. To plant the tree further east would block access to the garage and would conflict with underground electrical utilities. The stated intent of the condition is to "restore the visual screening of the home from 17-Mile Drive and other viewing areas." Staff accepted the location of Tree C1 as being in conformance with the condition because: 1) the location met the other criteria (no further west and not more than 20 feet from the tree that was replaced); 2) the owner submitted evidence from the arborist showing that there is not a feasible location for the tree that would comply with the condition due to site constraints; and 3) moving the tree 4 feet further north would not, better achieve the goal of visual screening of the home.

The original northernmost tree (Tree C2) was located approximately 13 feet west of the house and approximately 20 feet west of the original southernmost tree (Tree C1). Planting the replacement for Tree C2 no further west than Tree C1 would place the replacement tree within the footprint of the existing house which was clearly not the intention of the Board. It is planted as close as feasible to the specified location. Replacement tree C2 was planted no further west than the tree being

replaced and will screen the house from 17-Mile Drive. Moving the tree 20 feet further west, would not better achieve the goal of visual screening of the home.

Appellant's Contention No. 3: In both cases, the Board of Supervisors were given assurances by staff and the owner that the replacement trees would be located as directed by the Board and that the canopy and screening would be replicate (sic) that which was illegally removed. Now we are told that it will not. Nonetheless, Mr. Novo and the Planning Commission have determined the conditions are being met.

The condition is not and apparently cannot be met base on the tree location approved by staff. Therefore, the restoration required by the Code and Board has not and cannot be accomplished and the violation still exists on the site.

Find that the condition of PLN100318 (sic) have not been met and direct Mehdipour to do the restoration she committed to do and achieve the canopy and screening required by the Board; or

- *Set a public hearing pursuant to Section 20.70.060 to consider revocation or modification of PLN100418.*

We also ask that the Planning Commission find that the property has not been restored and direct that all work on PLN100318 (sic) be suspended until such time as the restoration occurs."

Response No. 3: As discussed in Staff's Response Nos. 1 and 2 above, the County finds that the project is currently in compliance with the Conditions of Approval for PLN100418. There may have been statements made by the owner about the quality of screening achieved in a certain time period, but these statements are not reflected in the condition language. The owner at this time is proceeding with satisfying the conditions with the concurrence of staff. If the Board disagrees with staff and finds that the permit conditions are not in compliance then the appropriate action would be to approve the appeal and identify the corrective actions that would be necessary to comply with the permit. It is very important to focus on the actual requirements of this permit. The condition including the planting requirements and monitoring are the technical points upon which compliance at this phase is determined. The Appellant may want the restoration to look exactly like the original trees, but as stated in Response No. 1, trees are living things that may not grow as expected. As such, condition compliance needs to take this into account and identify criteria that identify success. In this case canopy volume has been identified as the operative criteria. Under current circumstances this will take more than 5 years but the monitoring requirements of the condition allow this. As long as progress is being made to fulfill the condition it is hard to argue that the owners efforts do not constitute compliance with the condition.

Modification of the condition as proposed by the appellant is not before

the Board at this time. To modify the condition in the absence of an application by the owner to amend the condition, the Appropriate Authority would need to hold a separate public hearing and would need to find that one of the conditions are not being complied with or that the Coastal Development Permit was granted on the basis of false material or information. The false information would be either written or oral and must be fully or negligently be provided by the applicant (Title 20, Section 20.70.060.) Normally in situations where a condition is not being complied with the first step would be to identify what needs to be done to bring the project into compliance and give the owner the opportunity to comply with the condition. If the Board finds that the condition is not in compliance staff recommends that the Board state clearly what needs to be done to bring the permit into compliance with the condition.

- b) The Appeal, application, project plans, and related support materials submitted by the Appellant and project owner to the Monterey County RMA - Planning Department for the proposed development found in Project File Nos. REF140032, REF140015, PLN100338 and PLN100418.

4. **FINDING:** **CEQA (Exempt):** - The project is Categorically exempt from environmental review.

- EVIDENCE:**
- a) CEQA Guidelines section 15307 exempts actions taken by regulatory agencies for protection of natural resources.
 - b) The appeal involves an administrative determination by the Director of RMA-Planning regarding conditions of approval related to restoration of damaged habitat. The restoration activity is exempt under CEQA and so the Administrative determination and any appeal related to that determination is also exempt.
 - c) The appeal, and related support found in Project File REF140032; PLN100418, and PLN100338..

5. **FINDING:** **APPEALABILITY** - The decision on this appeal is final.

- EVIDENCE:**
- a) Section 20.86.070 of the Monterey County Zoning Ordinance states that the decision of the Board of Supervisors shall be final, conclusive and effective immediately, unless appealable pursuant to Section 20.86.080.
 - b) Section 20.86.080 of the Monterey County Zoning Ordinance states that the appeal is not subject to appeal by/to the Coastal Commission because the appeal from an administrative determination regarding the Zoning Ordinance is not a Coastal Development Permit.

DECISION

NOW, THEREFORE, based on the above findings and evidence, the Board of Supervisors does hereby: Adopt a resolution to deny the appeal by Sam Reeves from the Planning Commission decision denying Sam Reeves' appeal of an administrative determination by the Director of

RMA-Planning that Signal Hill LLC/(Mehdipour) complied with Condition No. 4 of its Coastal Development Permit and Restoration Plan.


PASSED AND ADOPTED upon motion of Supervisor Salinas, seconded by Supervisor Parker and carried this 8th day of April 2014, by the following vote, to wit:

AYES: Supervisors Armenta, Calcagno, Salinas, Parker and Potter
NOES: None
ABSENT: None

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 77 for the meeting on April 8, 2014.

Dated: April 9, 2014
File Number: RES 14-041

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

By  _____
Deputy