

Attachment D
Notice of Appeal

Signal Hill, LLC
PLN100418

ATTACHMENT D



NOTICE OF APPEAL

RECEIVED
MONTEREY COUNTY
2012 SEP 17 PM 3:31

CLERK OF THE BOARD

DEPUTY

Monterey County Code
Title 19 (Subdivisions)
Title 20 (Zoning)
Title 21 (Zoning)

No appeal will be accepted until a written decision is given. If you wish to file an appeal, you must do so on or before * (10 days after written notice of the decision has been mailed to the applicant).
Date of decision * AUGUST 29, 2012

1. Please give the following information:

- a) Your name SAM REEVES & ANTHONY L. LOMBARDO
- b) Address 450 LINCOLN AVENUE, SUITE C101 SALINAS Zip 93901
- c) Phone Number 831-751-2330

2. Indicate your interest in the decision by checking the appropriate box:

- Applicant
- Neighbor
- Other (please state) _____

3. If you are not the applicant, please give the applicant's name:

SIGNAL HILL, LLC; MASSY MEHDIPOUR

4. Indicate the file number of the application that is the subject of the appeal and the decision making body.

5.

	File Number	Type of Application	Area
a) Planning Commission:	<u>PLN100418</u>	<u>COASTAL PERMIT</u>	<u>PEBBLE BEACH</u>
b) Zoning Administrator:	_____	_____	_____
c) Subdivision Committee:	_____	_____	_____
d) Administrative Permit:	_____	_____	_____

5. What is the nature of your appeal?

a) Are you appealing the approval or the denial of an application? (Check appropriate box)

b) If you are appealing one or more conditions of approval, list the condition number and state the condition(s) you are appealing. (Attach extra sheets if necessary).

6. Check the appropriate box(es) to indicate which of the following reasons form the basis for your appeal:

There was a lack of fair or impartial hearing; or

The findings or decision or conditions are not supported by the evidence; or

The decision was contrary to law.

You must next give a brief and specific statement in support of each of the bases for appeal that you have checked above. The Board of Supervisors will *not* accept an application for appeal that is stated in generalities, legal or otherwise. If you are appealing specific conditions, you must list the number of each condition and the basis for your appeal. (Attach extra sheets if necessary).

ATTACHED

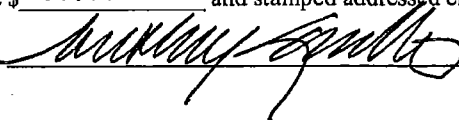
7. As part of the application approval or denial process, findings were made by the decision making body (Planning Commission, Zoning Administrator, Subdivision Committee or Director of Planning and Building Inspection). In order to file a valid appeal, you must give specific reasons why you disagree with the findings made. (Attach extra sheets if necessary).

ATTACHED

8. You are required to submit stamped addressed envelopes for use in notifying interested persons that a public hearing has been set for the appeal. The Resource Management Agency - Planning Department will provide you with a mailing list.

9. Your appeal is accepted when the Clerk to the Board's Office accepts the appeal as complete on its face, receives the filing fee \$ 00.00 and stamped addressed envelopes.

APPELLANT SIGNATURE



DATE

9/14/12

ACCEPTED

DATE

(Clerk to the Board)

Appeal to the Decision of the Planning Commission approving an after-the-fact permit (Signal Hill, LLC; PLN100418) to clear CE090288 consisting of a Coastal Development Permit and Restoration Plan for the removal of two Monterey Cypress trees, extensive pruning of three Monterey cypress trees and dune disturbance in an environmentally sensitive habitat area.

THE FINDINGS ARE NOT SUPPORTED BY THE EVIDENCE:

- A. Finding 1 states that restoration of the site to its pre-violation status is not feasible due to circumstances beyond the control of the owner. This finding is not supported by the facts because:
- a. There is no independent third party evidence to support those claims. All of the “evidence” upon which the Commission relied was supplied by the applicant’s consultants
 - b. There is no evidence of the cost of doing the restoration that is required by ordinance. Without such an estimate, an independent judgment of the economic feasibility of restoration could not have been made.
 - c. There is no independent evidence of the actual existence of a soil pathogen nor a discussion of the process or cost to remediate that fungus if it actually exists.
 - d. The Planning Commission did receive substantial evidence from recognized experts, Environmental Design, in transplanting major trees, including mature Monterey Cypress in the Pebble Beach area, that restoration is completely feasible.
- B. Finding 2 states that “... a result of this action [the Planning Commission approval] will be restoration of the property to its pre-violation state.”
- a. This finding is in direct conflict with Finding 1 which says restoration to the pre-violation state is not feasible.
 - b. The approved restoration plan does not require mature Monterey Cypress to be planted at the locations and to the approximate size of the trees Monterey Cypress that were removed to the west of the house, the numerous other trees that were removed without permits or permit waivers and all of the dune area damaged by the owner.

- C. Finding 3 states that the approval of this permit and its quasi-restoration plan will not be detrimental or injurious to persons living in the neighborhood or to the general welfare of the County.
- a. This permit approves after the fact removal of mature Monterey Cypress and sand dune degradation in an environmentally sensitive habitat. The tree removal and dune degradation took place over a period of time during which Ms. Mehdipour was fully aware of the violations, the need for permits and neighborhood controversy. Nonetheless she proceeded to cause violations of the Code, and then proceeded to ask forgiveness. Requiring anything less than full restoration and long term maintenance of the restored areas will, under these circumstances, set a poor precedent which will lead to other persons choosing to cut first and ask forgiveness later.
 - b. Evidence c) states in part “No modifications to the existing residence are proposed.” This is not true. An application is currently pending (PLN100318) by Ms. Mehdipour to demolish a single family dwelling that the County’s Historic Resources Review Board has determined to be historically significant and to construct a new large home. While this permit does not approve that project, it certainly sets the stage for “modifications to the existing residence.”
- D. Finding 4 states there will be no remaining code violations on the subject property. That is not true.
- a. The application does not address the substantial number of trees and ESHA that has been disturbed. These areas are clearly identifiable by aerial photographs that the County has in its possession from 2007 and 2009.
 - b. The staff has indicated that when the trees are planted and monitoring agreements are in place, the violation will be abated. Those monitoring agreements are by condition of the permits to be in place for five years but there is no assurance, however, that the five year period will be adhered to given the staff has already said the trees could be removed before that as part of another development permit.

THE DECISION IS CONTRARY TO THE LAW

- A. Any decision other than to require full restoration is contrary to the County Code. The applicant has caused substantial environmental damage to the property by the removal of

several mature trees, including two landmark Monterey Cypress, severely pruning three mature Monterey Cypress and disruption of a substantial area of ESHA. These are all violations of the County Code. The Code (MCC 20.90.130) is clear. The property must be fully restored to its pre-violation condition to abate the violation.

- B. There are broad statements by the applicant's paid consultants to the effect that restoration is not feasible due to cost and a soil fungus. However:
- a. There is no independent third party evidence to support those claims.
 - b. There is no independent evidence or evidence supplied by the applicant of the cost of doing the restoration that is required by ordinance.
 - c. There is no independent evidence of the actual existence of a soil pathogen or discussion of the process or cost to remediate that fungus if it actually exists.
 - d. The Planning Commission did receive substantial evidence from recognized experts, Environmental Design, in transplanting major trees, including mature Monterey Cypress in the Pebble Beach area, that restoration is completely feasible.