

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**). 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.

The proposed Restoration Plan (attached as **Exhibit 2** to **Attachment B** of the December 4, 2012 Board Report) includes:

- Planting of three 36-inch box replacement Monterey cypress trees. One tree is to be located to the west of the existing house and approximately 25 feet north of the location of the removed tree labeled “C-2” on the Tree Replacement Plan portion of the Restoration Plan, one tree approximately 20 feet north of the house and one tree approximately 45 feet south of the house. The trees will be nursery grown Monterey cypress trees, not from local genetic stock. In order to ensure that the replacement trees provide comparable screening of the house from 17-Mile Drive, a condition was imposed that two of the replacement trees be located not more than 20 feet from the locations of the removed trees and not farther south than the southernmost removed tree.
- Restoration of approximately 1.63 acres of the 2.17-acre site to native dune habitat. The primary goal of the plan is to eliminate all aggressive non-native species and restore native dune habitat within the designated area. This is proposed to be accomplished over a three-year period, with non-native plant eradication as the first phase. Sand stabilization and erosion control measures would be installed as needed as the non-native species are removed. Seeds and cuttings of appropriate dune species would be collected from on site and within close proximity and propagated during the first year. Installation of new plantings would occur in the winter and spring of the following year. Removal of exotic species would be ongoing, as would installation of additional and replacement plantings. Success criteria are established for each year of the plan and at the end of year 3 the criteria for success would be: 1) not more than 10 percent of the site to be covered with non-native vegetation; 2) at least 40 percent of the site to be covered with native annual and/or perennial species; 3) a minimum of 12 different native annual and/or perennial native plants present; 4) the native plants are in good health, the condition of restored dune is consistent with reference location(s), and damage from people, deer or pets is negligible; and 5) sand stabilization measures are effective and erosion is generally not evident. The plan proposes monitoring and maintenance of the restoration area as directed by the Project Biologist for a period of three years from implementation of the plan, with the

Project Biologist providing recommendations for on-going maintenance of the area at the end of the three-year period.

PROJECT ISSUES

Tree Removal

Two landmark-size Monterey cypress trees were removed without benefit of the required Coastal Development Permit in 2009. One of the trees removed (C1) was 41-inches in diameter and was located to the west of the existing driveway. The second tree (C2) was approximately 30-inches in diameter and was located west of the existing residence. The project site is on Signal Hill and the rear of the existing residence faces westward, toward viewpoints on 17-Mile Drive. Because of their location on the west side of the residence, the two large trees served to block views of the residence from 17-Mile Drive. The project site is located approximately 1,000 feet northeast of the nearest edge of the mapped indigenous range of the Monterey cypress. It is unknown whether the removed trees were native or planted, but the project biologist and consulting arborist have stated that they were likely planted.

The newly adopted Coastal Implementation Plan (CIP) for the Del Monte Forest allows trees and other vegetation to be removed without a Coastal Development Permit unless they are:

- (a) sensitive tree or vegetation species;
- (b) landmark trees (24 or more inches in diameter);
- (c) located in an environmentally sensitive habitat area (ESHA);
- (d) located within 100 feet of an environmentally sensitive habitat area where removal would significantly degrade such habitat area or be incompatible with the continuance of such habitat area;
- (e) located in or within a public viewshed where removal would lead to degradation of the public view; or not allowed to be removed pursuant to a coastal development permit, or forest management plan or similar instrument . . .

In this case, the trees removed were of landmark size and blocked views of the existing residence from the protected 17-Mile Drive viewshed and were located within ESHA. Therefore a Coastal Development Permit was required for their removal.

Tree Removal History

On August 17, 2009, the property owner submitted a retroactive request for a waiver of Coastal Development Permit for the removal of one 41-inch Monterey cypress tree and one 12-inch Monterey pine tree, both described as “dead and hazardous” (**Attachment G** to this staff report.) The request was accompanied by an arborist report prepared July 16, 2009 by Forest City Consulting to document findings regarding the removal of trees on the site. The report includes a copy of a Notice of Defensible Space Inspection to the owner from Cal Fire dated May 8, 2008, in which the owner is instructed to: 1) trim Monterey pines and cypress trees of dead branches 6 feet to 10 feet above ground; 2) remove dead cypress tree at corner of garage; 3) remove dead Monterey pine in courtyard; and 4) remove dead branches overhanging house. The report includes a photograph of the stump of Tree C1 and incorrectly identifies a stump on the east side of the house as being the second Monterey cypress tree (C2) that was illegally removed. This arborist did not locate the stump of tree C2. Staff determined through review of aerial photographs and personal communication with the Fire Captain that the dead trees required to be removed by Cal Fire were located on the east side of the residence and were not the trees identified in the code enforcement case. Staff did not grant the request for waiver as there was insufficient documentation submitted to prove that the trees removed represented an imminent hazard to life or property at the time they were removed.

Restoration Attempts

At the time the violation occurred, the property owner was preparing to submit an application for permits to demolish the existing residence and construct a new residence. Monterey County Code Section 20.90.130 requires that “no application 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.” In consultation with RMA-Planning Department staff, verbal authorization was given for restoration using Monterey cypress trees of local genetic stock, with the understanding that if the construction of the new residence necessitated removal of the replacement trees, a Coastal Development Permit for tree removal would be required at that time. In October of 2010, the property owner had five replacement trees that were propagated from seed collected from Cypress Grove in Pebble Beach planted in around the same locations as the trees that had been removed. In September of 2011, the replacement trees were found to be in poor condition and the project arborist determined that a fungal infection related to the decay of the original tree roots was causing the trees to die. The project arborist also determined that soil remediation is infeasible due to the large area affected by the fungus. The smaller sized trees that were the only size available propagated from local genetic stock, were also less able to withstand the wind and salt conditions in the open area where the original trees had been. The arborist then re-planted the small trees in more protected areas to the north and south of the residence and away from the decaying roots in an unsuccessful attempt to save them. The applicant submitted additional reports by Certified Arborists Frank Ono (See **Exhibit 1 of Attachment B**) and Stephen Staub (See **Attachment K**), both of whom concurred with Hamb’s conclusion that soil remediation was not a viable option for this site. Ono states: “The treatments to remediate soil born fungi would be monumental and create extreme disturbance with no guarantee of success.”

Tree Replanting Plan

On July 11, 2012, the Planning Commission considered a restoration plan that called for planting 10 small replacement Monterey cypress trees of local genetic stock, 5 each in locations to the north and south of the residence, away from the influence of the fungus contaminated soil. The proposed tree locations on the sides of the house would not result in screening of the residence from 17-Mile Drive that had been provided by the trees that were removed, and the Commission directed that the Applicant revise the restoration plan to bring the site back to the original condition visually, to the extent possible.

On August 3, 2012, the Applicant submitted a revised Tree Replanting Plan per the Planning Commission’s direction. The plan proposed to replace the two removed trees with three 36-inch box size Monterey cypress along the west (ocean) side of the house; one to be planted approximately 30 feet south of the location of tree C1 (and the house), one to be planted approximately 16 feet north of the location of tree C2 and the third, north of the existing residence and east of the existing cypress cluster. The removed trees screened the residence from view from 17-Mile Drive primarily from the west and southwest. Tree C2 was directly west and near the midline of the house and would have directly blocked views from 17-Mile Drive. The second, much larger tree (C1) was about 15 feet south of the southwest corner of the house and would also have screened views from the west and southwest. The proposed location of the replacement tree for tree C1 was more than 30 feet south of the house and would not have provided equivalent screening from 17-Mile Drive.

On August 29, 2012, by Resolution No. 12-033 (See **Attachment E**), the Planning Commission approved the revised Tree Planting Plan, subject to the condition (**Condition No. 4**) that two of

the trees be located within 20 feet of the original trees, neither of which could be located farther south than where the southernmost tree was located. The third tree would be located on the north side of the house in an area where vegetation appears to have been removed within the past few years and very near the three trees that were heavily pruned. The project arborist has indicated that the larger size trees are much less likely to be affected by the fungus associated with the roots of the removed trees. The effect of the revised plan, as conditioned, is that the replacement trees on the west side of the house will be located between the house and 17-Mile Drive and, once grown, will provide comparable screening to the trees that were removed. The benefits to using 36-inch box trees are that: 1) they will be well enough established to withstand the harsh conditions of the site better than the seedling size that was previously planted unsuccessfully; 2) they and will grow to a mature height and girth much sooner than the seedling size; and 3) they are small enough that minimal ground disturbance and therefore minimal disturbance to ESHA, will be necessary to plant them.

Potential Impacts to Native Monterey Cypress Forest

Replanting with native Monterey cypress stock was originally required by staff because of staff's concerns about potential impacts to the nearby rare indigenous Monterey cypress forest. The project arborist states in her July 30, 2012 letter report that "there are no concerns that the planted trees will interfere or cross pollinate with nearby trees thought to be members of a 'native' cypress community." The nearest extent of mapped indigenous Monterey cypress forest is approximately 1,000 feet to the southwest of the site. Monterey cypresses are monoecious, which means that each tree has both male and female parts. The cones may remain closed for many years before dropping seeds, which require a bare mineral soil for germination and establishment. Seedlings are generally from seed fertilized by the same tree. One of the reasons native Monterey cypress are so rare is a very low natural regeneration rate. The distance between the native cypress forest and the site combined with the very specific requirements for pollination and germination make it highly unlikely that these replacement trees would cause harm to the native forest.

ESHA

The project site is located on the southernmost extent of the Asilomar Dunes Complex, a remnant native sand dune that is protected by policies of the LUP as an environmentally sensitive habitat area (ESHA). The dune is heavily colonized by aggressive non-native species such as European beach grass and Iceplant; however, the habitat itself is rare and is therefore considered to be ESHA. Pursuant to Section 20.14.030.E of the Monterey County Zoning Ordinance (Title 20), development within 100 feet of mapped or field identified environmentally sensitive habitats requires a Coastal Development Permit. The definition of "Development" in Section 20.06.310.8 includes grading and the removal or harvesting of major vegetation.

In this case, vegetation was removed from an approximately 2,500 square foot area of dune to the west and below the residence. The project biologist stated that the disturbance had created a terrace on the dune slope. It is unclear how the dune became terraced. Soil borings on the dune were conducted by Cleary Consultants in February 2010 as part of the Geotechnical Investigation for the proposed new residence. At that time, the proposed residence would have included a wing that extended down the dune. However, the applicant has submitted a letter from Grant Foster of Cleary Consultants in which he states that the borings were drilled with a track-mounted auger rig requiring no grading or removal of vegetation and were backfilled with the native soil. Staking and flagging of the original proposal for the residence extended onto the dune and some sand may have been moved to accomplish the staking and flagging. The property owner says that her grandchildren playing on the dune caused the disturbance. John Bridges, the

applicant's representative, asserts in his August 3, 2012 letter that "restoration is not required because the invasive non-native beach grass that was removed was not 'major vegetation' under the Land Use Plan so no permit was required for its removal in the first instance." In a letter report addressing the potential restoration of the disturbed area dated September 28, 2011, biologist Michael Zander states that "the surrounding slope is dominated by the aggressive, non-native European beach grass" and that he "suspects that beach grass comprised the dominant vegetation prior to the disturbance". However, because the vegetation was removed prior to the first biological report prepared for the site in June of 2010, it is not possible to verify what types of plants were removed and photographs of the area taken in 2010 show other vegetation as well. The removal of vegetation and terracing of 2,500 square feet of dune constitutes development and thus requires a Coastal Development Permit pursuant to Section 20.70.120.A.2.

Restoration Plan

On July 11, 2012, the Planning Commission considered a restoration plan for the disturbed area of the dune that consisted of allowing the area to naturally re-vegetate with European beach grass. At the time of the report, beach grass was already rapidly colonizing the disturbed area and Zander states that if the subject area is left alone, the beach grass will likely become reestablished, creating 100 percent cover. In his opinion, restoration of the dune with native plants in the disturbed area would not be successful in the long term without eradication of the beach grass in the subject area and implementation of a restoration strategy for the entire property. The Commission rejected the notion of allowing European beach grass to colonize the area and directed that the applicant return with another approach.

On August 3, 2012, the Applicant submitted a revised "Remnant Dune Restoration Plan" per the Planning Commission's direction. Rather than allowing the non-native European beach grass to re-colonize the disturbed area, the primary goal of the revised plan is to eliminate all aggressive non-native species and restore native dune habitat on 1.63 acres of the 2.17-acre site (approximately 28 times the area of dune ESHA that was disturbed). This would be accomplished over a three-year period, with non-native plant eradication as the first phase. The plan includes an intensive effort to remove all European beach grass within the restoration area for three years, using manual removal initially and application of herbicide in combination with manual removal to control new growth. Iceplant would be sprayed with herbicide and left to dry before being removed. French broom would also be manually removed. Sand stabilization and erosion control measures would be installed as needed as the non-natives are removed. Seeds and cuttings of appropriate dune species would be collected from and within close proximity to the site and propagated during the first year. Installation of new plantings would occur in the winter and spring of the following year. Removal of exotic species would be ongoing, as would installation of additional and replacement plantings. The plan would be measured against success criteria that, at the end of year 3, would result in at least 12 different native annual and/or perennials being present in the restoration area, not more than 10 percent cover of non-native plants in the restoration area and at least 40% cover of native annuals and/or perennials, the native plants would be in good health and the restored dune consistent with reference locations, negligible damage from people and pets and no evident erosion. The plan does not propose 100 percent coverage of the dune with plantings but rather would leave open sand areas to allow for natural regeneration. The plan proposed monitoring and maintenance of the restoration area as directed by the Project Biologist for a period of three years from implementation of the plan, with the Project Biologist providing recommendations for on-going maintenance of the area at the end of the three-year period.

On August 29, 2012, by Resolution No. 12-033 (See **Attachment E**), the Planning Commission approved the revised “Remnant Dune Restoration Plan” dated August 2012, subject to the following additional requirements which were incorporated into **Condition No. 4**:

- 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.
- Success criteria for the eradication of non-native species within the 2,500 square foot disturbed area shall be 95 percent eradication of non-natives by the end of the 5-year monitoring period.
- Success criteria for the planting of native species shall be at least 50 percent coverage by natives throughout the restoration area by the end of the 5-year monitoring period.
- The Restoration Plan shall be bonded.

Tree Pruning

A cluster of three Monterey cypress trees, which lie on the dune above and to the northwest of the existing residence were pruned of large diameter lower branching. The pruning cuts are described as “rough and uneven” in a letter report by Certified Arborist Maureen Hamb dated October 19, 2011. Hamb states that “although the amount of branch/foliage removal and quality of the pruning cuts . . . are not within standard arboricultural standards, there is no evidence of decline in the tree canopy at this time”. These trees had previously been described by Hamb as “healthy-well structured examples of the species” and “remnants of the native forest.” Because subsequent reports by biologist Zander and Certified Arborist Stephen Staub refer to the trees as “planted”, it is unknown whether or not the trees are native. The trees are located within the viewshed of 17-Mile Drive and serve to block views of the residence from some points. Death of the trees would have an adverse impact on views from 17-Mile Drive. Hamb’s report states that trees that have been excessively pruned may not express decline for a number of years and recommends monitoring the health of the trees for a period of 5 years with provisions for replacement should the trees fail during that period. This monitoring requirement has been incorporated into **Condition No. 4**.

ENVIRONMENTAL REVIEW

The project for restoration of the site is found to be Categorical Exempt from CEQA per Section 15307 of the CEQA Guidelines, which categorically exempts actions by regulatory agencies for protection of natural resources. The County authorizes, by local ordinances, the Director of Planning discretion over requiring restoration of property to a pre-violation state when necessary to correct a violation. Restoration of the site, as proposed by this application, is protective of the environment in that over 28 times the amount of dune area that was disturbed will be restored to native dune habitat, the planting of replacement trees will result in screening qualities of the original trees with the least possible disturbance to ESHA and monitoring of the pruned trees with provisions for replacement should they fail will cause no environmental impact.

COMMENTS FROM THE PUBLIC

Numerous comments from the public (**Attachment I**) have been received concerning the removal of the two large Monterey cypress trees and the disturbance of dune ESHA. The primary issues brought up in the comments are:

1. *The trees that were removed screened views of the existing residence from offsite.*

Staff Response: Yes, the trees were large and would have partially blocked views of the house from 17-Mile Drive and other offsite viewpoints.

2. *The trees are reported as having served as a hunting post for a Peregrine falcon and as a nesting site and perch for a large White tailed kite over the years.*

Staff Response: There is no other evidence in the file to confirm or deny this claim. The trees were located overlooking an open dune area and slough and it is possible that raptors used the trees.

3. *Several letters reported that dune disturbance activities had been ongoing for up to four years.*

Staff Response: Comparison of aerial images of the site made in 2007 and 2009 show that trees were removed and that areas of dune vegetation that were present in 2007 are not present in 2009. The Biology reports and Dune Restoration Plans prepared for the project note that it appeared as if the disturbed area was a recently created terrace and photographs in the file show sand disturbance. Except for the pruning of the three Monterey cypress trees, no new disturbance of the dune areas were noted by Planning staff during site visits on July 28, 2010, October 27, 2010, August 1, 2011, November 2, 2011 and January 5, 2012.

4. *Several letters request that full restoration of the property to the pre-violation state be required prior to any application for further development being deemed complete.*

Staff Response: The intent of this application is to clear the existing violation. The applicant now proposes to plant 36-inch box size replacement trees and the project is conditioned to require that two of the replacement trees be within 20 feet of the trees that were removed in locations that will eventually duplicate the screening qualities of the original trees.

The trees that have been excessively trimmed cannot be restored to their original condition. As recommended by the project arborist, the proposed Restoration Plan includes monitoring of the health of the pruned trees for a period of 5 years with provisions for the planting of replacement trees if any of the pruned trees should fail.

Implementation of the proposed Remnant Dune Restoration Plan will restore approximately 40,000 square feet more dune habitat than was disturbed.

See also Staff's response to Appellant Contentions below.

STAFF'S RESPONSE TO APPELLANT CONTENTIONS

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. Staff's response to each contention follows:

Appellant's Contention No. 1: Finding 1, which states that restoration of the site to its pre-violation state is not feasible due to circumstances beyond the control of the owner, is not supported by the evidence because:

1. *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;*
2. *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.*
3. *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.*

4. *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.*

Staff's Response No. 1:

1. Professionals that are on the County's list of approved consultants prepared all of the reports and plans provided by the applicant. Staff reviewed all of the reports and concurred with the conclusions. Although there is no requirement in the Monterey County Code for an applicant to provide independent third party review of reports prepared and submitted in compliance with the applicable regulations, in addition to the primary arborist reports prepared by Certified Arborist Maureen Hamb, the applicant submitted peer reviews by two other Certified Arborists: Stephen Staub and Frank Ono, both of whom concurred with the findings of Hamb.
2. There is no requirement in the County Code for the applicant to provide a cost estimate for doing restoration. No finding was made regarding the economic feasibility of restoration.
3. In reports prepared on December 22, 2011 and March 13, 2012, Maureen Hamb documents the findings of her physical inspection of Monterey cypress seedlings that were planted immediately adjacent to the stumps of the trees that were removed. She states that the roots of the seedling trees were infected by a fungus that appeared to originate from the degrading root system of the original trees: "the lower stems and branching of the C1 seedlings were discolored (black) and moisture was oozing from the stem." Further excavation into the planting site revealed discolored and soft woody roots that originated from the stump of the removed tree. The presence of the fungus in the soil in conjunction with wind and salt spray caused the seedling sized replacement trees to die. At the request of RMA-Planning Department, Hamb evaluated the feasibility of a soil reclamation project surrounding the stump of tree C1 in an effort to create an area where seedlings could be viable. She states that the extent of the fungal development within the area cannot be determined, but that the most common soil born fungus responsible for root decay in cypress are invisible to the eye and can spread both within woody material and through the soil. She concludes that soil at least 20 feet from the stump to a depth of at least 5 feet (or approximately 230 cubic yards of soil) would have to be removed and replaced, with no assurances to the success of the planting. Both Staub and Ono agree that soil remediation is not a viable option for the property and both recommended planting larger size trees that would better withstand the harsh conditions on the site, including the presence of fungus in the soil.
4. On August 29, 2012 Anthony Lombardo, Attorney for the appellant, submitted letters from David Cox of Environmental Design, Inc. (**Attachment J** of the December 4, 2012 Board Report) in which Mr. Cox describes his company as being "expert in the transplanting of mature trees" and lists a number of local and national clients including Tehama, Pebble Beach Company, Cypress Point Golf Club, Stanford University, Apple Computers and the 9/11 Memorial. Cox evaluated the subject property from surrounding adjacent properties and concluded that the company would be able to prepare the site and transplant major trees in the locations of the removed trees without impacts to the dune ESHA. Staff contacted Cox by phone and in a call on November 16, 2012, Cox stated that the largest size tree that the company could install on this site would be a 35 to 40-foot tall, 16-inch to 18-inch diameter tree in a 120-inch box. A tree of that size would require excavation of an 11' X 11' X 5' planting hole (approximately 22 cubic yards) and would cost between \$35,000 and \$50,000 to install. The applicant proposes to plant 36-inch box size trees that are approximately 13 feet tall and would require excavation of approximately 2 cubic yards of soil if they are planted outside the location of large roots remaining from the original trees.

Cox stated that he could not confirm the presence of either fungus mentioned in the Hamb report but that they are “routinely encountered in the remaining root systems of the trees being replaced” and that they are “very common, readily correctable soil conditions.” One of the keys to success that he mentions in planting the major trees is “removing the old root systems”. This is basically what Maureen Hamb concluded in her assessment of the feasibility of soil remediation – that removal of the soil in the root zone of the removed trees would be required. As stated in Finding 3, Evidence h), land disturbance adjacent to and in ESHA (LUP Policy No. 14) is to be restricted to the minimum required to allow reasonable development. The LUP Key ESHA policy is clear that all development is to be subordinate to the protection of ESHA. In this case, although not native to the site, the trees had value because they screened views of the residence from 17-Mile Drive and met objectives of the Visual and Scenic Resources policies. For this reason, the trees should be replaced, but not at the cost of removing 40 or more additional cubic yards of the sand substrate that dune ESHA depends upon. By planting well established but smaller trees in locations not more than 20 feet from the removed trees, the screening qualities of the trees will in time be replicated and impacts to ESHA will be minimized.

Appellant’s Contention No. 2: *Finding 2, which states that “. . .a result of this action [the Planning Commission approval] will be restoration of the property to its pre-violation state” is not supported by the evidence because:*

1. *This finding is in direct conflict with Finding 1 (Planning Commission Resolution No. 12-033) which says restoration to the pre-violation state is not feasible.*
2. *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 (sic) 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.*

Staff’s Response No. 2:

1. This finding has been amended. See Finding 4.
2. See Staff’s Response to Appellate Contentions 1, No. 1-4. Staff has no evidence of other protected trees being removed without permits. The approved restoration plan requires 36-inch box size Monterey cypress trees to be planted in the general vicinity of the trees that were removed. The record shows that the Fire Marshall required the removal of two dead trees (one Monterey cypress and one Monterey pine) adjacent to the residence. There is no evidence in the record of any other protected trees being removed from the site. The owner disturbed approximately 2,500 square feet of dune habitat. Implementation of the dune restoration plan will result in the restoration of 1.63 acres (or 28 times the amount that was disturbed) of the 2.17-acre site to native dune habitat.

Appellant’s Contention No. 3: *Finding 3, which 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, is not supported by the evidence because:*

- 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 for 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 (PLN100338) 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.”*

Staff’s Response No. 3:

1. The appellant states his opinion regarding the applicant’s intentions. The restoration plan requires that the applicant/owner post a bond in the amount equivalent to the cost of restoring the site and monitoring for a minimum of 5 years as required by the condition. The appellant’s definition of “full restoration” includes replacement of the 41-inch and 31-inch Monterey cypress trees with trees of similar size. See Staff’s Response to Appellant Contention 1, No. 2-4 for discussion of requirement for smaller replacement trees.
2. Pursuant to Section 20.90.130, “no application for a discretionary land use permit ... 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.” An application (PLN100338) for a Combined Development Permit to demolish the existing dwelling and build a new dwelling on the subject site has been deemed incomplete pending the implementation of the restoration plan and execution of monitoring agreements. The house application (PLN100338) is not part of the action before the Board of Supervisors. If and when that application is deemed complete, it will be subject to all appropriate environmental review and separate consideration.

Appellant’s Contention No. 4: *Finding 4, which states that there will be no remaining code violations on the subject property, is not true. It is not supported by the evidence because:*

1. *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.*
2. *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.*

Staff’s Response No. 4:

1. See Staff’s Response to Appellant Contention 2-2 above.
2. See Staff’s Response to Appellant Contention 3-2 above. The appellant’s agent asked staff if the replacement trees could be removed at a later date. Staff’s response was that the replacement trees will be considered to be protected trees, and their removal would require a new Coastal Development Permit that would be subject to environmental review and public hearing pursuant to the requirements of the CIP. No such application has been submitted.

Appellant’s Contention No. 5: *The decision is contrary to law because 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 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.

Staff's Response No. 5: See Staff's Response to Appellant Contention 2-2 above. The Code (MCC 20.90.130) is clear that the Director of Planning "*may* (emphasis added) require restoration of the property to its pre-violation state if in his or her opinion it is necessary to correct the violation." "Restoration of the property shall include, *but not be limited to* (emphasis added), 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 the 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." In this case, since full restoration to the pre-violation state has been deemed to be unfeasible, a Coastal Development Permit has been required. The large limbs pruned from the three Monterey cypress cannot be restored and therefore alternate "restoration" in the form of monitoring with provisions for replacement should the trees fail is required. The effect of implementation of the "Remnant Dune Restoration Plan" will be that more than 28 times the area of dune that was disturbed will be restored from degraded dune that is heavily colonized by aggressive, non-native invasive species, to native dune habitat. The project arborists have determined that the landmark Monterey cypress that were removed were probably planted as landscape trees and were thus not natural components of the dune habitat. However they were valuable because they provided screening of the existing development from 17-Mile Drive. While the replacement trees will not be the same size or placed in the exact locations of the trees that were removed, the trees will be placed in locations that will ultimately screen views of the development from 17-Mile Drive. It is technically feasible to plant larger trees in the exact locations of the trees that were removed, however the additional disturbance to ESHA required to do so is not warranted in this case, given that the replacement trees will serve the same function (screening) as the removed trees.

Appellant's Contention No. 6: *The decision is contrary to law because 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:*

1. *There is no independent third party evidence to support those claims.*
2. *There is no independent evidence or evidence supplied by the applicant of the cost of doing the restoration that is required by ordinance.*
3. *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.*
4. *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.*

Staff's Response No. 6:

1. See Staff's Response to Appellant Contention 1-1 above. There is nothing in the Findings and Evidence regarding infeasibility of restoration because of cost.
2. See Staff's Response No. 1-2 above.
3. See Staff's Response No. 1-3 above.
4. See Staff's Response No. 1-4 above.

RECOMMENDATION

Staff recommends that the Board deny the appeal by Sam Reeves from a decision of the Monterey County Planning Commission approving an after-the-fact permit to clear a code violation, find the project Categorical Exempt per CEQA Guidelines Section 15307 and approve the 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, significant pruning of three Monterey cypress trees and sand dune degradation.