

ATTACHMENT I

Before the Planning Commission in and for the County of Monterey, State of California

In the matter of the application of:

SIGNAL HILL LLC (REF140015/PLN100418)

RESOLUTION NO. 14-012

Resolution by the Monterey County Planning
Commission:

- 1) Denying the Appeal by Sam Reeves of an administrative interpretation of the Zoning Ordinance made by the Director of RMA-Planning pursuant to Chapter 20.88 regarding status of compliance with Coastal Development Permit and Restoration Plan No. PLN100418 Condition No. 4 (Board of Supervisors Resolution No. 13-021 (Mehdipour) relating to restoration and upholding the Director's Decision that the project is in substantial compliance with the conditions of approval.

[REF140015, 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 from the administrative interpretation of the Zoning Ordinance (REF140015) came on for public hearing before the Monterey County Planning Commission on February 12, 2014. Having considered all the written and documentary evidence, the administrative record, the staff report, oral testimony, and other evidence presented, the Planning Commission 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 Director of RMA-Planning decision finding that restoration efforts to date are in compliance with Condition No. 4 of Coastal Development Permit and Restoration Plan No. PLN100418.
EVIDENCE:
 - a) At some point 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 applicant to restore the site to the pre-violation state, including monitoring and reporting to verify compliance, with Part 1 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) On February 5, 2013: The Board of Supervisors granted the appeal and approved the project with modified Conditions of Approval (Resolution No. 13-021).
- e) Condition No. 4, Part 1 from Board of Supervisors Resolution No. 13-021 reads as follows:

“The applicant/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 applicant'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.
- f) On March 21, 2013 the applicant planted two 48-inch box size Monterey cypress trees on the site to comply with the first part of Condition 4. It was noted in the arborist's report dated April 1, 2013 (**Exhibit I** attached to the Planning Commission February 12, 2014 staff

report) and verified by staff that the southernmost replacement tree labeled as Tree C1 had been planted further south than the original tree and that the location did not comply with the requirements of the condition.

- g) The County then required that Tree C1 be moved to a new location no further south than the original tree in order to comply with the condition. The applicant 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 a report dated April 30, 2013 (**Exhibit J** to the February 12, 2014 Planning Commission staff report), 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 (**Exhibit H** to the February 12, 2014 Planning Commission staff report) 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.
- h) 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 (**Exhibit K** to the February 12, 2014 Planning Commission staff report). 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 applicant 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.
- i) On April 1, 2013, the applicant 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.
- j) On April 3, 2013, cash bonds totaling \$16,000 (the cost estimate for all restoration and monitoring,) was posted by the applicant as required by the condition.
- k) Because the shape of the replacement trees is different than the shape of the original trees and it is not possible to anticipate exactly how the trees will grow, it was necessary to define a method of measuring the

canopies of the original and replacement trees in order to be able to determine compliance with the condition. The County and the Applicant agreed to use the volume of the canopies of the trees to determine compliance with the condition. The applicant'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 applicant 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.

- l) In August of 2013 the County determined that restoration had been implemented as required by the condition and all monitoring agreements were in place. Condition 4 is currently in compliance. All other conditions of approval for PLN100418 have been satisfied or are in "Ongoing" status.
- m) In August of 2013, the code violation case CE090288 was closed.
- n) The Appeal submitted by the Appellant to the Monterey County RMA - Planning Department found in Project File REF140015.
- o) The application, project plans, and related support materials submitted by the project applicant to the Monterey County RMA-Planning Department for the proposed development found in Project File PLN100418.

2. **FINDING:** **PROCESS** – The County's processing of the subject Appeal of Director's Decision (REF140015) complies with all applicable procedural requirements.
- EVIDENCE:**
- a) On September 24, 2013, Dale Ellis submitted a request for a written Director's Decision regarding specific questions regarding 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 Director's Decision pursuant to Monterey County Code Chapter 20.88 regarding specific questions related to the Signal Hill LLC discretionary application (File No. PLN100418). This Decision specified 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 to October 18, 2013 to October 28, 2013.
 - e) On October 18, 2013, Anthony Lombardo on behalf of Sam Reeves ("Appellant"), timely filed an appeal from the October 4, 2013 Director's Decision. This appeal is brought on the basis that the

Director's Decision is not supported by the evidence. The Notice of Appeal is attached as **Exhibit F** of the February 12, 2014 Planning Commission Staff Report.

- f) The public hearing on the appeal was scheduled for February 12, 2014, by mutual agreement by the Appellant and the Applicant.
- g) Public notices for the appeal hearing were published in the Monterey County Weekly, mailed to neighbors within 300 feet, and posted in three different public places pursuant to Monterey County Code Chapter 20.84.
- h) The Appeal submitted by the Appellant to the Monterey County RMA - Planning Department and related support materials found in Project File REF140015.

3. **FINDING:**

APPEAL – The Appellant contends that the Director's Decision that the project is in compliance with the terms of Condition No. 4, Part 1, is not supported by the evidence. Upon consideration of the documentary information in the files, the staff report, the oral and written testimony and all other evidence presented before the Planning Commission, the Planning Commission responds, as follows, to the Appellant's contentions:

EVIDENCE a)

Appellant's Contention No. 1: The southernmost replacement tree was planted further south than the location of the original tree in violation of the condition. The Board's conditions required that this tree be no farther south or west than the tree it replaced. During the course of their hearing, 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.

Response to No. 1: 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 applicant 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 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 applicant 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.

Appellant’s Contention No. 2: Replacement Canopy: The Board’s conditions also required that the replacement trees be monitored for five years or until such time as the replacement trees approximated the 2007 canopy and visual screening of the Mehdipour building site from Seventeen Mile Drive. These conditions were discussed and agreed to by Ms. Mehdipour. A photo simulation was shown by Mr. Bridges at the Board of Supervisors hearing that showed the replacement trees replicating that canopy and screening within five years. We are now 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 large part due to the applicant’s decision to place the trees as far apart as possible, to allow her to construct a larger home.

Response to No. 2: The applicant has submitted a copy of 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), was posted by the applicant on April 3, 2013. The County will continue to require monitoring until the volume of the canopies is equivalent to the volume of the original trees. As noted in the Director’s Decision, the C1 replacement tree would have provided better screening had the applicant been allowed to plant it further west where it would be between 17-Mile Drive and the house.

The photo simulation that was shown by Mr. Bridges at the December 4, 2012 Board of Supervisors hearing reflected what restoration would have looked like based on the requirements of the condition as it was approved by the Planning Commission and as it was being considered on that date by the Board. That condition required three 36-inch trees, two of which were to be within 20 feet and no further south than the southernmost removed tree, and allowed a fourth optional tree to the southwest of the residence. At that time, the applicant proposed to comply with the condition by planting two groupings of two trees each, to the west and southwest of the house. At that Board hearing, the Appellant’s attorney submitted modified condition language that required larger size replacement trees, eliminated the third required tree, and added language prohibiting the trees from being planted further

west than the southernmost removed tree. The condition approved by the Board included those modifications. Thus, the rendering presented at the hearing did not represent the restoration ultimately required by the condition approved the Board. It is the condition as approved by the Board of Supervisors that must be complied with, not the photo simulation presented reflecting a different scheme. See Staff's Response No. 1 for the justifications for planting the tree in the present location. The trees have been in the ground for less than a year. It is premature to make the determination that they 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. This may not be acceptable to some, but as long as the applicant is working toward compliance, including monitoring and reporting, they are in compliance.

Appellant's Contention No. 3: Because of the conditions are not being met (sic) there is a continuing violation of the County Code under Section 20.90.050. There is also a violation under Section 20.90.130 in that the restoration required by the Code and Board is not and apparently cannot be completed as proposed. Nevertheless, the staff has determined the application for the new house (PLN100338) to be complete and has started preparation of an initial study. As a result of the applicant misrepresentation to the Board, the conditions are not and apparently cannot be met based on the tree location approved by staff. Therefore, restoration required by the Code and Board has not and cannot be accomplished and the violation still exists on the site. We ask that the Commission:

- *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 to 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. The applicant at this time is proceeding with the concurrence of staff. If the Commission 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 rendering presented at the December 4, 2012 Board hearing, but as stated in Response No. 2, that rendering did not represent the reduced number or locations of replacement trees required by the condition as it

was ultimately adopted by the Board. 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 is the 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 efforts are not in compliance with the condition. It is not appropriate at this time to consider revocation or modification of PLN100418.

The application for a Combined Development Permit (PLN100338) to allow the demolition of the existing residence and the construction of a new residence was appropriately deemed complete after restoration was implemented, monitoring agreements were in place and Code Violation Case No. CE090288 was closed. Since the code enforcement action is closed, there is no limitation to processing additional permits.

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

4. **FINDING:** **CEQA (Exempt):** - The project is statutorily exempt from environmental review and no unusual circumstances were identified to exist for the proposed project.

- EVIDENCE:**
- a) The Appeal is not defined as a "Project" under California Environmental Quality Act (CEQA) Guidelines Section 21065, and is therefore statutorily exempt from environmental review.
 - b) The appeal involves an administrative decision by the Director of RMA-Planning and does not involve the issuance of an entitlement.
 - c) The appeal, and related support materials submitted by the project applicant to the Monterey County RMA - Planning Department for the proposed development found in Project File REF140015.

5. **FINDING:** **APPEALABILITY** - The decision on this appeal may be appealed to the Board of Supervisors and not the California Coastal Commission

- EVIDENCE:**
- a) Section 20.86.030 of the Monterey County Zoning Ordinance states that an appeal may be made to the Board of Supervisors by any public agency or person aggrieved by a decision of an Appropriate Authority other than the Board of Supervisors.
 - 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

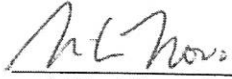
NOW, THEREFORE, based on the above findings and evidence, the Planning Commission does hereby:

1. Deny the Appeal by Sam Reeves of an administrative interpretation of the Zoning Ordinance made by the Director of RMA-Planning pursuant to Chapter 20.88 regarding 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) relating to restoration and uphold the Director's Decision that the project is in substantial compliance with the condition of approval.

PASSED AND ADOPTED this 12th day of February, 2014 upon motion of Commissioner Diehl, seconded by Commissioner Padilla, by the following vote:

AYES: Brown, Vandever, Rochester, Mendez, Roberts, Diehl, Padilla, Hert
NOES: None
ABSENT: Getzelman, Salazar
ABSTAIN: None


Mike Novo, Secretary

COPY OF THIS DECISION MAILED TO APPLICANT ON FEB 14 2014

THIS APPLICATION IS APPEALABLE TO THE BOARD OF SUPERVISORS.

IF ANYONE WISHES TO APPEAL THIS DECISION, AN APPEAL FORM MUST BE COMPLETED AND SUBMITTED TO THE CLERK TO THE BOARD ALONG WITH THE APPROPRIATE FILING FEE ON OR BEFORE FEB 24 2014

THIS PROJECT IS LOCATED IN THE COASTAL ZONE AND IS NOT APPEALABLE TO THE COASTAL COMMISSION.

This decision, if this is the final administrative decision, is subject to judicial review pursuant to California Code of Civil Procedure Sections 1094.5 and 1094.6. Any Petition for Writ of Mandate must be filed with the Court no later than the 90th day following the date on which this decision becomes final.

Form Rev. 11-06-2013