

**PLANNING COMMISSION
COUNTY OF MONTEREY, STATE OF CALIFORNIA**

RESOLUTION NO. 02084

FINDINGS AND DECISION

In the matter of the
James Hill III (PLN020502)

Appeal of the Director's opinion that a proposed lot line adjustment application (El Sur Ranch (PLN010530) is subject to the provisions of Government Code Section 66412(d) as amended by Senate Bill 497, which came on regularly for hearing before the Planning Commission on December 11, 2002.

Said Planning Commission, having considered the application and the evidence presented relating thereto,

FINDINGS OF FACT

- 1. Finding:** The Department of Planning and Building Inspection correctly concluded that Government Code section 66412(d) as amended by Senate Bill 497 applies to Applicant's lot line adjustment application because the County had not made a final decision on the application as of January 1, 2002, the date the amendment of section 66412(d) took effect.

Evidence: On November 30, 2001, Applicant filed an application for a Coastal Development Permit application for a major lot line adjustment on an approximately 960-acre portion of the over 7000-acre El Sur Ranch to reconfigure ten existing lots of record. The County deemed the application complete on December 28, 2001. The County had reached no final decision on the application as of January 1, 2002.

Evidence: Application materials on file in the Department of Planning and Building Inspection (PLN010530); staff report to the Planning Commission for December 11, 2002 meeting and exhibits thereto; administrative record.
- 2. Finding:** Section 20.64.240(A)(3) of the Monterey County Code does not confer a right on Applicant to have his application considered under the laws in effect at the time his application was deemed complete.

Evidence: Section 20.64.240 establishes a procedure for vested rights determinations and is not applicable to the Application. The section does not grant rights but rather makes clear that the vested rights determination does not change any pre-existing, underlying rights claimant may have.

Evidence: Staff report to the Planning Commission for December 11, 2002 meeting and exhibits thereto; application materials on file in the Department of Planning and Building Inspection (PLN010530); administrative record.
- 3. Finding:** At the time County deemed the application complete, County had not resolved whether the old state law or amended law would apply, and County did not act in a manner that would lead Applicant reasonably to believe that the application would be processed under the former Government Code section 66412(d) as it read prior to amendment by SB 497.

Evidence: On or about the effective date of SB 497, the Planning Department had not taken a

definitive position as to the effect of the legislation on pending lot line adjustment applications.

Evidence: Although County, at Applicant's urging, determined the application complete prior to the effective date of SB 497, the County at no time promised that the application would be exempt from the provisions of SB 497. The Planning Commission, the appropriate authority to decide the lot line application, made no official determination at the time the application was deemed complete or at any time prior to this appeal regarding which law would apply.

Evidence: Staff report to the Planning Commission for December 11, 2002 meeting and exhibits thereto; application materials on file in the Department of Planning and Building Inspection (PLN010530); correspondence and e-mails attached as exhibits to Applicant's appeal; administrative record.

4. **Finding:** Applicant was not ignorant of the possibility that SB 497 could affect his application.

Evidence: Staff report to the Planning Commission for December 11, 2002 meeting and exhibits thereto; application materials on file in the Department of Planning and Building Inspection (PLN010530); correspondence and e-mails attached as exhibits to Applicant's appeal; administrative record.

5. **Finding:** Applicant has not proven he was harmed by reliance on the County's conduct.

Evidence: Given that the effect of SB 497 was not settled at the time the application was deemed complete and that, in any event, the processing of Applicant's application was contingent on the outcome of his then pending Certificates of Compliance request, Applicant was aware of and assumed the risk that his application may not be successful.

Evidence: Applicant is not precluded from modifying his lot line adjustment application to four or fewer existing adjoining parcels or from applying for a subdivision map.

Evidence: Staff report to the Planning Commission for December 11, 2002 meeting and exhibits thereto; application materials on file in the Department of Planning and Building Inspection (PLN010530); correspondence related to the application; administrative record.

6. **Finding:** The strong public policy underlying the amendment of section 66412(d) by SB 497 outweighs the harm, if any, to Applicant of applying the law as amended.

Evidence: Applying the old law to the application would defeat the purpose of the amendment of section 66412(d).

Evidence: Senate Bill 497, Senate Floor Analyses, attached as Exhibit B to staff report to the Planning Commission for December 11, 2002 meeting

Evidence: Staff report to the Planning Commission for December 11, 2002 meeting and exhibits thereto; administrative record.

7. **Finding:** Applicant's grounds of appeal are without merit and the Department's interpretation is in accordance with the law.

Evidence: Staff report to the Planning Commission for December 11, 2002 meeting and exhibits thereto; application materials on file in the Department of Planning and Building Inspection (PLN010530); correspondence relating to the application attached as exhibits to County's December 11, 2002 staff report and to Applicant's appeal; administrative record.

DECISION

THEREFORE, it is the decision of said Planning Commission that said appeal be denied.

PASSED AND ADOPTED this 11th day of December, 2002, by the following vote:

AYES: Sanchez, Hawkins, Brennan, Parsons, Diehl, Engell
NOES: Errea, Wilmot
ABSENT: Pitt-Derdivanis

Original Signed By:

LYNNE MOUNDAY, SECRETARY PRO TEM

Copy of this decision mailed to applicant on

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.