

Exhibit C

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Monterey County Planning Commission

Agenda Item No. 2

Legistar File Number: PC 18-099

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1st Floor
Salinas, CA 93901
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Current Status: Agenda Ready

Matter Type: Planning Item

PLN171029 - LEAVY-HOGLUND PENELOPE CHRISTINE TR

Public hearing to consider a conditional certificate of compliance.

Project Location: 25735 Mesa Drive, Carmel, Carmel Area Land Use Plan, Coastal Zone

Proposed CEQA Action: Categorical Exemption pursuant to Section 15315 of the CEQA Guidelines.

RECOMMENDATION:

It is recommended that the Planning Commission:

- a. Find that the conditional certificate of compliance, Categorical Exempt pursuant to Section 15315 of the CEQA Guidelines, and there are no exceptions pursuant to Section 15300.2;
- b. Approve a Coastal Development Permit for a conditional certificate of compliance for Assessor's Parcel Number 009-231-023-000.

A draft resolution, including findings and evidence, is attached for consideration (**Exhibit B**). Staff recommends approval subject to five (5) conditions of approval.

PROJECT INFORMATION:

Property Owner: Leavy-Hoglund Penelope Christine TR

Agent: Anthony Lombardo & Associates

APN: 009-231-023-000

Zoning: Medium Density Residential, 2 units per acre, with a Design Control Overlay (Coastal Zone) [MDR/2-D (CZ)]

Existing Parcel Size: 7,861 square feet

Plan Area: Carmel Area Land Use Plan, Coastal Zone

Flagged and Staked: Not Required because the proposed conditional certificate of compliance does not include structural development.

SUMMARY:

The Applicant requests that the County issue a conditional certificate of compliance for a 7,861 square foot area of land within Assessor's Parcel Number (APN) 009-231-023-000 (i.e., the subject parcel). The Action to grant a conditional certificate of compliance relies on a determination of the intent of a 1969 conveyance of the subject area, which was part of a larger lot (APN 009-231-002-000 in 1969). In addition, an abutting parcel (APN 009-231-013-000) has been involved with development that occurred across both it and the subject parcel. In 1979, an addition to the single-family dwelling located on APN 009-231-013-000 crossed over the boundary onto APN 009-231-023-000; however, this addition was subsequently demolished under County Construction Permit 16CP01870. Presently, the subject parcel (APN 009-231-023-000) is completely vacant.

The question staff evaluated was whether the conveyance was intended to create a separate, third lot for development (i.e., a subdivision), or was the action intended as a lot line adjustment that reconfigured two lots to combine the subject area with APN 009-231-013-000. Staff reviewed the chain of title for the 7,861 square foot area of land and has found no conclusive evidence on the intent of the conveyance.

In 1969, if this conveyance was done with the intent to create a separate lot for development, it would have been a violation of the Subdivision Map Act (SMA) and County Ordinance 1496, and the conveyed parcel would be an illegal lot.

Another possible intent of the conveyance was to form a new, merged lot via a lot line adjustment (LLA). However, in 1969, neither the SMA nor local ordinance regulated or even contained the concept of a LLA. SMA Section 66412 was not amended until 1976 (effective January 1, 1977) to add LLAs as an exclusion to the SMA. Therefore, prior to 1977 there was no process in the code to effect a LLA.

As prescribed by the Subdivision Map Act (SMA) and Monterey County Code (MCC), a possible remedy to resolve this situation would be for the County to issue a conditional certificate of compliance, as requested by the Applicant and provided for in SMA Section 66499.35(b) and MCC Section 19.14.050.A.

DISCUSSION:

Based on applicable permit history, the County has never approved nor issued any permits solely or primarily for the benefit of APN 009-231-023-000. Primary development has always been connected to APN 009-231-013-000. The applicant for every permit issued, either graphically or in written form, represented that only one parcel was the subject parcel. All the permit history facts support a possible conclusion that the 1969 conveyance was understood by the respective owners and their successors in interest to be what is now known as a LLA. Therefore, APNs 009-231-013-000 and 009-231-023-000 could be considered one combined legal lot of record.

However, although the historical evidence points to a LLA, this conclusion is problematic. The County has no clear or explicit evidence that a LLA or lot merger was the intent of the parties. Although conveyed together under common ownership, APNs 009-231-013-000 and 009-231-023-000 have always been identified or described separately in every grant deed transferring ownership since 1969. One possible remedy to resolve this situation would be for the County to issue a conditional certificate of compliance, as requested by the Applicant and provided for in SMA Section 66499.35(b) and MCC Section 19.14.050.A. Pursuant to these Sections, if a local agency/County determines that the real property does not comply with the provisions of this division or of local ordinances enacted pursuant to this division, it shall issue a conditional certificate of compliance and may impose any conditions as would have been applicable to the division of the property at the time the applicant acquired interest therein. Furthermore, fulfillment and implementation of the conditions shall be required prior to the parcel in question being deemed a legal parcel for the purpose of sale, lease, or financing. Therefore, staff has recommended applicable conditions, which are attached to the draft resolution.

See **Exhibit A** for a detailed discussion of the conveyance and permit history.

OTHER AGENCY INVOLVEMENT:

The following County agencies or departments reviewed this project:

RMA-Public Works
RMA-Environmental Services
Environmental Health Bureau
Water Resources Agency
Cypress Fire Protection District

The proposed project was not referred to the Carmel Unincorporated/Highlands Land Use Advisory Committee (LUAC) for review.

Prepared by: Joseph Sidor, Associate Planner, x5262

Reviewed by: Jacqueline R. Onciano, RMA Chief of Planning

Approved by: John M. Dugan, FAICP, RMA Deputy Director for Land Use and Development

The following attachments are on file with the RMA:

Exhibit A - Discussion
Exhibit B - Draft Resolution, including:
- Conditions of Approval
Exhibit C - Vicinity Map

cc: Front Counter Copy; Planning Commission; California Coastal Commission; Cypress Fire Protection District; Environmental Health Bureau; RMA-Public Works; RMA-Environmental Services; Water Resources Agency; Brandon Swanson, RMA Services Manager; Joseph Sidor, Project Planner; Anthony Lombardo & Associates, Agent; Leavy-Hoglund Penelope Christine TR, Owner; The Open Monterey Project (Molly Erickson); LandWatch; RMA-Planning File No. PLN171029

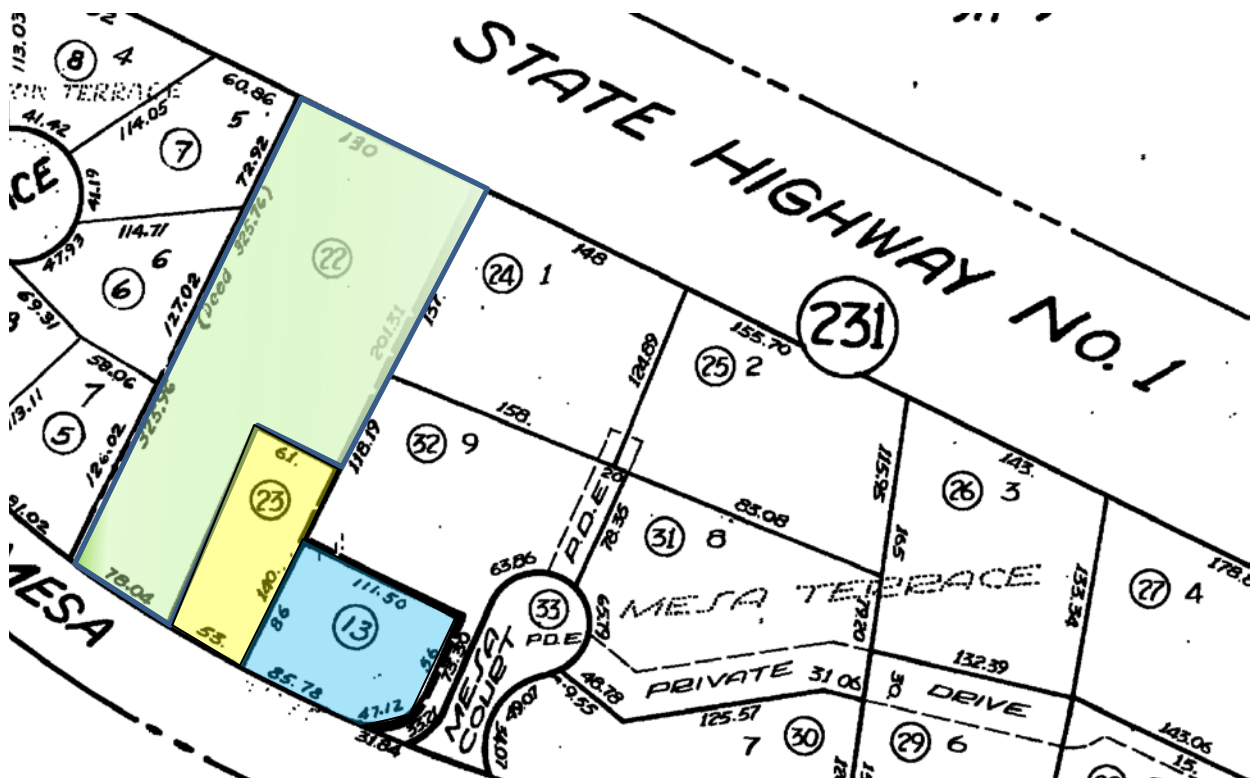
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Exhibit A

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EXHIBIT A PROJECT DISCUSSION

The Applicant requests the County issue a conditional certificate of compliance for a 7,861 square foot area of land with Assessor's Parcel Number¹ (APN) 009-231-**023**-000 (shown in yellow in the figure below). The lot is in a residential area between the City of Carmel-by-the-Sea and Highway 1, and is zoned Medium Density Residential, 2 units per acre, with a Design Control Overlay (Coastal Zone) [MDR/2-D (CZ)]. This area of the County consists primarily of small residential lots with corresponding single-family dwellings. In the following discussion, staff will also reference APN 009-231-**013**-000 (shown in blue in the figure below) because this 0.2112-acre (9,200 square feet) parcel is adjacent to the subject lot (i.e., -**023**), is under common ownership, and was involved with development that occurred across both it and the subject parcel. In 1979, an addition to the single-family dwelling located on APN 009-231-**013**-000 crossed over the boundary onto APN 009-231-**023**-000; however, this addition was subsequently demolished under County permit 16CP01870. Presently, the subject parcel (APN 009-231-**023**-000) is completely vacant. Staff will also initially reference APN 009-231-**002**-000 (now -**022**; shown in green in the figure below), an existing 1-acre legal lot of record from which APN 009-231-**023**-000 was conveyed. At the time of the conveyance, APNs 009-231-**013**-000 and 009-231-**002**-000 were adjacent, existing legal lots of record.



¹ Note: Assessor's Parcel Numbers (APNs) are for property tax assessment purposes only, and are not equivalent to legal parcels or legal lots of record. Reference to APNs in this discussion and in permit applications, site plans, and other land use materials is simply a convenient way to reference specific parcels or areas of land.

Background

APN 009-231-**013**-000 was legally created via grant deed in 1962 (R 67 OR 25). In 1969, the owner (Chalkey) of APN 009-231-**002**-000 conveyed (via grant deed) a 7,861 square foot portion of APN 009-231-**002**-000 to the owner of APN 009-231-**013**-000 (Scanlon; R 630 OR 299). The area conveyed was assigned the APN 009-231-**023**-000 (i.e., the subject lot).

Under state law and Monterey County Code (MCC), the County could consider two primary options. The conveyance or transfer via grant deed could have been intended as either a new parcel or as a lot line adjustment (LLA) to merge or join the conveyed area with APN 009-231-**013**-000. In 1969, if this conveyance was done with the intent to create a separate lot for development, it would have been a clear violation of the Subdivision Map Act (SMA) and County Ordinance 1496, and the conveyed parcel would be an illegal lot. Due to 1964 changes in the SMA and MCC, parcels conveyed or created via grant deed in 1969 were required to meet certain minimum requirements, such as being 2.5 acres or larger. The conveyed lot did not meet the minimum requirements pursuant to the SMA nor MCC in effect at that time.

Another possible intent of the conveyance was to form a new, merged lot via a LLA. However, in 1969, neither the SMA nor local ordinance regulated or even contained the concept of a LLA. SMA Section 66412 was not amended until 1976 (effective January 1, 1977) to add LLAs as an exclusion to the SMA. Therefore, prior to 1977 there was no process in the code to effect a LLA. Boundaries that needed to be changed could be adjusted by one neighbor deeding a sliver, strip, or parcel to an adjoining neighbor. These slivers, strips, or parcels were not necessarily intended by the parties to be separately developed, but were added to the adjoining neighbor's land holding. Although these conveyances often did not meet minimum lot size, they were not considered an illegal lot by the County, but rather as an addition to a neighboring lot. The parcel transfer history from Chalkey to Scanlon in 1969 could fit the pattern of a LLA (i.e.; neighbor to neighbor transfer, the transfer parcel does not meet the minimum size to be a legal lot, and the grantee neighbor eventually builds over the former lot line).

In subsequent grant deeds, APNs 009-231-**013**-000 and 009-231-**023**-000 have consistently been described separately, thereby indicating the existence of two parcels. However, describing parcels separately would only validate individual parcels if both parcels were legally created. As described above, APN 009-231-**023**-000 was not legally created in 1969 as a standalone parcel (albeit, it could be viewed as a legal "LLA" of that era). Separately describing an illegally created parcel does not make it legal, and this is consistent with a past County determination.

Additionally, no separate address has ever been requested for or assigned to APN 009-231-**023**-000. The address book maintained by RMA-Development Services lists 25735 Mesa Drive as the address for both APNs 009-231-**013**-000 and 009-231-**023**-000.

Building Permit History

In the past, the County has relied on building permit or development history to assist in determining lot legality. However, in this case, no independent development has ever occurred on APN 009-231-**023**-000. Of 5 past building permits issued by the County since 1977, all 5 list APN 009-231-**013**-000 as the subject parcel of the building permit, and only two list or include APN 009-231-**023**-000. In each case, any permitted activity affecting APN 009-231-**023**-000 is identified as ancillary to activity occurring on APN 009-231-**013**-000. Specifically:

- Building Permit 27273 (issued January 24, 1977). Permitted the addition to the single-family dwelling located on APN 009-231-**013**-000 crossed over the boundary onto APN 009-231-**023**-000; however, no reference is made to APN 009-231-**023**-000. The permit application, inspection card, and site plan only list APN 009-231-**013**-000 as the subject parcel. The site plan shows the entire Scanlon land holding (i.e., both APNs) as one lot.
- Building Permit 29567 (issued December 20, 1979). Interior remodel of the existing single-family dwelling. The permit application, inspection card, and site plan list both APNs as the subject property. However, the site plan shows the entire Scanlon land holding (i.e., both APNs 009-231-**013**-000 and 009-231-**023**-000) as one lot.
- Building Permit 14CP01419 (issued July 24, 2014; voided July 6, 2016). Demolition permit for the swimming pool located on APN 009-231-**013**-000. The permit and the related owner's letter reference only APN 009-231-**013**-000 as the subject parcel.
- PLN160434 (approved June 30, 2016). This Coastal Design Approval Application Form lists only APN 009-231-**013**-000 as the subject parcel. County staff correctly indicated the development involves a legal lot that existed in 1964 (i.e., APN 009-231-**013**-000). The comment made by County staff regarding "structures are encroaching adjacent lot – this will correct setbacks," is a true statement in the context of the original legal lot (APN 009-231-**013**-000) and APN 009-231-**023**-000. The site plan data indicates a lot size of 17,512 square feet which equals the approximate combined area of APNs 009-231-**013**-000 and 009-231-**023**-000.
- Building Permit 16CP01870 (issued July 26, 2016). This demolition permit lists only APN 009-231-**013**-000 as the subject parcel. The site plan was the same as submitted for PLN160434.

Therefore, the County has never approved nor issued any permits solely or primarily for the benefit of APN 009-231-**023**-000 within the reasonable interpretation of "approved for development" pursuant to SMA Section 66499.34. Primary development has always been connected to APN 009-231-**013**-000. The applicant for every permit issued, either graphically or in written form, represented that only one parcel was the subject parcel. The permit history facts support a possible conclusion that the 1969 conveyance was understood by the respective owners and their successors in interest to be what is now known as a LLA. Therefore, APNs 009-231-**013**-000 and 009-231-**023**-000 could be considered one combined legal lot of record.

However, although the historical evidence points to a LLA, this conclusion is problematic. The County has no clear or explicit evidence that a LLA or lot merger was the intent of the parties. Although conveyed together under common ownership, APNs 009-231-**013**-000 and 009-231-**023**-000 have always been identified or described separately in every grant deed transferring ownership since 1969. One possible remedy to resolve this situation would be for the County to issue a conditional certificate of compliance, as requested by the Applicant and provided for in SMA Section 66499.35(b) and MCC Section 19.14.050.A. Pursuant to these Sections, if a local agency/County determines that the real property does not comply with the provisions of this division or of local ordinances enacted pursuant to this division, it shall issue a conditional certificate of compliance and may impose any conditions as would have been applicable to the division of the property at the time the applicant acquired interest therein. Furthermore, fulfillment and implementation of the conditions shall be required prior to the parcel in question being deemed a legal parcel for the purpose of sale, lease, or financing. Therefore, staff has recommended applicable conditions, which are attached to the draft resolution.

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