

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

In the matter of the application of:

PHILLIPS (PLN160344)

RESOLUTION NO. 18-034

Resolution by the Monterey County Planning Commission recommend that the Board of Supervisors adopt a Resolution:

- 1) Finding the project is an Open Space Contract which qualifies as a Class 17 Categorical Exempt per CEQA Guidelines Section 15317, and that no exceptions exists pursuant to 15300.2;
- 2) Approve an Amendment to Lot 2 as shown on the Final Map of Santa Lucia Preserve, Phase F for the Layn R. and Kathryn H. Phillips TR property;
[PLN160344 Phillips, Layn R. and Kathryn H. TR (APN: 239-151-002-000) Greater Monterey Peninsula Area Plan

WHEREAS, in 2013, the owners engaged the services of a contractor (RJL Construction) to construct rear-yard improvements which included: a new 620 square foot covered patio, terrace with a hot tub, outdoor fireplace and a small dog kennel area. This work would have been subject to a Design Approval and building permit, however no permits were obtained. After the rear yard improvements were completed, the owners were notified by the Santa Lucia Preserve that improvements were built without HOA design review or approval. A subsequent search of County records also confirmed that no local permits were obtained for this work.

WHEREAS, parcels within the Santa Lucia Preserve were designed with building envelopes, called Homeland Boundaries, that establish limits where development can occur on the lot. A corner of the house was constructed outside of the existing boundary. It appears that this was done inadvertently based on what appears to have been misinformation from the contractor. This is a request by the homeowner to adjust the Homeland Boundary on this parcel to accommodate these improvements, and would reduce the net area of Homeland Boundary by 126 square feet. The area of the Homeland Boundary being dedicated has trees and slopes that would have been affected had they built in that area. Therefore, there is a benefit to dedicating this area to the Preserve.

WHEREAS, upon notification, the current owners immediately applied for the necessary permits/approvals to correct the unpermitted additions. Along with the work being unpermitted, it was found that the improvements encroached outside of the designated Homeland Boundary by approximately 2,040 square feet for this parcel shown on the Final Map of Santa Lucia Preserve, Phase F. The owners also began to address this encroachment with the Santa Lucia Preserve Association (HOA/DRB), the Santa Lucia Conservancy. The HOA/DRB has since approved the encroachment. The Santa Lucia Conservancy met with the County and ultimately determined that that a subdivision map amendment was required to correct the encroachment.

WHEREAS, Pursuant to Section 19.08.015.A.7 of the Subdivision Ordinance of Monterey County (Title 19), modifications to a parcel map or final map shall be considered through consecutive public hearings by the appropriate decision making body(s) that approved or recommended approval of the original tentative map or tentative parcel map. The appropriate decision making body shall confine the hearing to consideration of, and action on, the proposed modification.

WHEREAS, On December 13, 1995, the Planning Commission recommended that the Board of Supervisors certify the EIR and approve the Combined Development Permits for the development of this parcel. Final approval by the Board of Supervisors was on August 26, 1997. Therefore, the Planning Commission made the recommendation to the Board of Supervisors on the proposed adjustment to this homeland boundary.

WHEREAS, the amendment of Lot 2 as shown on the Final Map of Santa Lucia Preserve, Phase F, consists of moving the homeland boundary to include the unpermitted additions. The existing homeland boundary consists of 3,697 square feet of developable space. Once the boundary is adjusted, the new homeland boundary will consist of 3,571 square feet, a reduction of 126 square feet of developable space. The Santa Lucia Preserve is in support of this re-alignment finding that it provides a net benefit by increasing the preserved Open Land area. The exchange of land through the re-alignment of the Homeland Boundary would bring the development into compliance. Alternatively, the homeowner would need to demolish any improvements extending beyond the Homeland Boundary and restore that area.

DECISION

NOW THEREFORE BE IT RESOLVED THAT, the Planning Commission finds that allowing the realigned Homeland boundary for Lot 2 would be an appropriate solution and support the modifications.

BE IT FURTHER RESOLVED that the Planning Commission makes and adopts the following findings in support of the map amendment:

FINDING: **CONSISTENCY** –The Project, as conditioned, is consistent with the applicable plans and policies which designate this area as appropriate for development.

EVIDENCE: a) The project is an Amendment of Lot 2 of Lot F of the Santa Lucia Preserve, Phase "F" Final Map to adjust the Homeland boundary and Scenic Easement to reflect current site conditions

 b) During the course of review of this application, the project has been reviewed for consistency with the text, policies, and regulations in:

- the 2010 Monterey County General Plan;
- Monterey County Zoning Ordinance (Title 21), and
- Greater Monterey Peninsula Area Plan.

 No conflicts were found to exist. No communications were received during the course of review of the project indicating any inconsistencies with the text, policies, and regulations in these documents.

 c) The property is located at 2 Red Tail Trace, Carmel (Assessor's Parcel Number 239-151-002-000), Greater Monterey Peninsula Area Plan. The parcel is zoned RC/40-D-S (Resource Conservation, 40 acres per unit, with

Design Control and Site Plan Review Overlays), which allow accessory structures accessory to an existing single family dwelling. Therefore, the project is an allowed land use for this site.

FINDING: **NO VIOLATIONS** - The subject property is now in compliance with all rules and regulations pertaining to zoning uses, subdivision, and any other applicable provisions of the County's zoning ordinance. No violations exist on the property.

EVIDENCE: a) Staff reviewed Monterey County RMA - Planning and Building Services Department records and confirmed that necessary permits were applied for and approved to rectify the unpermitted additions to the site.
b) Staff conducted a site inspection on December 13, 2016 and researched County records to assess the subject property.

FINDING: **CEQA - CATEGORICALLY EXEMPT**

The project is categorically exempt from environmental review and no unusual circumstances were identified to exist for the proposed project.

EVIDENCE: a) CEQA Guideline Section 15317, Class 17 consists of the acceptance of easements or fee interest in order to maintain the open space character of an area. This application is not reducing the existing open space easement but simply realigning the easement with a correction to the homeland boundary and a minor addition to the easement.

FINDING: **SUBDIVISION MAP ACT.**

EVIDENCE: a) The prior configuration of homeland boundary is no longer appropriate as explained in this Resolution and in the Staff Report provided to the Planning Commission at its August 29, 2018 meeting.
b) The modification to the final map will result in the improvements being within the homeland boundary and increase the open space for the reasons explained in the recitals.
c) The modification does not impose any additional burden on the present fee owner of the property, who requested this amendment. It also does not alter any right, title or interest in the real property reflected on the recorded map because this change does not affect other parcels in the subdivision.

BE IT FURTHER RESOLVED based on the above facts and circumstances, that the Planning Commission does hereby recommend that the Board of Supervisors:

- 1) Find the project qualifies as a Class 17 Categorical Exempt per CEQA Guidelines Section 15317, and that no exceptions exist pursuant to 15300.2;
- 2) Amend Lot 2 as shown on the Final Map of Santa Lucia Preserve, Phase F for the Layn R. and Kathryn H. Phillips TR property.


In general conformance with the attached plans attached hereto and incorporated herein by reference, subject to the conditions of approval.

PASSED AND ADOPTED this 29th day of August, 2018 upon motion of Commissioner Ambriz, seconded by Commissioner Getzelman the following vote:

AYES: Ambriz, Duflock, Getzelman, Gonzalez, Mendoza, Padilla, Roberts, Vandever, Wizard

NOES: None

ABSENT: Diehl
ABSTAIN: None


Jacqueline R. Onciano, Planning Commission Secretary

COPY OF THIS DECISION MAILED TO APPLICANT ON SEP 10 2018.

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 SEP 20 2018

(Coastal Projects)

THIS PROJECT IS LOCATED IN THE COASTAL ZONE AND IS APPEALABLE TO THE COASTAL COMMISSION. UPON RECEIPT OF NOTIFICATION OF THE FINAL LOCAL ACTION NOTICE (FLAN) STATING THE DECISION BY THE FINAL DECISION MAKING BODY, THE COMMISSION ESTABLISHES A 10 WORKING DAY APPEAL PERIOD. AN APPEAL FORM MUST BE FILED WITH THE COASTAL COMMISSION. FOR FURTHER INFORMATION, CONTACT THE COASTAL COMMISSION AT (831) 427-4863 OR AT 725 FRONT STREET, SUITE 300, SANTA CRUZ, CA

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.

NOTES

1. You will need a building permit and must comply with the Monterey County Building Ordinance in every respect.

Additionally, the Zoning Ordinance provides that no building permit shall be issued, nor any use conducted, otherwise than in accordance with the conditions and terms of the permit granted or until ten days after the mailing of notice of the granting of the permit by the appropriate authority, or after granting of the permit by the Board of Supervisors in the event of appeal.

Do not start any construction or occupy any building until you have obtained the necessary permits and use clearances from Monterey County RMA-Planning and RMA-Building Services Department office in Salinas.

2. This permit expires 3 years after the above date of granting thereof unless construction or use is started within this period.

Monterey County RMA Planning

Conditions of Approval/Implementation Plan/Mitigation Monitoring and Reporting Plan

PLN160344

1. PD001 - SPECIFIC USES ONLY

Responsible Department: RMA-Planning

Condition/Mitigation Monitoring Measure: This Amendment to Lot 2 of Santa Lucia Preserve, Phase F (PLN160344) allows an amendment to the Homeland Boundary to accommodate construction outside of the recorded boundary. The property is located at 2 Red Tail Trace, Carmel (Assessor's Parcel Number 239-151-002-000), Greater Monterey Area Plan. This permit was approved in accordance with County ordinances and land use regulations subject to the terms and conditions described in the project file. Neither the uses nor the construction allowed by this permit shall commence unless and until all of the conditions of this permit are met to the satisfaction of the Director of RMA - Planning. Any use or construction not in substantial conformance with the terms and conditions of this permit is a violation of County regulations and may result in modification or revocation of this permit and subsequent legal action. No use or construction other than that specified by this permit is allowed unless additional permits are approved by the appropriate authorities. To the extent that the County has delegated any condition compliance or mitigation monitoring to the Monterey County Water Resources Agency, the Water Resources Agency shall provide all information requested by the County and the County shall bear ultimate responsibility to ensure that conditions and mitigation measures are properly fulfilled. (RMA - Planning)

Compliance or Monitoring Action to be Performed: The Owner/Applicant shall adhere to conditions and uses specified in the permit on an ongoing basis unless otherwise stated.

2. CC01 INDEMNIFICATION AGREEMENT

Responsible Department: County Counsel

Condition/Mitigation Monitoring Measure: The property owner agrees as a condition and in consideration of approval of this discretionary development permit that it will, pursuant to agreement and/or statutory provisions as applicable, including but not limited to Government Code Section 66474.9, defend, indemnify and hold harmless the County of Monterey or its agents, officers and employees from any claim, action or proceeding against the County or its agents, officers or employees to attack, set aside, void or annul this approval, which action is brought within the time period provided for under law, including but not limited to, Government Code Section 66499.37, as applicable. The property owner will reimburse the County for any court costs and attorney's fees which the County may be required by a court to pay as a result of such action. The County may, at its sole discretion, participate in the defense of such action; but such participation shall not relieve applicant of his/her/its obligations under this condition. An agreement to this effect shall be recorded upon demand of County Counsel or concurrent with the issuance of building permits, use of property, filing of the final map, recordation of the certificates of compliance whichever occurs first and as applicable. The County shall promptly notify the property owner of any such claim, action or proceeding and the County shall cooperate fully in the defense thereof. If the County fails to promptly notify the property owner of any such claim, action or proceeding or fails to cooperate fully in the defense thereof, the property owner shall not thereafter be responsible to defend, indemnify or hold the County harmless. (County Counsel)

Compliance or Monitoring Action to be Performed: Upon demand of County Counsel or concurrent with the issuance of building permits, use of the property, recording of the final/parcel map, or recordation of Certificates of Compliance, whichever occurs first and as applicable, the Owner/Applicant shall submit a signed and notarized Indemnification Agreement to the County Counsel for review and signature by the County.

Proof of recordation of the Indemnification Agreement, as outlined, shall be submitted to the Office of County Counsel.

3. SPPW001 - AMENDING MAP FOR HOMELAND BOUNDARY

Responsible Department: RMA-Public Works

Condition/Mitigation Monitoring Measure: Prior to recordation of the Amending Map, the Amending map shall be reviewed and certified by the County Surveyor. The applicant shall submit the Amended Map the RMA for review and certification. (RMA Planning)

Compliance or Monitoring Action to be Performed: The applicant/owner shall submit to the RMA Planning department an Amended Map for review and certification by the County Surveyor prior to recordation.

OWNER’S STATEMENT

WE HEREBY CERTIFY THAT WE ARE THE OWNERS OF, OR HAVE SOME RIGHT, TITLE OR INTEREST IN AND TO, THE REAL PROPERTY INCLUDED WITHIN LOT 2, AND THAT WE ARE THE ONLY PERSONS WHOSE CONSENT IS NECESSARY TO PASS A CLEAR TITLE TO SAID PROPERTY, AND WE CONSENT TO THE PREPARATION AND RECORDATION OF SAID MAP AND AMENDMENT TO THE SUBDIVISION AS SHOWN.

WE ALSO HEREBY DEDICATE FOR PUBLIC USE A BLANKET EASEMENT FOR PUBLIC UTILITIES INCLUDING BUT NOT LIMITED TO ELECTRICITY, GAS, COMMUNICATION, WATER INCLUDING WATER WELLS, AND THEIR NECESSARY APPURTENANCES ON, OVER OR UNDER ALL LAND WITHIN LOT 2, EXCEPT THAT LAND DESIGNATED AS "HOMELAND" AS SHOWN ON SAID MAP, SAID EASEMENT IS TO BE KEPT FREE FROM BUILDINGS AND STRUCTURES INTERFERING WITH THE PURPOSE OF THE EASEMENT.

WE ALSO HEREBY DEDICATE FOR PUBLIC USE A BLANKET EASEMENT FOR SANITARY SEWERS, SEPTIC TANKS AND NECESSARY APPURTENANCES INCLUDING LEACH FIELDS AND REPLACEMENT AREAS ON, OVER OR UNDER ALL LAND WITHIN LOT 2, EXCEPT THAT LAND DESIGNATED AS "HOMELAND" AS SHOWN ON SAID MAP, SAID EASEMENT IS TO BE KEPT FREE FROM BUILDINGS AND STRUCTURES INTERFERING WITH THE PURPOSE OF THE EASEMENT.

WE ALSO HEREBY DEDICATE FOR PUBLIC USE A BLANKET EASEMENT FOR NATURAL DRAINAGE AND NECESSARY STORM DRAIN APPURTENANCES ON, OVER OR UNDER ALL LAND WITHIN LOT 2, EXCEPT THAT LAND DESIGNATED AS "HOMELAND" AS SHOWN ON SAID MAP, SAID EASEMENT IS TO BE KEPT FREE FROM BUILDINGS AND STRUCTURES INTERFERING WITH THE PURPOSE OF THE EASEMENT.

OWNER:

LAYN R. PHILLIPS AND KATHRYN H. PHILLIPS, TRUSTEES OF THE PHILLIPS REVOCABLE TRUST DATED APRIL 1, 1998

_____, TRUSTEE

_____, TRUSTEE

NOTARY ACKNOWLEDGMENT

STATE OF _____

COUNTY OF _____

ON _____ BEFORE ME,

PERSONALLY APPEARED _____

PERSONALLY KNOWN TO ME OR PROVED TO ME ON THE BASIS OF SATISFACTORY EVIDENCE TO BE THE PERSON(S) WHOSE NAME(S) IS/ARE SUBSCRIBED TO THE WITHIN INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE/SHE/THEY EXECUTED THE SAME IN HIS/HER/THEIR AUTHORIZED CAPACITY(IES), AND THAT BY HIS/HER/THEIR SIGNATURE(S) ON THE INSTRUMENT THE PERSON(S), OR THE ENTITY UPON BEHALF OF WHICH THE PERSON(S) ACTED, EXECUTED THE INSTRUMENT.

WITNESS MY HAND AND OFFICIAL SEAL.

SIGNATURE OF NOTARY
NAME OF NOTARY: _____
COMMISSION NO. _____
EXPIRATION DATE: _____

RECORDER’S STATEMENT

FILED THIS ____ DAY OF _____, 2006,
AT ____ M. IN VOLUME ____ OF CITIES AND TOWNS, AT PAGE ____ AT
THE REQUEST OF WHITSON ENGINEERS.

SIGNED: _____
COUNTY RECORDER

BY: _____
DEPUTY

SERIAL NUMBER: _____ FEE: _____

COUNTY SURVEYORS STATEMENT

I, MICHAEL GOETZ, COUNTY SURVEYOR OF THE COUNTY OF MONTEREY, HEREBY STATE THAT I HAVE EXAMINED THIS MAP, THAT THE SUBDIVISION SHOWN HEREON IS SUBSTANTIALLY THE SAME AS IT APPEARED ON THE FINAL MAP AND ANY APPROVED ALTERATIONS THEREOF, APPROVED BY THE MONTEREY COUNTY BOARD OF SUPERVISORS ON NOVEMBER 25, 2003; THAT ALL OF THE PROVISIONS OF THE CALIFORNIA SUBDIVISION MAP ACT, AS AMENDED AND OF THE MONTEREY COUNTY CODE, TITLE 19, HAVE BEEN COMPLIED WITH, AND THAT SAID MAP IS TECHNICALLY CORRECT.

MICHAEL K. GOETZ L.S. 5667
COUNTY SURVEYOR
COUNTY OF MONTEREY, STATE OF CALIFORNIA

SURVEYOR’S STATEMENT

THIS AMENDING MAP WAS PREPARED BY ME OR UNDER MY DIRECTION AND IS BASED UPON A FIELD SURVEY OF THE AMENDED HOMELAND BOUNDARY IN CONFORMANCE WITH THE REQUIREMENTS OF THE SUBDIVISION MAP ACT AND LOCAL ORDINANCE AT THE REQUEST OF KATHRYN H. PHILLIPS ON NOVEMBER 30, 2015. I HEREBY STATE THAT THIS AMENDING MAP SUBSTANTIALLY CONFORMS TO THE APPROVED FINAL MAP AND ANY APPROVED ALTERATIONS THEREOF, AND ALL MONUMENTS ARE OF THE CHARACTER AND OCCUPY THE POSITIONS INDICATED, AND THAT THE MONUMENTS ARE SUFFICIENT TO ENABLE THE SURVEY TO BE RETRACED.

RICHARD P WEBER L.S. 8002



TRACT NO. 1406
AMENDING FINAL MAP

THIS MAP AMENDS LOT F2 AS SHOWN ON THE FINAL MAP
OF
SANTA LUCIA PRESERVE
PHASE F
A PRIVATE ROAD SUBDIVISION IN RANCHO SAN FRANCISQUITO, MOUNT DIABLO BASE & MERIDIAN, OFFICIAL RECORDS OF MONTEREY COUNTY, CALIFORNIA AS FILED IN VOLUME 22 CITIES AND TOWNS AT PAGE 43 ON NOVEMBER 26, 2003 AS PREPARED BY THOMPSON-HYSELL ENGINEERS FOR THE SANTA LUCIA PRESERVE, MONTEREY COUNTY CALIFORNIA. AMENDMENT CONSISTS OF THE RELOCATION OF THE HOMELAND BOUNDARY ON LOT F2. ALL INFORMATION SHOWN (ACCEPTING AMENDMENT) IS AS SHOWN ON THE RECORDED FINAL MAP

PREPARED BY:
WE WHITSON ENGINEERS
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