

MONTEREY COUNTY

RESOURCE MANAGEMENT AGENCY

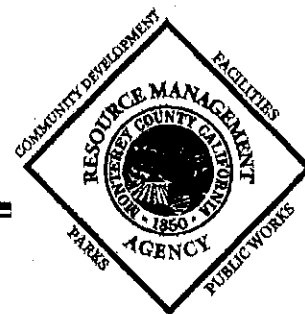
Carl P. Holm, AICP, Director

LAND USE & COMMUNITY DEVELOPMENT | PUBLIC WORKS & FACILITIES | PARKS

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MEMORANDUM

Date: August 28, 2108

To: Chair Vandevere and Planning Commissioners

From: Elizabeth Gonzales, Senior Planner *ELG*

Subject: Phillips PLN160344
Agenda Item #3

cc: Wendy Strimling
Jacqueline Onciano
Brandon Swanson

Due to formatting errors, please find a Revised Staff Report and Resolution with conditions attached for your review of Agenda Item #3 of the Planning Commission Hearing on August 29, 2018.

Thank you for your understanding.

Planning Commission
August 29, 2018

...Title

PLN160344/PHILLIPS

Public Hearing to consider amending the Homeland Boundary of Lot 2 as shown on the Final Map of Santa Lucia Preserve, Phase F to accommodate construction outside of the recorded boundary;

Project Location: 2 Red Tail Trace, Carmel, Greater Monterey Peninsula Area Plan

Proposed CEQA Action: Categorically Exempt per CEQA Guidelines Section 15317

...Report

RECOMMENDATION:

It is recommended that the Planning Commission adopt a resolution (**Exhibit A**) to recommending that to the Board of Supervisors:

- a. Find the project is an Open Space Contract which qualifies as a Class 17 Categorical Exempt per CEQA Guidelines Section 15317, and that no exceptions exist pursuant to 15300.2;
- b. ~~Accept the Amended Map for~~ Approve an Amendment to Lot 2 as shown on the Final Map of Santa Lucia Preserve, Phase F (**Exhibit B**) for the Layn R. and Kathryn H. Phillips TR property;
- c. ~~Authorize the Chair of the Board of Supervisors to execute the Amended Final Map for Lot 2 as shown on the Final Map of Santa Lucia Preserve, Phase F; and~~
- d. ~~Direct the Clerk of the Board to submit the Amended Final Map to the County Recorder for recordation.~~

PROJECT INFORMATION:

Owner: Layn R. and Kathryn H. Phillips TR

Applicant: Maureen Wruck Planning Consultants, LLC

APN: 239-151-002-000

Plan Area: Greater Monterey Peninsula Area Plan

Flagged and Staked: No

SUMMARY:

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.

This adjustment would not create any potential for development in areas with resources or hazards and would increase the undevelopable area of the parcel. Therefore, staff finds that allowing the realigned Homeland Boundary for Lot 2 would be an appropriate solution and recommends the Planning Commission support the modification. If the map amendment were denied, the homeowner must demolish all improvements extending beyond the Homeland Boundary and restore that area.

DISCUSSION:

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.

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 a subdivision map amendment was required to correct the encroachment.

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. 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 must make a recommendation to the Board of Supervisors on the proposed adjustment to this homeland boundary.

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.

Staff evaluated neighboring privacy with moving the homeland boundary slightly closer to the adjacent parcel. The applicants also own the adjoining parcel located near the additions, so they can manage where development were to occur on that lot and any new owner would be able to see the extent of these improvements.

The extension of the boundary would not enter into any areas of slopes or ESHA that may have been intended to be protected. Any easements on the property were prepared separately of the County and will be handled between outside parties.

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 resolution would increase the

existing open space easement but realigning the easement in accordance with the new Homeland Boundary.

OTHER AGENCY INVOLVEMENT:

The Office of the County Counsel has approved the Map Amendment to amend Lot 2 as shown on the Final Map of Santa Lucia Preserve, Phase F.

FINANCING:

Funding for staff time associated with this project is included in the FY17-18 Adopted Budget for the Planning Department.

Prepared by: Elizabeth Gonzales, Associate Planner, ext. 5102

Reviewed by: Brandon Swanson, RMA-Planning Services Manager, ext. 5334

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

cc: Front Counter Copy; Carl P. Holm, Director-Planning Department; Brandon Swanson, Planning Services Manager; Layn R. and Kathryn H. Phillips TR, Owners; Joel Panzer, Maureen Wruck and Associates, Applicant; John Fossum, Owners' Attorney; The Open Monterey Project; LandWatch; Project File PLN160344.

ATTACHMENTS:

Exhibit A	Draft Resolution
Exhibit B	Amended Final Map Lot 2, Phase F, dated May 2016
	<ul style="list-style-type: none">• Lot F2 Homeland Area of Adjustment Diagram• Lot F2 Homeland Area of Adjustment with structures

**EXHIBIT A
DRAFT RESOLUTION**

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

In the matter of the application of:

PHILLIPS (PLN150805)

RESOLUTION NO. ---

Resolution by the Monterey County Planning Commission recommending 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) ~~Accepting the Amended Map for~~ 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;
- 3) ~~Authorizing the Chair of the Board of Supervisors to execute the Amended Final Map for Lot 2 as shown on the Final Map of Santa Lucia Preserve, Phase F; and~~
~~Directing the Clerk of the Board to submit the Amended Final Map to the County Recorder for recordation~~
[PLN160344 Phillips, Layn R. and Kathryn H. TR (APN: 239-151-002-000) Greater Monterey Peninsula Area Plan

~~The Planning Commission adopts this Resolution with respect to the following facts and circumstances:~~

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 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

~~**WHEREAS**, for these reasons~~ **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 actions in this Resolution: 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 to of the Santa Lucia Preserve, Phase "F" Final Map to adjust the Homeland boundary and Scenic Easement for Lot F2 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 above in this Resolution and in the Staff Report provided to the Planning Commission at its August 29, 2018 meeting.
 - b) The modifications to the final map is approved because it will result in the improvements being within the homeland boundary and increase the open space for the reasons explained in the recitals. do not make any of the conditions of the map no longer appropriate or necessary and the modification do not impose any additional burden on the present fee owner of the property, nor alter any right, title or interest in the real property reflected on the recorded map.

Monterey County RMA Planning

DRAFT 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. PW3 - Prior to Final Map

Responsible Department: RMA-Public Works

**Condition/Mitigation
Monitoring Measure:**

Prior to recordation of Final Amended Map, Amended map shall be reviewed and approved by Public Works.

**Compliance or
Monitoring
Action to be Performed:**

Submit for review and approval an Amended Final Map to Public Works.