



Legislation Details (With Board Report)

File #: RES 21-038 **Name:** PLN170765 - McIntosh
Type: BoS Resolution **Status:** Scheduled PM
File created: 2/12/2021 **In control:** Board of Supervisors
On agenda: 2/23/2021 **Final action:**

Title: Public hearing (continued from February 9, 2021) to consider an appeal by Leonard McIntosh from the September 30, 2020 Planning Commission decision approving an amendment to a Combined Development Permit to allow construction of a 22,137 square foot, two-story, 15-unit residential apartment building, on vacant Lot 5 of the Laguna Seca Office Park (LSOP) and approving a General Development Plan for Lots 2-7, 9, 11, 15, & 16, and portions of Lots 10 [Condominium Units 103 & 104] and 19 [Condominium Unit 002]] of the LSOP to allow residential and/or commercial uses on any single lot, such that the cumulative total of residential square footage across all lots covered by the General Development Plan does not exceed the cumulative total commercial square footage across the LSOP.

Proposed CEQA Action: Consider an Addendum together with the Final Environmental Impact Report for the Laguna Seca Office Park in accordance with CEQA Guidelines Section 15164.
[PLN170765 -Leonard H. McIntosh Family Trust, 24491 Citation Court, Monterey, Greater Monterey Peninsula Area Plan. (APNs: 173-121-002, 173-121-003, 173-121-004, 173-121-005 (Lot 5), 173-121-023, & 173-121-026, 173-121-009, 173-121-011, 173-121-015, 173-121-016, 173-123-001, 173-123-003, 173-123-006, & 173-124-001)]

Sponsors:

Indexes:

Code sections:

Attachments: 1. Board Report, 2. Attachment A - Discussion, 3. Attachment B - Maps, 4. Attachment C - Draft Resolution, 5. Attachment D - Planning Commission Resolutions, 6. Attachment E - Notice of Appeal dated October 26, 2020, 7. Attachment F - Addendum to LSOP FEIR, 8. Attachment G - LSOP FEIR, 9. Attachment H - Housing Advisory Committee Minutes of August 26, 2020, 10. Attachment J - Technical Reports, 11. Attachment K - Correspondence, 12. PowerPoint Presentation, 13. Item No. 17 McIntosh Appeal, 14. Memo to the Board, 15. Completed Board Oder Item 17

Date	Ver.	Action By	Action	Result
2/23/2021	1	Board of Supervisors	continued	Pass

Public hearing (continued from February 9, 2021) to consider an appeal by Leonard McIntosh from the September 30, 2020 Planning Commission decision approving an amendment to a Combined Development Permit to allow construction of a 22,137 square foot, two-story, 15-unit residential apartment building, on vacant Lot 5 of the Laguna Seca Office Park (LSOP) and approving a General Development Plan for Lots 2-7, 9, 11, 15, & 16, and portions of Lots 10 [Condominium Units 103 & 104] and 19 [Condominium Unit 002]] of the LSOP to allow residential and/or commercial uses on any single lot, such that the cumulative total of residential square footage across all lots covered by the General Development Plan does not exceed the cumulative total commercial square footage across the LSOP.

Proposed CEQA Action: Consider an Addendum together with the Final Environmental Impact Report for the Laguna Seca Office Park in accordance with CEQA Guidelines Section 15164.
[PLN170765 -Leonard H. McIntosh Family Trust, 24491 Citation Court, Monterey, Greater Monterey Peninsula Area Plan. (APNs: 173-121-002, 173-121-003, 173-121-004, 173-121-005 (Lot 5), 173-121-023, & 173-121-026, 173-121-009, 173-121-011, 173-121-015, 173-121-016, 173-123-001, 173-123-003, 173-123-006, & 173-124-001)]

RECOMMENDATION:

It is recommended that the Board of Supervisors adopt a resolution (**Attachment C**) to:

- a) Deny the appeal by Leonard McIntosh from the September 30, 2020 Planning Commission decision approving an amendment to a Combined Development Permit to allow construction of a 22,137 square foot, two-story, 15-unit residential apartment building, on vacant Lot 5 of the Laguna Seca Office Park (LSOP) and approving a General Development Plan for Lots 2-7, 9, 11, 15, & 16, and portions of Lots 10 [Condominium Units 103 & 104] and 19 [Condominium Unit 002] of the LSOP;
- b) Certify the Board considered an Addendum together with the LSOP Final Environmental Impact Report (FEIR) in accordance with CEQA Guidelines Section 15164;
- c) Approve a General Development Plan (GDP) covering certain lots [Lots 2-7, 9, 11, 15, & 16, and portions of Lots 10 (Condominium Units 103 & 104) and 19 (Condominium Unit 002)] that allows residential and/or commercial uses on any single lot, such that the cumulative total of residential square footage across all lots covered by this GDP, does not exceed the cumulative total commercial square footage across all LSOP lots; and
- d) Approve an amendment to a Combined Development Permit (PLN020332, PC Resolution No. 12-035) to allow construction of a 22,137 square foot two-story 15-unit residential apartment building on Lot 5 of the LSOP, instead of a 20,306 square foot two-story professional office building, subject to the project satisfying the 4.9 (35%) requirement for total Affordable Units with Density Bonus accommodation as follows: 1) One (1) Very Low-Income; 2) Two (2) Moderate-Income; 3) One (1) Workforce II Income; and Waiver of 0.9 fractional unit in-lieu fee as a financial concession per Government Code Section 65915(d)(2)(A).

The attached draft Resolution includes findings and evidence for consideration (**Attachment C**). Staff recommends adoption of the resolution to deny the appeal and approve of the project subject to twenty-five (25) conditions of approval. If the Board desires to choose a different option, staff recommends the Board adopt a motion of intent and continue the hearing to a date certain for staff to return with a revised resolution.

PROJECT INFORMATION:

Agent: Anthony Lombardo, Anthony Lombardo & Associates

Property Owner: Leonard H. McIntosh Family Trust (LAGUNA SECA OFFICE PARK - LOT 5) and owners of Lots 2-7, 9, 11, 15, & 16, and portions of Lots 10 [Units 103 & 104] and 19 [Unit 002] of the Laguna Seca Office Park.

Zoning: Visitor Serving/Professional Office with Building Site, Urban Reserve, Design Control, and Site Plan Review Overlays [VO-B-6-UR-D-S]

Flagged and Staked: Yes

SUMMARY:

The hearing on the appeal was noticed for February 9, 2021. On February 9, 2021, at the County's request with appellant's concurrence, the Board of Supervisors continued the hearing to February 23, 2021.

The proposed General Development Plan (GDP) would allow those Laguna Seca Office Park (LSOP) lots that are covered by the GDP to be developed with residential-only use (e.g., an apartment building), provided the cumulative total square footage of residential use on the lots under the GDP does not exceed the cumulative total of commercial square footage across lots subject to the GDP (currently 152,978 square feet). A GDP is required to comply with zoning within the LSOP which designates the area for visitor serving and office uses. Within this zoning district, residential development is allowed, provided it does not exceed the commercial development. This GDP would shift focus from individual lots to the larger LSOP by crediting commercial development across multiple privately-owned Lots for the purposes of calculating allowable residential development. The Planning Commission supported this concept to provide multi-family housing opportunities in the unincorporated area of the County. Staff supports the approach as a means of providing housing;

however, the GDP applies to only portions of the LSOP (with some lots and units excluded), because not all lot owners agreed to be subject to the GDP, which make it less desirable from a staff perspective (not comprehensive).

If the GDP concept is approved, the applicant seeks to develop Lot 5 with a 15-unit residential apartment building; however, the applicant has appealed the Planning Commission decision because the applicant contests the affordable housing requirement. The Planning Commission applied the 35% requirement of the Development Evaluation System, which would equal 4.9 affordable/workforce units; however, by providing a financial incentive under Density Bonus law, the Commission required only four (28.57%) total Affordable Units with Density Bonus accommodation and waived the in-lieu fee for the 0.9 fractional unit. The appellant requests an inclusionary housing alternative of providing 2.8 (20%) total affordable units consisting of 1 Low-Income and 1 Moderate-Income unit and waiver of 0.8 fractional unit fee, or paying an in-lieu fee and building no on-site affordable units, based on the contention that applicant need provide only 20% affordable housing under County's inclusionary housing ordinance (Chapter 18.40 of the Monterey County Code).

Affordable Housing Options:

The main issue in the appeal is the amount of affordable housing required and method and timing of compliance. If the applicant provides at least one unit affordable to a very low income household, state law requires the County to provide a financial concession/incentive, which would allow the County to deviate from the percentage requirements of the General Plan but have the benefit of provision of a very low income unit. Affordable housing options include:

1. Four units: 1 Very Low, 2 Moderate, and 1 Workforce II (150-180% of median income), and waiver of in lieu -fee equivalent to 0.9 fractional unit (equivalent to 28.6% on-site affordable units plus incentive) (Planning Commission decision);
2. Three units: 1 Very Low and 2 Moderate and waiver of an in-lieu fee equivalent to 1.9 units (equivalent to 21% on-site affordable units plus incentive).
3. Two units: 1 Very Low and 1 Moderate and waiver of in-lieu fee equivalent to 2.9 units (equivalent to 14% on-site affordable units plus incentive).
4. Two units: 1 Low and 1 Moderate and payment of in-lieu fee equivalent to .8 fractional unit or payment of in-lieu fee equivalent to 2.8 units (2.8 is equivalent to 20% of 14 units). (Applicant request). Because the proposal does not include a very low unit, it does not qualify for eligibility for a financial concession/incentive.

Conditions of Approval:

Since the proposed GDP addresses development rights on several lots in the LSOP, County staff recommended, and the Planning Commission required, written permission for the GDP from any property owner subject to it. The applicant obtained written permission from several of the owners of lots within the LSOP. Consequently, the GDP applies to Lots 2-7, 9, 11, 15, & 16, and portions of Lots 10 [Units 103 & 104] and 19 [Unit 002]] of the LSOP. Portions of Lots represent condominium office units where individual owners of space within a Lot have agreed to the GDP while others have not. The appellant objects to a condition of approval (previously Condition No. 19 of PC resolution) requiring the GDP to be recorded on title on those lots. Notice of development restrictions must be recorded on title to provide notice to future owners of potential development restrictions. Instead of requiring recordation of the GDP itself, the appellant has proposed and staff has concurred that the record notice could also be accomplished through recordation of the Permit Approval Notice which shall refer to and contain legal descriptions of all the lots subject to the GDP. Staff has revised the proposed conditions of approval on this point. Thus, staff believes this issue of the appeal is resolved.

Affordable Housing Requirements

This project is subject to the Development Evaluation System (DES) because it is located outside of areas designated for growth in the *2010 General Plan* (i.e. not within Community Areas, Rural Centers, and

Affordable Housing Overlay districts). Pending formal adoption of procedures to implement the DES, the County has been implementing the DES through application of the specific criteria in the *2010 General Plan* Policy LU-1.19. Accordingly, a qualitative analysis has been completed for this project based on those criteria. As it relates to this appeal, the DES policy states:

“Residential development shall incorporate the following minimum requirements for developments [...] outside of a Community Area or Rural Center:

- 1) *35% affordable/Workforce housing (25% inclusionary; 10% Workforce) for projects of five or more units to be considered. [...].”*

The Planning Commission considered both the proposed LSOP GDP and Lot 5 apartment building using criteria set forth in Policy LU-1.19 to ascertain development fitness considering site-specific infrastructure and resource constraints. Although the project is not specifically within a targeted growth area, the Planning Commission, based on staff recommendation, found that the proposal shows development fitness at this location and would be consistent with the *2010 General Plan* upon adherence to the minimum requirement of 35% affordable/Workforce housing provision for residential developments, as set forth in the DES criteria. Ultimately, the Planning Commission approved this project, contingent upon the provision of the 35% affordable housing requirement applied by provision of 4 units and waiver of an in-lieu fee for the .9 fractional unit, as described above.

During review of this application, consideration has been given to other land use factors including but not limited to location of the project within an airport approach zone, congestion on roads in the vicinity, and limitations on water availability associated with the adjudicated Seaside groundwater basin. Additional details about these considerations are provided in the Addendum (**Attachment F**) and detailed discussion included as **Attachment A**.

Planning Commission Decision

This application was considered at a public hearing before the Planning Commission on August 14, 2019, and on February 12, August 12, and September 30, 2020. On September 30, 2020, after review of the application, all submitted documents, recommendation from the Housing Advisory Committee, and public testimony, the Planning Commission adopted a resolution to consider the Addendum to the LSOP FEIR, approve the General Development Plan to allow residential and/or commercial uses on any single lot for which the owner provided written agreement to the GDP, and approve an amendment to the previously approved Combined Development Permit to allow a 15-unit residential apartment building instead of a commercial office structure on Lot 5 of the LSOP, with an effective 28.57% affordability requirement (requiring 4 affordable/workforce units and waiving the 0.9 fractional unit). (**Attachment D1**, Monterey County Planning Commission Resolution No. 20-032). The recommendation from the Housing Advisory Committee is attached as (**Attachment H**). The Addendum to the LSOP FEIR is at **Attachment F**, and the original Combined Development Permit is attached at **Attachment D2**.

Appeal by Leonard McIntosh of September 30, 2020 Planning Commission Decision

Leonard McIntosh, represented by Anthony Lombardo & Associates, timely filed an appeal of the Planning Commission decision on the project (**Attachment E**). In general, the appeal contends that the 35% affordable housing obligation renders the project financially infeasible and that the applicant should be allowed the option to pay in-lieu fees at the time of building permit approval. Additionally, the appeal contends that:

- The project is not subject to the DES;
- There is substantial inconsistency in County inclusionary housing regulations and policies,
- A 35% inclusionary obligation is contrary to statewide housing policies,
- The DES 35% requirement creates internal inconsistency with the County’s certified Housing Element,

and

- The requirement for each property-owner affected by the GDP to record the GDP (previously Condition No. 19) is redundant of Condition No. 2 that requires the one subject project applicant to record a Permit Approval Notice that includes all affected properties.

These contentions are briefly addressed below and are discussed in further detail within the resolution (**Attachment C**).

Staff disagrees with the appeal contentions, except for the applicant's concern that Planning Commission Condition No. 19 was redundant. Staff believes this contention is resolved by modification of Condition No. 2 to require the Notice of Permit Approval include the APN and legal description of each lot affected by the GDP, and deletion of Condition No.19. Remaining contentions are discussed and responded to in detail in the draft resolution (**Attachment C**) and Discussion (**Attachment A**). In summary of staff 's response:

- Identification of the method of compliance with an inclusionary housing agreement at the time of the first discretionary approval is required. At the September 30, 2020 hearing, the applicant volunteered to build affordable units. The Planning Commission required a condition of approval to memorialize what was being approved, pursuant to Chapter 18.40.100.B of Monterey County Code. The Inclusionary Housing Ordinance does not allow deferral of decision on the method of compliance, unless the Board makes specific findings, supported by substantial evidence, that unusual or unforeseen circumstances justify deferring the decision on applicant' method of compliance with affordable housing requirements.
- The project is subject to Policy LU-1.19 of the *2010 General Plan*. General Plan policies apply to development applications with or without implementing regulations. The DES applies because the project is not located in a Community Area, Rural Center, or Affordable Housing Overlay district and includes development of more than 5 units;
- Affordable housing requirements will result in lower profit margins for the developer and longer time to recover costs of initial investments. Staff, the Housing Advisory Committee (HAC), and the Planning Commission (PC) all considered the *pro forma* data submitted by the applicant before making the decision/recommendation. The *pro forma* data itself shows a profit after 5 years. In addition, as recommended by the HAC and approved by the PC, the decision provides a financial incentive equating to a reduction in fees of approximately \$250,000 to reduce financial constraints for provision of affordable housing. On this issue, if the Board determines a greater level of financial incentive is necessary to make the project feasible, the Board could consider an alternative that increases the financial incentive provided to the developer (for example, options 2 or 3 outlined above);
- Inclusionary Housing regulations in Chapter 18.40 of the Monterey County Code should be updated to reflect the General Plan which, in the non-coastal zone, have requirements for 25% or 35% (depending on location), and over the last several years, Housing staff have begun a comprehensive review of the County's affordable housing policies. In the absence of an update to Chapter 18.40, General Plan policies govern because the General Plan predominates in the hierarchy of law;
- State Housing and Community Development did not state that the 35% requirement is contrary to law. The Housing Element is presumed legally valid once it has been certified by state HCD. State HCD requested that the County analyze the 35% housing policy (LU-1.19) in the constraints' analysis, either by amending the current Housing Element or by analyzing it in the next Housing Element cycle, which is coming up soon. Housing law does require considerations of regulatory constraints to providing housing in the Housing Element. Housing law also promotes the creation and protection of housing affordable to all income levels which staff's recommendation would accomplish.
- The 35% does not create an internal inconsistency with the Housing Element in this case. The appellant has reached out the State office of Housing and Community Development (CA HCD) for an opinion on this matter. CA HCD staff have responded to confirm that the 35% requirement in the DES policy is not

specifically discussed in the Housing Element (although it was part of the *2010 General Plan* policies already adopted when CA HCD certified the County's last Housing Element). CA HCD staff suggest adding a discussion of DES to the Housing Element. They did not opine on the application of policies specific to this project. In addition, the decision by the Planning Commission incorporates incentives that effectively reduce the financial obligation to make the project more feasible.

Staff has prepared a draft resolution (**Attachment C**) to deny the appeal, certify consideration of the Addendum along with the LSOP FEIR, approve the General Development Plan (PLN170765), and amend the Combined Development Permit (PLN020332, PC Resolution No. 12-035), essentially affirming the Planning Commission decisions. Alternatively, if the Board chooses to grant the appeal or chooses a different option for compliance with the County's affordable housing regulations, staff recommends that the Board continue the hearing to a date certain and adopt a motion of intent with direction to staff to prepare a new resolution with modified findings and evidence for Board consideration at the subsequent hearing.

DISCUSSION - A detailed discussion of the proposed project has been included in **Attachment A**.

CEQA

An Addendum (**Attachment F**) to the previously certified FEIR for the LSOP was prepared pursuant to Code of Regulations, Title 14, Section 15164 because some changes or additions are necessary but none of the conditions described in CEQA Guidelines Section 15162 calling for preparation of a subsequent EIR have occurred. The proposed GDP concentrating residential use, and calculating permissible residential and commercial use cumulatively across the lots subject to the GDP, is a change in the project from what was analyzed in the LSOP EIR. However, this change will not introduce significant new impacts and in fact, reduces the severity of impacts to water use and traffic from what was previously analyzed.

OTHER DEPARTMENT INVOLVEMENT:

- Environmental Health Bureau
- County Counsel
- HCD-Public Works
- HCD-Environmental Services
- Monterey County Regional Fire District
- HCD - Housing & Community Development

FINANCING:

Funding for staff time associated with this appeal is included in the FY 20-21 Adopted Budget for HCD-Planning. The appellant paid the appeal fee of \$3,540.

BOARD OF SUPERVISORS STRATEGIC INITIATIVES:

This action represents effective and timely response to our HCD customers. Processing this application in accordance with all applicable policies and regulations also provides the County accountability for proper management of our land resources.

Check the related Board of Supervisors Strategic Initiatives:

- Economic Development
- Administration
- Health & Human Services
- Infrastructure
- Public Safety

Prepared by: Jaime Scott Guthrie, AICP, Associate Planner, ext. 6414

Reviewed by: Craig Spencer, HCD-Planning Services Manager

Approved by: Melanie Beretti, Housing and Special Programs Services Manager

The following attachments on file with the Clerk of the Board:

Attachment A Discussion

Attachment B Maps
B1 - Vicinity

B2 - Context

B3 - LSOP

Attachment C Draft Resolution including:

- General Development Plan
- Conditions of Approval
- Plan Set
- Colors + Materials

Attachment D Planning Commission Resolutions

D1 - No. 20-032

D2 - No. 12-035

Attachment E Notice of Appeal dated October 26, 2020

Attachment F Addendum to LSOP FEIR

Attachment G LSOP FEIR

Attachment H Housing Advisory Committee Minutes of August 26, 2020

Attachment J Technical Reports

J1 - Geotechnical

J2 - Drainage Report Update

J3 - Trip Generation Study

J4 - Forest Management Plan

J5 - Traffic Study Update

Attachment K Correspondence

K1 - from Shannan West, CA HCD to Monterey County HCD

K2 - from Kelly McCarthy Sutherland, Anthony Lombardo and Assoc.

K3 - from Monterey County HCD to CA HCD

K4 - from CA HCD to Monterey County HCD

cc: Front Counter Copy; Public Works, Facilities and Parks; Environmental Health Bureau; HCD-Environmental Services; Craig Spencer, HCD-Planning Services Manager; Jaime Scott Guthrie, Project Planner; Leonard H. McIntosh, Property Owner and Appellant; Anthony Lombardo, Attorney for Applicant and Appellant; Mark Blum, interested party; Bob Dvorak, interested party; Joan Nelson, interested party; Harvey Pantzis, interested party; Pam Pantzis, interested party; Carol Planchon, interested party; Edward Rockower, interested party; Henry Ruhnke, Architect and interested party; Peggy Tharpe interested party; Michael Weaver, interested party; The Open Monterey Project (Molly Erickson); LandWatch (Director); Project File PLN170765