

MONTEREY COUNTY PLANNING COMMISSION

Meeting: November 18, 2009	Time: 9:45 A.M.	Agenda Item No.: 3
Project Description: Coastal Administrative Permit to allow the conversion of an approved test well (PLN060263) to a domestic production well.		
Project Location: 24479 San Juan Road, Carmel Woods		APN: 009-012-013-000
Planning File Number: PLN080017 (Related to PLN060263)		Owner: Chopin Enterprises LP Agent: Erik Dyar
Planning Area: Carmel Area Land Use Plan		Flagged and staked: NA
Zoning Designation: MDR/2-D (CZ) [Medium Density Residential, 2 units per acre with Design Control Overlay (Coastal Zone)]		
CEQA Action: Categorically exempt per CEQA Guidelines Section 15303		
Department: RMA - Planning Department		

RECOMMENDATION:

Staff recommends that the Planning Commission adopt a resolution (**Exhibit B**) to:

- 1) Categorically exempt PLN080017 per CEQA Guidelines Section 15303; and
- 2) Approve PLN080017, based on the findings and evidence and subject to the conditions of approval (**Exhibit B**).

PROJECT OVERVIEW:

Item referred from the Zoning Administrator public hearing on October 29, 2009. Staff requested a Referral from the Zoning Administrator hearing after receipt of requests from members of the public and a recommendation from the Carmel Highlands Land Use Advisory Committee to refer the project to the Planning Commission.

The applicant proposes to convert an existing test well (PLN060263) to a domestic production well. The test well, located on a vacant parcel of approximately 6,144 square feet, was administratively approved on January 15, 2008, by the Board of Supervisors (Resolution No. 08-019). The applicant does not propose any structural development at this time. Based on current zoning guidelines, foreseeable maximum structural development on the parcel would be approximately 2,765 square feet.

Per the Well Assessment Report (**Exhibit E**) prepared for the test well, the production well will have an insignificant and unmeasurable impact on surrounding wells or sensitive receptors. There is only one other well, and only five other vacant lots, within 1,000 feet of the subject property.

An archaeological survey prepared for PLN060263 did not identify any resources on site. Also, this project involves no grading or tree removal, and would not result in any significant disruption to environmentally sensitive habitat. This project is located in the Carmel Area Wastewater District (CAWD) and the adjacent properties have sewer connections. The entire area is on the CAWD sewer system, and there are no septic tanks or leachfields in the area.

OTHER AGENCY INVOLVEMENT: The following agencies and departments reviewed this project:

RMA - Public Works Department
Environmental Health Division
Water Resources Agency
California Coastal Commission

Agencies that submitted comments are noted with a check mark (“√”). Conditions recommended by the RMA - Planning Department have been incorporated into the Condition Compliance and Reporting Plan attached as Exhibit 1 to the draft resolution (**Exhibit B**).

The project was referred to the Carmel Highlands Land Use Advisory Committee (LUAC) for review. Based on the LUAC Procedure guidelines adopted by the Monterey County Board of Supervisors per Resolution No. 08-338, this application did warrant referral to the LUAC because it involves development that may have required CEQA review. Subsequent analysis determined the project to be categorically exempt. The Carmel Highlands LUAC continued the item at a public meeting held on May 5, 2008, in order to wait for an opportunity to review the test well results. The LUAC voted to support the project as proposed by a vote of 3 to 2, at a public meeting held on October 19, 2009. The LUAC also recommended the Zoning Administrator refer the project to the Planning Commission.

Note: The decision on this project is appealable to the Board of Supervisors, and not the California Coastal Commission.

Joseph Sidor, Associate Planner
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November 4, 2009

cc: Front Counter Copy; Planning Commission Members (10); County Counsel; Carmel Highlands Fire Protection District; RMA - Public Works Department; Environmental Health Division; Water Resources Agency; California Coastal Commission; Laura Lawrence, Planning Services Manager; Joseph Sidor, Project Planner; Carol Allen, Senior Secretary; Chopin Enterprises LP, Owner; Erik Dyar, Agent; Scott Hislop; Anne Jensen; Steve Dallas; Peter Fallon; Planning File PLN080017

Attachments:	Exhibit A	Project Data Sheet
	Exhibit B	Draft Resolution, including:
		1. Conditions of Approval
		2. Site Plan
	Exhibit C	Vicinity Map
	Exhibit D	Advisory Committee Minutes
	Exhibit E	Well Assessment Report (Redacted)

This report was reviewed by Laura Lawrence, Planning Services Manager.

EXHIBIT B
DRAFT RESOLUTION

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

In the matter of the application of:

CHOPIN ENTERPRISES LP (PLN080017)

RESOLUTION NO.

Resolution by the Monterey County Planning
Commission:

- 1) Categorically exempting PLN080017 per CEQA Guidelines Section 15303; and
- 2) Approving a Coastal Administrative Permit to allow the conversion of an approved test well (PLN060263) to a domestic production well.

(PLN080017, Chopin Enterprises LP, 24479 San Juan Road, Carmel Woods, Carmel Area Land Use Plan, APN: 009-012-013-000)

The Chopin Enterprises LP application (PLN080017) came on for public hearing before the Monterey County Planning Commission on November 18, 2009. Having considered all the written and documentary evidence, the administrative record, the staff report, oral testimony, and other evidence presented, the Planning Commission finds and decides as follows:

FINDINGS

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

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

- the Monterey County General Plan,
- Carmel Area Land Use Plan,
- Carmel Area Coastal Implementation Plan (Part 4),
- Monterey County Zoning Ordinance (Title 20)

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.

- b) The property is located at 24479 San Juan Road, Carmel Woods (Assessor's Parcel Number 009-012-013-000), Carmel Area Land Use Plan. The parcel is zoned Medium Density Residential, 2 units per acre with Design Control Overlay (Coastal Zone) [MDR/2-D (CZ)], which allows water system facilities serving up to 14 or fewer service connections as a principal use with the approval of a Coastal Administrative Permit. Therefore, the project is an allowed land use for this site.
- c) The project is consistent with applicable policies in the Carmel Area Land Use Plan (LUP) regarding Water Resources. LUP Policy

2.4.4.A.1 directs that new development shall be approved only where it can be demonstrated by the applicant that adequate water is available from a water utility, community system, surface water diversion, spring, or well. The test well yielded a capacity of approximately 57 gallons per minute (gpm), while the estimated maximum day demand is 1.11 gpm. The applicant also submitted a Well Assessment Report prepared by a qualified hydrogeologist. In addition, the applicant recorded a deed restriction on the parcel identifying that the source of well water from fractured bedrock may be unreliable, and that additional water sources may be required in the future.

- d) LUP Policy 2.4.4.A.2 directs the applicant to demonstrate that the proposed new water use will not adversely affect both the natural supply necessary to maintain the environment, and the supply available to meet the minimum needs of existing users during the driest years. There is only one test well within 1,000 feet of the subject project well, and no permanent production wells. The Well Assessment Report prepared for the project concluded that the subject well will have an insignificant and unmeasurable impact on surrounding wells or sensitive receptors.
- e) The project planner conducted a site inspection on September 23, 2009, to verify that the project on the subject parcel conforms to the plans listed above. In addition, staff conducted site visits for PLN060263 on September 12, 2006, October 4, 2007, and October 10, 2007, to verify that the project site conforms to the plans listed above.
- f) The project was referred to the Carmel Highlands Land Use Advisory Committee (LUAC) for review. Based on the LUAC Procedure guidelines adopted by the Monterey County Board of Supervisors per Resolution No. 08-338, this application did warrant referral to the LUAC because it involves development that may have required CEQA review. Subsequent analysis determined the project to be categorically exempt (see Finding 5). The Carmel Highlands LUAC continued the item at a public meeting held on May 5, 2008, in order to wait for an opportunity to review the test well results. The LUAC voted to support the project as proposed by a vote of 3 to 2, at a public meeting held on October 19, 2009. The LUAC also recommended the Zoning Administrator refer the project to the Planning Commission. In addition, several neighbors expressed concerns about the project and requested the project be referred to the Planning Commission. See Finding No. 5.
- g) The application, project plans, and related support materials submitted by the project applicant to the Monterey County RMA - Planning Department for the proposed development found in Project File PLN080017.

2. **FINDING:** **SITE SUITABILITY** – The site is physically suitable for the use proposed.

EVIDENCE: a) The project has been reviewed for site suitability by the following departments and agencies: RMA - Planning Department, RMA - Public Works Department, Environmental Health Division, and Water Resources Agency. There has been no indication from these departments/agencies that the site is not suitable for the proposed development. Conditions recommended have been incorporated.

- b) A technical report by an outside hydrogeologic consultant indicated that there are no physical or environmental constraints that would indicate that the site is not suitable for the use proposed. County staff independently reviewed this report and concurs with its conclusions. The following report has been prepared:
 - Well Assessment Report (LIB090412) prepared by Martin B. Feeney, Ventura, California, November 17, 2008.
- c) Staff conducted a site inspection on September 23, 2009, to verify that the site is suitable for this use. In addition, staff conducted site visits for PLN060263 on September 12, 2006, October 4, 2007, and October 10, 2007.
- d) The application, project plans, and related support materials submitted by the project applicant to the Monterey County RMA - Planning Department for the proposed development found in Project File PLN080017.

3. **FINDING:** **HEALTH AND SAFETY** - The establishment, maintenance, or operation of the project applied for will not under the circumstances of this particular case be detrimental to the health, safety, peace, morals, comfort, and general welfare of persons residing or working in the neighborhood of such proposed use, or be detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the County.

- EVIDENCE:**
- a) The project was reviewed by RMA - Planning Department, RMA - Public Works Department, Environmental Health Division, and Water Resources Agency. The respective departments/agencies have recommended conditions, where appropriate, to ensure that the project will not have an adverse effect on the health, safety, and welfare of persons either residing or working in the neighborhood.
 - b) Necessary public facilities will be provided. Potential structural development on the property would be served by the well and public sewer. The property is located in the Carmel Area Wastewater District (CAWD), and CAWD has provided a letter confirming its ability to provide service to a future single family residence. The well water met all Maximum Contaminant Level (MCL) drinking-water standards for primary inorganic constituents. The water exceeded the MCL standards for several secondary (aesthetics-based) constituents; however, the water remains potable. The secondary constituents are: Chloride, tested at 502 mg/L versus an MCL of 250 mg/L; Specific Conductance, tested at 2260 umhos/cm versus an MCL of 900 umhos/cm; and Total Dissolved Solids, tested at 1440 mg/L versus an MCL of 500 mg/L. An initial water sample, collected from the well at the end of test pumping, tested positive for coliform bacteria; however, the well had not yet been sanitized. A subsequent sample tested negative for coliform bacteria. Based on these test results, and per the Environmental Health Division, treatment is not required.
 - c) Preceding findings and supporting evidence for PLN080017.

4. **FINDING:** **NO VIOLATIONS** - The subject property is 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 Department and Building Services Department records and is not aware of any violations existing on subject property.
 - b) Staff conducted a site inspection on September 23, 2009, and researched County records to assess if any violation exists on the subject property.
 - c) There are no known violations on the subject parcel.
 - d) The application, plans and supporting materials submitted by the project applicant to the Monterey County Planning Department for the proposed development are found in Project File PLN080017.

5. **FINDING: CEQA (Exempt):** - The project is categorically exempt from environmental review and no unusual circumstances were identified to exist for the proposed project.

- EVIDENCE:**
- a) California Environmental Quality Act (CEQA) Guidelines Section 15303 (Class 3), categorically exempts the new construction or conversion of small facilities or structures.
 - b) The project proposes to convert an approved and existing test well to a domestic production well. Therefore, the project is consistent with the parameters of CEQA Guidelines Section 15303.
 - c) No adverse environmental effects were identified during staff review of the development application during a site visit on September 23, 2009. In addition, staff conducted site visits for PLN060263 on September 12, 2006, October 4, 2007, and October 10, 2007.
 - d) Exceptions to exemptions listed in Section 15300.2.a-f are inapplicable. The project does not involve: a historical resource, a hazardous waste site, development located near or within view of a scenic highway, unusual circumstances that would result in a significant effect, development that would result in a cumulatively significant impact, nor development in a particularly sensitive environment. The parcel is an in-fill lot in an established residential neighborhood.
 - e) Several neighbors expressed concerns related to potential environmental impacts; however, no substantive evidence was submitted to support these concerns. LUP Policy 2.4.4.A.2 directs the applicant to demonstrate that the proposed new water use will not adversely affect both the natural supply necessary to maintain the environment, and the supply available to meet the minimum needs of existing users during the driest years. There is only one test well within 1,000 feet of the subject project well, and no permanent production wells. The Well Assessment Report prepared for the project concluded that the subject well will have an insignificant and unmeasurable impact on surrounding wells or sensitive receptors.
 - f) See preceding and following findings and supporting evidence.

6. **FINDING: PUBLIC ACCESS** – The project is in conformance with the public access and recreation policies of the Coastal Act (specifically Chapter 3 of the Coastal Act of 1976, commencing with Section 30200 of the Public Resources Code) and Local Coastal Program, and does not interfere with any form of historic public use or trust rights.

- EVIDENCE:**
- a) No access is required as part of the project as no substantial adverse

impact on access, either individually or cumulatively, as described in Section 20.146.130 of the Monterey County Coastal Implementation Plan can be demonstrated.

- b) The subject property is not described as an area where the Local Coastal Program requires public access (Figure 3 in the Carmel Area Land Use Plan).
- c) No evidence or documentation has been submitted or found showing the existence of historic public use or trust rights over this property.
- d) The application, plans and supporting materials submitted by the project applicant to the Monterey County Planning Department for the proposed development are found in Project File PLN080017.
- e) The project planner conducted a site inspection on September 23, 2009. In addition, staff conducted site visits for PLN060263 on September 12, 2006, October 4, 2007, and October 10, 2007.

7. **FINDING:** **APPEALABILITY** - The decision on this project may be appealed to the Board of Supervisors and not the California Coastal Commission.

- EVIDENCE:**
- a) Board of Supervisors: Section 20.86.030 of the Monterey County Zoning Ordinance (Title 20). An appeal may be made to the Board of Supervisors by any public agency or person aggrieved by a decision of an Appropriate Authority other than the Board of Supervisors.
 - b) California Coastal Commission: Section 20.86.080.A of the Monterey County Zoning Ordinance (Title 20). The project is not subject to appeal by/to the California Coastal Commission because it does not involve development between the sea and the first through public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tide of the sea where there is no beach, whichever is the greater distance; or development within 300 feet of the top of the seaward face of any coastal bluff; or development involving a conditional use.

DECISION

NOW, THEREFORE, based on the above findings and evidence, the Planning Commission does hereby:

- A. Categorically exempt PLN080017 per CEQA Guidelines Section 15303; and
- B. Approve a Coastal Administrative Permit to allow the conversion of an approved test well (PLN060263) to a domestic production well, in general conformance with the attached sketch (**Exhibit 2**) and subject to the conditions (**Exhibit 1**), both exhibits being attached hereto and incorporated herein by reference.

PASSED AND ADOPTED this 18th day of November, 2009, upon motion of _____, seconded by _____, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

MIKE NOVO, Planning Commission Secretary

COPY OF THIS DECISION MAILED TO APPLICANT ON _____.

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 _____.

THIS PROJECT IS LOCATED IN THE COASTAL ZONE AND IS NOT APPEALABLE TO 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 may 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 the Monterey County Planning Department and Building Services Department office in Salinas.

2. This permit expires 4 years after the above date of granting thereof unless construction or use is started within this period.

RESOLUTION _____ - EXHIBIT 1 Monterey County Resource Management Agency Planning Department Condition Compliance and/or Mitigation Monitoring Reporting Plan	Project Name: Chopin Enterprises LP File No: PLN080017 APNs: 009-012-013-000 Approved by: Planning Commission Date: November 18, 2009
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**Monitoring or Reporting refers to projects with an EIR or adopted Mitigated Negative Declaration per Section 21081.6 of the Public Resources Code.*

<i>Permit Cond. Number</i>	<i>Mitig. Number</i>	<i>Conditions of Approval and/or Mitigation Measures and Responsible Land Use Department</i>	<i>Compliance or Monitoring Actions to be performed. Where applicable, a certified professional is required for action to be accepted.</i>	<i>Responsible Party for Compliance</i>	<i>Timing</i>	<i>Verification of Compliance (name/date)</i>
RMA – Planning Department						
1.		PD001 - SPECIFIC USES ONLY This Coastal Administrative Permit (PLN080017) allows the conversion of an approved test well (PLN060263) to a domestic production well. The property is located at 24479 San Juan Road, Carmel Woods (Assessor's Parcel Number 009-012-013-000), Carmel Area Land Use Plan. This permit was approved in accordance with County ordinances and land use regulations subject to the following terms and conditions. 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. (RMA-Planning Department)	Adhere to conditions and uses specified in the permit. 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 the RMA - Planning Department. 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.	Owner/ Applicant RMA - Planning WRA RMA - Planning	Ongoing unless otherwise stated.	
2.		PD002 - NOTICE-PERMIT APPROVAL The applicant shall record a notice which states: "A permit (Resolution _____) was approved by the	Obtain appropriate form from the RMA-Planning Department.	Owner/ Applicant		

<i>Permit Cond. Number</i>	<i>Mitig. Number</i>	<i>Conditions of Approval and/or Mitigation Measures and Responsible Land Use Department</i>	<i>Compliance or Monitoring Actions to be performed. Where applicable, a certified professional is required for action to be accepted.</i>	<i>Responsible Party for Compliance</i>	<i>Timing</i>	<i>Verification of Compliance (name/date)</i>
		Planning Commission for Assessor's Parcel Number 009-012-013-000 on October 29, 2009. The permit was granted subject to six (6) conditions of approval which run with the land. A copy of the permit is on file with the Monterey County RMA - Planning Department." (RMA-Planning Department)	The applicant shall complete the form and furnish proof of recordation of this notice to the RMA - Planning Department.	RMA-Planning	and building permits, or commencement of use.	
3.		PD004 - INDEMNIFICATION AGREEMENT The property owner agrees as a condition and in consideration of the 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. County may, at its sole discretion, participate in the defense of such action; but such participation shall not relieve applicant of his 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 the property, filing of the final map, 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	Submit signed and notarized Indemnification Agreement to the Director of RMA – Planning Department for review and signature by the County. Proof of recordation of the Indemnification Agreement, as outlined, shall be submitted to the RMA – Planning Department.	Owner / Applicant	Upon demand of County Counsel or concurrent with the issuance of building permits, or use of the property, whichever occurs first and as applicable.	

<i>Permit Cond. Number</i>	<i>Mitig. Number</i>	<i>Conditions of Approval and/or Mitigation Measures and Responsible Land Use Department</i>	<i>Compliance or Monitoring Actions to be performed. Where applicable, a certified professional is required for action to be accepted.</i>	<i>Responsible Party for Compliance</i>	<i>Timing</i>	<i>Verification of Compliance (name/date)</i>
		hold the county harmless. (RMA - Planning Department)				
4.		PD005a – NOTICE OF EXEMPTION Pursuant to CEQA Guidelines § 15062, a Notice of Exemption shall be filed for this project. The filing fee shall be submitted prior to filing the Notice of Exemption.	The applicant shall submit a check, payable to the <i>County of Monterey</i> , to the Director of the RMA - Planning Department.	Owner / Applicant	After project approval.	
5.		PD032(A) - PERMIT EXPIRATION The permit shall be granted for a time period of four years, to expire on October 29, 2013, unless use of the property or actual construction has begun within this period. (RMA – Planning Department)	The applicant shall obtain a valid grading or building permit and/or commence the authorized use to the satisfaction of the Director of Planning. Any request for extension must be received by the Planning Department at least 30 days prior to the expiration date.	Owner / Applicant	As stated in the conditions of approval.	
6.		PDSP001 - OTHER AGENCY PERMITS (NON-STANDARD) Contact and obtain required clearances and/or permits from the Monterey Peninsula Water Management District (MPWMD). (RMA-Planning Department)	Contact and obtain required clearances and/or permits from the MPWMD. Submit evidence to the RMA-Planning Department that clearance and/or permits have been obtained.	Owner / Applicant	Prior to commencement of use.	

END OF CONDITIONS