

Attachment A

This page intentionally left blank.

ATTACHMENT A
DISCUSSION

The Board's decision on the request must be consistent with the General Plan. The applicable County policies discussed below provide the framework for consideration of the proposal to modify the term of affordability for the 161 Moro Cojo Subdivision residences and to determine whether affordable replacement housing units should be provided to offset the potential loss of the 161 existing affordable residences. While state law does not directly apply to the request before the Board, state housing law can be used as guidance for the County's interpretation of its General Plan policies.

North County Land Use Plan

A key policy applicable to the subject proposal is Policy 4.3.6.D.1, (Low and Moderate Income Housing) of the North County Land Use Plan (LUP). This policy states in part that:

“The County shall protect existing affordable housing opportunities in the North County coastal area from loss due to deterioration, conversion, or any other reason. The County will:

- a) Discourage demolitions but require replacement on a one by one basis of all demolished or converted units which were affordable to or occupied by low and moderate income persons.”

The clear intent of this Policy is the protection and maintenance of existing affordable housing stock within the North County LUP area and the stipulation that any affordable housing lost through demolition or conversion is required to be replaced on a “one by one basis.” However, whether it applies to the Moro Cojo request is subject to interpretation. While on its face, Policy 4.3.6.D.1 requires replacement, whether the Policy applies to the Moro Cojo request involves interpretation of whether changing the term of affordability, as requested by the 161 homeowners, constitutes a “conversion.” State law, (Government Code section 65590.) has similar language concerning replacement units for “conversion or demolition of existing residential dwelling units” in the coastal zone, but defines “conversion” to mean a change in the form of ownership such as condominium conversion or change from residential to non-residential use. Also, the focus of both State law and the County's Housing Element regarding the requirement of replacement units is on affordable units that are part of multi-unit rental housing structures which are the primary means of providing affordable housing to lower and moderate income households throughout the County and State.

If the Board determines the Policy applies to the request, the Board has discretion as to how to implement the replacement requirement. Beyond the one by one replacement requirement, the LUP does not dictate how to achieve replacement. For instance, issues to be resolved, which are not addressed by the Policy, include the following: 1) who would be responsible for the approval and development of replacement units; 2) whether there are exceptions to the replacement requirement; 3) the appropriate geographic location of replacement units in relation to the existing affordable units; 4) the timing for construction and occupancy of the replacement units; 5) whether the replacement units need to be the same housing type (i.e., single-family or multi-family; rental or owner-occupied) as the units being replaced; and the 6) appropriate term of affordability for the replacement units.

Housing Element Goals and Policies

The County's Housing Element contains several goals (Housing Element Goal H-1) and policies (Policies H-1.7 and H-1.8) that promote the construction and maintenance of affordable housing throughout the County. These policies are intended to increase and maintain affordable housing opportunities. Any decision the Board makes on the Moro Cojo request must be found consistent with the Housing Element policies, but similar to the North County LUP policy, the finding of consistency involves interpretation. The proposed transition of the 161 single-family residences in the Moro Cojo Subdivision from affordable to market rate, could be determined to be inconsistent with the plain language of the policies because existing affordable housing units would be lost. However, Section 2.9 of the Housing Element ("Housing in the Coastal Zone,") states that "The majority of the housing units in the Coastal Zone are single-family homes [such as those in the Moro Cojo Subdivision] not subject to the replacement requirements." Therefore, based on the type of housing involved, the Board could also reasonably find that changing the term of affordability, as requested by the homeowners, is consistent with the policy because it is meant to apply to rental, or multi-unit, housing, not for sale single-family residences.

General Plan Land Use Policy LU-2.12

While the 2010 General Plan does not apply to the Coastal Zone and therefore is not directly applicable to the Moro Cojo Subdivision, General Plan Policy LU-2.12 may nonetheless provide guidance for the policy issues presented by the request. The provisions of Policy LU-2.12 were thoroughly discussed during the preparation of the General Plan and provide the Board with a practical, relevant framework for possibly resolving the issues raised by the Moro Cojo request. The policy states:

"Monterey County shall establish a program for retaining affordable housing units. For-sale housing units with affordability restrictions developed within redevelopment areas (Boronda, Castroville, Fort Ord, and Pajaro), Community Areas and Rural Centers prior to the adoption of their Plans, as well as any project developed under the Affordable Housing Overlay Program shall be consistent with term of affordability provisions in State Redevelopment law. Rental units shall be deed restricted in perpetuity countywide. For-sale units with affordability restrictions in all other areas shall have the option of conforming to State Redevelopment law term of affordability criteria or conforming to the following guidelines (emphasis added):

- a) Affordable housing units shall be offered to the County of Monterey who shall have a First Right of Refusal.
- b) Units developed under this option shall be subject to a 30-year Program.
- c) Within the first 15 years of this Program:
 1. Units must be resold to a qualified buyer at the same income level at which the unit was first sold.
 2. The 30-year restriction shall restart from the date of sale if the unit is sold.
- d) Between year 16 and 30 of this Program, sale of units may be sold at market value but shall be subject to an Equity Sharing Program that increases based on the length of ownership.
- e) Units retained by the same owner for more than 30 years shall not be subject to this Program."

A helpful aspect of Policy LU-2.12, in relation to the Moro Cojo proposal, is that it distinguishes between affordability restrictions for rental and for-sale (owner-occupied) housing, making rental units affordable in perpetuity and establishing dual thresholds for owner-occupied housing that creates a financial incentive for the owner tied to the duration of affordability. That is: 1) owner-occupied housing must remain affordable for at least 15 years, and 2) the longer the housing remains affordable, up to 30 years, at which time the unit becomes market rate, the greater the owner's equity share in the unit. The Economic Development Department has outlined how this type of concept could apply to the Moro Cojo application. (See Attachment P)

Both the Housing Advisory Committee and Planning Commission have held hearings on the request and recommended compromise alternatives.

Review by the Housing Advisory Committee

The Housing Advisory Committee (HAC) considered the proposed change to the term of affordability (Combined Development Permit Condition 99) at meetings on April 8 and May 27, 2015. On May 27, the HAC recommended (by a vote of 5-1, one member absent, one member recused) that the term of the affordability restriction (Condition 99) be modified to state that:

“The deed restriction be modified from “permanent” to none on condition that CHISPA obtain entitlement, undertake new construction, and receive certificates of occupancy of at least 161 qualified replacement housing units located within the unincorporated area of the County within ten years from the date of approval of the modification. Qualifying units are defined as 80% of project units (100% less 20% required affordable units per the County's Inclusionary Ordinance) or 49% of project units if the County funds any portion of a project. Replacement units would be deed restricted for a minimum of 45 years for single-family housing and 55 years for multifamily housing. The responsibility rests with CHISPA and its successors in interest to produce the replacement units. If the condition is met prior to ten years, the removal of the permanent restriction shall occur at the time of certification of occupancy of the 161st unit.”

Thus the HAC's recommendation is for a 25-year term of affordability, starting from the residences' initial occupancy, and would require that CHISPA, as representative of the 161 homeowners and a regional affordable housing developer, provide replacement units within the timeframe. The recommendation from the HAC further stipulated that the 25-year period would be reduced if CHISPA replaced the units prior to 25 years.

Review by the Planning Commission

The Planning Commission considered the proposal at hearings on September 9 and 30, 2015. As part of its review, the Commission considered the following alternatives regarding the term of affordability and the issue of replacement housing units:

1. Recommendation for approval of the request as proposed by CHISPA on behalf of the 161 Moro Cojo Subdivision homeowners. Separately, determine whether affordable replacement units are required, or should be required, to offset the loss of the existing 161 affordable residences.
2. Recommendation for denial of the request, leaving the in-perpetuity affordability requirement intact. Housing Element Goal H-1 and Policies H-1.7 and H-1.8, as well as North Coast LUP Policy 4.3.6.D.1, referenced in this report provide language encouraging the development, maintenance and protection of affordable housing units throughout the County.

3. Recommendation of an alternate time period for affordability to remain in effect, based, for instance, on the HAC's 25-year recommendation and/or General Plan Policy LU-2.12. As with the first option, the issue of replacement housing would have to be determined if the permanent affordability term were altered.

The Commission recommended that the Board adopt the Negative Declaration prepared for the project and change the term of the affordability restriction from permanent to a 20-year period, commencing on the first date of conveyance of each property to the original owners. The Commission's recommendation would add five years to the term requested by the applicant and lessens the HAC's recommendation by five years. In its consideration, the Commission discussed whether replacement units should be required if the affordability restriction is modified, and the Commission ultimately recommended deferring to the Board of Supervisors to interpret the policy.

Conclusion

The Board of Supervisors has a number of options and alternatives, principally among them:

1. Deny the request: Leave the term of affordability unchanged as a permanent requirement;
2. Grant the request: Approve the proposal as submitted by the CHISPA on behalf of the 161 home owners. This would eliminate the affordability restriction 15 years from the date of the unit's original occupancy. No replacement units would be required per the applicant's request;
3. Adopt the recommendation of the Housing Advisory Committee, which in essence would change the term of affordability to 25 years (adding ten years to the applicant's request) only if CHISPA provides an equal number of replacement units within the time frame;
4. Approve a change of the term of affordability as recommended by the Planning Commission, changing the term of affordability to 20 years (adding five years to the applicant's request), and determine whether the North County Land Use Plan requires replacement affordable housing units; and
5. Use General Plan Policy LU-2.12 of the 2010 General Plan as guidance. While not strictly applicable because the policy applies only in the inland area and the project is in the coastal zone, Policy LU-2.12 provides a framework that was the result of hearings and deliberation and addresses the balance of preserving affordable housing and allowing owners to realize some equity. This policy provides an alternative for equity sharing. One proposal, for example, would be to set a defined period of affordability, such as 20 years, with an equity share that reduces yearly based upon the longer the single-family housing unit remains affordable. (see Attachment P, Monterey County Housing Office analysis) Using an equity sharing model such as this allows for equity to be reinvested into future affordable housing and thus limits the harm caused by the loss of 161 units of affordable housing.

If the Board determines that affordable replacement housing is required, a process would need to be developed for the provision of the replacement units, including determining their appropriate location, time frame for construction, type of units (single or multi-family), and the term of affordability for the replacement units.