

**Before the Board of Supervisors in and for the
County of Monterey, State of California**

In the matter of the application of:

**161 PROPERTY OWNERS AT THE MORO
COJO SUBDIVISION (PLN120650)**

RESOLUTION NO. ----

Resolution by the Monterey County Board of Supervisors:

- 1) Adopting a Negative Declaration; and
- 2) Approving the amendment of Condition #99 of the previously-approved Combined Development Permit (SH93001) for the Moro Cojo Standard Subdivision changing the term of the affordability restriction of 161 of the single-family residences in the Subdivision from permanent to a 20-year term commencing on the date of the first deed of conveyance of each property from the developers to the original owners of the units.

[PLN120650, North County Land Use Plan]ⁱ

The proposed amendment of Condition #99 of the Moro Cojo Standard Subdivision Combined Development Permit (PLN120650) came on for a public hearing before the Monterey County Board of Supervisors on December 8, 2015 and January 26, 2016. Having considered all the written and documentary evidence, the administrative record, the staff report, oral testimony, and other evidence presented, the Board of Supervisors finds and decides as follows:

FINDINGS

1. **FINDING:** **PROJECT DESCRIPTION** – The proposed project is the amendment of Condition #99 of the previously-approved Combined Development Permit (SH93001) for the Moro Cojo Standard Subdivision (“Subdivision”). As originally approved by the Board of Supervisors on December 20, 1994, Condition #99 required that all of the 175 single-family residences within the Subdivision be available to very low, low and moderate income households. (Board of Supervisors’ Resolution No. 94-524.) A lawsuit challenging that approval resulted in a “Settlement Agreement and Stipulation for Judgment.” (*Alliance to Enforce Mandates Governing Project Review Procedures and Water and Traffic Standards, et al v. County of Monterey et al* (Monterey County Superior Court Case No. 102344) (“Settlement Agreement”)) The Settlement Agreement interpreted Condition 99 to be a “*permanent deed restriction*” on the parcels within the Subdivision. A subsequent court order clarified The proposed amendment submitted by 161 of the 175 homeowners seeks to amend Condition #99 to change the term of affordability from permanent to a period of 15 years, commencing on

the date of the first deed of conveyance from the Subdivision's developers to the property owners. The Planning Commission recommended that the term of affordability be changed to 20 years and that the Board of Supervisors determine if replacement affordable units would be required if the term of affordability were eliminated. The Board of Supervisors is hereby approving an amendment of Condition #99 to change the term of the affordability restriction to 20 years. As explained in findings below, the Board has determined that replacement of the subject 161 units with other affordable units is not required as a condition of approving the amendment.

EVIDENCE:

The application and related support materials submitted by the project applicant to Monterey County RMA-Planning for the proposed amendment found in Project File PLN120650.

2. FINDING:

PROCEDURAL BACKGROUND – The proposed amendment to Condition #99 was processed per the requirements of the Subdivision Map Act, County regulations, and the Settlement Agreement.

EVIDENCE:

- a) The application for the subject amendment was submitted on December 11, 2013 by CHISPA on behalf of the 161 property owners. The application was deemed as complete on July 31, 2014.
- b) The Monterey County Housing Advisory Committee (Committee) considered the proposed amendment on April 8 and May 27, 2015. (A Committee meeting on the project originally scheduled for January 2015 was rescheduled to April 2015). On May 27, the Committee recommended (5-1 vote; one member absent) the modification of the affordability restriction as follows:

“The deed restriction is 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.”

- c) The Planning Commission considered the proposed amendment as well as staff-recommended alternatives at a duly noticed public hearing on September 9 and 30, 2015. On September 30, 2015, the Planning Commission recommended (5-2 vote; three members absent) to the Board of Supervisors changing the affordability restriction of 161 of the single-family residences in the Subdivision from permanent to a 20-year term commencing on the date of the first deed of conveyance of each property from the developers to the original owners of the units.

- d) The Board of Supervisors considered the proposed amendment at a duly noticed public hearing on December 8, 2015 and January 26, 2016. On December 8, 2015 the Board of Supervisors adopted a resolution of intent (4-1 vote) to adopt the Negative Declaration and to change the affordability restriction to a 20 year period without requiring replacement affordable units. The Board continued the public hearing to January 26, 2016 directing staff to return with a draft resolution for approval of the amendment. On January 26, 2016, the Board considered and adopted this resolution.
- d) Pursuant to the Subdivision Map Act (Government Code section 66472.1 and the County's Subdivision Ordinance (Monterey County Code, Title 19, section 19.08.015.A.7), the requested modification to Condition 99 was considered by the appropriate decision-making bodies that approved or recommended approval of the original tentative map, and the findings for amending the map have been made. (See finding 6 below.)
- e) The homeowners' request to modify Condition 99 was processed in accordance with the Settlement Agreement. (See finding 3 below.)
- f) The application and related support materials submitted by the project applicant to Monterey County RMA-Planning for the proposed development found in Project File PLN120650.

3. FINDING:

COMPLIANCE WITH THE SETTLEMENT AGREEMENT AND STIPULATION FOR JUDGEMENT – The subject application for the amendment of Condition #99 of the previously-approved Moro Cojo Standard Subdivision was submitted and processed per the terms of the Settlement Agreement. The applicants produced substantial evidence supporting the request for modification.

- a) In regard to any application or request for modification of any condition of approval of the Subdivision, the Settlement Agreement stipulates that:
 - A. The County shall not initiate any modification of any condition of approval;
 - B. Should the applicant request any modification of any condition of approval, the applicant shall have the burden of producing substantial evidence to support the request for said modification;
 - C. Where appropriate under the California Environmental Quality Act, any proposed change shall receive an initial review of its environmental effects.

The Settlement Agreement further stipulates that “Petitioners, through their counsel, will receive thirty (30) days actual notice of any public hearing of the Board of Supervisors, Planning Commission or other County public body on any matter relating to the approval of the final map, or any condition of approval, or any modification of any condition of approval.”

- b) The County did not initiate the proposed amendment. The 161 homeowners, with CHISPA as their agent, submitted the application. CHISPA, on behalf of the applicants, submitted evidence in support of the proposed amendment. The County conducted environmental review

for the proposed amendment. All the known members of the original petitioners received 30-day notices of all the public hearings conducted to consider the amendment.

c) The property owners through CHISPA as their representative submitted the following evidence in support of their request consistent with the provisions of the Settlement Agreement:

1. The owners face challenges selling their deed-restricted units due to plummeting home prices and because the price of market rate homes currently approach or in some cases equal the price of the deed restricted units;
2. Buyers that qualify to purchase affordable housing are generally not willing to purchase deed-restricted units when they can afford similarly priced homes that are not deed-restricted;
3. No other mutual self-help housing projects built by the applicants' representative (CHISPA) require that units remain affordable in perpetuity;
4. Affordable units with long restrictions either remain on the market for significant periods of time before they are ultimately sold or are taken off the market due to the lack of offers;
5. Revising the affordability term of the units from perpetuity to a 15-year term will make the units more attractive and competitive in the current real estate market;
6. Section 33334.3 of the California Health and Safety Code establishes a 15-year affordability term for mutual self-help projects. Although this section is not strictly applicable, it is presented to demonstrate that Redevelopment Law provided generally for a shorter duration for restriction of self-help units;
7. Policy LU-2.12 of the 2010 General Plan eliminated any perpetuity requirement for inclusionary housing units and established that affordable housing units either conform to the affordability provisions in State Redevelopment Law or be subject to new guidelines that provide for an equity share component;
8. Correspondence from the California Coalition for Rural Housing, a low income housing coalition, indicating that mutual self-help affordable housing projects are not typically subject to a deed restriction with a term of perpetuity. The correspondence also summarizes that "a resale deed restriction in perpetuity significantly limits the families' ability to access the full equity they earn from their significant labor contributions to construct their home" and that "a restriction in perpetuity makes it difficult for homeowners to refinance their home."
9. Correspondence from homeowners stating that they have been unable to refinance their existing homes to obtain more favorable financing terms due to the perpetuity restriction and that they are therefore unable or unwilling to invest in their homes to enhance their value due to the uncertainty of recouping their investment. Further, their inability to refinance their homes and obtain a loan prevents the consolidation of debt that they

may have already incurred to repair, maintain and improve their homes.

4. FINDING:

CONSISTENCY – GENERAL PLAN - The subject amendment is consistent with the General Plan which, through the Housing Element, contains goals, policies and direction related to the development and preservation of affordable housing. Specifically, Housing Element Policy H-1.7 “Encourage[s] the conservation of existing housing stock through rehabilitation while...assuring that existing affordable housing stock...[is] not lost.” Housing Element Policy H-1.8 is to “Work with property owners and nonprofit housing providers to preserve lower income housing at risk of converting to market rate.”

- a) Section 2.9, “Housing in the Coastal Zone,” of the County’s Housing Element addresses issues specifically related to affordable housing located within and proximate to the Coastal Zone, such as the subject 161 single-family units. Regarding information that must be included when Housing Elements are updated, consistent with California Government Code Sections 65588(c) and 65590, Section 2.9 requires reporting of “The number of housing units for...low or moderate income [households] to be provided in new housing developments either within the coastal zone or within three miles of the coastal zone as replacement for the conversion or demolition of existing coastal units occupied by low or moderate income persons.”
- b) Section 2.9 states, “Coastal replacement requirements do not apply to the following: The conversion or demolition of a residential structure which contains less than three dwelling units [such as single-family residences], or, in the event that a proposed conversion or demolition involves more than one residential structure, the conversion or demolition of 10 or fewer units.”
- c) The focus of State housing law (Government Code Sections 65588 and 95590) and the County’s Housing Element regarding the requirement of replacement units is on affordable units that are part of multi-family housing structures, not single-family residences such as the subject 161 units, which are the primary means of providing affordable rental housing to lower income households. In further support of this view, the County’s Housing Element states, “The majority of the housing units in the Coastal Zone are single-family homes not subject to the replacement requirements.”

5. FINDING:

CONSISTENCY – NORTH COUNTY LAND USE PLAN - Policy 4.3.6.D.1 “Low and Moderate Income Housing” of the North County Land Use Plan (LUP) that housing units affordable to or occupied by low or moderate income persons that are proposed for demolition or conversion be replaced on a “one by one basis.”

EVIDENCE: a)

LUP Policy 4.3.6.D.1 requires replacement on a “one by one basis” for converted affordable units; however, the LUP does not define what constitutes conversion of an affordable housing unit. In relation to housing, conversion typically refers to the type of ownership involved; for instance, apartment units converting to condominiums, which often

results in the units becoming less affordable to lower income households. Absent a definition, the language used in LUP Policy 4.3.6.D.1 is, therefore, open to interpretation.

b) California Government Code Section 65590(g)(1), part of Article 10.7, “Low- and Moderate-Income Housing in the Coastal Zone,” defines “Conversion” as “a change of a residential dwelling..., to a condominium, cooperative, or similar form of ownership; or a change of a residential dwelling...to a nonresidential use.” Thus, where affordable housing within the Coastal Zone is concerned, conversion, per State law, is defined so that it refers only to changes of ownership-type or land use. Affordability status or the term of the unit’s affordability do not fall within this definition of conversion. Therefore, being guided by the definition of conversion in Article 10.7, “Low- and Moderate-Income Housing in the Coastal Zone,” the requested amendment by CHISPA on behalf of the 161 single-family homeowners to replace the in-perpetuity affordability requirement with a 20-year term would not constitute a conversion and affordable replacement units are not required.

6. **FINDING:**

CONSISTENCY – SUBDIVISION ORDINANCE – The amendment of Condition #99 to change the term of affordability from “permanent” to 20 years is allowable pursuant to the Subdivision Map Act and Section 19.08.015 (A) (7) of the County’s Subdivision Ordinance. The Board finds that there are changes in circumstances that make Condition 99, insofar as it applies as a permanent restriction, no longer appropriate or necessary, that the modification of the term to 20 years from permanent does not impose any additional burden on the fee owners of the subject property, and the modifications do not alter any right, title, or interest in the real property reflected on the recorded map. Substantial evidence in the record supports these findings, as described below.

EVIDENCE:

- a) Government Code section 66472.1 and Section 19.08.015 (A) (7) of Title 19 (County’s Subdivision Ordinance) of the Monterey County Code provide that a recorded final map may be amended to make modifications to the map or conditions of the map where: 1) there are changes that make any or all of the conditions no longer appropriate or necessary; 2) The modification does not impose any additional burden on the fee owners of the real property that are the subject of the application; and 3) The modification does not alter any right, title or interest in the real property reflected on the final map.
- b) The *permanent deed restriction* is no longer appropriate or necessary because it is a potentially significant burden on the subject property owners, who acquired their residences in part through “sweat equity.” Presently, the majority of homeowners are locked into higher interest rate loans and face limitations on their abilities to refinance and consolidate debt. The 2008 recession, which resulted in much lower interest rates, has widened the gap between the interest rates the homeowners are paying as compared to the low interest rates now available on the market, but owners testified that they were unable to

take advantage of the lower rates, due to the tightening of lending resulting from the 2008 recession and reluctance of lenders to refinance due to the permanent deed restriction. Accordingly, these owners are locked into interest rates that are significantly above market interest rates. These limitations may ultimately affect the homeowners' abilities to maintain their homes, which are now reaching an age where regular maintenance is necessary in order to avoid the physical decline of the homes.

- c) The amendment of Condition #99 does not impose any additional burden on the fee owners of the subject 161 property owners. The amendment merely allows for the sale of the subject properties at market-rate value after a 20-year period from the date of the first deed of conveyance of the units from the developer to the original owners.
- d) The amendment of Condition #99 does not alter any right, title or interest in the real property reflected on the recorded Final Map for the Subdivision. The amendment solely allows the removal of a deed restriction which currently limits the resale of the subject units to buyers of moderate income levels.
- e) The amendment of Condition #99 is solely a modification to the affordability requirements of 161 of the 175 single-family residences in the Subdivision and does not involve further subdivision, site improvements, development intensification or change of use within the subdivision.

7. **FINDING:**

CEQA (Negative Declaration) - On the basis of the whole record before Monterey County, there is no substantial evidence that the amendment of Condition #99 of the approved Moro Cojo Standard Subdivision will have a significant effect on the environment. The Negative Declaration reflects the independent judgment and analysis of the County.

EVIDENCE:

- a) Public Resources Code Section 21080.(c) and California Environmental Quality Act (CEQA) Guidelines Section 15063.(b).(2) require that if a proposed project would not have a significant effect on the environment, the lead agency shall adopt a negative declaration to that effect.
- b) Monterey County RMA-Planning prepared a Draft Initial Study for the proposed amendment of Condition #99 in accordance with CEQA and circulated it for public review from March 6, 2015 through April 6, 2015 (State Clearinghouse #: 2015031027). Issues that were analyzed in the Negative Declaration include: land use/planning and population/housing. The Initial Study concluded, based upon the record as a whole, that the amendment of Condition #99 would not have a significant effect on the environment.
- c) Based on the comments received during the public review period, the Initial Study/Negative Declaration was revised and re-circulated for public review from July 6, 2015 to August 5, 2015. The revised Initial Study/Negative Declaration further addressed the provisions of the North County Local Coastal Program and their applicability to the proposed amendment of Condition #99. The revised Initial Study again concluded that the proposed amendment of Condition #99 would not

result in potentially significant environmental impacts.

- d) Evidence that has been received and considered includes: the application, materials submitted by the applicant, staff reports that reflect the County's independent judgment and information and testimony presented during the review of the application and the Initial Study and the public hearings. These documents are on file in RMA-Planning under the application file PLN120650 and are incorporated herein by reference.
- e) The proposed amendment to Condition #99 does not include any physical improvements or additional development within the already-built Subdivision. Staff analysis contained in the Initial Study and the record as a whole indicate the project would not result in changes to the resources listed in Section 753.5(d) of the California Department of Fish and Wildlife (CDFW) regulations. Therefore, the project will not be required to pay the State fee; however, a fee payable to the Monterey County Clerk/Recorder is required for posting the Notice of Determination (NOD).
- f) Monterey County RMA-Planning, located at 168 W. Alisal, 2nd Floor, Salinas, California, 93901, is the custodian of documents and other materials that constitute the record of proceedings upon which the decision to adopt the Negative Declaration is based.

DECISION

NOW, THEREFORE, based on the above findings and evidence, the Board of Supervisors:

1. Adopt a Negative Declaration; and
2. Approve an amendment of Condition #99 of the previously-approved Combined Development Permit (SH93001) for the Moro Cojo Standard Subdivision changing the term of the affordability restriction of 161 of the single-family residences in the Subdivision from permanent to a 20-year term, commencing on the date of the first deed of conveyance of each property from the developers to the original owners of the units. The amendment applies to the attached list (Attachment A) of properties and is subject to the attached (Attachment B) conditions of approval.

PASSED AND ADOPTED this 26th day of January, 2016 upon motion of Supervisor _____, seconded by Supervisor _____, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

I, Gail T. Borkowski, Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof Minute Book _____ for the meeting on _____.

Date:

File Number:

Gail T. Borkowski, Clerk of the Board of Supervisors
County of Monterey, State of California

By _____
Deputy

ⁱ The list of owners, addresses and Assessor's Parcel Numbers of the 161 residential units subject to this application is attached to this Resolution.