

Attachment B

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MONTEREY COUNTY PLANNING COMMISSION

Meeting: September 9, 2015	Agenda Item No.: 2
Project Description: Request by 161 homeowners of the Moro Cojo Subdivision to amend the language of Condition No. 99 of the previously-approved Combined Development Permit (SH93001) for the Moro Cojo Standard Subdivision. The requested amendment would alter the term of affordability on the 161 single-family detached residences from permanent to 15 years, beginning from the date the residences were initially occupied.	
Project Location: Castroville Boulevard – See Exhibit C	APN: Refer to Exhibit B of the staff report
Planning File Number: PLN120650	Owner/Applicant: 161 homeowners of the Moro Cojo Subdivision (Refer to Exhibit B) Agent: Community Housing Improvement Systems and Planning Association (CHISPA).
Planning Area: North County Land Use Plan	Flagged and staked: N/A
Zoning Designation: “HDR/5 (CZ)” [High Density Residential, 5 Units per Acre (Coastal Zone)]	
CEQA Action: Negative Declaration	
Department: RMA-Planning	

RECOMMENDATION:

Staff recommends that the Planning Commission take the following actions:

- 1) Consider the Initial Study and adopt the Negative Declaration;
- 2) Consider the applicant-proposed amendment to Condition 99 of the previously-approved Combined Development Permit (SH93001) for the Moro Cojo Standard Subdivision, as well as alternatives to the proposed amendment; and
- 3) Direct staff to return to the Planning Commission at its regularly scheduled meeting on September 30, 2015 with a draft resolution for the adoption of the Commission’s recommendation to the Board of Supervisors.

PROJECT OVERVIEW:

The residential project commonly known as the “Moro Cojo Standard Subdivision Development” (Subdivision), was approved by the Monterey County Board of Supervisors on December 20, 1994, together with the “Moro Cojo Senior Housing Development” (Senior Housing). The Board (Resolution 94-524 – Exhibit D) approved a Combined Development Permit for the Subdivision (File SH93001) and a separate Combined Development Permit for the Senior Housing Development (File SH93002). Both the Subdivision and Senior Housing projects were proposed by the Community Housing Improvement Systems and Planning Association, Inc. (CHISPA) and South County Housing, as 100% affordable residential developments. The Combined Development Permit for the Subdivision included a Coastal Development Permit for a vesting tentative map to subdivide 125.6 acres into 177 lots; a Coastal Development Permit for two clustered developments of 90 multi-family rental units; and a Coastal Development Permit for a Community Center. The 177 lots in the subdivision included 175 single-family residential lots.

The Subdivision is located in northern Monterey County, approximately one mile northeast of the Castroville community; the Subdivision is immediately north of Highway 156, east of Castroville Boulevard and south of North Monterey County High School (Exhibit C). The site is in the Coastal Zone and subject to the North County Land Use Plan (North County LUP).

Both the Subdivision and Senior Housing projects were considered by Monterey County under "Special Handling" procedures in effect at the time. The intent of Special Handling was to provide heightened consideration and expedited review of developments that offered extraordinary countywide benefits, such as strong economic development potential or the creation of significant numbers of affordable housing units. As a 100% affordable housing development, the Subdivision and Senior Housing merited the Special Handling designation; the 100% affordable status of the development also factored into the adoption of a Statement of Overriding Considerations for the project's Environmental Impact Report (EIR) at the time of its certification. The Board of Supervisors accepted the Final Map for the Subdivision on September 30, 1997.

The Subdivision and Senior Housing projects were approved subject to a joint set of conditions. Condition No. 99, the focus of the subject request, required the following:

"That all the units in the Moro Cojo Inclusionary Housing Development Projects (SH93001 and SH93002) be affordable to very low, low and moderate income households as defined in Section 50093 of the California Health and Safety Code."

Importantly, at the time of approval, Condition 99 did not specify a time frame that the affordability requirement for the residential units would remain in effect. A subsequent Settlement Agreement and Stipulation for Judgment (Exhibit E), resulting from a lawsuit filed on the approval of the project, however, stipulated that Condition 99 required that the units within the approved Subdivision and Senior Housing be affordable to very low, low and moderate income households as a *permanent deed restriction on the parcels*. Presently, CHISPA, acting as representative for 161 of the 175 individual owners of the single-family detached residences in the Subdivision has applied to amend Condition No. 99 to alter the duration of the affordability requirement for the 161 residences. As proposed by CHISPA on behalf of the 161 homeowners, the amendment would change Condition 99 to read as follows (proposed language is underlined):

"That the units in the Moro Cojo Inclusionary Housing Development Projects (SH93001 and SH93002) be affordable to very low, low and moderate income households as defined in Section 50093 of the California Health and Safety Code ("Affordability Requirement"). The term of the Affordability Requirement for the "for sale" units within the Moro Cojo Inclusionary Housing Development Projects identified in application # PLN120650 shall be 15 years. The 15-year affordability term shall commence on the date of the first deed of conveyance from the developer (CHISPA or South County Housing) to the original owner of the "for sale" unit."

The materials submitted by the Applicant in support of the request are included in Exhibit G. The discussion of the proposed amendment, policy analysis and alternatives is included in Exhibit A (Discussion). The three principal issues associated with the request and discussed in Exhibit A are: 1) Whether the existing term of affordability for the 161 residences should remain in perpetuity; 2) If the term is modified from in perpetuity, determining the appropriate remaining duration of affordability for the residences; 3) Whether replacement affordable housing units will be required to offset the loss of the 161 existing affordable housing units.

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

RMA-Public Works Department
RMA-Environmental Services

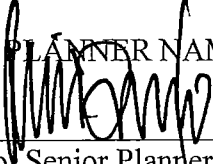
Environmental Health Bureau
Water Resources Agency
Economic Development Department

Given the nature of the project, none of the reviewing agencies submitted comments regarding the proposal.

The proposed amendment to Condition 99 was reviewed and considered by the Housing Advisory Committee on April 8 and May 27, 2015. The recommendation from the Housing Advisory Committee is attached to the staff report as Exhibit I.

Note: The decision of the Planning Commission on this application is a recommendation to the Board of Supervisors and is, therefore, not appealable.

/S/ PROJECT PLANNER NAME


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August 31, 2015

cc: Front Counter Copy; Planning Commission; RMA-Public Works Department; RMA-Environmental Services; Environmental Health Bureau; Water Resources Agency; California Coastal Commission; Luke Connolly, RMA Management Specialist; Luis A. Osorio, Project Planner; Jane Barr, Economic Development; CHISPA c/o Alfred Diaz-Infante, Agent; Center for Community Advocacy c/o Juan Uranga; The Open Monterey Project (Molly Erickson); LandWatch (Amy White); Jane Haines; Mary Tsui; Martha Rau; Denise Visintine; Eleonore Gutierrez; Gloria Stinnette; Margaret Robinson; Planning File PLN120650

Attachments:	Exhibit A	Project Discussion
	Exhibit B	Subject Property Owner List and Map
	Exhibit C	Vicinity Map
	Exhibit D	Board of Supervisors Resolution No. 94-524
	Exhibit E	<u>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</u> (Monterey County Superior Court Case No. 102344)
	Exhibit F	Deed Restriction reflecting the terms of the affordability requirement recorded in October 1997.
	Exhibit G	Support materials provided by the Applicant <ul style="list-style-type: none">• Correspondence dated March 22, 2014• Correspondence dated July 15, 2014
	Exhibit H	Minutes, Housing Advisory Committee Meeting May 27, 2015
	Exhibit I	April 29, 2015 Memorandum from the County Counsel Office to the Board of Supervisors RE: Legal Analysis of Public Resources Code Section 30614 as it pertains to the application to modify the affordability restriction on homes in the Moro Cojo Subdivision.
	Exhibit J	Initial Study/Negative Declaration
	Exhibit K	Comments on original Initial Study and staff's responses
	Exhibit L	Comments on the revised Initial Study and staff's responses
	Exhibit M	General Correspondence

This report was reviewed by Luke Connolly, AICP, Management Specialist.

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Exhibit A
Project Discussion

EXHIBIT A DISCUSSION

Background

The Moro Cojo Subdivision and Senior Housing projects were proposed by the developers, CHISPA and South County Housing, as a 100% affordable, self-help housing development. Neither the Subdivision nor the Senior Housing was proposed pursuant to any County policies or inclusionary housing requirements. The projects, therefore, while being 100% affordable, are not subject to the County's Inclusionary Housing Ordinance. As indicated by the term "self-help," all of the 175 homes that comprise the Subdivision were constructed by the owners under a United States Department of Agriculture Rural Development Mutual Self-Help program, whereby the families contributed to the building of their homes and earned "sweat equity" in the residences through their work. Additionally, the County funded both State HOME First Time Homebuyer and Self Help loans to 50 of the 161 applicant homeowners. As stated above, under Project Review, Condition 99 of the Subdivision required the following:

"That all the units in the Moro Cojo Inclusionary [the term "Inclusionary" is used here as a synonym for "affordable"] Housing Development Projects (SH93001 and SH93002) be affordable to very low, low and moderate income households as defined in Section 50093 of the California Health and Safety Code."

As approved by the Board of Supervisors in 1994, Condition 99 did not specify a time frame for the affordability requirement for the residences. A Deed Restriction (Exhibit F) reflecting the terms of the affordability requirement of Condition 99 was recorded in of October 1997. Earlier, however, in November 1995, after a lawsuit was filed over the project approval by the Alliance to Enforce Mandates Governing Project Review Procedures and Water and Traffic Standards and David Green, the parties entered into a Settlement Agreement and Stipulation for Judgment (Settlement Agreement) (Exhibit E). The Agreement provided, among other things, that:

- 1) The requirement of Condition 99, that the units within the approved projects be affordable to very low, low and moderate income households *shall be a permanent deed restriction on the parcels* (emphasis added); and
- 2) That the 175 single-family homes [in the Moro Cojo Subdivision] are for low-income households (80% of median income).

In 2005, CHISPA obtained a court order clarifying that Condition 99 and the recorded deed restriction "allow for and permit the resale of any and all of the Project Units to persons and families of very low, low or moderate income." This clarification allowed resale of the single-family units within the Subdivision to families with moderate incomes, not just low incomes. The court order did not, however, alter the duration of the affordability requirement, which remained permanent pursuant to the 1995 Settlement Agreement. Therefore, at present, homes within the Subdivision can be sold to households with incomes not exceeding moderate levels (i.e., households that earn no more than 120% of the area median income) on the basis that they remain permanently affordable.

The Settlement Agreement also stipulated that:

"In regard to any application or request for any modification of any condition of approval, the parties agree as follows:

- 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;

Any decision made by the County pursuant to this Agreement shall be reviewable in the Superior Court in the manner permitted by law. The Superior Court expressly retains jurisdiction over the parties and the subject matter in order to effectuate the terms and purposes of this Settlement Agreement.”

An additional key provision of the Settlement Agreement stated 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. Failure to give such notice shall render voidable any County action taken which does not conform with this paragraph.”

Basis for the Applicant’s Request

The amendment, as proposed by the 161 homeowners and CHISPA, to Condition 99 of the previously-approved Combined Development permit would add the following language to the Condition:

“The term of the Affordability Requirement for the “for sale” units within the Moro Cojo Inclusionary Housing Development Projects identified in application # PLN120650 shall be 15 years. The 15-year affordability term shall commence on the date of the first deed of conveyance from the developer (CHISPA or South County Housing) to the original owner of the “for sale” unit.”

Per the 1995 Settlement Agreement, RMA-Planning requested that the applicant provide evidence to support their proposal. The evidence submitted on behalf of the 161 homeowners through CHISPA is included in Exhibit G and is summarized in points 1-9, below:

1. The Subdivision homeowners face challenges selling their deed-restricted homes 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 the 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 for 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;

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 loans 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.

The request to amend Condition 99 has been made consistent with the requirements of the Settlement Agreement in that: 1) The County did not initiate the proposed modification to Condition 99; 2) the Applicants have provided evidence in support of their request; 3) the County has conducted appropriate environmental review; and 4) the County has provided thirty days actual notice of public hearings to the known petitioners of the lawsuit that resulted in the 1995 Settlement Agreement.

Policy Analysis

As stated, the Subdivision, along with the Senior Housing, was proposed by the developers and approved by the Board of Supervisors as a 100% affordable housing development that provided a significant number of much-needed affordable housing units in the North County area; but the affordable housing units were not, and are not, part of the County’s Inclusionary Housing Program. In approving the Subdivision, the Board of Supervisors adopted a Statement of Overriding Considerations, finding that “the benefits of the proposed project on the available housing in Monterey County outweigh any potential unavoidable adverse environmental effects of the project.” (See Exhibit D, final page).

At present, the major issue associated with CHISPA’s request on behalf of the 161 Moro Cojo Subdivision homeowners is balancing the ongoing need for the County to provide and maintain affordable housing units with the interests of individual property owners who may be enduring financial inequities caused, at least in part, by the affordability restrictions that encumber their properties—in this case, a requirement that their properties remain affordable to moderate income families in perpetuity. A corollary issue to this is whether the residences, if the affordability requirement were eliminated at an as yet undetermined future date, would need to be replaced by an equal number of affordable units.

The principal policies and regulations relevant to the request are discussed below.

California Coastal Act

As part of the review process for the proposal, comments were received from the public and the Coastal Commission stating that Section 30614 of the California Public Resources Code prohibits the County from modifying the term of the affordability restriction on any of the single-

family residences that make up the Subdivision. The Office of the County Counsel, however, researched this issue and provided a legal opinion (Exhibit J) determining that Section 30614 is inapplicable to the subject request and, therefore, does not impede the County's consideration of the request to modify the term of the affordability restriction. Counsel's specific determination regarding Section 30614 of the Public Resources Code is that it applies solely within Orange County; it does not apply in Monterey County or elsewhere throughout California's Coastal Zone.

The remaining policies and regulations discussed in this report bear directly on the main issues associated with the request: 1) Should the affordability requirement remain in perpetuity? 2) If not, what would be the appropriate term of affordability going forward? 3) Would affordable replacement units be required to offset the loss of the existing affordable housing units?

North County Land Use Plan

The proposed modification of Condition 99 is subject to Policy 4.3.6.D.1, "Low and Moderate Income Housing," of the North County Land Use Plan (LUP), which requires that affordable housing units proposed for conversion be replaced. Policy 4.3.6.D.1 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.

This language was adopted as part of the LUP in 1982 and has not been modified since that time. The intent of the Policy, which is "based on the goals of the adopted County Housing Element," is focused on protecting and maintaining existing affordable housing stock within the North Coast LUP area and stipulates that any affordable housing lost through demolition or conversion is required to be replaced on a "one by one basis." Beyond the one-by-one replacement requirement, however, the LUP does not provide guidance as to what constitutes acceptable replacement units. For instance, the LUP does not address whether there are exceptions to the replacement requirement; where, geographically, replacement units would need to be located within the County; the timing for construction and occupancy of the replacement units; whether the replacement units need to be of the same housing type (i.e., single-family or multi-family; rental or owner-occupied) as the units being replaced; or whether the term of affordability for the replacement units would need to mirror that of the lost affordable units, among other considerations.

In the early 1980s, when the North Coast LUP was adopted, the Coastal Act included language related to the development and preservation of affordable housing. However, the Coastal Act no longer addresses the provision of affordable housing, leaving the issue to State laws and local policies and regulations more appropriately intended to address issues relating to housing and affordability. While staff has not found any conclusively definitive language clarifying LUP Policy 4.3.6.D.1 beyond the one-by-one replacement requirement, there is additional, often more specific, language and guidance concerning the issue of affordable housing and replacement for lost affordable units in the County's Housing Element and State law pertaining to Housing Elements.

Housing Element Goals and Policies

Consistent with State law, the County's current Housing Element (which applies to properties in the Coastal Zone, such as the Moro Cojo Subdivision, as well as to the County's inland areas) contains goals and policies that support the construction and maintenance of affordable housing, which remains a critical need throughout the County as well as the majority of the State of California. Accordingly, Housing Element Goal H-1 is to "Assure the quality, safety, and habitability of existing housing, promote the continued high quality of residential neighborhoods, preserve at-risk affordable housing developments, and conserve energy." Policy H-1.7, which implements Goal H-1, is to "Encourage the conservation of existing housing stock through rehabilitation while...assuring that existing affordable housing stock...[is] not lost." Policy H-1.8, which also implements Goal H-1, is to "Work with property owners and nonprofit housing providers to preserve lower income housing at risk of converting to market rate." Based on an objective reading of these policies, which are implicitly intended to increase and maintain affordable housing throughout the County, the proposed transition of 161 single-family residences in the Subdivision from affordable (to households whose incomes do not exceed moderate income requirements) to market rate appears inconsistent. This, however, leads to consideration of other relevant provisions of the Housing Element and State law that bear on this request, specifically related to replacement housing in the Coastal Zone.

Low and Moderate Income Housing in the Coastal Zone

Section 2.9, "Housing in the Coastal Zone," of the County's Housing Element addresses a range of issues related to affordable housing located within and proximate to the Coastal Zone. 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." (Emphasis added).

Section 2.9 goes on to state, "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." (Emphasis added). California Government Code Section 65590(b) states that local governments may determine that if replacement of all or any portion of the converted or demolished affordable dwelling units is feasible then replacement may be required. Therefore, local governments are not precluded from requiring replacement units for lost or converted affordable housing units, regardless of housing type; however, 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-family housing structures, which are the primary means of providing affordable rental housing to lower income households. An additional statement in the County's Housing Element, "The majority of the housing units in the Coastal Zone are single-family homes not subject to the replacement requirements," further supports the view that single-family residences are not subject to replacement requirements.

One final consideration regarding replacement housing units within the Coastal Zone is the definition of the term "conversion." Neither the North Coast LUP nor the County's Housing Element defines what constitutes conversion. The language used in LUP Policy 4.3.6.D.1, quoted above, which requires replacement on a "one by one basis" for converted affordable units can be interpreted so that conversion refers to the unit's affordability; in other words, converting

housing units from affordable to market rate. In relation to housing, though, 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 open to interpretation. California Government Code Section 65590(g)(1), part of Article 10.7, "Low- and Moderate-Income Housing in the Coastal Zone," however, 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 use. The term of the unit's affordability does 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 15-year term would not constitute a conversion. This further militates against requiring replacement affordable units if the term of affordability were lessened and ultimately eliminated in the future.

General Plan Land Use Policy LU-2.12

The 2010 General Plan does not apply to properties in the Coastal Zone, like the Moro Cojo Subdivision, however, the County's most recently-drafted and relevant policy addressing the term of affordability for affordable housing is Land Use Element Policy LU-2.12, which 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.

Essentially, Policy LU-2.12 distinguishes between 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. Since Policy LU-2.12 is part of the 2010 General

Plan it does not bear directly on the subject request due to the Subdivision's location in the Coastal Zone, but it does provide a basis for considering an alternate position whereby the term and circumstances associated with affordability would be modified. Policy LU-2.12 was considered by the Housing Advisory Committee (HAC) in its review of the proposal and helped frame their ultimate recommendation, discussed below.

Subdivision Ordinance

The proposed modification to Condition 99 constitutes an amendment to the recorded Final Map for the Subdivision. Therefore, the modification would be subject to the provisions of Chapter 19.08.015 (Correction and Amendment of Recorded Final or Parcel Maps) of the Subdivision Ordinance. Chapter 19.08.015(A)(7) provides that a recorded final or parcel map may be amended to make modifications to the final or parcel map where there are changes that: 1) 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.

The proposed modification to Condition 99 solely requests a modification to the affordability requirements of 161 of the 175 for-sale, single-family residences and does not involve further subdivision, site improvements, development intensification or change of use within the subdivision. Moreover, the term of the affordability requirement was not a product of the Subdivision but was established post-approval through the Settlement Agreement.

Review by the Housing Advisory Committee

The Housing Advisory Committee (HAC) considered the proposed change to Condition 99 at their regular meetings on April 8, 2015 and May 27, 2015. On May 27, the HAC recommended (by a vote of 5-1, one member absent) that the term of the affordability restriction 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.”

A major assumption in the May 27 discussion before the HAC was that replacement units would be required in accordance with North Coast LUP Policy 4.3.6.D.1. Staff did not advise the HAC that the Housing Element, Section 2.9, “Housing in the Coastal Zone,” and State law, Article 10.7, “Low- and Moderate-Income Housing in the Coastal Zone,” provided additional specificity indicating that affordable single-family residences would be exempt from replacement requirements. During the May 27 consideration of the request, the majority of the HAC, except for one member, was opposed to the in-perpetuity affordability requirement and supported an alternate, defined time period and approach similar to that outlined in General Plan Policy LU-2.12. Their recommendation, cited above, was for a 25-year (10 more years than requested by

CHISPA) term of affordability, starting from the residences initial occupancy approximately 15 years ago.

The recommendation from the HAC allowed that the 25-year period could be reduced if CHISPA replaced the units with an equal number of affordable units within the unincorporated area of Monterey County. Had the HAC been aware that replacement of the units was not a certainty their recommendation may have been different, particularly since the replacement requirement was a factor in arriving at the recommended 25-year time period of affordability, allowing CHISPA a realistic period of time finance and construct the replacement units. Also, in recommending that acceptable replacement units could be built anywhere within the unincorporated portion of Monterey County, the HAC was not aware of the provisions in the Housing Element and State law, Article 10.7, that replacement housing required to offset the loss of affordable housing needs to be within the Coastal Zone or within three miles of the Coastal Zone. Had the HAC members been aware of these provisions regarding the location of replacement housing their recommendation may have been different concerning the location of replacement units as well.

Environmental Review

Staff prepared an Initial Study where no potentially significant environmental impacts were identified from the proposed amendment to Condition 99. The Initial Study/Negative Declaration was circulated for public review, including to the State Clearinghouse and the Coastal Commission, from March 6, 2015 to April 6, 2015. Nine letters were submitted with comments on the Initial Study. The main concern expressed on the comment letters related to the lack of analysis of the project's consistency with the requirements of North County LUP Policy 4.3.6.D.1, regarding potential replacement units. Based on these comments a Revised Initial Study was prepared and circulated for public review from July 6, 2015 to August 5, 2015. The revised Initial Study included discussion of provisions of Policy 4.3.6.D.1 of the LUP and staff's interpretation of the project's consistency with it. Only one comment letter was submitted on the revised Initial Study. The comment letters on the original Initial Study and staff responses are included in Exhibit K. The comment letter on the revised Initial Study and staff's response are included in Exhibit L.

Project Considerations and Alternatives

The proposed amendment of the term of the affordability requirement for the subject single-family residences, as proposed by CHISPA on behalf of the 161 homeowners, would modify it from in-perpetuity to 15 years commencing on the date of the first deed of conveyance from the developers to the original owner of the residence. The residences were generally conveyed approximately 14-15 years ago, meaning the affordability requirement would be removed in the very near future for most homeowners if the amendment were approved as proposed.

The proposal to modify the affordability term for a large number of owner-occupied, single-family residences within the Coastal Zone is extremely uncommon and involves balancing many policy considerations, some of which have seldom been referred to or interpreted, with issues of individual fairness and equity. While the proposal has its complexities, there are three main issues, as outlined earlier, to be considered: 1) Whether the existing term of affordability for the 161 residences should remain in perpetuity? 2) If the term is modified from in perpetuity, what is the appropriate remaining term of affordability? 3) Whether replacement affordable housing units are, or should be, required to offset the loss of the 161 existing affordable housing units. These issues form the framework for the Planning Commission's consideration and recommendation. The

following are potential recommendations to the Board of Supervisors for which staff can draft a Resolution for the Commission's adoption at its regularly scheduled September 30 meeting:

1. Recommend 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 affordable residences. Staff does not believe that replacement units are required based on the proposal not constituting a "conversion" under the definition of conversion in State law (General Code Section 65590(g)(1) and the nature (single-family residences) of the housing involved. However, if requiring replacement housing were included in the recommendation, staff believes the replacement housing would need to be constructed in the Coastal Zone or within three miles of it, in accordance with State law (Government Code Section 65590(b) regulating the location of replacement housing and the Housing Element (Section 2.9, "Housing in the Coastal Zone"). Additionally, the construction of new, affordable replacement housing units would take an unspecified period of time, certainly several years, if not a decade or more, which would affect the timing of the request, as proposed.
2. Recommend denial of the request and leave 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 strong language encouraging the development, maintenance and protection of affordable housing throughout the County and Coastal Zone. If the request were denied there would be no consideration of replacement housing.
3. Recommend an alternate time period for affordability to remain in place, based, for instance on the HAC's 25-year recommendation or General Plan Policy LU-2.12. As with the first option, the consideration of whether replacement housing should be required addressed independently.

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