



Monterey County

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Board Report

Legistar File Number: 15-1292

December 08, 2015

Introduced: 11/23/2015

Current Status: Agenda Ready

Version: 1

Matter Type: General Agenda Item

Public hearing to consider:

- a. The request by 161 homeowners of the Moro Cojo Subdivision to amend Condition #99 of the previously-approved Combined Development Permit (SH93001) for the Moro Cojo Standard Subdivision and the Planning Commission recommendation to adopt a negative declaration, approve the request to amend Condition #99 with a term of 20 years, and determine whether replacement units are required;
- b. Direction to staff regarding the proposed amendment; and
- c. Continuation of the public hearing to January 26, 2016 for staff to return with a draft resolution for adoption based upon the Board's direction.

(PLN120650, Moro Cojo Subdivision, Castroville Boulevard, North County Land Use Plan)

PROJECT INFORMATION:

Planning File Number: PLN120650

Owner: Owners of 161 residential units at the Moro Cojo Subdivision

Project Location: Moro Cojo Subdivision - Castroville Boulevard

APN: Refer to Attachment N

Agent: Community Housing Improvements and Planning Association (CHISPA)

Plan Area: North County Land Use Plan

Flagged and Staked: No

CEQA Action: Negative Declaration

RECOMMENDATION:

It is recommended that the Board of Supervisors hold a public hearing to consider:

1. The request by 161 homeowners of the Moro Cojo Subdivision to amend Condition #99 of the previously-approved Combined Development Permit (SH93001) for the Moro Cojo Standard Subdivision and the Planning Commission recommendation to adopt a negative declaration, approve the request to amend Condition #99 with a term of 20 years, and determine whether replacement units are required;
2. Direction to staff regarding the proposed amendment; and
3. Continuation of the public hearing to January 26, 2016 for staff to return with a draft resolution for adoption based upon the Board's direction.

SUMMARY:

The residential project known as the "Moro Cojo Standard Subdivision Development" (Subdivision) was approved by the Monterey County Board of Supervisors on December 20, 1994. The project was proposed by the Community Housing Improvement Systems and Planning Association, Inc. (CHISPA) as a 100% affordable residential development. The Combined Development Permit for the Moro Cojo Subdivision was approved subject to a set of

conditions, including Condition No. 99, which required “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.”

A 1995 Settlement Agreement (Attachment H) arising out of litigation on the project interpreted Condition No. 99 as a “permanent deed restriction” providing that the 175 single family homes had been approved for low income households (80% of median income.) A 2005 court order clarified that the deed restriction allows for and permits the resale of the homes to persons and families of very low, low, or moderate income. The Settlement Agreement also stipulated to the following requirements for any request for modification of a condition of approval: 1) the County cannot initiate the modification; 2) if an applicant requested modification, the burden is on the applicant to produce substantial evidence to support the request for modification; and 3) any such request shall receive appropriate environmental review under CEQA.

CHISPA, representing 161 of the 175 individual owners of the single-family residential units in the Subdivision, has applied to amend Condition No. 99 to alter the duration of the affordability requirement to 15 years. The fundamental policy issues associated with the request under consideration by the Board are the following:

- 1) Whether the existing term of affordability for the 161 individually-owned residences should remain permanent and whether the applicant has provided substantial evidence to support their request for modification;
- 2) If the term of affordability is modified from permanent, what period of time would be the appropriate remaining term of affordability; and
- 3) Whether replacement affordable housing units are, or should be, required to offset the loss of the 161 existing affordable housing units.

DISCUSSION:

The Moro Cojo Subdivision (Subdivision) was approved by the Monterey County Board of Supervisors on December 20, 1994. The Board approved a Combined Development Permit for the Subdivision (File SH93001; Resolution 94-524 - Attachment G). The project was proposed by the Community Housing Improvement Systems and Planning Association, Inc. (CHISPA) as a 100% affordable residential development. Even though the Subdivision is comprised entirely of affordable single-family residences, it is not part of the County’s Inclusionary Housing Program, meaning it was not processed under the County’s Inclusionary Housing Ordinance (Chapter 18.40), and hence the County’s Inclusionary Housing regulations are not directly applicable to the project and this application. The Subdivision is located in northern Monterey County, approximately one mile northeast of the Castroville community, immediately north of Highway 156, east of Castroville Boulevard, and south of the North Monterey County High School (Attachment N). The site is in the Coastal Zone and, therefore, subject to the North County Land Use Plan (North County LUP).

CHISPA, representing 161 of the 175 individual owners of the single-family residential homes that comprise the Subdivision, has applied to amend Condition No. 99 to alter the duration of the affordability requirement for the 161 residences as follows (CHISPA’s proposed language is

underlined):

“That the units in the Moro Cojo Inclusionary Housing Development Projects (SH93001 and SH93002 [SH93002 refers to a senior housing project that is not part of the subject request]) be affordable to 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 proposal, therefore, would modify the affordability term from permanent to a term of fifteen years. Since the 161 subject residences were conveyed approximately 14-15 years ago, the effect of granting the request is that the affordability requirement would be removed in the very near future. The major policy issue associated with the subject request is balancing the ongoing need for the County to provide and maintain affordable housing units with the interests of individual property owners who contend that the permanent deed restriction causes financial hardship, including difficulty refinancing, and that a permanent restriction is too restrictive for a self-help project. From a policy perspective, the substantive issues associated with the request are:

- 1) Whether the existing term of affordability for the 161 residences should remain permanent;
- 2) If the term of affordability is reduced from permanent, what period of time would be the appropriate remaining term of affordability; and
- 3) Whether replacement affordable housing units are, or should be, required to offset the loss of the 161 existing affordable housing units.

Any change would have to be consistent with the County’s General Plan, and applicable policies relevant to the proposal are included in the North County Land Use Plan and the Housing Element of the General Plan. Additionally, as discussed above, the Board would need to find that the change is supported by substantial evidence.

While many options are within the Board’s discretion and could be found consistent with General Plan policies, staff has outlined some of the principal alternatives, which range from denying the request in full, granting the request in full, or approving a middle ground, as follows:

1. Deny the request: Leave the term of affordability unchanged as a permanent requirement;
2. Grant the request: Approve the proposal as submitted by CHISPA on behalf of the 161 homeowners. 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 how long 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.

The County's Housing Advisory Committee (HAC) recommended a change in the term of affordability to 25 years if CHISPA constructs 161 replacement units within that time period. The HAC recommendation also would allow the 25-year period to be reduced if CHISPA replaced the units with an equal number of affordable units within the unincorporated area of Monterey County prior to the end of the 25-year period. (See Attachment D.)

The Planning Commission recommended a change in the term of the affordability restriction (Attachment C) from permanent to a 20-year period commencing on the date of conveyance of each property to the original owners. The Commission deliberated as to whether North County Land Use Plan policy required replacement housing. This question involves interpretation of the policy, and reasonable minds can differ as to that interpretation. The Commission did not reach agreement as to the recommended interpretation and, hence, the Planning Commission deferred to the Board of Supervisors to interpret that policy.

Discussion of applicable policies and these alternatives for Board action is provided in **Attachment A**.

OTHER AGENCY INVOLVEMENT:

The Planning Commission and Monterey County Housing Advisory Committee have made recommendations, which are further discussed in Attachment A.

FINANCING:

Funding for staff time associated with this project is included in the FY15-16 Adopted Budget for RMA-Planning.

Prepared by: Luis A. Osorio, Senior Planner ext. 5177

Approved by: Mike Novo, Director, RMA-Planning, ext. 5192

Carl P. Holm, Director Resource Management Agency, ext. 5103

This report was reviewed by Luke Connolly, Management Specialist

All attachments are on file with the Clerk of the Board:

- Attachment A Discussion
- Attachment B Planning Commission Staff Report (with Exhibit A- Discussion, only);
- Attachment C Planning Commission Resolution
- Attachment D Minutes, Housing Advisory Committee Meeting May 27, 2015
- Attachment E Basis for the Applicant's Request (Summary prepared by Staff)
- Attachment F Support materials provided by the Applicant
 - Correspondence dated March 22, 2014
 - Correspondence dated July 15, 2014
- Attachment G Board of Supervisors Resolution No. 94-524
- Attachment H 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)
- Attachment 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.
- Attachment J Deed Restriction reflecting the terms of the affordability requirement recorded in October 1997.
- Attachment K Initial Study/Negative Declaration
- Attachment L Comments on original Initial Study and staff's responses
- Attachment M Comments on revised Initial Study and staff's responses
- Attachment N Subject Property Owner List, Assessor Parcel Numbers and Location Map
- Attachment O General Correspondence
- Attachment P Memorandum from Housing Office to RMA Planning re Alternative Forms of Compliance

cc: Front Counter Copy; California Coastal Commission; Luke Connolly, 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; Jane Haines; The Open Monterey Project (Molly Erickson); LandWatch (Amy White); Mary Tsui; Martha Rau; Denise Visintine; Eleonore Gutierrez; Gloria Stinnette; Margaret Robbins; Project File PLN120650

