

W/6c

Recipient Information

To: Brian O'Neill
Company: California Coastal Commission
Fax #: 8314274877



Sender Information

From: Andrew Allison
Email address: allison.aa@gmail.com (from 99.162.78.104)
Phone #: 8316264361
Sent on: Monday, August 1 2016 at 9:27 PM EDT

Click here to go to original staff report

Re: Appeal No. A-3-MCO-16-0017 The Jan. 26, 2016, decision by the Monterey County Board of Supervisors (Parker dissenting) to amend the affordability requirement that keeps 161 homes in the Castroville area coastal zone permanently was clearly illegal. By law, their affordability status may not change unless the Board of Supervisors acts consistently with the 1982 North Monterey County Local Coastal Program. It states that Monterey County shall protect affordable housing in the North County coastal zone and, if for any reason the affordable housing must be converted, replacement units shall be required. Despite that mandate, the supervisors voted to amend the permanent affordability restriction at the Moro Cojo project so it will terminate in 2020, and they required no replacement units. As a Monterey County resident, I respectfully request you to read important information at pages 78-90 of the staff report in connection with the criteria for finding "substantial issue." That information, which demonstrates why the Coastal Commission should reject staff's recommendation for the Aug. 10 hearing and instead vote to find "substantial Issue" was omitted from the body the staff report. There is a critical shortage of affordable housing in Monterey County, and there should be no question of removing any of what little stock there is. cc'd to Staff Andrew Allison 25420 Via Cicindela Carmel, CA 93923

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W16c

From: Brian Ackerman [info@whispercharters.com]

Sent: Sunday, July 31, 2016 11:40 AM

To: Turnbull-Sanders, Effie@Coastal; Bochco, Dayna@Coastal; Luevano, Mary@Coastal; Mitchell, Wendy@Coastal; Shallenberger, Mary@Coastal; Vargas, Mark@Coastal; McClure, Martha@Coastal; Kinsey, Steve@Coastal; Groom, Carole@Coastal; Howell, Erik@Coastal; Uranga, Roberto@Coastal; Cox, Greg@Coastal

Cc: brian.oneill@coastal.ca.gov

Subject: Appeal No. A-3-MCO-16-0017

Dear Commissioner,

I'm a Monterey County resident. I respectfully request you to read important information at pages 78-90 of the staff report in connection with the criteria for finding "substantial issue." That information is not mentioned elsewhere in the staff report but is important. It will show you why the Coastal Commission should reject staff's recommendation for the Aug. 10 hearing and instead vote to find "substantial Issue."

Sincerely,
Brian Ackerman

COMMUNICATIONS SECTION
AUG - 9 2016
COMMUNICATIONS SECTION

W16c

Chapman, Diana@Coastal

From: Michael Smith <cwo4smith@gmail.com>
Sent: Wednesday, August 03, 2016 7:20 PM
To: Kinsey, Steve@Coastal
Cc: Chapman, Diana@Coastal
Subject: Fwd: Appeal No. A-3-MCO-16-0017

**Representative identical email
letter sent to each
Commissioner.**

Dear Mr. Kinsey,

I'm a Monterey County resident.

I respectfully request you to read important information at pages 78-90 of the staff report in connection with the criteria for finding "substantial issue."

That information is not mentioned elsewhere in the staff report but is important.

It will show you why the Coastal Commission should reject staff's recommendation for the Aug. 10 hearing and instead vote to find "substantial Issue."

Very respectfully,

Michael J. Smith, CWO4, USNR(Ret.)
691 Jessie Street
Monterey, CA 93940
831 324 4782

W16c

Chapman, Diana@Coastal

From: MARGIE17K@aol.com
Sent: Wednesday, August 03, 2016 5:26 PM
To: Chapman, Diana@Coastal
Subject: Fwd: W16c - Appeal No. A-3-MCO-16-0017

RESPRESENTATIVE FORM
LETTER RECEIVED FROM 4
SEPARATE INDIVIDUALS

Diana,
Resending to you since the "v" was dropped off in first sending this morning.
Apologies.
AOL does not allow me to send to Brian so his instructions were to send to you.
Margie Kay

From: MARGIE17K@aol.com
To: Steve.Kinsey@coastal.ca.gov
CC: Effie.Turnbull-Sanders@coastal.ca.gov, Dayna.Bochco@coastal.ca.gov, Mary.Luevano@coastal.ca.gov,
Wendy.Mitchell@coastal.ca.gov, Mary.Shallenberger@coastal.ca.gov, Mark.Vargas@coastal.ca.gov,
Martha.McClure@coastal.ca.gov, Carole.Groom@coastal.ca.gov, Erik.Howell@coastal.ca.gov,
Greg.Cox@coastal.ca.gov, Diana.Chapman@coastal.ca.gov
Sent: 8/3/2016 10:19:10 A.M. Pacific Daylight Time
Subj: W16c - Appeal No. A-3-MCO-16-0017

A-3-MCO-16-0017 (Moro Cojo Affordable Housing CDP Amendment)

California Coastal Commissioners,
Please find **"Substantial Issue"** and **uphold the certified land use plan.**
I live in the North Monterey County coastal zone 5 miles from the Moro Cojo subdivision homes that received a statement of overriding considerations for approval due to the acute need for affordable housing that still exists and **respectfully request you read pages 78-90 of the staff report** in connection with the criteria for finding "substantial issue." That information is not mentioned elsewhere in the staff report but is important and will show you why the Coastal Commission should reject staff's recommendation at the Aug. 10 hearing and instead **vote to find "Substantial Issue."**
Margie Kay

W16c ✓

JEAN RASCH

ATTORNEY AT LAW

3855 VIA NONA MARIE, SUITE 204B
CARMEL, CALIFORNIA 93923

Telephone: 831-625-3200
E-Facsimile: 1-650-324-2764
jean@jeanrasch.com

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August 5, 2016

Coastal Commission

Re: Moro Cojo Revision of Affordability Restrictions

Dear Coastal Commission:

I support the appeal of Jane Haines against the lessening of affordability restrictions of the Moro Cojo neighborhood as currently proposed.

Maintaining affordable housing is a crucial need in our county. Awarding a windfall to a few homeowners, while not replacing the stock of affordable housing in Monterey County, makes no sense at all at this time when we have homeless people in every community camped out in our parks and highway on-ramps. We need MORE affordable housing, not less.

Monterey County has a land use policy seeking to provide affordable housing. The Coastal Commission should uphold this policy and at a minimum require replacement of the housing stock one for one. Without replacement housing absolutely insured, the proposed revisions should be rejected.

The proposed revisions, if allowed, may set an unfortunate precedent for conversion of other low income housing, at a time, again, when we need more affordable housing, not law suits over allowing participants to benefit at the expense of the broader community, a community which is struggling with the intense need to expand the low income housing stock.

Sincerely,



Jean Rasch
Attorney at Law



CCA

CENTER FOR COMMUNITY ADVOCACY
CENTRO DE ABOGACÍA DE LA COMUNIDAD

Main Office: 22 West Gabilan Street
Salinas, CA 93901

Phone: (831) 753-2324 • Fax: (831) 753-0141

W16c

DEDICATED TO IMPROVING FARMWORKER HEALTH & HOUSING BY
TRAINING FARMWORKERS TO HELP THEMSELVES

August 5, 2016

Steve Kinsey, Chair
California Coastal Commission
3501 Civic Center Drive, Suite 329
San Rafael, CA 94903

VIA EMAIL

RE: Appeal A-3 MCO 16-0012
Moro Cojo

Dear Mr. Kinsey:

The Center for Community Advocacy (CCA) supports the Coastal Commission staff's recommendation that this matter poses no substantial issue.

CCA has, for several years, energetically supported the efforts of 165 home owner, farmworker families who seek the removal of an onerous "perpetuity" restriction from their deeds; a restriction which was imposed 15 years ago under threats from people who did not want farmworkers living close to them (NIMBYs) and a restriction which has proven to be inequitable and unfair in its application. The restriction has saddled the farmworkers, all of whom reside in a community known as "Moro Cojo", with high interest rates (sometimes double the market rate) on their mortgages and has made it difficult to access home equity to finance repairs to their homes and to finance their children's education.

CCA is a farmworker housing advocacy group. CCA organizes farmworkers at housing sites and trains them to engage in concerted activity aimed at improving the quality of housing available to farmworkers and other low-income working families in the Salinas and Pajaro valleys. We strive to both improve the existing stock of housing (by training tenants to engage in escalating actions against their landlord, including rent strikes) and to increase the stock of farmworker housing (by partnering with housing developers to help them build new, affordable units). In both endeavors, we seek to uphold one true value: that farmworkers and other low-income working families must be treated respectfully and equitably.

In the instant matter, the "perpetuity" deed restriction imposed on 165 farmworker homeowners in "Moro Cojo" has the consequence of treating those farmworkers inequitably and unfairly when compared to other homeowners in Monterey County, including other low-income homeowners who, like the 165 farmworkers, built their own homes under a "self-help" program funded by the United States Department of Agriculture (it is this self-help nature, where farmworkers, themselves, build their own homes after working all day in the agricultural fields that makes the homes affordable). No other such housing project has the same restriction as "Moro Cojo". The County of Monterey, realized this inequity and took action to modify the perpetuity

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restriction and replace it with the customary 20 year restriction that attaches to all similar projects. The Monterey County Board of Supervisors did so on a 4 to 1 vote after years of study, conferences, research and hearings. Moreover, the Board of Supervisors came to its conclusion based upon the recommendation of County staff, including housing development staff and staff from County Counsel.

CCA contends that the County of Monterey acted well within its authority to modify the subject deed restriction. The Coastal Commission staff agrees.

When all is said and done, the Commission is faced, on one side, with a community of 165 farmworker families who reside in the Salinas Valley and who have the support of the region's premier affordable housing developer (CHISPA), the region's premier farmworker housing advocate (CCA) and the nation's premier Latino, social justice organization (LULAC). On the other side are a handful of folk and organizations whom all reside on the Monterey Peninsula, who have never worked in the agricultural fields and who have tenuous connections, if any, to the farmworker community and to the affordable housing sector.

CCA believes that both legal authority and the equities underlying this case support the Coastal Commission staff's recommendation.

Sincerely,

A handwritten signature in black ink, appearing to read 'Juan Uranga', written in a cursive style.

Juan Uranga
Executive Director and Attorney at Law

W16c

North Monterey County LULAC

LEAGUE OF UNITED LATIN AMERICAN CITIZENS

P.O. Box 1359, Castroville, CA 95012



*President
Diana Jimenez*

*1st Vice
President
Martha
Chavarria*

*2nd Vice
President
Adriana
Mendoza*

*Secretary
Stephanie Ortiz*

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Chair
Valerie Bigham*

*Scholarship
Vice Chair
Sally Childs*

April 23, 2014

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The Honorable Louis Calcagno, Chair
Monterey County Board Of Supervisors
The Honorable Jose Mendez, Chair
Monterey County Planning Commission
168 W. Alisal Street,
Salinas, CA 93901

SUBJECT: Moro Cojo Subdivision- Deed Restrictions

Dear Supervisor Calcagno, Members of the Board of Supervisors, and Planning Commissioners:

The NMC LULAC Council strongly supports CHISPA's application to modify Rancho Moro Cojo's resale deed restrictions from a term of perpetuity to a term of 15 years, and that these changes apply to all the 175 single-family home owners.

In 2004, we wrote a letter urging the Board to not approve deed restriction policies that have a lifetime affect on low-income homeowners and their children, and that the County establish a policy that resale deed restriction affecting inclusionary housing units should not exceed a reasonable time period such as ten years; we continue to support these policy changes.

We believe implementing lifetime deed restrictions whereby low-income homeowners like Moro Cojo residents are permanently limited to the amount of money they can sell their property for are discriminatory in practice. The lifetime deed restrictions does not afford a low-income minority group the same economic growth privileges and opportunities associated with homeownership that their neighbors have, marginalizes forever an already economically disadvantaged community, and creates a casting system for the current homeowners and their children.

All of Moro Cojo homeowners deserve the same privileges and opportunities afforded to all of us who are home owners. This includes: refinancing to take advantage of low interest rates; helping to pay for our children's education, assisting our children buy their own home, and gaining economic growth and power as the economy improves.

Thank you for the opportunity to express our concerns and recommendations, and for your consideration of this important public issue.

Respectfully,

Diana Jimenez
NMC LULAC President



THE LEAGUE
OF WOMEN VOTERS
of Monterey County

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August 3, 2016

Steve Kinsey, Chair of the California Coastal Commission
3501 Civic Center Drive, Suite 329
San Rafael, CA 94903-4193

Subject: August 10, 2016 California Coastal Commission Hearing Appeal A-3-MCO-16-0012
(Moro Cojo Affordable Housing CDP Amendment)

Dear Mr. Kinsey:

The League of Women Voters of Monterey County requests the California Coastal Commission find "substantial issue" in the above-referenced appeal of the January 26, 2016 Board of Supervisors decision (Parker dissenting) to terminate permanent affordability on 161 Moro Cojo homes. The decision amends existing condition no. 99 of the Moro Cojo Coastal Development Permit, so that instead of the homes being permanently affordable, they may be sold at market rate 20 years from date of purchase. Since most of the homes were purchased in 1999-2000, it means that in most cases, Moro Cojo homes which are currently affordable to low income families will become unaffordable when they change to market rate four years from now, in 2020.

Coastal Commission staff has recommended the Commission find NO substantial issue. The staff report (p. 17, paragraph 5) characterizes the appeal as raising only a fact-specific situation involving financing of affordable home ownership through sweat equity and long-term ramifications relating to the structuring of that financing which is unlikely to be a recurrent issue in other parts of the region or State. An examination of the appeal belies staff's characterization.

The appeal challenges the impending loss of affordable housing at the Moro Cojo project in North Monterey County. Public Resources Code §30614, subdivision (a), provides the legislature's guidance to the Coastal Commission regarding when a coastal development permit protecting existing affordable housing gets amended. Subdivision (a) of Section 30614 states:

(a)The commission shall take appropriate steps to ensure that coastal development permit conditions existing as of January 1, 2002, relating to affordable housing are enforced and do not expire during the term of the permit. (Public Resources Code §30614,(a).)

Condition no. 99 of the Moro Cojo coastal development permit relates to affordable housing and existed prior to 2002. On January 26, 2016, Monterey County amended condition no. 99 to end permanent affordability restrictions on 161 Moro Cojo homes. Commission staff takes the position that Public Resources Code §30614 is inapplicable to the appeal because it is not one of the grounds for appeal under Public Resources Code §30603. Nonetheless, §30614 demonstrates that preservation of existing affordable housing is of statewide concern because the legislature wants the Commission to take appropriate steps when amendment of a coastal development permit condition will affect such housing. Thus, Appeal A-3-MCO-16-0017 raises an issue of statewide concern.

The appeal alleges blatant violation of North Monterey County Land Use Plan policy 4.3.6.D.1, which states:

1. *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.*
 - b) *Promote housing improvement and rehabilitation programs for low and moderate income persons in both owner-occupied and renter-occupied units.*
 - c) *Study relaxation of building code requirements and if appropriate adopt minimum building code regulations for the rehabilitation of older housing units.*
 - d) *Replacement affordable housing units shall be retained as low and moderate income units through deed restrictions or other enforceable mechanisms.*

The appeal rests on three bases: (1) inconsistency with North County Land Use Policy 4.3.6.D.1, (2) failure to meet criteria for amendment a final subdivision map set forth in Monterey County Coastal Subdivision Ordinance Section 19.08.015, and (3) the requirement of Public Resources Code §30614. Those bases go far beyond a "fact-specific situation involving financing of affordable home ownership." Those three bases address the same issues which the California Legislature and courts consider to be of statewide concern.

The League of Women Voters supports measures which would ensure an adequate supply of affordable housing. We recognize that the scarcity of affordable housing constitutes a crisis. Appeal A-3-MCO-16-0017 challenges amendment of a coastal development permit that will result in excluding 161 Monterey County low-income households from future opportunity to own a decent home.

Thank you for your consideration.

Sincerely,

s/ Janet Brennan
Janet Brennan
President

c: brian.o'neill@coastal.ca.gov

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SIERRA CLUB

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VENTANA CHAPTER

FOUNDED 1963

CALIFORNIA COASTAL COMMISSION

July 31, 2016

Steve Kinsey, Chair, and California Coastal Commission
3501 Civic Center Drive, Suite 329
San Rafael, CA 94903-4193

Re: Coastal resource protection in Appeal No. A-3-MCO-16-0017

Dear Chair Kinsey and Coastal Commission,

The Ventana Chapter of the Sierra Club respectfully disagrees with staff's analysis that the above-referenced appeal raises NO substantial issue pertaining to the significance of coastal resources affected by the appealed decision (Appeal Report, pgs. 16-17.)

Pages 7-8 of the Appeal Report explain that protection of coastal resources was the basis for Sierra Club's 1995 appeal of the Moro Cojo project. The 1995 Commission recognized the project caused significant impacts to coastal resources (groundwater and environmentally sensitive habitat), yet found NO substantial issue anyway, in order that the project could provide badly needed affordable housing in North Monterey County. Pages 7-8 of the Appeal Report state:

Following the County's approval of CDP SH93001, the Sierra Club and David Green appealed that approval to the Commission on a variety of issues. Staff recommended that the Commission find that a substantial issue existed with regard to the project's conformance with LCP policies related to the protection of groundwater and environmentally sensitive habitat areas (ESHA). During the substantial issue hearing on February 9, 1995, the Commission's discussion was focused almost entirely on the public benefit of affordable housing, despite the recognized environmental concerns. Chair Williams noted the "tension between environmental community and those of us who support low-income housing." Commissioner Stevens recognized that the environmental concerns were "not insignificant," but ultimately supported the project "with some reluctance." Commissioner Giacomini stated that the environmental impacts were "undeniably a substantial issue," but supported the project due to "social public policy." Commissioner Karas (who was also a Monterey County supervisor at the time) urged a finding of No Substantial Issue because "[t]here's never been one affordable housing unit in North Monterey County in the 11 years I have sat on the board and by God we now have the opportunity to do it, so let's do it." Consequently, the Commission determined that the

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appeal did not raise a substantial issue of conformance with the LCP by an 8-2 vote and the local approval became effective.

Yet the current Appeal Report recommends NO substantial issue when that same badly needed affordable housing is terminated at the very same Moro Cojo project that harmed coastal resources in the first place.

The Ventana Chapter of the Sierra Club requests the Commission to reject the Appeal Report's recommendation to find NO significant issue, and instead **find substantial issue** in order that this appeal may proceed to hearing.

Sincerely,



Joel Weinstein, Chair
Ventana Chapter, Sierra Club

Copy: Brian O'Neil
California Coastal Commission
Central Coast District Office
725 Front Street, Suite 300
Santa Cruz, CA 95016

W16c

I respectfully request that the Addendum present my 8/4 letter and the 8/2 letter from LandWatch, the 7/31 letter from Sierra Club, and the 8/3 letter from League of Women Voters in adjoining order as follows:

1. Jane Haines 8/4 letter
2. LandWatch 8/2 letter
3. Sierra Club 7/31 letter
4. League of Women Voters 8/3 letter

My 8/4 letter refers to the 8/2, 7/31, and 8/3 letters in that order, so to make sense of my letter, Commissioners will need to access the three referenced letters.

I also request these letters be placed in the Addendum *before* letters supporting the finding of no substantial issue, to balance the effect of presenting my correspondence last (Exhibit 9) in the Appeal Staff Report.

Sincerely,
Jane Haines, Appellant

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W16c

Jane Haines

601 Ocean View Boulevard, Apt. 1 PACIFIC GROVE CA 93950

janehaines80@gmail.com
Tel (831) 375-5913

August 4, 2016

Steve Kinsey, Chair, and the California Coastal Commission
3501 Civic Center Drive, Suite 329
San Rafael, CA 94903-4193

Re: August 10 Hearing Agenda Item 16c - Appeal No. A-3-MCO-16-0017 (Moro Cojo Affordable Housing Monterey County) - Precedent for Future Interpretations of LUP Policy 4.3.6.D.1

Dear Chair Kinsey and the California Coastal Commission:

I respectfully request the Coastal Commission to find substantial issue in my appeal of Monterey County granting an amendment of the CDP for the Moro Cojo affordable housing project to reduce the term of affordability for 161 single-family homes from permanent to 20 years from date of purchase on the grounds that the precedent set by the amendment will allow additional affordable homes at the Moro Cojo project¹ (as well as other North Monterey County coastal affordable homes) to be converted to market rate homes without replacement, contrary to LUP Policy 4.3.6.d.1, and on the additional grounds explained in the below-listed letters to the Commission which address issues not mentioned in the Appeal Staff Report:

- **LandWatch Monterey County, 8/2/16 letter.** Factor: the *extent and scope* of the appealed decision. LandWatch shows the decision has financial consequences of \$48 million and will substantially worsen Monterey County's affordable housing crisis.
- **Sierra Club, 8/1/16 letter.** Factor: the Moro Cojo project's substantially harmful *effect on coastal resources* which the 1994 Commission felt should be sacrificed in order to provide affordable housing.
- **League of Women Voters, 8/2/16 letter.** Factor: *local vs. statewide public policy*. The LWV shows that protection of affordable housing is not only a local issue, but is a statewide issue which the legislature addressed in Public Resources Code § 30614.

The precedent set by the County's interpretation of "converted units" is a substantial issue because other North County affordable housing projects could follow this decision and seek conversion, without replacement units, contrary to LUP Policy 4.3.6.d.1 which states:

¹ The Appeal Staff Report mistakenly states that the Moro Cojo subdivision includes 161 single-family residences and 14 multi-family units (Pg. 6.) That's incorrect. The Moro Cojo subdivision includes 175 single-family residences, even though the application to terminate affordability pertained to only 161 single-family residences. (Appeal Staff Report Exhibit. 5, finding no. 1.) Thus, the Moro Cojo subdivision contains 14 single-family units and 14 multi-family units *in addition to* the 161 affected by Monterey County's 1/26/16 decision.

1.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:

1.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.**

2.Promote housing improvement and rehabilitation programs for low and moderate income persons in both owner-occupied and renter-occupied units.

3.Study relaxation of building code requirements and if appropriate adopt minimum building code regulations for the rehabilitation of older housing units.

4.Replacement affordable housing units shall be retained as low and moderate income units through deed restrictions or other enforceable mechanisms. (Emphasis added.)

The precedent set by the County's interpretation of "converted units" to refer **not** to conversion from affordable to market rate **but rather** to refer to converting from a residential use to a nonresidential use or change in the form of ownership, such as a residential dwelling to a condominium or cooperative, is an interpretation the County used to avoid requiring replacement units. It **is** a substantial issue because it sets a precedent that other North Monterey County affordable housing projects can use to avoid the requirement for replacement units.

For example, the Moro Cojo project contains 28 affordable units excluded from the subject application for CDP amendment. The precedent set in this case will allow those 28 units also to be converted from affordable to market rate without the County requiring replacement on a one by one basis, as Policy 4.3.6.d.1 requires.

The County allowed the applicant to use the Mello Act definition of "conversion," defined as units that undergo a change from a residential use to a nonresidential use or change in the form of ownership, such as a residential dwelling to a condominium or cooperative. Using this definition, rather than conversion referring to changing from affordable to market rate, eliminated the requirement for replacement units.

The use of the Mello Act definition is unreasonable because:

1. The Mello Act was enacted **after** the County submitted the LUP to the Commission for certification of the North County LUP; the County thus could not have intended the Mello Act definition of "converted units,"
2. The **plain meaning** of Policy 4.3.6.D.a is that when affordable units are lost **for any reason**, replacements are required on a one by one basis.
3. The 7/15/16 Declaration of Marc Del Piero, Chair of the Monterey County Board of Supervisors when the North County LCP was adopted, and who is acknowledged on page iii of the LCP as one of its authors, states the *"applicable zoning classifications in the North County LCP area, which I also voted upon in my capacity as the County Supervisor for North Monterey County, the North County LCP and its' zoning does not allow condominiums in the applicable land use classifications for the subject single family units. Further, the property was already subdivided into separate single family lots*

*pursuant to the zoning ordinance. Thus, the 'creative, but tortured' definition of 'conversion' that the County wrongfully relied upon to violate the clear and unambiguous mandates of the North County LCP is clearly inapplicable, and directly contradicts the express language and legislative intent of the Planning Commission and Board of Supervisors that adopted the LCP. Moreover, the County did not address the additional mandatory requirement of Policy 4.3.6.D.1 which mandates that the County shall protect existing affordable housing from loss from **'any other reason.'** **This would include the voluntary, and without compensation, gifting of the public's deeded interest in the affordable units to private parties who would be significantly and monetarily benefited by the gift of the public's assets.**" (Appeal Staff Report, Exh. 9, pgs. 3-5 of 15, emphasis in original.)*

Accordingly, the County's interpretation sets a precedent that clearly raises a substantial issue.

On that basis, and also for reasons explained in the referenced letters, I respectfully request the Commission to find that Appeal No. A-3-MCO-16-0017 raises substantial issue.

Sincerely,

Jane Haines, Appellant

copy: brian.o'neill@coastal.ca.gov

W/6c



Post Office Box 1876
Salinas, CA 93902
www.landwatch.org
831-759-2824

August 2, 2016

Steve Kinsey, Chair, and the California Coastal Commission
3501 Civic Center Drive, Suite 329
San Rafael, CA 94903-4193

Re: August 10 hearing for substantial issue determination in Appeal No. A-3-MCO-16-0017

Dear Chair Kinsey and the California Coastal Commission:

On behalf of LandWatch, a community-based nonprofit organization with members from throughout Monterey County, this letter requests the Coastal Commission to find 'substantial issue' in Appeal No. A-3-MCO-16-0017. Providing affordable housing for local working families is one of LandWatch's *Five Basic Principles of Sound Land Use Policy*.

LandWatch policy supporting affordable housing for local working families guided our successful participation in the May, 2004 Monterey County Board of Supervisors hearing to interpret the Moro Cojo affordability requirements to include affordability for very low, low as well as moderate income households. Additionally, we submitted comments during the 2015 County hearings in opposition to the application to amend Condition No. 99 of the Coastal Development Permit for the Moro Cojo project. LandWatch believes the extent and scope of County's 1/26/16 decision has substantial financial and societal consequences.

Appeal Report Analysis of the 'Extent and Scope' of the 1/26/16 decision

The Appeal Report analyzes the "extent and scope" of the 1/26/16 decision solely in terms of environmental consequence. It states on page 17:

Second, in terms of the extent and scope of the amendment, the housing units for which the affordability condition will be amended are already fully built out; therefore, the amendment will not change the intensity of use of the site or otherwise result in any environmental impacts, but rather only affects to whom the current homeowners may sell. This factor tends to support a finding of no substantial issue with respect to the appeal.

Environmental consequences are of course important, but so are financial and societal consequences. The loss of a \$48 million asset and conversion of badly needed affordable homes are substantial financial and societal consequences of the 1/26/16 decision.

Substantial Financial Consequences

North Monterey County Coastal Land Use Policy 4.3.6.D.1.a requires replacement on a one by one basis when affordable units are lost. It states:

1. *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.*** (Emphasis added.)

However, the 1/26/16 decision requires no replacement for the conversion of 161 affordable houses to market rate. Allowing the houses to convert to market rate without requiring replacement units represents loss of an asset valued at more than \$ 48 million dollars based on the estimated replacement cost of \$300,000 to \$350,000 per single replacement unit, stated in the 2015-2023 Monterey County Housing Element, page 39. (Multiplying 161 units times \$300,000 exceeds \$48 million dollars.)

Substantial Societal Consequence

The below 9/6/15 memorandum from Monterey County Economic Director David Spaur to the Monterey County Planning Commission explains the current need for affordable single family housing units in Monterey County: "high demand for affordable single family housing units right now and not enough units available. We have 172 families on the wait list and 114 on our lottery list... We just purchased and sold a deed restricted single family home and had too many qualified buyers with a capped sale price of \$329,000. Demand is high."

From:	Spaur, David x5387
Sent:	Wednesday, September 09, 2015 1:08 PM
To:	Novo, Mike x5182; Connolly, Luke T. x5173; Osorio, Luis x5177
Subject:	Planning Commission- In Summary

Sorry I can't make it.
I have an Econ Committee meeting at 1:30 pm

A couple of points of clarification should be shared with the PC members.

1. We do have affordable housing units in perpetuity (apartments) restricted in perpetuity as affordable rental housing.
2. We typically don't restrict single family housing past the 30 year mortgage period and if paid off then released from all restrictions.
3. We have a high demand for affordable single family housing units right now and not enough units available. We have 172 families on the wait list and 114 on our lottery list.
4. We just purchased and sold a deed restricted single family home and had too many qualified buyers with a capped sale price of \$329,000. Demand is high.
5. We need to encourage more affordable units and not reduce the number of units (Moro Cojo) we should require a replacement with an equal number of units (apartments or single family).
6. We would agree with removing the "in perpetuity requirement" and adding a reasonable period of time, typically 30 years. If CHSPA will take 10 years to build more units plus the 15 years requested by CHSPA that would equal the 25 year "affordability restriction."

Best Regards,
David L. Spaur, CECD, EDFP
Economic Development Director
County of Monterey
168 W. Alisal St. Salinas, CA
o: (831) 755-5387
c: (916) 990-5789



Terminating affordability of 161 single-family homes in the above-described situation has substantial human costs.

Conclusion

The extent and scope of the 1/26/16 decision to amend Condition No. 99 of the Coastal Development Permit for the Moro Cojo project results in substantial financial and societal consequences. LandWatch respectfully requests the Coastal Commission to find 'substantial issue' in Appeal No. A-3 MCO-16-0017 so consequences of the appealed decision may be examined in greater depth at a de novo hearing.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael D. DeLapa". The signature is stylized and cursive.

Michael D. DeLapa
Interim Executive Director
LandWatch, Monterey County

cc: Brian O'Neill, California Coastal Commission, Central Coast District Office

CALIFORNIA COASTAL COMMISSION

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W16c

Appeal Filed: 3/1/2016
49th Day: Waived
Staff: Brian O'Neill - SC
Staff Report: 7/22/2016
Hearing Date: 8/10/2016

APPEAL STAFF REPORT: SUBSTANTIAL ISSUE DETERMINATION ONLY

Appeal Number: A-3-MCO-16-0017

Applicant: Community Housing Improvement Systems and Planning Association, Inc. (CHISPA)

Appellant: Jane Haines

Local Government: Monterey County

Local Decision: Coastal Development Permit Amendment PLN120650 approved by the Monterey County Board of Supervisors on January 26, 2016.

Location: Moro Cojo Inclusionary Housing Subdivision, located off of Castroville Boulevard near the community of Castroville in unincorporated North Monterey County.

Amendment Description: Reduction in the duration of required affordability for 161 single-family residences from permanent to 20 years from the date of the first deed conveyance.

Staff Recommendation: No Substantial Issue

Important Hearing Procedure Note: This is a substantial issue only hearing. Testimony will be taken only on the question of whether the appeal raises a substantial issue. (See generally Title 14 of the California Code of Regulations (CCR) Section 13115.) Generally and at the discretion of the Chair, testimony is limited to three minutes total per side. Please plan your testimony

accordingly. Only the Applicant, persons who opposed the application before the local government (or their representatives), and the local government shall be qualified to testify. (*Id.* CCR Section 13117.) Others may submit comments in writing. (*Id.*) If the Commission determines that the appeal does raise a substantial issue, the de novo phase of the hearing will occur at a future Commission meeting, during which the Commission will take public testimony. (*Id.* CCR Section 13115(b).)

SUMMARY OF STAFF RECOMMENDATION

Monterey County approved a coastal development permit (CDP) amendment to modify one of the conditions of approval for the Moro Cojo Inclusionary Housing subdivision that was originally approved in 1995. The subdivision includes a public park, 14 multi-family units, and 161 single-family homes that were constructed in the early 2000s. The subdivision is located approximately two miles northeast of Castroville in North Monterey County and is predominantly surrounded by agricultural land and wetlands. The approved amendment modifies Condition 99 of the CDP, which required the single-family houses to be affordable and available only to very-low-, low-, and moderate-income families in perpetuity. The modification reduces the term of the affordability condition on the 161 single-family residences from permanent to 20 years from the date of the first deed conveyance. Because most of the deeds were conveyed in 2000, the effect of the amendment would be to eliminate the affordability condition by 2020. Removal of the affordability condition would allow homeowners to sell their homes within the subdivision at market price to any buyer, rather than at a capped price only to families who qualify as very-low-, low-, and moderate-income.

The Appellant contends that the approved amendment is inconsistent with Monterey County Local Coastal Program (LCP) policies related to the protection of affordable housing opportunities and an LCP requirement to replace lost affordable units on a one-to-one basis. After reviewing the local record, Commission staff has concluded that the approved project does not raise a substantial issue with respect to the project's conformance with the LCP.

To justify its decision, the County provided evidence that the affordability condition has caused a financial hardship on the current homeowners due to an inability to refinance their loans or sell at market rate. The County therefore made a policy decision to alleviate the hardship that the existing affordability condition puts on current homeowners, rather than protect possible affordable housing opportunities for *future* low-income families. The County also determined that replacement of the affordable units was not required. This determination was based upon the definition of the term "converted unit" as defined in the Mello Act (Government Code Section 65590), which sets minimum standards for the replacement of affordable housing units within the coastal zone. Under the Mello Act, the definition of "conversion" of affordable housing is limited to change from a residential use to a non-residential use or a change in the form of ownership, such as a residential dwelling to a condominium or cooperative. Because the CDP amendment does not change the units from a residential use to nonresidential use or change the form of ownership, the County determined that the approved amendment does not constitute a "conversion" of affordable housing units.

At the same time, it is clear that there are other ways to understand conversion under the LCP, and a reasonable argument exists that the LCP does not allow a CDP amendment that would

“convert” affordable units currently restricted in perpetuity to allow for the units to be sold at market rate in approximately 4 years (i.e., starting in about 2020). The primary LCP policy relevant here states:

*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. ...*¹

And the LCP includes a variety of statements that indicate that conversion could be understood differently than the County did by relying on the Mello Act for interpretation of the term. That said, the Mello Act does help frame the issue, particularly because it provides for the “minimum requirements for housing within the coastal zone for persons and families of low or moderate income.”²

The particular facts of this situation also illustrate why the County’s decision to amend the affordability term of the CDP can be understood in the context of an unusual affordable housing dilemma, and thus be deemed reasonable, despite support in the LCP for a contrary result. For example, the affordable housing in question was built with ‘sweat equity’, whereby families contributed 10 months of full-time labor to the construction of each home (in this case, covering about two-thirds of the actual construction involved), which is not typically how affordable housing projects are financed or constructed. Also, this was not a type of inclusionary affordable housing that was built as mitigation for and/or as part of a higher cost project, and then restricted in perpetuity as a result. Rather, this was an affordable housing development that was conceived, developed, and built by CHISPA, which is a nonprofit affordable housing developer. According to the Applicant, they do not know of any other ‘sweat equity’ project that has a permanent affordability requirement,³ and they assert that other such projects generally have some time-delimited period during which the affordable restriction adheres (e.g., currently a minimum of 15 years). As a result, the housing at issue here is a different type of affordable housing development than an inclusionary housing development built as mitigation to offset another project’s impacts, and this too helps properly frame the issue in this case.

In addition, although the Coastal Act encourages affordable housing, the Legislature explicitly eliminated the Coastal Commission’s authority for requiring affordable housing through Coastal Act amendments in 1982. These Coastal Act amendments, as well as the Mello Act, were instituted after the North County LUP was adopted locally and submitted to the Commission for certification, and thus the County’s LCP requirements should be understood through that lens as well. And while the County can implement requirements in the LCP more protective than the

¹ LUP Policy 4.3.6.D.1.

² Government Code Section 65590(k).

³ The County’s original CDP did not specify the length of the affordability condition. Rather, after the County was sued on their CDP approval, the County and the Applicant agreed to settle that lawsuit by, among other things, interpreting the affordability restriction as applicable in perpetuity. However, paragraph 6 of the settlement agreement allows for modification of any condition of approval, including the perpetuity requirement, upon a showing that CHISPA provide “substantial evidence to support its request for modification.” CHISPA believes it has met that burden here, and the County concurs.

Coastal Act, the County in this instance found the CDP amendment was necessary to help relieve the financial burden that the affordability restriction has caused the current homeowners. That is not to say the Commission cannot determine differently, but staff concludes that on balance the above factors weigh in favor of finding no substantial issue. Finally, it is worth noting that the amendment does not result in any other coastal resource impacts.

If the Commission does find a substantial issue based on an interpretation of the LCP different than the County's interpretation, it is important to note that such a different interpretation would likely lead to a denial of the requested CDP amendment (or a requirement to replace 161 affordable housing units, which seems likely infeasible to achieve, and could have the same effect as a denial). Although the approved CDP amendment raises some LCP consistency questions, as discussed above, the County made a reasoned decision based on the Mello Act (as guidance) and the above factors to ease the financial burden that the affordability condition imposes on the current homeowners. In light of the discussion above, staff determines the County's decision in this case to be reasonable, and thus staff recommends that the Commission determine that the appeal contentions do not raise a substantial LCP conformance issue, and that the Commission decline to take jurisdiction over the CDP for this project. The single motion necessary to implement this recommendation is found on page 6 below.

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APPENDICES

Appendix A – Substantive File Documents

EXHIBITS

Exhibit 1 – Project Location Maps

Exhibit 2 – Project Site Images

Exhibit 3 – Letter from CHISPA to Board of Supervisors

Exhibit 4 – Statement of Overriding Considerations

Exhibit 5 – County’s Final Local Action Notice

Exhibit 6 – Appeal of the County’s CDP Amendment Decision

Exhibit 7 – Settlement Agreement dated November 28, 1995

Exhibit 8 – Deed Restriction dated September 22, 1997

Exhibit 9 – Correspondence

I. MOTION AND RESOLUTION

A. Substantial Issue Determination

Staff recommends that the Commission determine that **no substantial issue** exists with respect to the grounds on which the appeal was filed. A finding of no substantial issue would mean that the Commission will not hear the application de novo and that the local action will become final and effective. To implement this recommendation, staff recommends a **YES** vote on the following motion. Passage of this motion will result in a finding of No Substantial Issue and the local action will become final and effective. The motion passes only by affirmative vote of a majority of the Commissioners present.

***Motion:** I move that the Commission determine that Appeal Number A-3-MCO-16-0017 raises no substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act, and I recommend a yes vote.*

***Resolution to Find Substantial Issue:** The Commission hereby finds that Appeal Number A-3-MCO-16-0017 does not present a substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency with the certified Local Coastal Program and/or the public access and recreation policies of the Coastal Act.*

II. FINDINGS AND DECLARATIONS

A. PROJECT LOCATION AND BACKGROUND

The Moro Cojo Inclusionary Housing subdivision is located approximately 2 miles northeast of Castroville in North Monterey County (see **Exhibit 1** for location maps). The subdivision is predominantly surrounded by agricultural land and wetlands, including nearby Moro Cojo Slough. The subdivision includes 161 single-family residences, 14 multi-family units, and a public park (see **Exhibit 2** for site photos).

The project site and associated subdivision and development have an extensive permitting and legal background. Prior to development of the subdivision, the project site was historically used for agriculture and as a water collection pond. The site was then re-zoned high-density residential and was the subject of numerous development proposals beginning in the 1970's. None of these earlier proposals were approved due to a lack of water, inadequate public services, and the site's proximity to wetlands. In the early 1990's the site was owned by a now-defunct federal agency, the Resolution Trust Corporation⁴. In 1992, the Commission certified, with modifications, a County request for an LCP amendment⁵ to rezone a portion of the property as open space, while allowing a maximum of 88 total units on the remaining portion of the site.

⁴ The Resolution Trust Corporation was a temporary U.S. government-owned asset management company charged with liquidating assets, primarily real estate-related assets, that had been assets of savings and loan associations declared insolvent by the Office of Thrift Supervision as a consequence of the savings and loan crisis of the 1980s.

⁵ See Monterey County LCP Amendment No. 3-91. The amendment was to rezone several different properties, including the subject property. The Commission approved the amendment to rezone the subject property as submitted, but modified other portions of the amendment.

Around this time, CHISPA (the Applicant for the CDP amendment that is the subject of this appeal) purchased the property at a below market value from the Resolution Trust Corporation and began the process of gaining approval for an affordable housing subdivision on the site. Although the Commission had certified the County's prior LCP amendment request, at CHISPA's request, the County never took the necessary action for final approval of the LCP amendment in order to give CHISPA the opportunity to pursue an affordable housing project on the entire site.

In October 1994, the Moro Cojo Inclusionary Housing Final Environmental Impact Report (EIR) for an affordable housing project on the site was completed. The EIR identified several significant environmental impacts from the proposed project, including impacts to groundwater, traffic, and wetland habitat. Prior to certification of the EIR, CHISPA submitted a letter to the County urging certification because the project "presents a unique opportunity to create a significant number of new homes for low-income families" (see **Exhibit 3**). The letter also stated that there were "**no other sites available**" for an affordable housing project and the project presents the "**only opportunity to meet the needs for affordable housing** in this area" (emphasis in original). CHISPA argued that the significant environmental impacts of the project "must be considered in the larger context of the **great need for affordable housing and the lack of available sites in North Monterey County**" (emphasis in original).

Despite the project's identified environmental impacts, the County determined that the public benefit of an affordable housing project outweighed any environmental impacts and adopted a Statement of Overriding Considerations in approving the project (see **Exhibit 4**). Specifically, the County determined that "North Monterey County and Castroville, specifically, suffers from an acute need for affordable housing" and that "there is also a severe over-crowding condition existing in the available housing stock." Accordingly, on December 20, 1994 the County certified the EIR and approved CDP SH93001 for the Moro Cojo Inclusionary Housing project, which included a subdivision and development of 161 single-family residences, 14 multi-family units, and a public park. Condition 99 of that approval, which is the subject of this appeal, states that "all the units in the Moro Cojo Inclusionary Housing Development Projects (SH 93001 and SH 93002) [must] be affordable to very-low-, low- and moderate-income households." Condition 99, however, did not specifically state the length of time the units must be made affordable to low-income households.

Following the County's approval of CDP SH93001, the Sierra Club and David Green appealed that approval to the Commission on a variety of issues.⁶ Staff recommended that the Commission find that a substantial issue existed with regard to the project's conformance with LCP policies related to the protection of groundwater and environmentally sensitive habitat areas (ESHA). During the substantial issue hearing on February 9, 1995, the Commission's discussion was focused almost entirely on the public benefit of affordable housing, despite the recognized environmental concerns. Chair Williams noted the "tension between environmental community and those of us who support low-income housing." Commissioner Stevens recognized that the environmental concerns were "not insignificant," but ultimately supported the project "with some reluctance." Commissioner Giacomini stated that the environmental impacts were

⁶ Appeal A-3-MCO-95-02.

“undeniably a substantial issue,” but supported the project due to “social public policy.” Commissioner Karas (who was also a Monterey County supervisor at the time) urged a finding of No Substantial Issue because “[t]here’s never been one affordable housing unit in North Monterey County in the 11 years I have sat on the board and by God we now have the opportunity to do it, so let’s do it.” Consequently, the Commission determined that the appeal did not raise a substantial issue of conformance with the LCP by an 8-2 vote and the local approval became effective.⁷

Following the Commission’s decision, an alliance of local environmental activists filed suit against the County and CHISPA over the project’s approval. The parties ultimately entered a Settlement Agreement and Stipulation for Judgment (Judgment) (see **Exhibit 7**) in November 1995. The purpose of the Judgment was to interpret the length of the affordability condition. According to the Judgment, the parties agreed that Condition 99 “shall be a permanent deed restriction on the project parcels, and shall not be subordinated to any financial encumbrance, loan, development agreement, contract, lease or other document.” The Judgment further stated that none of the conditions of approval could be modified unless CHISPA itself requests the modification and provides “substantial evidence to support its request for modification.”

In September 1997, the County approved the final Moro Cojo Inclusionary Housing subdivision map and found that Condition 99 would be satisfied by recordation of a permanent deed restriction on all of the units.⁸ In October 1997, CHISPA recorded the deed restrictions (see **Exhibit 8**) with the County Recorder along with the final subdivision map. The deed restrictions state that all units in the Moro Cojo Inclusionary Housing Development Project shall be affordable to very-low-, low-, and moderate-income households, and that it “is intended that this Deed Restriction is irrevocable.” The restriction further explains that “but for the imposition of the above condition, the proposed development could not be found consistent with the provisions of the California Coastal Act of 1976 and that a permit could therefore not have been granted.”

After the final map was recorded, CHISPA began to recruit low-income families to participate in a “Self Help” homeownership program developed by the Rural Housing Service branch of the United State Department of Agriculture (USDA). None of the recruitment brochures distributed by CHISPA informed potential participants of the deed restriction that was recorded two years prior to the start of construction.

Under the federal “Self Help” program, groups of families would pool their efforts and spend 40 hours a week per family building single-family homes for approximately 10 months under the supervision of CHISPA. Approximately 65% of home construction was performed by the families, with more technical construction components completed by CHISPA and its contractors. USDA provided CHISPA with grant funds to cover the costs of running the program. In return for their labor, program participants purchased the new single-family homes

⁷ The Appellants later sued CHISPA and the County again over the approval of the final subdivision map. The appellants prevailed in this lawsuit due to the inadequacy of the project’s groundwater protection plan.

⁸ All 161 single-family homes and 14 multi-family units are subject to a deed restriction. The CDP amendment that is the subject of this appeal would lift the deed restriction on the 161 single-family homes, but would retain the affordability restriction on the multi-family units.

which they helped build without a down payment and at cost, which was often significantly below market rate due to grant funding and the use of participant labor. The monetary difference between typical construction costs and the actual purchase price for Self-Help homes is also generally known as “sweat equity.”

In terms of financing, USDA provided mortgage loans between \$100,000 to \$120,000 for each program participant to purchase the home from CHISPA once it was constructed. Of that money, \$55,000 was given to CHISPA to purchase the lot. CHISPA took the excess of each loan (approximately \$45,000 to \$65,000) and pooled that money together to cover the costs of constructing the 161 single-family homes in the subdivision. The USDA loans were typically 33-year fixed-rate loans. Interest rates were based on the average rates at the time, although actual payments were modified by federal subsidies that were based on income levels. Interest rates could be as low as 1% for qualifying individuals and homeowners never paid more than 24% of their monthly income on mortgage payments. Additionally, there were no closing costs and Private Mortgage Insurance was not required, further lowering the purchase price. Program participants facing acute hardship could also apply to USDA for a two-year payment moratorium or partial forgiveness of the loan in the event that a home is sold for less than what is owed on the loan.

On top of the USDA mortgage, and even though the actual value of the homes was not equal to the appraised market value due to the deed restriction, CHISPA placed a second mortgage on all 161 single-family homes based on the difference between the appraised market value of each house and the USDA loan. These mortgage loans, which CHISPA calls “excess equity” loans, were between \$30,000 and \$35,000 and are unique in self-help housing programs. Under the terms of the loan, monthly payments to CHISPA were equal to the 3% interest rate of the loan. No principal payments were due for the first ten years, providing that the homeowner was not in default. After the first ten years, 10% of the principal would be forgiven each year, absent default, such that the entire note would be forgiven after twenty years. If the owner sold the house prior to twenty years, the entire note would be due. Many homeowners, however, have claimed that they were unaware of the deed restriction at the time they purchased the home, which limits resale value of the homes to an affordable price and not the appraised market value.

In subsequent years, some homeowners participated in cash-out refinancing and encumbered their properties with debt that is greater than the value of the home given that the deed restriction limits the sale price of the properties to an affordable amount. The resale prices of the homes are capped under the deed restriction and are individually calculated using a number of factors explained in the Monterey County Inclusionary Housing Program Administrative Manual. The current maximum resale value of a three-bedroom house in the subdivision is \$291,750.⁹

A group of homeowners sued CHISPA in 2009, claiming that CHISPA failed to inform homeowners of the deed restriction and persuaded the owners into manual labor under false pretense. The homeowners sought to collect damages for fraudulent and negligent nondisclosure and breach of implied contract. The Sixth Circuit Court of Appeals determined that the claims

⁹ According to real estate websites Trulia.com and Zillow.com, the average sale price of a three-bedroom home in Castroville over the last year was approximately \$345,000 with a year over year trend of +8.3%.

against CHISPA were barred by the Statute of Limitations because, even though CHISPA failed to disclose the deed restriction, the homeowners should have discovered the restriction when the grant deed was provided to them at the close of escrow in 2000. The court held that the three-year statute of limitation ended in 2003 and thus the homeowners were time-barred from bringing their claims against CHISPA in 2009.¹⁰

As an alternative to collecting damages, the homeowners also attempted to invalidate the deed restriction as an unreasonable restraint on alienation of property. The court explained that the homeowners were “essentially arguing that this housing program should have been designed differently, namely just to benefit them, the first wave of low-income buyers.” The court determined that it is “reasonable to impose a continuing affordability requirement for the benefit of future low- to moderate-income homeowners.” The court concluded that because the homeowners “enjoyed the benefits of owning a home through the affordable housing program, [the homeowners] cannot now reject its obligations” and thus denied the homeowners’ claim that the deed restriction constitutes an unreasonable restraint on alienation of property.¹¹

In November 2015, CHISPA submitted an application to the County to modify Condition 99, which required the houses to be affordable only to very-low-, low-, and moderate-income families in perpetuity. The modification request was to reduce the term of the affordability condition on the 161 single-family residences from permanent to 20 years from the date of the first deed conveyance.¹² Because most of the deeds were conveyed in 2000, the effect of the amendment would be to eliminate the affordability condition by 2020. Removal of the affordability condition would allow the homeowners to sell homes within the Moro Cojo Inclusionary Housing subdivision at market price to any buyer, rather than at a capped price only to families who qualify as low- and moderate-income. Although the County’s Housing Advisory Committee recommended that the amendment include a requirement to replace the loss of the 161 affordable housing units on a one-for-one basis due to the extremely high demand for affordable housing in the area (see **Appendix A**), the Board of Supervisors did not require replacement of the lost affordable housing units and approved the amendment as requested (See **Exhibit 5**).

¹⁰ *Alfaro v. CHISPA* (2009) 171 Cal.App.4th 1356.

¹¹ It is worth noting that, although the Sixth Circuit Court of Appeals rejected the homeowners’ claim that the deed restriction constitutes an unreasonable restraint on alienation of property, the Court did not hold that a deed restriction for affordable housing can never be removed because of policy considerations – in which case the Commission’s ability to act on the present CDP amendment would be limited. Rather, the Court simply upheld the deed restrictions as reasonable restraints on alienation for the purpose of addressing the homeowners’ causes of action in their lawsuit. A decision does not stand for a proposition not considered by the court. (See *Norvatis v. SHAC* (2006) 143 Cal.App.4th 1284.)

¹² CHISPA originally requested a reduction to 15 years based on Health and Safety Code Section 33413, which requires redeveloped affordable housing units “to remain at an affordable housing cost to, and occupied by, persons and families of low-income, moderate-income, and very low income households, respectively, for the longest feasible time, but for not less than . . . 15 years for mutual self-help housing units.” The definition of longest feasible time, “as used in this section, includes, but is not limited to, unlimited duration.” Through discussions with the County, CHISPA agreed to request a 20 year term.

B. MONTEREY COUNTY CDP AMENDMENT APPROVAL

On January 26, 2016 the Monterey County Board of Supervisors adopted a resolution to approve a Coastal Development Permit (“CDP”) amendment for the project. See **Exhibit 5** for the County’s Final Local Action Notice. The County’s Final Local Action Notice was received in the Coastal Commission’s Central Coast District Office on Monday, February 29, 2016. The Coastal Commission’s ten-working-day appeal period for this action began on Tuesday March 1, 2016 and concluded at 5pm on Tuesday, March 14, 2016. One valid appeal (see below) was received during the appeal period.

C. APPEAL PROCEDURES

Coastal Act Section 30603 provides for the appeal to the Coastal Commission of certain CDP decisions in jurisdictions with certified Local Coastal Programs (“LCPs”). The following categories of local CDP decisions are appealable: (a) approval of CDPs for development that is located (1) between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tide line of the sea where there is no beach, whichever is the greater distance, (2) on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, or stream, or within 300 feet of the top of the seaward face of any coastal bluff, and (3) in a sensitive coastal resource area; or (b) for counties, approval of CDPs for development that is not designated as the principal permitted use under the LCP. In addition, any local action (approval or denial) on a CDP for a major public works project (including a publicly financed recreational facility and/or a special district development) or an energy facility is appealable to the Commission. The original CDP for this project was appealable to the Commission because the subdivision was a conditional use in a high density residential zoning district and was located within 100 feet of wetlands, and as such, any amendment to the permit is also appealable to the Commission.

The grounds for appeal under Section 30603 are limited to allegations that the development does not conform to the certified LCP or to the public access policies of the Coastal Act. Section 30625(b) of the Coastal Act requires the Commission to consider a CDP for an appealed project de novo unless a majority of the Commission finds that “no substantial issue” is raised by such allegations.¹³ Under Section 30604(b), if the Commission conducts the de novo portion of an appeals hearing and ultimately approves a CDP for a project, the Commission must find that the proposed development is in conformity with the certified LCP. If a CDP is approved for a project that is located between the nearest public road and the sea or the shoreline of any body of water located within the coastal zone, Section 30604(c) also requires an additional specific finding that the development is in conformity with the public access and recreation policies of Chapter 3 of the Coastal Act. This project is not located between the nearest public road and the sea and thus

¹³ The term “substantial issue” is not defined in the Coastal Act or in its implementing regulations. In previous decisions on appeals, the Commission has generally been guided by the following factors in making substantial issue determinations: the degree of factual and legal support for the local government’s decision; the extent and scope of the development as approved or denied by the local government; the significance of the coastal resources affected by the decision; the precedential value of the local government’s decision for future interpretations of its LCP; and, whether the appeal raises only local issues as opposed to those of regional or statewide significance. Even when the Commission chooses not to hear an appeal, appellants nevertheless may obtain judicial review of a local government’s CDP decision by filing a petition for a writ of mandate pursuant to the Code of Civil Procedure, Section 1094.5.

this additional finding would not need to be made if the Commission were to approve the amendment following the de novo portion of the hearing.

The only persons qualified to testify before the Commission on the substantial issue question are the Applicant, persons who made their views known before the local government (or their representatives), and the local government. Testimony from other persons regarding substantial issue must be submitted in writing. Any person may testify during the de novo CDP determination stage of an appeal.

D. SUMMARY OF APPEAL CONTENTIONS

The Appellant contends that the County-approved CDP amendment is inconsistent with the LCP with regard to affordable housing protections and subdivision ordinances. Specifically, the Appellant contends that the approved amendment would violate applicable LCP policies because: 1) it will convert 161 housing units from affordable to market rate and does not require replacement of the converted units on a one-to-one basis; and 2) it will amend a condition of a final recorded map that is still necessary and appropriate. Additionally, the Appellant contends that the amendment is inconsistent with Coastal Act Section 30614, which requires the Commission to ensure that affordable housing permit conditions existing prior to 2002 do not expire during the term of the permit. See **Exhibit 6** for the full text of the appeal contentions.

E. SUBSTANTIAL ISSUE DETERMINATION

Affordable Housing LCP Policies

The LCP contains various policies designed to “increase the availability of low and moderate income housing.” These policies are “based on the goals of the adopted County Housing Element.” In addition to policies that encourage new affordable housing opportunities, the LCP provides strong protections for existing affordable units, including the following policy:

LUP Policy 4.3.6.D.1. 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 Appellant contends that the CDP amendment is inconsistent with the LCP because the amendment converts 161 housing units from affordable to market rate without replacing the units on a one-for-one basis as required by LCP Policy 4.3.6.D.1.

The LCP states that the County shall protect existing affordable housing opportunities from loss due to deterioration, conversion, or any other reason. The Moro Cojo Inclusionary Housing project is an existing subdivision that provides affordable housing opportunities in the form of 14 multi-family units and 161 single-family residences, which are all deed restricted to be affordable to very-low-, low-, and moderate-income households. The approved amendment

would eliminate the affordability restriction for the 161 single-family homes within the next four years and allow the units to be sold at market rate to any interested buyer regardless of income.

The LCP policy is clear that existing affordable housing opportunities must be protected. On this point, the County made a policy decision to alleviate the hardship that the existing affordability condition puts on current homeowners (i.e., to protect *their* affordable housing opportunities) rather than protect possible affordable housing opportunities for *future* low-income families. The County found that the approved CDP amendment is consistent with its Housing Element, and the LCP policies are based on the goals of the Housing Element. The County also determined that the CDP amendment does not result in conversion of existing affordable housing opportunities based on interpretation of the LCP's use of the term "converted units," relying on the Mello Act for guidance (see below).

LCP Policy 4.3.6.D.1 also requires replacement of demolished or converted units that were affordable to or occupied by low- and moderate-income persons. The 161 houses within the Moro Cojo Inclusionary Housing subdivision are affordable to and have been occupied by low- and moderate-income persons since construction of the homes in 2000. The amendment would allow 161 existing single-family homes up to now restricted as affordable and only available to low- and moderate income families to be sold at market rate to any buyer regardless of income. The County did not require replacement of the affordable housing units on a one-to-one basis. The applicability of the replacement requirement to this amendment is dependent upon the definition of the term "converted units" in LCP Policy 4.3.6.D.1.a and whether changing an existing affordable house to market rate constitutes a "conversion."

As a preliminary matter, the LCP does not provide express definitions of the terms "conversion" or "converted units." Absent clear guidance in the LCP, the terms "conversion" and "converted units" could satisfy several different definitions. A plain meaning of "conversion" could include any type of change, including a change from an affordable unit to a market rate unit. Moreover, in the affordable housing context, the term "conversion" may include a change from an affordable unit to a market rate unit.¹⁴ The LCP specifically states that its affordable housing policies are "based on the goals of the adopted County Housing Element." In turn, the *County of Monterey 2015-2023 Housing Element* makes multiple references to the term "converted units" that suggests the term includes units that are changed from affordable to market rate.¹⁵ Moreover, the overarching LCP policy to protect affordable housing opportunities from loss due to deterioration, conversion, or "any other reason" would suggest that a broad definition of

¹⁴ For example, in *Highlights of the State of Housing in California: Affordability Worsens, Supply Problems Remain* (California Department of Housing and Development, 2014) a section is devoted to the problem of affordable housing at risk of "conversion" to market rate. Additionally, in *What Happens to Low-Income Housing Tax Credit Properties at Year 15 and Beyond?* (United States Department of Housing and Urban Development, 2012) the problem of affordable housing "converting" to market rate is also discussed.

¹⁵ "This section . . . evaluates the potential of such housing to convert to market rate" (*Id.* at 36); "11 units are potentially at risk of converting to market rate" (*Id.* at 36); "The construction of new low income housing units is a means of replacing the at-risk units should they be converted to market-rate units" (*Id.* at 39); "Work with property owners and nonprofit housing providers to preserve lower income housing at risk of converting to market rate" (*Id.* at 120); "11 very low income units are at-risk of converting to market rate housing" (*Id.* at 121); "Within 60 days of notice of intent to convert at-risk units to market rate rents . . ." (*Id.* at 122); "No housing unit was at risk of converting to market rate" (*Id.* at C-3).

“converted units” that includes a change from an affordable unit to market rate unit would be appropriate.

However, the County determined that replacement units were not required on the basis that the term “converted units” in LCP Policy 4.3.6.D.1.a does not include units that are changed from affordable to market rate. The County relied on a definition found in the Mello Act¹⁶, which defines the term “conversion” (as it applies to affordable housing in the coastal zone) as a change from a residential use to a nonresidential use or a change in the form of ownership, such as a residential dwelling to a condominium or cooperative. (Gov. Code § 65590(g)(1).) Because the amendment does not change the units from a residential use to nonresidential use or change the form of ownership, the County determined that the approved amendment does not constitute a “conversion” of affordable housing units, meaning that the provisions of LUP Policy 4.3.6.D.1.a do not apply and replacement units are thus not required.

Although this definition of “converted units” is not as protective of existing affordable housing opportunities as other possible definitions, the County’s interpretation is reasonable. As previously mentioned, the LCP does not provide express definitions for the terms “conversion” or “converted units.” Although LUP Policy 4.3.6.D.1 does not appear to be the County’s local implementation of the Mello Act¹⁷, no clear reason exists to *prohibit* the County from using the Mello Act definition of “converted units,” given that the Mello Act definition is specific to replacement requirements for affordable housing within the coastal zone. Furthermore, the Mello Act was enacted *after* the County approved the LUP locally (but before the Commission certified the LUP), and thus it was reasonable for the County to use the Mello Act to help inform its interpretation of the LUP to ensure consistency with later-enacted relevant State law requirements. Although local governments may implement stricter standards, the County’s interpretation of its LCP’s term “converted units” reflects the statewide definition applicable to affordable housing within the coastal zone (under the Mello Act) and can be considered a reasonable interpretation.

As a practical matter, it is important to note that a requirement to replace 161 affordable housing units within North Monterey County would likely not be achievable at this time anyway due to the scarcity of water and developable land. Construction of new affordable units would likely be infeasible because the County has informally instituted a moratorium on new subdivisions in North Monterey County until an identifiable, available, long-term supply of water is established. Another option for replacement units would be for the Applicant to purchase existing market rate units and deed restrict those units as affordable, which would likely be a cost-prohibitive

¹⁶ The Mello Act provides the “minimum requirements for housing within the coastal zone for persons and families of low or moderate income.” (Gov. Code § 65590(k).)

¹⁷ Changes to the housing provisions of certified LCPs are subject to Mello Act requirements, although the Mello Act does not require that a local government adopt individual ordinances or programs to implement Mello Act requirements. (Gov. Code § 66590(f), (h)(2)-(3).) Although LUP Policy 4.3.6.D states it is “based on the goals of the adopted County Housing Element,” neither the LCP nor the County Housing Element specifies anywhere it intends to codify Mello Act requirements. Additionally, the North County LUP was submitted to the Commission for certification before the Mello Act requirements came into effect. Therefore, LUP Policy 4.3.6.D does not appear to constitute local codification of Mello Act requirements, and the Commission is not foreclosed from reviewing the County’s implementation of LUP Policy 4.3.6.D. (*See* Pub. Res. Code § 30011.)

solution. In practical terms, a requirement to replace the 161 affordable housing units would therefore likely have the effect of a denial of the CDP amendment.

Although the conflicting factual and legal support for the County's action may tend to support a finding of substantial issue with respect to consistency with the LCP generally and LUP Policy 4.3.6.D.1 specifically, on balance the other factors which the Commission has historically used to make substantial issue determinations support a finding of no substantial issue. (See also "Substantial Issue Conclusion" below.)

Subdivision Ordinance

Title 19 of the LCP, also known as the subdivision ordinance, regulates the division of land within the coastal zone of Monterey County and implements the provisions of the Subdivision Map Act. The subdivision ordinance controls modifications to recorded Final Maps or Parcel Maps. The subdivision ordinance lists seven reasons a recorded map may be modified. Six of those reasons are to correct various errors in the recorded map. The seventh reason allows amendments to accomplish the following:

Implementation Plan (IP) Section 19.08.015.A.7. ...To make modifications to a final map or parcel map where there are changes which make any or all of the conditions of the map no longer appropriate or necessary and that the modifications do not impose any additional burden on the present fee owner of the property, and if the modifications do not alter any right, title or interest in the real property reflected on the recorded map.

The Appellant contends that the CDP amendment is inconsistent with the LCP because the amendment will modify a condition of the final Moro Cojo subdivision map without meeting the criteria for modification as described in IP Section 19.08.015.A.7. Specifically, the Appellant states that there is a high demand for affordable housing units in Monterey County and quotes the Monterey County Economic Development Director that ... "[w]e need to encourage more affordable housing units and not reduce the number of units." The Appellant claims that the demand for affordable housing demonstrates that the affordability condition is still "appropriate" and "necessary" as those terms are used in IP Section 19.08.015.A.7.

The subdivision ordinance allows modifications to a condition of a final map if there are "changes which make any or all of the conditions of the map no longer appropriate *or* necessary" (emphasis added). The approved amendment would modify the affordability condition of the Moro Cojo final map and allow the 161 single-family homes to be sold at market rate to any buyer regardless of income. According to the County's Housing Element, the demand for affordable housing in the County remains high and few affordable housing projects will be built in the next few years. There is no evidence to suggest that there have been changes in the County's affordable housing stock that makes the existing affordable housing units no longer necessary.

However, the subdivision ordinance also allows conditions to be modified if the condition is no longer appropriate. The County determined that the condition is no longer appropriate because the recession of 2008 has prevented some of these current homeowners from being able to refinance their mortgages in order to take advantage of lower interest rates, which has caused

them financial hardship. The Applicant submitted three declarations from current homeowners who have been denied in their attempts to refinance their loans, which are at a fixed rate of approximately 8% compared to the current average rate of 3.5%.¹⁸ Due to this hardship on current homeowners, the County found that the changed financial landscape has made the permanent affordability condition of the CDP no longer appropriate. Despite the continued need for affordable housing in the County and even though affordability conditions (such as the one removed by the CDP amendment) may still be one way to address that need, IP Section 19.08.015.A.7 also allows conditions on final maps to be modified if the conditions are found to be no longer appropriate. The County found that the evidence of ongoing financial hardship for some of these current homeowners demonstrates that the affordability condition is no longer appropriate, and thus the County reasonably used its discretion under IP Section 19.08.015.A.7 to modify Condition 99.

Coastal Act Section 30614

The Coastal Act includes the following a provision to protect existing CDP conditions related to affordable housing:

30614. The commission shall take appropriate steps to ensure that coastal development permit conditions existing as of January 1,2002, relating to affordable housing are enforced and do not expire during the term of the permit.

The Appellant contends that the CDP amendment is inconsistent with this section because the amendment would allow an existing affordable housing permit condition approved prior to 2002 to expire.

The grounds for appeal under Coastal Act Section 30603 are limited to allegations that the development does not conform to a certified LCP or to the public access policies of the Coastal Act. Coastal Act Section 30614 is not incorporated into the County's certified LCP, nor is this section found within the Chapter 3 public access policies of the Coastal Act. Coastal Act Section 30614 therefore cannot be utilized as a standard of review to determine whether the approved CDP amendment raises a substantial issue and is not applicable to this appeal.

No Substantial Issue Conclusion

As explained above, the Commission has historically used the following five factors to guide its decision of whether the issues raised in a given case are "substantial" or not: the degree of factual and legal support for the local government's decision; the extent and scope of the development as approved or denied by the County; the significance of the coastal resources affected by the decision; the precedential value of the County's decision for future interpretations of its LCP; and, whether the appeal raises only local issues as opposed to those of regional or statewide significance.

¹⁸ The Monterey County Housing Advisory Committee found that 41 homeowners have successfully refinanced their home loans. Additionally, due to the terms of the USDA loans, the interest rate of the mortgage does not reflect the actual interest rate paid in many cases because the homeowners are provided federal subsidies that can lower the rate paid to as little as 1%. Some homeowners, however, do pay more than the current interest rate of 3.5% and have had difficulty refinancing.

In this case, although one of these factors weighs towards a finding of substantial issue, the others do not, so consideration of these five factors as a whole does not support a conclusion that this project raises a substantial issue of conformance with the LCP. First, the conflicting factual and legal support for the County's action may tend to support a finding of substantial issue (more than not) with respect to consistency with LUP Policy 4.3.6.D.1. Specifically, the County considered evidence of the financial impact on the existing homeowners of the permanent affordability condition but did not specifically address whether amendment of the condition was consistent or not with the affordable housing protection policy of LUP Policy 4.3.6.D.1; the County then relied on the Mello Act definition of "converted units" to determine that the CDP amendment did not trigger the replacement requirement of LUP Policy 4.3.6.D.1.

Second, in terms of the extent and scope of the amendment, the housing units for which the affordability condition will be amended are already fully built out; therefore, the amendment will not change the intensity of use of the site or otherwise result in any environmental impacts, but rather only affects to whom the current homeowners may sell. This factor tends to support a finding of no substantial issue with respect to the appeal.

Third, in terms of significance of the coastal resources affected by the decision, the amendment deals solely with a change to an affordability condition for an existing subdivision; the CDP amendment will not change the intensity of use of the site or otherwise result in any environmental impacts. This factor tends to support a finding of no substantial issue with respect to the appeal.

Fourth, in terms of the precedential value of the County's decision for future interpretations of its LCP, the County's action only affects interpretation of the term "converted units" as that term is used in LUP Policy 4.3.6.D.1. Although no prior precedence appears to control interpretation of the term "converted units," the County's reliance on the Mello Act definition is reasonable and the County's action only affects interpretation of a very specific term in a discrete provision of the LCP's affordable housing policies. This factor tends to support a finding of no substantial issue with respect to the appeal.

Fifth, in terms of whether the appeal raises only local issues as opposed to those of regional or statewide significance, the County's action and the ensuing appeal concern a highly-unusual, complex, fact-specific situation involving financing of affordable home ownership through sweat equity and long-term ramifications relating to the structuring of that financing which is unlikely to be a recurrent issue in other parts of the region or State. This factor tends to support a finding of no substantial issue with respect to the appeal.

For the reasons stated above, the Commission finds that Appeal Number A-3-MCO-16-0017 **does not raise a substantial issue** with respect to the County-approved project's conformance with the certified Monterey County LCP, and declines to take jurisdiction over the CDP application.

APPENDIX A: SUBSTANTIVE FILE DOCUMENTS

Moro Cojo Inclusionary Housing Development Project Final Environmental Impact Report, Jones and Stokes Associates, October 27, 1994.

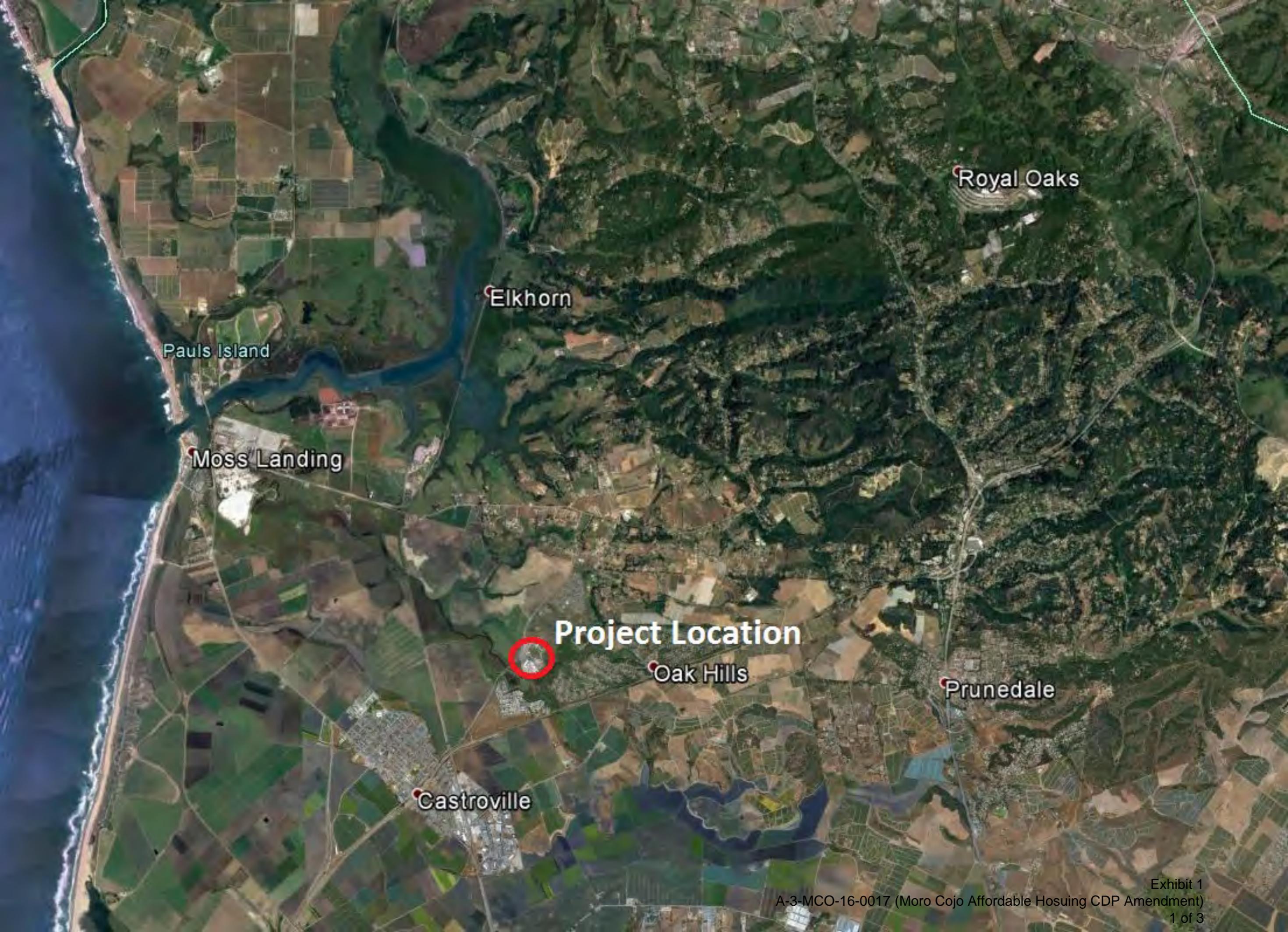
Staff Report: Appeal Substantial Issue A-3-MCO-95-02, A-3-MCO-95-04, Rick Hyman, January 30, 1995.

Staff Report: Appeal No Substantial Issue A-3-MCO-95-02, A-3-MCO-95-04, Rick Hyman, March 15, 1995.

Moro Cojo Subdivision Amendment Revised Negative Declaration, County of Monterey, July 2, 2015.

Housing Authority Recommendation Agenda No. 4a, Monterey County Housing Authority Committee, January 14, 2015.

County of Monterey 2015-2023 Housing Element, County of Monterey, June 2015.



Pauls Island

Moss Landing

Elkhorn

Royal Oaks

Project Location

Oak Hills

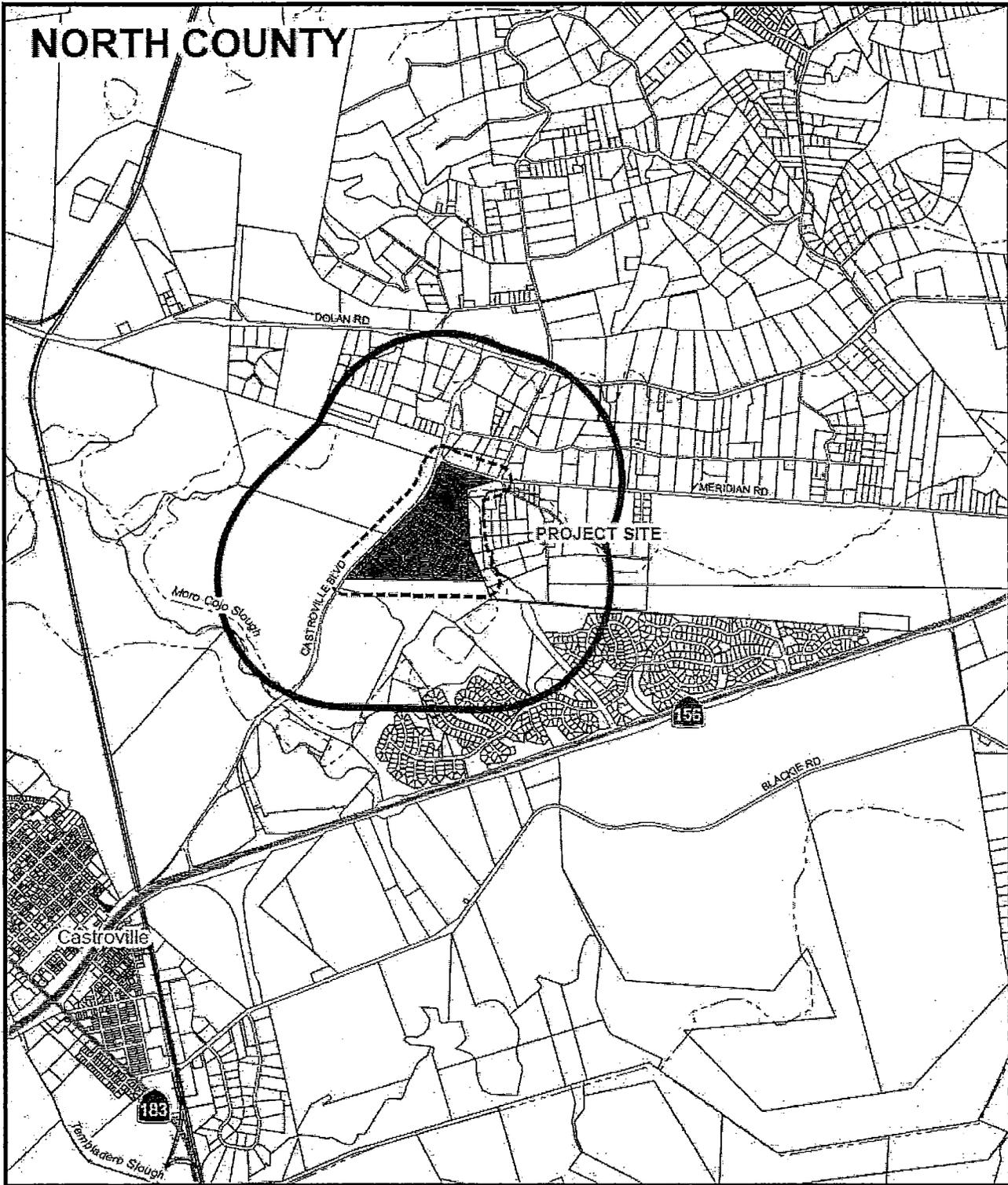
Prunedale

Castroville



Project Location

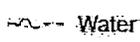
NORTH COUNTY

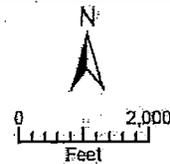


APPLICANT: MORO COJO SUBDIVISION

APN: N/A

FILE # PLN120650

 2500' Limit
  300' Limit
  Water



PLANNER: OSORIO











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Page 2



THE FACTS ABOUT RANCHO MORO COJO, AN AFFORDABLE HOUSING SUBDIVISION IN NORTH MONTEREY COUNTY

Rancho Moro Cojo presents a unique opportunity to create a significant number of new homes for low-income families in north Monterey County. Although hundreds of workers in the Castroville area earn below the County median income, virtually nothing has been done in north Monterey County to provide safe, decent, affordable housing for low-income households. Consider the following:

- Carmel Valley has absorbed over 200 low-income units;
- Monterey has over 170 low-income units;
- Salinas, Gonzales, Soledad, Greenfield and King City have encouraged the development of hundreds of affordable housing units.

It is important to note that there are **no other sites available** in north Monterey County which are suitable for developing affordable housing. The Rancho Moro Cojo subdivision proposed by CHISPA presents perhaps the **only opportunity to meet the need for affordable housing** in this area.

Rancho Moro Cojo, which comprises two separate parcels totaling 188 acres, is located on Castroville Boulevard. The site's current zoning allows for the development of up to **five units per acre**. The zoning allows for more than 600 units; CHISPA is proposing only 375 units. Most of the site will remain as **open space**.

CHISPA's proposal includes:

- 100 senior units located on a 53-acre parcel. These units will utilize only **10** of the available acres.
- 90 multi-family units, and
- 175 single family homes on the 125-acre parcel. These units will utilize only **42** of the available acres.
- **136** of the 188 acres will remain **open space**.

The following is a summary of the potential impacts on water and traffic as cited in the EIR. CHISPA has contracted with **experienced, qualified traffic, water, wetland and animal habitat consultants** to prepare detailed plans for **minimizing these impacts**. Please note that CHISPA is **required** to mitigate the potential development impacts described in the EIR. These issues, however, must be considered in the larger context of the **great need for affordable housing and the lack of available sites in North Monterey County**.

IMPACT ON TRAFFIC:

The project might cause degradation in the reserve capacity at the State Highway 156/Castroville Boulevard intersection, at the State Highway 1/State Highway 183 intersection, and at the Castroville Boulevard/San Miguel Canyon Road intersection;

impact on the operation of two new intersections on Castroville Boulevard; and increased demand for public transit and bicycle trails.

RESPONSES:

- CHISPA recognizes that many residents are concerned about existing traffic issues in the area. The County assesses fees on new housing units to improve the capacity of the roadways. The traffic fees for Rancho Moro Cojo will not only **reduce the impact of the new units**, but also will help **resolve current traffic issues**. However, neither CHISPA nor low-income families should have to accept the burden of solving all of the existing traffic problems.
- As a community-based non-profit developer, CHISPA's goal is to serve **families who work and reside in North County** and who live in substandard conditions or pay a high percentage of income for housing. Unlike most "market rate" developers, CHISPA is **not interested** in attracting homebuyers from other areas. Since CHISPA's goal is to serve current residents of north Monterey County, the project's traffic impact likely will be **less** than described in the EIR.
- CHISPA is proposing a van service to take elderly residents of the senior housing project to nearby commercial and residential centers. The subdivision will also include extensive, well-marked bicycle trails for an alternative source of transportation.

IMPACT ON WATER:

There is a potential for increased net groundwater pumping near Castroville and increased rate of seawater intrusion near the project area.

RESPONSES:

- The property was previously used to grow strawberries. **Forty acres of strawberries** utilize the **same amount of water** as would the **365 unit development**. The site has nearly **150 acres** of usable growing land. If CHISPA did **not** develop the housing project and **instead** returned the site to its historical use, that of **growing strawberries**, the impact on water would be **significantly greater than** that of the proposed project.
- The project will obtain water from **California Water Services Company's wells** located in **Oak Hills**. These are located **uphill** and in the **opposite direction** from the **seawater intrusion**, which is flowing **downhill** and in a southeasterly direction toward the **lowest elevation** in the underground aquifer. The estimated water use for Rancho Moro Cojo represents **only a .4% increase** in the **current overdraft**. The **majority of the overpumping** in the area is for **agricultural uses**.
- CHISPA is considering alternatives to **reduce water usage** including retrofitting homes in north Monterey County.

The EIR also sites other impacts. As with the traffic and water issues discussed here, CHISPA is working with qualified consultants to develop and implement mitigation measures in accordance with state and County laws and with the recommendations of EIR.

STATEMENT OF OVERRIDING CONSIDERATIONS

After considering all the evidence, both oral and documentary, contained in the record, the Board of Supervisors hereby finds that the conditions of approval contained in this project eliminate or substantially lessen all significant effects on the environment to the extent feasible.

If it is later determined that the mitigations imposed by the Board of Supervisors do not mitigate the impacts of this project to a level of insignificance, the Board hereby finds that any remaining significant effects on the environment found to be unavoidable under §15091 are acceptable due to overriding considerations.

The Board of Supervisors, as the decision-makers on this project have balanced the benefits of the proposed project against its environmental impact and determined that benefits of the proposed project outweigh any unavoidable adverse environmental effects.

Specifically, the Board finds that Northern Monterey County and Castroville, specifically, suffers from an acute need for affordable housing.

Specifically, 1990 U.S. Census data provided by the Monterey County Department of Building Inspection and Planning indicate that (1) Castroville has a lower percentage of homeowner opportunities available, (2) that the median household income for Castroville is only eighty percent (80%) of the County's median income, (3) that the percentage of persons living below the poverty level is twice that for the remainder of the County, (4) that the vacancy rate in Castroville is lower than for the remainder of the County, and (5) that the percentage of overcrowding in rental units in the Castroville area is twice that of Monterey County as a whole.

The Monterey County Housing Element also indicates that the vacancy rate for rental units in the unincorporated area of Monterey County has declined from one and ninety-two one hundredths percent (1.92%) in 1980 to one and twenty-seven one hundredths

percent (1.27%) in 1990, giving the unincorporated area the lowest overall vacancy rate in the entire County. According to the Monterey County Housing Element, the effective vacancy rate in the County is far below what is considered to be balanced housing market where supply equals demand. As a result, the demand for available rental units has driven the cost up of rental housing and allowed substandard housing to be rented at excessive rental rates.

Substantial evidence in the record illustrates that the average rental rate for housing in North Monterey County is almost double the rate affordable to persons of low and moderate income.

The Association of Monterey Bay Area Governments projected that over two thousand nine hundred (2,900) low- and very low-income housing units would be required to meet the housing needs of low-income households prior to 1996. Less than ten percent (10%) of those units have been built.

The Monterey County Housing Authority has stated that there are six thousand five hundred sixty-nine (6,569) eligible families on the Section 8 waiting list. Almost five hundred (500) of those families currently reside in Castroville.

Based on a survey conducted in North Monterey County, there is also a severe over-crowding condition existing in the available housing stock.

Therefore, the Board finds that in the event it is determined that the significant effects identified in the Final EIR are not at least substantially mitigated, the Board of Supervisors hereby adopts a Statement of Overriding Consideration that the benefits of the proposed project on the available housing in Monterey County outweigh any potential unavoidable adverse environmental effects of the project.

MONTEREY COUNTY RESOURCE MANAGEMENT AGENCY



Carl P. Holm, AICP, Director
John Guertin, Acting Deputy Director
Daniel Dobrilovic, Acting Building Official
Mike Novo, AICP, Director of Planning
Benny J. Young, Interim Director of Public Works & Facilities

RECEIVED

FEB 29 2016

150 W. Alisal Street, 2nd Floor
Salinas, California 93901
(831)755-4800
www.co.monterey.ca.us/rma

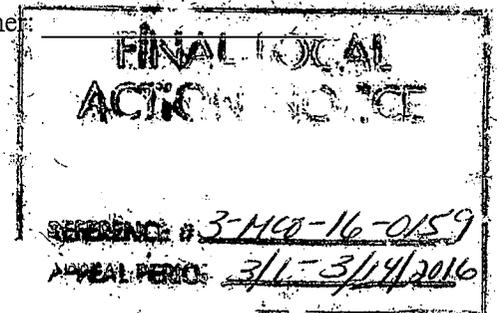
CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

FINAL LOCAL ACTION NOTICE

Date: February 26, 2016
To: California Coastal Commission, Central Coast District Office
Applicant/Representative: Alfred Diaz-Infante, C/O CHISPA; Paul Tran, C/O CHISPA
From: Monterey County Resource Management Agency Planning Department
Subject: Final Local Action on Coastal Permit Application PLN120650

Please note the following **Final Monterey County Action** for the following coastal development permit type:

- CDP/CAP CDP Amendment Extension Emergency CDP
 Exemption Exclusion LCP Amendment Other
 all local appeals processes have been exhausted for this matter
 The project includes an amendment to the LCP



Project Information

Resolution #: 16-009
Project Applicant: Alfred Diaz-Infante, C/O CHISPA, 295 Main Street STE 100, Salinas, CA, 93901
Applicant's Rep: Paul Tran, C/O CHISPA, 295 Main Street STE 100, Salinas, CA, 93901
Project Location: The 161 properties affected by this action are located in the Moro Cojo Subdivision which is located generally at the intersection of Castroville Boulevard and Meridian Road, Castroville area, within the North County Land Use Plan area in North Monterey County. The addresses, Assessor Parcel Numbers and property owners list is attached to the Board of Supervisors Resolution approving the amendment.
Project Description: Amendment to 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.

For Coastal Commission Use Only

MCO

Reference #: 3-MCO-16-0159

FLAN received: A-3-MCO-16-0017 (Moro Cojo Affordable Housing CDP Amdnement)

Appeal period: 3/1-3/14/2016

Exhibit 5
1 of 20

Final Action Information

Final Action Date: January 26, 2016

Local Appeal Period Ends: January 26, 2016

Final Action: Approved w/conditions Approved w/o conditions Denied

Final Action Body: Zoning Administrator Planning Commission Board of Supervisors Dir. of Planning

Final Local Action Notice Attachments Included

Required Materials Supporting the Final Action	Enclosed	Previously Sent (date)	Notes/Comments
Staff Report		1/15/2016	
Adopted Findings	X		
Adopted Conditions	X		
Site Plans			
Elevations			
Location/Vicinity Map		1/15/2016	
Additional Materials Supporting the Final Action	Enclosed	Previously Sent (date)	Notes/Comments
CEQA Document(s)		7/2/2015	
Geotechnical Report(s)			
Biotic Report(s)			
Forest Management Plan(s)			

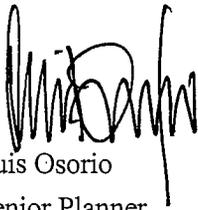
Coastal Commission Appeal Information

Monterey County has determined that this Final Local Action is:

- NOT APPEALABLE** to the California Coastal Commission. The Final Monterey County Action is now effective.
- APPEALABLE** to the California Coastal Commission. The Coastal Commission's 10-working day appeal period begins the first working day after the Coastal Commission receives adequate notice of this Final Monterey County Action. The Final Monterey County Action is not effective until after the Coastal Commission's appeal period has expired and no appeal has been filed. Any such appeal must be made directly to the California Coastal Commission Central Coast District Office in Santa Cruz; there is no fee for such an appeal. Should you have any questions regarding the Coastal Commission appeal period or process, please contact the Central Coast District Office at 725 Front Street, Suite 300, Santa Cruz, CA 95060, (831) 427-4863.

Submitted by

Signature:



Name: Luis Osorio

Title: Senior Planner

Phone/Fax: 831-755-5177/831-757-9516

email: osoriol@co.monterey.ca.us



Monterey County

168 West Alisal Street,
1st Floor
Salinas, CA 93901
831.755.5066

Board Order

Upon motion of Supervisor Phillips seconded by Supervisor Armenta and carried by those members present, the Board of Supervisors hereby:

Public hearing continued from December 8, 2015:

- a. Adopted a Negative Declaration; and
- b. Approved by Resolution 16-009 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, Moro Cojo Subdivision, Castroville Boulevard, North County Land Use Plan)

PASSED AND ADOPTED on this 26th day of January 2016, by the following vote, to wit:

AYES: Supervisors Armenta, Phillips, Salinas and Potter

NOES: Supervisor Parker

ABSENT: None

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 of Minute Book 78 for the meeting on January 26, 2016.

Dated: January 27, 2016
File ID: 16-082
Corrected: February 25, 2016

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

By *Danise Hancock*
Deputy

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. 16-009**

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] ¹

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 upon motion of Supervisor Salinas, seconded by Supervisor Armenta carried this 26h day of January 2016, by the following vote, to wit:

AYES: Supervisors Armenta, Phillips, Salinas and Potter
NOES: Supervisor Parker
ABSENT: None

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 of Minute Book 78 for the meeting on January 26, 2016.

Dated: January 27, 2016
File Number: 16-082
Corrected: February 25, 2016

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

By 
Deputy

¹ The list of owners, addresses and Assessor's Parcel Numbers of the 161 residential units subject to this application is attached to this Resolution.

4. REVISED AFFORDABILITY DEED RESTRICTION

Responsible Department: RMA-Planning

Condition/Mitigation Monitoring Measure: Each of the owners of the 161 properties subject to the amendment of Condition #99 of the Moro Cojo Standard Subdivision Combined Development Permit shall record a deed restriction for their property reflecting the amendment to the Condition. Specifically, the revised deed restriction must state that "The term of the affordability restriction is a 20-year term commencing on the date of the first deed of conveyance from the developers to the original owners of the units and shall terminate thereafter." The deed restriction shall indicate that the 20-year term supersedes the prior deed restriction. The form of the deed restriction shall be acceptable to the Director of Planning and County Counsel.

Compliance or Monitoring Action to be Performed: Within 30 days of the final approval of the amendment by the Board of Supervisors the owners shall submit a draft Deed Restriction to the Director of RMA -Planning Department for review as to form. Owners shall submit recording fee within the same period to pay the cost of recording all the documents.

For each of the 161 properties, for the amendment to take effect for that property, the owner(s) of that property must submit proof of recordation of the deed restriction.

3. PD004 - INDEMNIFICATION AGREEMENT

Responsible Department: RMA-Planning

Condition/Mitigation Monitoring Measure: The owners of the 161 residential units subject to the amendment of Condition #99 of the Moro Cojo Standard Subdivision Combined Development Permit agree as a condition and in consideration of approval of this discretionary development permit that they, or CHISPA where authorized by an owner, 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 owners 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. The 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 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 hold the County harmless. If authorized by an owner, CHISPA may act on behalf of the owner to fulfill the obligations set forth in this condition. To the extent CHISPA is acting on behalf of an owner in fulfilling this condition, CHISPA shall submit to the Director of the RMA-Planning Department the owner's written authorization for CHISPA to act on their behalf.

(RMA - Planning Department)

Compliance or Monitoring Action to be Performed: Within 30 days of the final approval of the amendment by the Board of Supervisors the owners shall submit a 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 within 30 days of the approval of the amendment.

2. PD002 - NOTICE PERMIT APPROVAL

Responsible Department: RMA-Planning

**Condition/Mitigation
Monitoring Measure:**

The applicant shall record a Permit Approval Notice. This notice shall state:

"An amendment of Condition #99 of the Moro Cojo Standard Subdivision Combined Development Permit (Resolution Number 16-009) was approved by the Board of Supervisors on January 26, 2016. The amendment changes the term of the affordability restriction of 161 of the 175 single-family residences in the Subdivision from permanent to a 20-year term commencing on the date of the first deed of conveyance from the developers to the original owners of the units. As part of the approval of the amendment, the Board of Supervisors determined that replacement affordable housing units are not required to substitute for the subject 161 units for which the affordability requirement will be removed after the 20-year term. The amendment was granted subject to four (4) conditions of approval which run with the land. The list of properties, owners, addresses and assessor's parcels subject to the amendment is attached to this Notice. A copy of the permit is on file with the Monterey County RMA - Planning Department." Proof of recordation of this notice shall be furnished to the Director of the RMA - Planning Department prior to issuance of building permits or commencement of the use.

(RMA-Planning Department)

**Compliance or
Monitoring
Action to be Performed:**

Within 30 days of the final approval of the amendment by the Board of Supervisors the owners or their representative shall submit a signed and notarized Permit Approval Notice to the Director of RMA-Planning Department for review and signature by the County.

Proof of recordation of the Permit Approval Notice, as outlined, shall be submitted to the RMA-Planning Department.

Monterey County RMA Planning

Conditions of Approval/Implementation Plan/Mitigation Monitoring and Reporting Plan

PLN120650

1. PD001 - SPECIFIC USES ONLY

Responsible Department: RMA-Planning

**Condition/Mitigation
Monitoring Measure:**

This permit allows an amendment to Condition #99 of the approved Combined Development Permit (File No. SH93001) for the Moro Cojo Standard Subdivision. The amendment changes the term of the affordability restriction of 161 of the 175 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 does not require that affordable housing units be provided to substitute for the subject 161 units for which the affordability requirement will be removed after the 20-year term. The amendment was approved in accordance with County ordinances and land use regulations subject to the terms and conditions described in the project file. 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)

**Compliance or
Monitoring
Action to be Performed:**

The Owners of the subject 161 residential units shall adhere to the terms of the provisions of the amendment and the conditions and uses specified in the permit on an ongoing basis unless otherwise stated.

137	133-095-057-000	9486 COMUNIDAD WY	REYES JOSE A & MARIA GUADALUPE DIAZ
138	133-095-058-000	9482 COMUNIDAD WY	VARGAS ANGEL & DELFINA &
139	133-095-059-000	9478 COMUNIDAD WY	ESPINOZA HECTOR & ANGELITA
140	133-095-061-000	9711 CORTEZ LANE	ANAYA MANUEL R & RAMONA V
141	133-095-070-000	9831 LOS ARBOLES CIR	PEREZ RIGOBERTO & JACQUELINE ZARAGOZA
142	133-095-071-000	9835 LOS ARBOLES CIR	ENRIQUEZ LETICIA MUNOZ
143	133-095-072-000	9839 LOS ARBOLES CIR	SALDIVAR AGUSTIN & LAURA
144	133-095-073-000	9843 LOS ARBOLES CIR	GUZMAN FLORENTINO
145	133-095-078-000	9708 CORTEZ LN	FONCE JOSE R & MARIA G
146	133-095-079-000	9712 CORTEZ LANE	BERMUDEZ PEDRO & MARIA E
147	133-095-080-000	9716 CORTEZ LANE	ARANGO ALEJANDRO & ILDEGARDA
148	133-095-081-000	9720 CORTEZ LANE	CASTILLO KAMIRO & ROSARIO
149	133-094-058-000	9760 CORTEZ LN	CAMPOS (S) HECTOR S & GRISELDA
150	133-094-059-000	9764 CORTEZ LN	SUBRAMANI GOPAL & KAMAL
151	133-094-062-000	9689 ESPERANZA CIR	CAMPOS JAVIER & MARIA D
152	133-094-063-000	9683 ESPERANZA CIR	URIBE MIGUEL & LETICIA O
153	133-094-064-000	9681 ESPERANZA CIR	ORTIZ (A) GONZALO & ANGELICA ORTIZ
154	133-094-065-000	9677 ESPERANZA CIR	TINOCO (F) JOSE LUIS & EMELIA TINOCO
155	133-095-045-000	9457 COMUNIDAD WY	RODRIGUEZ JOSE G & EDWIGES
156	133-094-068-000	9555 VIVA LN	SERRATO CLAUDIO H & LIDIA L
157	133-094-069-000	9551 VIVA LN	REYES JOSE F & ANGELINA
158	133-094-071-000	9543 VIVA WAY	MACIAS FRANCISCO & TERESA
159	133-094-072-000	9539 VIVA LN	TORRES LUZ DELIA
160	133-094-073-000	9535 VIVA LANE	SOLORZANO JUAN R & MARIA J
161	133-094-018-000	9562 VIVA LN CASTROVILLE CA 95012	ALONDRA VASQUEZ

91	133-095-075-000	9851 LOS ARBOLES CIR	RESENDIZ SEBASTIAN & GISELA
92	133-094-054-000	9878 LOS ARBOLES CIR	SANCHEZ JOSE ANGEL & MARTHA
93	133-095-063-000	9834 LOS ARBOLES CIR	ACOSTA MARIO M & ELENA
94	133-095-069-000	9858 LOS ARBOLES CIR	CAMPOS PABLO & ROSALINDA ALBARRAN
95	133-095-067-000	9850 LOS ARBOLES CIR	RIVERA GLORIA CHRISTINA
96	133-095-066-000	9846 LOS ARBOLES CIR	ESPINOZA JESUS P & EVANGELINA
97	133-095-085-000	9736 CORTEZ LN	DE GUZMAN MARIA S & SOBRIA MARIO ALBERTO GUZMAN
98	133-095-068-000	9854 LOS ARBOLES CIR	JUAREZ MIGUEL & RUTH
99	133-094-048-000	9866 LOS ARBOLES	LOPEZ ARNULFO & SUSANNAH RAINE LOPEZ
100	133-095-064-000	9838 LOS ARBOLES CIR	MARTINEZ JESUS & MARGARITA
101	133-095-084-000	9732 CORTEZ LN	MONTANO ARTURO R & HILDA Z
102	133-095-082-000	9724 CORTEZ LN	PEREZ RAUL G & YOLANDA
103	133-094-047-000	9862 LOS ARBOLES CIR	ROCHA RAMON & LETICIA
104	133-095-065-000	9842 LOS ARBOLES CIR	ROCHA ROBERTO F & MARGARITA
105	133-095-062-000	9830 LOS ARBOLES CIR	MENDOZA HERMILA GOMEZ
106	133-095-083-000	9728 CORTEZ LN	ZAMORA JAVIER & BLANCA E
107	133-095-011-000	9132 LOS NINOS PL	CARDENAS OLGA
108	133-095-055-000	9494 COMUNIDAD WY	ATILANO MARIA CRISTINA LOPEZ
109	133-095-012-000	9128 LOS NINOS PLACE	BARBOSA PANFILO M & ISAUARA
110	133-095-010-000	9136 LOS NINOS PL	BERMUDEZ MARIA LOURDES
111	133-095-002-000	9168 LOS NINOS PL	BOSE HERMENEGILDO C & VIRGINIA M
112	133-095-004-000	9160 LOS NINOS PL	CARTER HOWARD J
113	133-095-005-000	9156 LOS NINOS PL	MARAVILLA-BAROCIO HUMBERTO & MARAVILLA MARIA GLORI
114	133-095-006-000	9152 LOS NINOS PL	PORRAS-GUTIERREZ ROSALIO
115	133-095-009-000	9140 LOS NINOS PL	MUNOZ EDGAR I & CHRISTINA
116	133-095-003-000	9164 LOS NINOS PL	PALACIOS JUAN M & SILVIA A
117	133-095-013-000	9124 LOS NINOS PL	ROSAS JOEL & PATRICIA
118	133-095-001-000	9172 LOS NINOS	VILLAGOMEZ JOSE MANUEL & ROSARIO G
119	133-094-057-000	9304 CAMPO DE CASA DR	DIAZ BERTHA
120	133-094-038-000	9300 CAMPO DE CASA DR	RESENDIZ J JUAN & ROSA MARIA
121	133-094-039-000	9696 CAMPO DE CASA DR	CASTRO JOSE JUAN & ROSALBA CASTRO NERI
122	133-095-035-000	9417 COMUNIDAD WY	ALFARO ROBERTO
123	133-095-037-000	9425 COMUNIDAD WY	ALFARO TOMAS & PATRICIA
124	133-095-038-000	9429 COMUNIDAD WY	CERVANTES CARMEN LUCIA & VARGAS OSVALDO GONZALEZ
125	133-095-039-000	9433 COMUNIDAD WY	MARTINEZ CARLOS HERNANDEZ & LAURA ROSALES
126	133-095-040-000	9437 COMUNIDAD WY	MARTINEZ ANTONIA & MARTINEZ JULIO CESAR
127	133-095-041-000	9441 COMUNIDAD WY	ALCARAZ TRINIDAD & YOLANDA RAYA
128	133-095-046-000	9461 COMUNIDAD WY	CHAVARIN FERMIN & ROSARIO
129	133-095-047-000	9465 COMUNIDAD WY	ORTIZ ALFREDO & LUISA
130	133-095-048-000	9469 COMUNIDAD WY	BENITEZ PABLO & MARIA
131	133-095-049-000	9473 COMUNIDAD WY	ZAYALA JOSE L & MARIA G
132	133-095-050-000	9477 COMUNIDAD WY	CUENTAS FRANCISCO & ROSA M
133	133-095-051-000	9481 COMUNIDAD WY	CUELLAR SALVADOR & MARIA
134	133-095-052-000	9485 COMUNIDAD WY	NIETO J MANUEL RESENDIZ & OFELIA MONTOYA MALDONADO
135	133-095-053-000	9489 COMUNIDAD WY	ROCHA ANDRES & GRACIELA
136	133-095-056-000	9490 COMUNIDAD WY	CARPIO LUISA & MANUEL CARPIO G

45	133-094-089-000	9633 ESPERANZA CIR	JAHEN JUAN CARLOS & MARIA G ZEPEDA
46	133-094-013-000	9542 VIVA LN	JIMENEZ ANGEL H & DELMY A
47	133-094-014-000	9546 VIVA LANE	MARIN JOSE RAUL & MARIA LETICIA
48	133-094-077-000	9640 ESPERANZA CIR	MARTINEZ GUADALUPE & ELVIRA NAVARRO
49	133-094-076-000	9573 VIVA LN	MELGOZA VICTOR R & MARIA J
50	133-094-012-000	9538 VIVA LN	MONTEIANO JOEL & LUISA
51	133-094-087-000	9625 ESPERANZA CIR	MUNOZ AZUCENA C & JOSE LUIS MUNOZ P
52	133-094-090-000	9637 ESPERANZA CIR	RODRIGUEZ ANSELMO & ANA G CHAVEZ
53	133-094-088-000	9629 ESPERANZA CIR	VALENZUELA JOSE REFUGIO & BERTHA
54	133-094-074-000	9531 VIVA LN	PEREZ ALVINA AGUILAR & AGUILAR NOELIA
55	133-095-034-000	9708 CAMPO DE CASA	ALVAREZ LORENZO & ODILVINA DE ALVAREZ
56	133-095-031-000	9220 CAMPO DE CASA DR	DE ANDA MIGUEL CAMARENA & CARMEN CAMARENA
57	133-095-032-000	9216 CAMPO DE CASA	CORONA FERNANDO & ANA MARIE
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61	133-095-014-000	9120 LOS NINOS PL	GONZALEZ FEDERICO & ANTONIA OLIVARES
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63	133-095-019-000	9223 CAMPO DE CASA DR	HUERTA JOSE & MARTHA C
64	133-095-017-000	9215 CAMPO DE CASA DR	MELGOZA AURELIO & MARGARITA
65	133-095-030-000	9224 CAMPO DE CASA DR	NICASIO OLIVARES
66	133-095-029-000	9228 CAMPO DE CASA DR	RODRIGUEZ ALBERTO & MARTHA
67	133-094-085-000	9672 ESPERANZA CIR	BAGHMAN SCOTT ALAN
68	133-094-056-000	9752 CORTEZ LANE	CAMACHO MIGUEL & CATALINA
69	133-094-060-000	9571 VIVA LANE	CARRILLO AURELIO
70	133-094-019-000	9566 VIVA LN	CORTES LUIS FERNANDO & CIRIA
71	133-094-061-000	9693 ESPERANZA CIR	CRUZ JENNIFER LYNN
72	133-094-067-000	9559 VIVA LN	GARCIA JUAN M
73	133-094-081-000	9656 ESPERANZA CIR	GUIDO JESUS & GUILLERMINA GUTIERREZ
74	133-094-079-000	9648 ESPERANZA CIR	PEREZ ROBERT J & ESTEE L
75	133-094-084-000	9668 ESPERANZA CIR	MELGOZA EVERARDO & MARIA INES MELGOZA
76	133-094-066-000	9575 VIVA LN	SANCHEZ SALVADOR & PATRICIA
77	133-094-082-000	9660 ESPERANZA CIR B14	SUAREZ RAMIRO & MAGDALENA
78	133-094-086-000	9676 ESPERANZA CIR	ZAMORA RAMIRO & ALICIA IRS
79	133-094-055-000	9882 LOS ARBOLES CIR	ALCALA MARIA O
80	133-094-051-000	9867 LOS ARBOLES CIR	BERMUDEZ RUBEN & ANA M
81	133-095-054-000	9493 COMUNIDAD WY	CAMACHO JOEL & MARIA LUISA
82	133-094-034-000	9316 CAMPO DE CASA DR	LOPEZ JAVIER CEJA & MARISOL CEJA
83	133-095-074-000	9847 LOS ARBOLES CIR	FERNANDEZ FLORA IR
84	133-094-050-000	9863 LOS ARBOLES CIR	CONTRERAS FERNANDO VICENTE
85	133-095-060-000	9715 CORTEZ LN	KEEN IVY MARIE & KEEN SAVANNA
86	133-094-049-000	9870 LOS ARBOLES CIR	LIRA MIGUEL ANGEL & CLARA OFELIA
87	133-094-053-000	9744 CORTEZ LN	MANZO AURELIANO ET AL
88	133-095-076-000	9855 LOS ARBOLES CIR	MAGANA JESUS & GRACIELA
89	133-094-052-000	9740 CORTEZ LN	GALINDO MIROSLAVA & ENRIQUE MEDINA G
90	133-095-077-000	9859 LOS ARBOLES CIR	PARRA JOSE LUIS JR & KATHERINE MICHELLE IRS

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18	133-094-008-000	9522 VIVA LANE	LOPEZ JOSE T & ANTONIA
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20	133-094-007-000	9518 VIVA LN	MARROQUIN MARTIN J & TERESA T
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27	133-094-042-000	9284 CAMPO DE CASA DRIVE	VAZQUEZ JESUS M & ALBINA C
28	133-094-023-000	9303 CAMPO DE CASA DR	DUCUSIN NAPOLEON J & LIGAYA
29	133-094-017-000	9558 VIVA LN	GARCIA REFUGIO & MA CONSUELO GARCIA
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39	133-094-021-000	9311 CAMPO DE CASA DR	RODRIGUEZ EFREN VIRGEN & CLAUDIA VERONICA
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43	133-094-011-000	9534 VIVA LN	HERNANDEZ BERTHA A TR
44	133-094-078-000	9644 ESPERANZA CIR	IBARRA FELIPE & MA EUGENIA BRAVO



CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE
 725 FRONT STREET, SUITE 300
 SANTA CRUZ, CA 95060-4508
 VOICE (831) 427-4863 FAX (831) 427-4877

RECEIVED

FEB 23 2016

CALIFORNIA
 COASTAL COMMISSION
 CENTRAL COAST DISTRICT

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

NOTE: THIS REPLACES MY JANUARY 26, 2016 APPEAL

Please Review Attached Appeal Information Sheet Prior To Completing This Form.

SECTION I. Appellant(s)

Name: Jane Haines

Mailing Address: 601 Ocean View Boulevard, Apt. 1

City: Pacific Grove

Zip Code: 93950

Phone: (831) 375-5913

SECTION II. Decision Being Appealed

1. Name of local/port government:

Monterey County

2. Brief description of development being appealed:

January 26, 2016 decision by Board of Supervisors to amend Condition No. 99 of the Coastal Combined Development Permit for the Moro Cojo affordable housing subdivision project by reducing the term of affordability for very low, low and moderate income households from perpetuity to twenty years from the date of first sale. The subdivision project consists of 175 self-help single-family homes financed through publicly-subsidized home loans.

3. Development's location (street address, assessor's parcel no., cross street, etc.):

North Monterey County coastal area generally fronting on Castroville Boulevard near North Monterey County High School. A 4-page list of APNs for the 161 affected homes is included in this appeal.

4. Description of decision being appealed (check one.):

Approval; no special conditions

Approval with special conditions:

Denial

Note: For jurisdictions with a total LCP, denial decisions by a local government cannot be appealed unless the development is a major energy or public works project. Denial decisions by port governments are not appealable.



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TO BE COMPLETED BY COMMISSION:

APPEAL NO: *A-3-MCO-16-0017*

DATE FILED: *3-1-2016*

DISTRICT: *Central Coast*


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APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 2)

5. Decision being appealed was made by (check one):

- Planning Director/Zoning Administrator
 City Council/Board of Supervisors
 Planning Commission
 Other

6. Date of local government's decision: January 26, 2016

7. Local government's file number (if any): PLN120650

SECTION III. Identification of Other Interested Persons

Give the names and addresses of the following parties. (Use additional paper as necessary.)

a. Name and mailing address of permit applicant:

Community Housing Improvement Systems and Planning Association (on behalf of 161 homeowners)
 Attention: Alfred Diaz-Infante, President/CEO
 295 Main Street, Suite 100
 Salinas, CA 939-1

b. Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearing(s). Include other parties which you know to be interested and should receive notice of this appeal.

Juan Uranga, Executive Director
 Center for Community Advocacy
 22 East Gabilan Street
 Salinas, CA 93901

Jason Retterer, Esq.
 L+G, LLP
 318 Cayuga Street
 Salinas, CA 93901

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Margaret Robbins
3850 Rio Road, Unit 26
Carmel, CA 93923

Mary Tsui
2305 Ashland Street, Ste. C#360
Ashland, OR 97520

Martha Rau
9350 Canyon Oak
Salinas, CA 93907

LandWatch
P.O. Box 1876
Salinas, CA 93902-1876

Denise Visintine
2240 Bay Tree Drive
Sant Peters, Missouri 63376

Paul Cortopassi
11503 Merritt Street.
Castroville, CA 95012

League of Women Voters of Monterey County
P.O. Box 1996
Monterey, CA 93942

Nina Beety
277 Mar Vista Drive
Monterey, CA 93940

Sabino Lopez
Center for Community Advocacy
22 East Gabilan Street
Salinas, CA 93901

Luis Osario, Planner
Monterey County Planning Department
168 West Alisal Street
Salinas, CA 93901

Also, the 161 Moro Cojo homeowners whose names and addresses appear on the following 4-page list.

OWNERS, ADDRESSES AND ASSESSOR'S PARCEL NUMBERS OF
RESIDENTIAL UNITS SUBJECT TO APPROVED AMENDMENT

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89	133-094-052-000	9740	CORTEZ LN	GALINDO MIROSE AYA & ENRIQUE MEDINA G
90	133-095-077-000	9859	LOS ARBOLES CIR	PARRA JOSE LUIS JR & KATHERINE MICHELLE TRS

91	133-095-075-000	9831 LOS ARBOLES CIR	RESSENDIZ SEBASTIAN & GISELA
92	133-094-054-000	9878 LOS ARBOLES CIR	SANCHEZ JOSE ANGEL & MARTHA
93	133-095-063-000	9834 LOS ARBOLES CIR	ACOSTA MARIO M & ELENA
94	133-095-069-000	9858 LOS ARBOLES CIR	CAMPOS PABLO & ROSALINDA ALBARRAN
95	133-095-067-000	9850 LOS ARBOLES CIR	RIVERA GLORIA CHRISTINA
96	133-095-066-000	9846 LOS ARBOLES CIR	ESPINOZA JESUS P & EVANGELINA
97	133-095-085-000	9736 CORTEZ LN	DE GUZMAN MARIA S & SORIA MARIO ALBERTO GUZMAN
98	133-095-068-000	9854 LOS ARBOLES CIR	JUAREZ MIGUEL & RUTH
99	133-094-048-000	9866 LOS ARBOLES	LOPEZ ARNULFO & SUSANNAE RAINE LOPEZ
100	133-095-064-000	9838 LOS ARBOLES CIR	MARTINEZ JESUS & MARGARITA
101	133-095-084-000	9732 CORTEZ LN	MONTANO ARTURO R & HILDA Z
102	133-095-082-000	9724 CORTEZ LN	PEREZ RAUL G & YOLANDA
103	133-094-047-000	9862 LOS ARBOLES CIR	ROCHA RAMON & LETICIA
104	133-095-065-000	9842 LOS ARBOLES CIR	ROCHA ROBERTO F & MARGARITA
105	133-095-062-000	9830 LOS ARBOLES CIR	MENDOZA HERMILA GOMEZ
106	133-095-083-000	9728 CORTEZ LN	ZAMORA JAVIER & BLANCA E
107	133-095-011-000	9132 LOS NINOS PL	CARDENAS OLGA
108	133-095-055-000	9494 COMUNIDAD WY	ATILANO MARIA CRISTINA LOPEZ
109	133-095-012-000	9128 LOS NINOS PLAGE	BARBOSA PAMPILIO M & ISAUARA R
110	133-095-010-000	9136 LOS NINOS PL	BERMUDEZ MARIA LOURDES
111	133-095-002-000	9168 LOS NINOS PL	BOSE HERMENEGILDO C & VIRGINIA M
112	133-095-004-000	9160 LOS NINOS PL	CARTER HOWARD J
113	133-095-005-000	9156 LOS NINOS PL	MARA VILLA-BAROCIO HUMBERTO & MARAVILLA MARIA GLORI
114	133-095-006-000	9152 LOS NINOS PL	PORRAS-GUTIERREZ ROSALJO
115	133-095-009-000	9140 LOS NINOS PL	MUNOZ EDGAR I & CHRISTINA
116	133-095-003-000	9164 LOS NINOS PL	PALACIOS IVAN M & SILVIA A
117	133-095-013-000	9124 LOS NINOS PL	ROSAS JOEL & PATRICIA
118	133-095-001-000	9172 LOS NINOS	VILLAGOMEZ JOSE MANUEL & ROSARIO G
119	133-094-037-000	9304 CAMPO DE CASA DR	DIAZ BERTHA
120	133-094-038-000	9300 CAMPO DE CASA DR	RESSENDIZ JUAN & ROSA MARIA
121	133-094-039-000	9686 CAMPO DE CASA DR	CASTRO JOSE IVAN & ROSALBA CASTRO NERI
122	133-095-035-000	9417 COMUNIDAD WY	ALFARO ROBERTO
123	133-095-037-000	9425 COMUNIDAD WY	ALFARO TOMAS & PATRICIA
124	133-095-038-000	9429 COMUNIDAD WY	CERVANTES CARMEN LUCIA & VARGAS OSVALDO GONZALEZ
125	133-095-039-000	9433 COMUNIDAD WY	MARTINEZ CARLOS HERNANDEZ & LAURA ROSALES
126	133-095-040-000	9437 COMUNIDAD WY	MARTINEZ ANTONIA & MARTINEZ JULIO CESAR
127	133-095-041-000	9441 COMUNIDAD WY	ALCARAZ TRINIDAD & YOLANDA RAYA
128	133-095-046-000	9461 COMUNIDAD WY	CHAYARIN BERMIN & ROSARIO
129	133-095-047-000	9465 COMUNIDAD WY	ORTIZ ALFREDO & LUISA
130	133-095-048-000	9469 COMUNIDAD WY	BENITEZ PABLO & MARIA
131	133-095-049-000	9473 COMUNIDAD WY	ZAVALA JOSE L & MARIA G
132	133-095-050-000	9477 COMUNIDAD WY	CUENTAS FRANCISCO & ROSAM
133	133-095-051-000	9481 COMUNIDAD WY	CUBILLAR SALVADOR & MARIA
134	133-095-052-000	9485 COMUNIDAD WY	NIETO I MANUEL RESSENDIZ & OFELIA MONTOYA MALDONADO
135	133-095-053-000	9489 COMUNIDAD WY	ROCHA ANDRES & GRACIELA
136	133-095-036-000	9490 COMUNIDAD WY	CARRIO LUISA & MANUEL CARRIO G

ATTACHED FILE

137	133-095-057-000	9486 COMUNIDAD WY	REYES JOSE A & MARIA GUADALUPE DIAZ
138	133-095-058-000	9482 COMUNIDAD WY	VARGAS ANGEL & DELFINA &
139	133-095-059-000	9478 COMUNIDAD WY	ESPINOZA HECTOR & ANGELITA
140	133-095-061-000	9711 CORTIZ LANE	ANAYA MANUEL R & RAMONA V
141	133-095-070-000	9831 LOS ARBOLES CIR	PEREZ RIGOBERTO & JACQUELINE ZARAGOZA
142	133-095-071-008	9835 LOS ARBOLES CIR	ENRIQUEZ LETICIA MONOZ
143	133-095-072-000	9839 LOS ARBOLES CIR	SALDIYAR AGUSTIN & LAURA
144	133-095-073-000	9843 LOS ARBOLES CIR	GUZMAN FLORENTINO
145	133-095-078-000	9708 CORTIZ LN	PONCE JOSE R & MARIA G
146	133-095-079-000	9712 CORTIZ LANE	BERMUDEZ PEDRO & MARIA B
147	133-095-080-000	9716 CORTIZ LANE	ARANGO ALEJANDRO & ILEGARDA
148	133-095-081-000	9720 CORTIZ LANE	CASTILLO RAMIRO & ROSARIO
149	133-094-058-000	9760 CORTIZ LN	CAMPOS (S) HECTOR S & GRSELDA
150	133-094-059-000	9764 CORTIZ LN	SURAMANI GOPAL & KAMAL
151	133-094-062-000	9689 ESPERANZA CIR	CAMPOS JAVIER & MARIA D
152	133-094-063-000	9685 ESPERANZA CIR	URIBE MIGUEL & LETICIA O
153	133-094-064-000	9681 ESPERANZA CIR	ORTIZ (A) GONZALO & ANGELICA ORTIZ
154	133-094-065-000	9677 ESPERANZA CIR	TINOCO (D) JOSE LUIS & EMELIA TINOCO
155	133-095-045-000	9437 COMUNIDAD WY	RODRIGUEZ JOSE G & EDWIGES
156	133-094-068-000	9555 VIVA LN	SERRATO CLAUDIO H & LIDIA I
157	133-094-069-000	9551 VIVA LN	REYES JOSE F & ANGELINA
158	133-094-071-000	9543 VIVA WAY	MAGIAS FRANCISCO & TERESA
159	133-094-072-000	9539 VIVA LN	TORRES LUZ DELIA
160	133-094-073-000	9535 VIVA LANE	SOLORZANO JUAN R & MARIA J
161	133-094-018-000	9562 VIVA LN CASTROVILLE CA 95012	ALONDRA VASQUEZ

**CALIFORNIA COASTAL COMMISSION**

CENTRAL COAST DISTRICT OFFICE
725 FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060-4508
VOICE (831) 427-4863 FAX (831) 427-4877

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 3)**SECTION IV. Reasons Supporting This Appeal****PLEASE NOTE:**

- Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section.
- State briefly **your reasons for this appeal**. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)
- This need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

My Reasons for this Appeal

This is an appeal of the January 26, 2016 action by the Monterey County Board of Supervisors to amend Condition No. 99 of the Coastal Combined Development Permit (CDP) for the Moro Cojo affordable housing subdivision project in the North Monterey County coastal area. There are three bases for this appeal:

FIRST, amendment of Condition No. 99 is inconsistent with North County Land Use Plan (LUP) Policy 4.3.6.D.1 (for low and moderate income housing). Policy 4.3.6.D.1 requires the County to “protect existing affordable housing opportunities in the North County coastal area from loss due to deterioration, conversion or any other reason” and to replace affordable housing units on a one-to-one basis should existing units be eliminated.

CDP Condition No. 99 was approved in 1994 by Resolution No. 94-524. It requires the project’s 175 single family homes to be available only to very low, low and moderate income households. The resolution explains that the Moro Cojo project’s “remaining significant effects on the environment found to be unavoidable under Section 15091” are acceptable due to “overriding considerations” because “Northern Monterey County and Castroville, specifically, suffers from an acute need for affordable housing.”

On January 26, 2016, the Board of Supervisors amended Condition No. 99 to terminate the affordability requirement for 161 of the 175 units in the 20th year from the date of first sale (in most cases by 2019 or 2020). Beginning then, the 161 currently-affordable units can be sold at market rate. Evidence in the record shows that very low, low and moderate income households will be unable to purchase the homes at market rate prices. That is shown by examples where the addresses of affected homes were entered into a search engine leading to either Redfin, Trulia or a similar real estate data website which provide the homes’ estimated current market rate valuations. Nearly all the estimated valuations exceed \$400,000, which is several times greater than the prices the homeowners paid for them and unaffordable to very low, low or moderate income households.

Allowing affordability-restricted homes to become unaffordable market rate homes and not requiring replacements for eliminated units, is inconsistent with North County Land Use Plan (LUP) Policy 4.3.6.D.1 because it does not protect existing affordable housing opportunities in the North County coastal area from loss.

SECOND, the January 26 amendment of Condition No. 99 does not meet the criteria for amending a final subdivision map set forth in Monterey County Coastal Subdivision Ordinance Section 19.08.015. Section 19.08.015 allows amendment of a recorded final subdivision map either to correct physical errors or “where there are changes which make any or all of the conditions of the map no longer appropriate or necessary and that the modifications do not impose any additional burden on the present fee owners of the property, and if the modifications do not alter any right, title or interest in the real property reflected on the recorded map.”

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The record contains no evidence showing any lessening of the acute need for affordable housing in North Monterey County. To the contrary, the record contains a 9/9/15 email from the Monterey County Economic Development Director which states:

“We have a high demand for affordable single family housing units right now and not enough units available. We have 172 families on the wait list and 114 on our lottery list...We just purchased and sold a deed restricted single family home and had too many qualified buyers with a capped sale price of \$329,000. Demand is high...We need to encourage more affordable units and not reduce the number of units (Moro Cojo) we should require a replacement with an equal number of units (apartments or single family).”

Despite the current high demand for affordable units, the Board adopted “finding #6” in its January 26, 2016 resolution when it approved the amendment. Finding #6 does not mention the acute need for affordable housing in North Monterey County. Rather, it asserts there are changes in circumstances which make Condition No. 99, insofar as it applies as a permanent restriction, 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.’” The reference to “burden” appears to relate to the ability to refinance. Finding #6 asserts the “majority of homeowners are locked into higher interest rate loans and face limitations on their abilities to refinance and consolidate debt.” (Italics added.)

The record contains no evidence supporting that assertion. Although the record contains three declarations by homeowners who state they attempted to refinance but were turned down and oral testimony by several more who say the same, it also contains the 5/17/15 Monterey County Housing Advisory Committee staff report stating that 41 Moro Cojo homeowners are known to have refinanced their homes. Statements by approximately six who say they have been unable to refinance is not evidence that the “majority” of 161 are locked into higher interest rate loans, particularly when the record shows that 41 are known to have refinanced.

What’s more, the January 26 amendment of Condition No. 99 is prohibited by Section 19.08.015(A)(7). Section 19.08.015(A)(7) prohibits map modifications that “alter any right, title or interest in the real property reflected on the recorded map.” The deed restriction recorded with the final map shows an interest in the real property held by the People of the County of Monterey in that it states the deed restriction was made by the Board of Supervisors “acting on behalf of the People of the County of Monterey.” It further states that the property owner covenants and agrees for himself and his successors in interest “that all units in the Moro Cojo Inclusionary Housing Projects (SH 93001 and SH 93002) shall be affordable to very low, low and moderate income households” and that “said deed restriction shall remain in full force and effect during the period that said permit, or any modification thereof, remains effective.” Since the deed restriction is recorded with the final map, and the January 26 amendment of Condition No. 99 alters its provisions by making Moro Cojo units no longer affordable effective beginning a few years from now, amending Condition No. 99 alters the interest of those on whose behalf the deed restriction was made, the People of the County of Monterey. Thus, the January 26 amendment of Condition No. 99 violates the prohibition of Section 19.08.015(A)(7) against altering an interest in the real property reflected on the final map.

THIRD, Public Resources Code §30614 requires the Commission “to ensure that coastal development permit conditions existing as of January 1, 2002, relating to affordable housing are enforced and do not expire during the term of the permit.”

Accordingly, pursuant Public Resources Code §30614 and other provisions of the California Coastal Act plus the plain meaning of North Monterey County LUP Policy 4.3.6.D.1, I respectfully request the Commission to take appropriate steps to ensure that Condition No. 99 for the Moro Cojo affordable housing subdivision project is enforced and not allowed to expire during the term of the CDP.



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APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 4)

SECTION V. Certification

The information and facts stated above are correct to the best of my/our knowledge.

June Hines

Signature of Appellant(s) or Authorized Agent

Date: February 23, 2016

Note: If signed by agent, appellant(s) must also sign below.

Section VI. Agent Authorization

I/We hereby authorize _____
to act as my/our representative and to bind me/us in all matters concerning this appeal.

Signature of Appellant(s)

Date: _____

1 Michael W. Stamp, State Bar #72785
 2 LAW OFFICES OF MICHAEL W. STAMP
 3 500 Camino El Estero, Suite 200
 4 Monterey, CA 93940-3200
 5 Telephone: (408) 373-1214

6 Jane Haines, State Bar #126751
 7 LAW OFFICES OF JANE HAINES
 8 614 Lighthouse Avenue, Suite G
 9 Pacific Grove, CA 93950
 10 Telephone: (408) 372-6665

11 Attorneys for Petitioners and
 12 Plaintiffs Alliance to Enforce
 13 Mandates and David H. Green

NOV 28 1995

MEMORIAL
 OF THE SUPERIOR COURT
File

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA

15 COUNTY OF MONTEREY

16 ALLIANCE TO ENFORCE MANDATES)	No. 102344
17 GOVERNING PROJECT REVIEW)	
18 PROCEDURES AND WATER AND TRAFFIC)	SETTLEMENT AGREEMENT AND
19 STANDARDS, AND DAVID H. GREEN,)	STIPULATION FOR JUDGMENT;
20)	JUDGMENT
21 Petitioners and Plaintiffs,)	
22)	
23 vs.)	
24)	
25 COUNTY OF MONTEREY; BOARD OF)	
26 SUPERVISORS OF THE COUNTY OF)	
27 MONTEREY; ROBERT SLIMMON, JR.,)	
28 DIRECTOR OF PLANNING AND)	
29 BUILDING INSPECTION, IN HIS)	
30 OFFICIAL CAPACITY; DOES 1 - 100,)	
31)	
32 Respondents and Defendants,)	
33)	
34 COMMUNITY HOUSING IMPROVEMENT)	
35 SYSTEM & PLANNING ASSOCIATION,)	
36 INC., DOES 101 - 200,)	
37)	
38 Real Parties in Interest.)	

39 This Settlement Agreement and Stipulation for Judgment is made
 40 and entered into this ____ day of November, 1995, by and between
 41 Alliance to Enforce Mandates Governing Project Review Procedures
 42 and Water and Traffic standards, and David H. Green (collectively

43 Exhibit "C" 1

1 referred to as Petitioners); the County of Monterey, and Robert
 2 slimmon, Jr. (collectively referred to as County); and Community
 3 Housing Improvement System and Planning Association, Inc. (CHISPA).

4 Recitals

5 1. On December 20, 1994, the County adopted resolutions
 6 approving combined development permits for the Moro Cojo Standard
 7 Subdivision Development and the Moro Cojo Senior Housing
 8 Development projects, and certifying the environmental impact
 9 report for those projects. The project approvals contain 203 terms
 10 and conditions of approval ("conditions of approval").

11 2. On January 20, 1995, Petitioners filed suit in Monterey County
 12 Superior Court, challenging the approvals for the project.
 13 Petitioners filed amended Petitions on February 17, 1995, and
 14 June 5, 1995.

15 3. The parties have participated in settlement discussions at
 16 various times since February, 1995.

17 4. The parties, in order to avoid protracted litigation and for
 18 the purpose of settling the disputes which currently exist, have
 19 agreed to settle this litigation upon the terms and conditions
 20 contained in this Settlement Agreement and Stipulation for
 21 Judgment.

22 In consideration of the foregoing recitals and the mutual
 23 covenants and promises of the parties as contained in this
 24 Settlement Agreement and Stipulation for Judgment, the parties
 25 agree as follows:

26 //
 27 //
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AGREEMENT

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1. The 103 conditions of approval for the projects are reaffirmed and shall be made part of the judgment herein, and shall not be deleted, altered, modified, or revised, except as specifically provided herein.

2. The parties stipulate that the County shall interpret the conditions of approval to provide that the projects have been approved for 175 single family homes for low income (80% of median income) families, 90 multi-family rentals for very low income (average of 50% of median income) families and a maximum of 100 affordable rental units for seniors.

3. Condition 99 of the conditions of approval, as interpreted by Paragraph 2 of this Settlement Agreement, shall be a permanent deed restriction on the project parcels, and shall not be subordinated to any financing, encumbrance, loan, development agreement, contract, lease or other document.

4. The parties stipulate that voter approval for the projects is not required under Article 34 of the California Constitution.

5. Petitioners, through their counsel, will receive thirty (30) days' actual notice of any public hearing of the County 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 confirm with this paragraph.

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

- 1 A. The County shall not initiate any modification of any
- 2 condition of approval;
- 3 B. Should the applicant request any modification of any
- 4 condition of approval, the applicant shall have the
- 5 burden of producing substantial evidence to support its
- 6 request for said modification;
- 7 C. Where appropriate under the California Environmental
- 8 Quality Act, any proposed change shall receive an initial
- 9 review of its environmental effects.

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

15 7. Petitioners, County, and CHISPA release each other from any
 16 and all claims, causes of action, and demands arising out of this
 17 litigation, including any claims for attorney's fees or costs,
 18 except as specifically provided in this Agreement.

19 8. The parties agree that this is a negotiated settlement, and is
 20 not an admission by any party of anything.

21 9. CHISPA agrees to pay Petitioners the sum of \$10,000 within
 22 fifteen (15) days of the entry of judgment pursuant to this
 23 Settlement Agreement and Stipulation for Judgment. In all other
 24 respects and amounts, all parties waive any claims they may have
 25 against any other party for attorneys' fees and costs, and each
 26 party agrees to bear its own costs and fees.

27 10. The parties stipulate that the Superior Court may enter
 28 judgment on the terms and conditions contained herein.

1 11. All notices to be given pursuant to this Agreement shall be
 2 given by first class mail or by personal delivery to the following
 3 persons:

4 For Petitioners:

Michael W. Stamp
 LAW OFFICES OF MICHAEL W. STAMP
 500 Camino El Estero, suite 200
 Monterey, CA 93940

6 and

7 Jane Haines
 LAW OFFICES OF JANE HAINES
 8 614 Lighthouse Avenue, Suite G
 Pacific Grove, CA 93950

9
 10 For County:

Board of Supervisors
 County of Monterey
 240 Church Street.
 Salinas, CA 93902

12 and

13 Office of the County Counsel
 County of Monterey
 14 Post Office Box 1587
 Salinas, California 93902-1587

15
 16 For CHISPA:

Executive Director
 Community Housing Improvement
 System and Planning
 Association, Inc.
 18 600 E. Market Street
 Salinas, CA 93905

19 and

20 Anthony Lombardo
 Anthony Lombardo & Associates
 Post Office Bcx 2119
 Salinas, California 93902

21
 22
 23 DATED: November 30, 1995

Alliance to Enforce Mandated
 Governing Project Review
 Procedures and Water and Traffic
 Standards

24
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 27 By: [Signature]
 Authorized Representative

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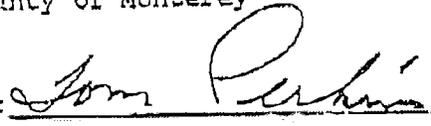
DATED: November 20, 1995



David Green

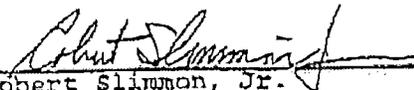
DATED: November 21, 1995

County of Monterey

By: 

Chair of the Board of Supervisors

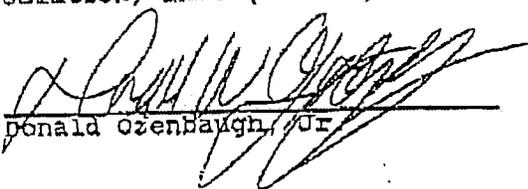
DATED: November 20, 1995



Robert Slinnmon, Jr.

DATED: November 20, 1995

Community Housing Improvement
System and Planning
Association, Inc. (CHISPA)

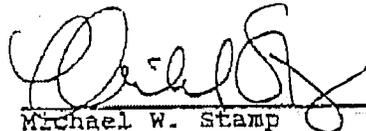
By: 

Donald Ozenbaugh, Jr.

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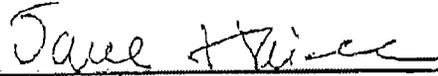
APPROVED AS TO FORM:

DATED: November 20, 1995



Michael W. Stamp
LAW OFFICES OF MICHAEL W. STAMP
Attorney for Petitioners

DATED: November 16, 1995



Jane Haines
LAW OFFICES OF JANE HAINES
Attorney for Petitioners

DATED: November 20, 1995



Douglas C. Holland
COUNTY COUNSEL
Efren M. Iglesia
SENIOR DEPUTY COUNTY COUNSEL
Attorneys for Respondents

DATED: November 20, 1995

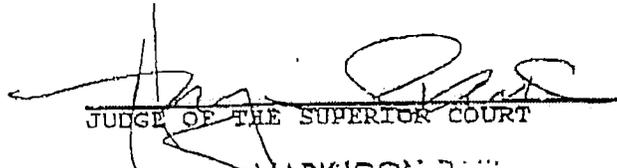


Anthony L. Lombardo
ANTHONY LOMBARDO & ASSOCIATES
Attorneys for CHISPA

JUDGMENT

IT IS SO ORDERED.

DATED: NOV 28 1995



JUDGE OF THE SUPERIOR COURT

MARKOON PARK

Recording Requested by and
When Recorded, Mail To:

Monterey County Planning and
Building Inspection Department
Post Office Box 1208
Salinas, CA 93906

Bruce A. Reeves
Monterey County Recorder
Recorded at the request of
Filor

CROLIE
10/13/1997
10:44:56

DOCUMENT: 9759925



8889759925

Titles: 1 / Pages: 6

Fees...	21.00
Taxes..	
Other...	
AMT PAID	21.00

Permit No. : SH 93001 & SH 93002
Applicant Name : CHISPA
Project Planner : Jacqueline Onciano

DEED RESTRICTION

I. WHEREAS, on this 22nd day of September, 1997, **COMMUNITY HOUSING IMPROVEMENT SYSTEMS AND HOUSING ASSOCIATION, INC.**, a non-profit public benefit corporation, **EL CERRITO TOWNHOMES**, a California Limited Partnership and **MORO LINDO TOWNHOMES**, a California Limited Partnership, hereinafter referred to as owner(s), is the record owner of the following real property:

SEE EXHIBIT "A" ATTACHED HERETO FOR LEGAL DESCRIPTION

hereinafter referred to as "the subject property"; and

II. WHEREAS, Monterey County Board of Supervisors is acting on behalf of the People of the County of Monterey; and

III. WHEREAS, the subject property is located within the coastal zone as defined in §30103 of the California Public Resources Code (hereinafter referred to as the California Coastal Act); and

IV. WHEREAS, pursuant to the California Coastal Act of 1976, the owner applied to Monterey County for a coastal development permit for the development on the subject property described above; and

V. WHEREAS, Coastal Development Permit No. SH 93001 and SH 93002 was granted on December 20, 1994, by the Board of Supervisors in accordance with the provision of the Findings, contained in Resolution No. 94-524, attached to the Conservation and Scenic

001104d-dad.fff

Easement Deed recorded on the subject property, and hereby incorporated by reference; and

VI. WHEREAS, Coastal Development Permit No. SH 93001 and SH 93002 was subject to the terms and conditions including, but not limited to, the following condition:

"That all the units in the Moro Cojo Inclusionary Housing Development Projects (SH 93001 and SH 93002) be affordable to very low, low and moderate income households as defined in Section 50093 of the California Health and Safety Code."

VII. WHEREAS, Monterey County found that, but for the imposition of the above condition, the proposed development could not be found consistent with the provisions of the California Coastal Act of 1976 and that a permit could therefore not have been granted; and

VIII. WHEREAS, it is intended that this Deed Restriction is irrevocable and shall constitute enforceable restrictions; and

IX. WHEREAS, Owner has elected to comply with the condition imposed by Permit No. SH 93001 and SH 93002 so as to enable owner to undertake the development authorized by the permit.

NOW, THEREFORE, in consideration of the granting of Permit No. SH 93001 and SH 93002 to the Owner by Monterey County, the owner hereby irrevocably covenants with Monterey County that there be and hereby is created the following restrictions on the use and enjoyment of said subject property, to be attached to and become a part of the deed to the property. The undersigned owner, for himself/herself and for his/her heirs, assigns, and successors in interest, covenants and agree that:

"That all the units in the Moro Cojo Inclusionary Housing Development Projects (SH 93001 and SH 93002) be affordable to very low, low and moderate income households as defined in Section 50093 of the California Health and Safety Code."

If any provision of these restrictions is held to be invalid or for any reason becomes unenforceable, no other provision shall be thereby affected or impaired.

Said deed restriction shall remain in full force and effect during the period that said permit, or any modification or amendment thereof, remains effective, and during the period that the development authorized by said permit or any modification of said development, remains in existence in or upon any part of, and thereby confers benefit upon, the subject property described herein, and to that extent, said deed restriction is hereby deemed and agreed by owner to be a

001201d-deed.137

covenant running with the land, and shall bind owner and all his/her assigns or successors in interest.

The property owner agrees as a condition of this deed restriction required pursuant to approval of the Coastal Development Permit that it will, pursuant to Government Code §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 deed restriction which action is brought within the time period provided for in Government Code §66499.37. 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 hold the County harmless.

Owner agrees to record this Deed Restriction in the Recorder's Office for the County of Monterey as soon as possible after the date of execution.

DATE: 9-22, 19 97

COMMUNITY HOUSING IMPROVEMENT SYSTEMS
AND PLANNING ASSOCIATION, INC.,
a non-profit public benefit corporation

By: [Signature]
CFO and Acting Director

EL CERRITO TOWNHOMES, a California Limited Partnership

By: COMMUNITY HOUSING IMPROVEMENT SYSTEMS
AND PLANNING ASSOCIATION, INC.,
a non-profit public benefit corporation

By: [Signature]
CFO and Acting Director

001161d-deed.899

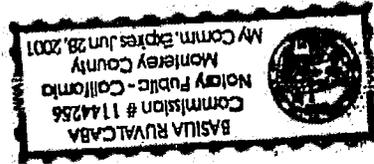
MORO LINDO TOWNHOMES, a California Limited Partnership

By: COMMUNITY HOUSING IMPROVEMENT SYSTEMS
AND PLANNING ASSOCIATION, INC.,
a non-profit public benefit corporation

By: *Norman V. Kolpin*
CFO and Acting Director

This is to certify that the Deed Restriction set forth above is hereby acknowledged by the Director of the Monterey County Planning and Building Inspection Department pursuant to the action of the Board of Supervisors on December 20, 1994 and that Monterey County consent to its recordation thereof.

William Phillips
William Phillips
Acting Director of Planning and
Building Inspection



STATE OF CALIFORNIA)
) ss.
COUNTY OF MONTEREY)

On Sept. 22, 1997, before me, Basilia Ruvakava Notary Public,
personally appeared Norman V. Kolpin, personally known to me (or proved to me on
the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the
within instrument and acknowledged to me that he/she/they executed the same in his/her/their
authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or
the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Basilia Ruvakava
Notary Public in and for said
County and State

00110(d)-deed.000

Document Content/Form Acceptable:

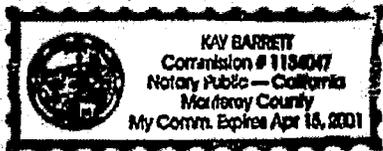
Mary Joa Ferriz, 9-22-97
County Counsel Deputy

Jacqueline R. Sencena 9-22-97
Planning and Building Inspection Department

STATE OF California)
) ss.
COUNTY OF Monterey)

On 9/23/97, before me, Kay Barrett, Notary Public,
personally appeared William L. Phillips,
William L. Phillips, personally known to me (or proved to me on
the basis of satisfactory evidence) to be the person(s) whose name(s) is are subscribed to the
within instrument and acknowledged to me that he/she/they executed the same in his/her/their
authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or
the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.



Kay Barrett
Notary Public in and for said
County and State

001104d-deed.099

EXHIBIT "A"

That certain real property situate in the County of Monterey, State of California, described as follows:

All of Tract No. 1284 of Moro Cojo, filed 9-30-97 in Volume 19,
Cities and Towns, at Page 48, Monterey County Records.

END OF DOCUMENT

00110\dt-deed.899

16

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE
725 FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060
PHONE: (831) 427-4863
FAX: (831) 427-4877
WEB: WWW.COASTAL.CA.GOV



April 6, 2015

Luis Osorio
Senior Planner
Monterey County Resource Management Agency – Planning Department
168 W. Alisal Street, 2nd Floor
Salinas, CA 93901

Subject: *Negative Declaration for the Moro Cojo Subdivision Amendment (PLN120650)*

Dear Mr. Osorio:

Thank you for sending the Negative Declaration for the Moro Cojo Subdivision Amendment (PLN120650) for our review. The proposed amendment would change Condition No. 99 of the Combined Development Permit for the Moro Cojo Subdivision Project (SH93001 and SH93002), approved by the County on December 20, 1994. The proposed amendment would change the affordability requirement for 161 of the 175 units from perpetuity to a limited term of 15 years from the date of first sale. The original Combined Development Permit was appealable to the Coastal Commission because the subdivision was a conditional use in the high density residential zoning district, and as such, any amendment to the permit is also appealable to the Coastal Commission. We would like to provide the following comments on the proposed change and the Negative Declaration.

The proposed change would eliminate the requirement that 161 of the 175 units be affordable in perpetuity and would turn these 161 into market rate units. North County Land Use Plan (LUP) Policy 4.3.6.D.1 (for low and moderate income housing) requires the County to “protect existing affordable housing opportunities in the North County coastal area from loss due to deterioration, conversion, or any other reason.” The LUP requires replacement of affordable housing units on a one-to-one basis should existing units be eliminated (4.3.6.D.1.a). Removal of the affordability requirement for 161 existing affordable units would be inconsistent with the LCP requirement to protect such units. And to our knowledge, neither the applicant nor the County has proposed or identified any replacement affordable housing units to replace the loss of these 161 units. We also note that the Negative Declaration does not analyze the proposed change against these applicable LUP policies.

In addition to the LCP requirements, the Coastal Act requires the Commission “to ensure that coastal development permit conditions existing as of January 1, 2002, relating to affordable housing are enforced and do not expire during the term of the permit.” (PRC §30614) Commission staff believes that 161 units is a significant amount of housing for lower-income residents of North Monterey County and the loss of these units would be clearly inconsistent with the LCP and Coastal Act requirements to protect them.

Luis Osorio
Monterey County RMA – Planning Department
April 6, 2015
Page 2

Thank you for the opportunity to provide comments on this proposed change and Negative Declaration. If you have any questions or would like to discuss, please feel free to contact me at (831) 427-4863 or katie.butler@coastal.ca.gov.

Regards,

A handwritten signature in black ink that reads "Katie Butler". The signature is written in a cursive, flowing style.

Katie Butler
Coastal Planner
Central Coast District Office

DECLARATION OF MARC J. DEL PIERO IN SUPPORT OF COASTAL COMMISSION

APPEAL NO. A-3-MCO-16-0017

1. I am Marc J. Del Piero. I declare under penalty of perjury, pursuant to the laws of the State of California, that I have personal knowledge of the facts stated herein, that they are true and correct, and, if called upon, I will testify to the same. I am licensed to practice law in California (CA Bar #91644).

2. From 1981 until 1992, I served for three consecutive four year terms on the Monterey County Board of Supervisors as the elected county supervisor for North Monterey County. I was Chair of the Board when the North County Land Use Plan Local Coastal Program was adopted. Prior to my election to the Board of Supervisors, I served as a member of the Monterey County Planning Commission from 1978 until 1981. From 1979-1981, in my capacity as the Monterey County Planning Commissioner for North Monterey County, I was actively involved in drafting the North County LCP and its policies, both mandatory and discretionary policies. I served on the Planning Commission when we adopted the draft LCP and forwarded it to the Board of Supervisors. After my election to the Board of Supervisors, I personally continued to work directly on every policy and provision of the LCP, including drafting additional language to satisfy the requirements of the Coastal Act with lead Coastal Commission staff Les Strnad, until its' adoption by the Board of Supervisors. I participated in every public vote taken upon the LCP by a county agency.

3. I am very familiar with the LCP policies, including Policy 4.3.6.D.1 for low and moderate income housing. Policies in the LCP that incorporate the words "shall" or "will" are mandates and were intended by both the Planning Commission and the County Supervisors to be mandatory. Policy 4.3.6.D.1 states and mandates:

"1. 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.

b) Promote housing improvement and rehabilitation programs for low and moderate income persons in both owner-occupied and renter-occupied units.

c) Study relaxation of building code requirements and if appropriate adopt minimum building code regulations for the rehabilitation of older housing units.

d) Replacement affordable housing units shall be retained as low and moderate income units through deed restrictions or other enforceable mechanisms." (underlining added).

Marc Del Piero
15 July 2016

4. Based on my personal knowledge and deep involvement with the actual drafting, the legislative intent, and ultimate adoption of the North County LCP, and based on the facts stated herein, I conclude that Monterey County Resolution 16-009, adopted on January 26, 2016, is inconsistent with Policy 4.3.6.D. 1 and that Appeal No. A-3-MCO-16-0017 should therefore be granted to protect 161 units of existing affordable single family housing opportunities in the North County coastal area from loss. Pursuant to the mandates in Policy 4.3.6.D.1(a), no replacement units were provided by the County to replace the "affordable" unit that the Supervisors voluntarily converted to market rate units by their uncompensated (gifting) extinguishment to private parties of the public's deed restrictions mandating affordability limits on the subject units.

5. On January 26, 2016, the current Monterey Board of Supervisors voted 4-1 to approve an application by CHISPA, an affordable housing provider, to amend Condition #99 of the Combined Development Permit for the Moro Cojo affordable housing project in North Monterey County so that the permanent affordability restrictions on 161 of 175 single-family residences will terminate 20 years from the date of the first deed of conveyance of each property from the developers to the original owners of the units. Since most of the deeds were conveyed in 2000, that means most of the homes could be sold at market rate beginning in 2020.

6. The rationale used by the current Board of Supervisors for allowing conversion to market rate is stated in Finding #5 of Monterey County Resolution 16-009. It states that the definition of "conversion" in the language of Policy 4.3.6.D.1 is "open to interpretation" because, it states, Policy 4.3.6.D.1 contains no definition of "conversion" as applied to affordable housing. The finding then interprets Policy 4.3.6.D.1 according to the definition of "conversion" in California Government Code Article 10.7, Section 86690(g)(1), to mean "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" and concludes that since the 161 homes are not being converted to condominiums, cooperatives or similar forms of ownership, conversion to market rate would be consistent with Policy 4.3.6.D.1. Finding #5 states in relevant part: "...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."

7. Pursuant to the applicable zoning classifications in the North County LCP area, which I also voted upon in my capacity as the County Supervisor for North Monterey County, the North County LCP and its' zoning does not allow condominiums in the applicable land use classifications for the subject single family units.. Further, the property was already subdivided into separate single family lots pursuant to the zoning ordinance. Thus, the "creative, but tortured" definition of "conversion" that the County wrongfully relied upon to violate the clear and unambiguous mandates of the North County LCP is clearly inapplicable, and directly contradicts the express language and legislative intent of the Planning Commission and Board of Supervisors that adopted the LCP. Moreover, the County did not address the additional mandatory requirement of Policy 4.3.6.D.1 which mandates that the County shall protect existing affordable housing from loss from **"any other reason"**. **This would include the voluntary, and**

*Approved by
15 July 2016*

without compensation, gifting of the public's deeded interest in the affordable units to private parties who would be significantly and monetarily benefited by the gift of the public's assets.

8. None of the current members of the Monterey County Board of Supervisors belonged to either the 1981 Board of Supervisors or the 1980 Planning Commission which approved the North County Land Use Plan Local Coastal Program. I belonged to both, and voted respectively on both for the North Monterey County LCP and its policies and its implementing zoning ordinances.

9. Resolution No. 16-009 amends Condition #99 from a permanent to a 20-year affordability term applicable to 161 of the 175 units and it requires no replacement for the loss of the 161 affordable homes. Such an action is clearly inconsistent with and in direct violation of the legislative intent and the mandates of the North Monterey County Local Coastal Plan Policy 4.3.6.D.1.

Dated: 15 July 2016 Signed:  Marc J. Del Piero

DECLARATION OF MARC J. DEL PIERO IN SUPPORT OF APPEAL NO A-3-MCO-16-0017 - PAGE 2 OF 2

DATE: July 21, 2016
TO: California Coastal Commission
FROM: Appellant Jane Haines
SUBJECT: **Substantial issue** in Appeal No. A-3-MCO-16-0017

Appeal No. A-3-MCO-16-0017 raises **substantial issues** because:

1. Degree of legal support - the appeal is based on substantial evidence and law, unlike the challenged decision which is based on an erroneous interpretation of the North Monterey County Local Coastal Program, as shown by attached Exhibits A, B and C:
 - Attached Exhibit A (pgs. 2-4) is a 7/15/16 declaration by the Chair of the 1982 Monterey County Board of Supervisors. The declarant was an *author of the LCP*. He states under penalty of perjury that the rationale used on 1/26/16 to approve amendment of Combined Development Permit condition no. 99 violates “the clear and unambiguous mandates of the North County LCP.” (Exh. A, pg. 3.).
 - Attached Exhibit B (pgs. 5-6) is a 4/6/15 letter from Coastal planner Katie Butler to Monterey County stating that a decision to amend condition no. 99 of the CDP would “be *clearly inconsistent with the LCP and Coastal Act.*” (Emphasis added.)
 - Attached Exhibit C (pg. 7) contains LCP Policy 4.3.6.D.1 on which the appeal is based. The policy unambiguously states: “Monterey County *shall* protect existing affordable housing opportunities” and require replacement units. (Emphasis added.)
2. Scope of the challenged decision - amendment of CDP condition no. 99 for 161 affordable homes without requiring replacement units represents a *\$48 million* loss of affordable housing within the North Monterey County coastal zone. Attached Exhibit D (pg. 8.).
3. Significance of coastal resources - permanent loss of 161 affordable homes in the North Monterey County coastal zone violates the mandate of LCP Policy 4.3.6.D.1 (Exh. C pg. 7). Attached Exhibit E (pg. 9) describes the area’s acute need for affordable housing.
4. Precedent value of decision for future interpretations of the LCP - precedent set by impunity for egregious violation of mandatory LCP policy, as explained in Exhibits A, B and C.
5. Whether appeal raises statewide issues - *State law* requires the Coastal Commission to take “appropriate action” to ensure that CDP condition no. 99 (1994) does not expire during term of the Moro Cojo project. See Public Resources Code §30614 at Exhibit F (pg. 10).

DECLARATION OF MARC J. DEL PIERO IN SUPPORT OF COASTAL COMMISSION

APPEAL NO. A-3-MCO-16-0017

1. I am Marc J. Del Piero. I declare under penalty of perjury, pursuant to the laws of the State of California, that I have personal knowledge of the facts stated herein, that they are true and correct, and, if called upon, I will testify to the same. I am licensed to practice law in California (CA Bar #91644).

2. From 1981 until 1992, I served for three consecutive four year terms on the Monterey County Board of Supervisors as the elected county supervisor for North Monterey County. I was Chair of the Board when the North County Land Use Plan Local Coastal Program was adopted. Prior to my election to the Board of Supervisors, I served as a member of the Monterey County Planning Commission from 1978 until 1981. From 1979-1981, in my capacity as the Monterey County Planning Commissioner for North Monterey County, I was actively involved in drafting the North County LCP and its policies, both mandatory and discretionary policies. I served on the Planning Commission when we adopted the draft LCP and forwarded it to the Board of Supervisors. After my election to the Board of Supervisors, I personally continued to work directly on every policy and provision of the LCP, including drafting additional language to satisfy the requirements of the Coastal Act with lead Coastal Commission staff Les Strnad, until its' adoption by the Board of Supervisors. I participated in every public vote taken upon the LCP by a county agency.

3. I am very familiar with the LCP policies, including Policy 4.3.6.D.1 for low and moderate income housing. Policies in the LCP that incorporate the words "shall" or "will" are mandates and were intended by both the Planning Commission and the County Supervisors to be mandatory. Policy 4.3.6.D.1 states and mandates:

"1. 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.

b) Promote housing improvement and rehabilitation programs for low and moderate income persons in both owner-occupied and renter-occupied units.

c) Study relaxation of building code requirements and if appropriate adopt minimum building code regulations for the rehabilitation of older housing units.

d) Replacement affordable housing units shall be retained as low and moderate income units through deed restrictions or other enforceable mechanisms." (underlining added).

4. Based on my personal knowledge and deep involvement with the actual drafting, the legislative intent, and ultimate adoption of the North County LCP, and based on the facts stated herein, I conclude that Monterey County Resolution 16-009, adopted on January 26, 2016, is inconsistent with Policy 4.3.6.D. 1 and that Appeal No. A-3-MCO-16-0017 should therefore be granted to protect 161 units of existing affordable single family housing opportunities in the North County coastal area from loss. Pursuant to the mandates in Policy 4.3.6.D.1(a), no replacement units were provided by the County to replace the "affordable" unit that the Supervisors voluntarily converted to market rate units by their uncompensated (gifting) extinguishment to private parties of the public's deed restrictions mandating affordability limits on the subject units.

5. On January 26, 2016, the current Monterey Board of Supervisors voted 4-1 to approve an application by CHISPA, an affordable housing provider, to amend Condition #99 of the Combined Development Permit for the Moro Cojo affordable housing project in North Monterey County so that the permanent affordability restrictions on 161 of 175 single-family residences will terminate 20 years from the date of the first deed of conveyance of each property from the developers to the original owners of the units. Since most of the deeds were conveyed in 2000, that means most of the homes could be sold at market rate beginning in 2020.

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without compensation, gifting of the public's deeded interest in the affordable units to private parties who would be significantly and monetarily benefited by the gift of the public's assets.

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Dated: 15 July 2016 Signed: Marc Del Piero Marc J. Del Piero

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE
725 FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060
PHONE: (831) 427-4863
FAX: (831) 427-4877
WEB: WWW.COASTAL.CA.GOV



April 6, 2015

Luis Osorio
Senior Planner
Monterey County Resource Management Agency – Planning Department
168 W. Alisal Street, 2nd Floor
Salinas, CA 93901

Subject: *Negative Declaration for the Moro Cojo Subdivision Amendment (PLN120650)*

Dear Mr. Osorio:

Thank you for sending the Negative Declaration for the Moro Cojo Subdivision Amendment (PLN120650) for our review. The proposed amendment would change Condition No. 99 of the Combined Development Permit for the Moro Cojo Subdivision Project (SH93001 and SH93002), approved by the County on December 20, 1994. The proposed amendment would change the affordability requirement for 161 of the 175 units from perpetuity to a limited term of 15 years from the date of first sale. The original Combined Development Permit was appealable to the Coastal Commission because the subdivision was a conditional use in the high density residential zoning district, and as such, any amendment to the permit is also appealable to the Coastal Commission. We would like to provide the following comments on the proposed change and the Negative Declaration.

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In addition to the LCP requirements, the Coastal Act requires the Commission “to ensure that coastal development permit conditions existing as of January 1, 2002, relating to affordable housing are enforced and do not expire during the term of the permit.” (PRC §30614) Commission staff believes that 161 units is a significant amount of housing for lower-income residents of North Monterey County and the loss of these units would be clearly inconsistent with the LCP and Coastal Act requirements to protect them.

Luis Osorio
Monterey County RMA – Planning Department
April 6, 2015
Page 2

Thank you for the opportunity to provide comments on this proposed change and Negative Declaration. If you have any questions or would like to discuss, please feel free to contact me at (831) 427-4863 or katie.butler@coastal.ca.gov.

Regards,



Katie Butler
Coastal Planner
Central Coast District Office

LOCAL COASTAL PROGRAM CERTIFIED JUNE 1982
MONTEREY COUNTY, CALIFORNIA

1. 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.
 - b) Promote housing improvement and rehabilitation programs for low and moderate income persons in both owner-occupied and renter-occupied units.
 - c) Study relaxation of building code requirements and if appropriate adopt minimum building code regulations for the rehabilitation of older housing units.
 - d) Replacement affordable housing units shall be retained as low and moderate income units through deed restrictions or other enforceable mechanisms.
2. The County shall encourage the expansion of housing opportunities for low and moderate income households.
 - a) Re-evaluate ordinances and policies which impose constraints to low and moderate income housing opportunities.
 - b) Require employee housing as a condition of all permits related to additions to existing visitor facilities or the construction of new facilities. Such housing must be provided prior to or concurrent with the proposed development, and must be permanently linked to the visitor-serving use through appropriate binding guarantees.
3. The County shall provide where feasible, affordable housing through the continuing good faith and the diligent efforts by the public sector. The County will:
 - a) Establish a fund, from in-lieu fees, sales of land, and transfer payments, for direct assistance to low and moderate income proposals.
 - b) Protect the rights of both tenants and landlords with regard to housing issues.
 - c) Provide means to expedite projects which demonstrate innovative ways to implement housing policy.
4. Consider adopting comprehensive guidelines for farm labor housing in Monterey County including the North County coastal zone as a separate entity. This should include an analysis of existing conditions, i.e., social, economic, cumulative impacts, public health concerns, environmental impacts, etc., and programs for alleviating these problems and establishing acceptable housing. Annual inspections should be required by Health and Building Departments of all units approved, by the Planning Commission and Building Departments, as farm labor housing.
5. Development of farmworker and non-farmworker cooperatives should be encouraged at appropriate locations and at site densities designated in the plan for residential use of an area.
6. The trailer and mobile home exclusion districts in the County Zoning Ordinance should be repealed to increase affordable housing opportunities and increase access to the Coastal Area for low and moderate income families.

E. Commercial and Visitor-Serving Facilities

risk units is estimated at \$8,807 per month or \$105,684 annually. Providing this level of subsidies for at least 55 years would require approximately \$12,106,000.¹⁷ The feasibility of this alternative is highly dependent upon the availability of reliable funding sources necessary to make rent subsidies and the willingness of property owners to participate in the program.

Table 26: Rental Subsidies Required

Total Units	Fair Market Rent ¹	Household Size	Very Low Income (50% AMI) ²	Affordable Cost – Utilities ³	Monthly per Unit Subsidy	Total Monthly Subsidy
5	\$1,814	4	\$35,950	\$899	\$915	\$4,575
4	\$2,029	5	\$38,850	\$971	\$1,058	\$4,232
9						\$8,807

Notes:

1. Fair Market Rent (FMR) is determined by HUD, 2015.
2. Monterey County 2014 Area Median Household Income (AMI) limits set by the California Department of Housing and Community Development (HCD) – see Table 22.
3. Affordable cost = 30 percent of the AMI, minus utilities for rentals– see Table 22.

Purchase of Affordability Covenants

Another option to preserve the affordability of the at-risk project is to provide an incentive package to the owner to maintain the project as affordable housing. Incentives could include writing down the interest rate on the remaining loan balance, providing a lump-sum payment, and/or supplementing the rents to market levels. The feasibility of this option depends on whether the complex is too highly leveraged. By providing lump sum financial incentives or ongoing subsidies in rents or reduced mortgage interest rates to the owner, the County can ensure that some or all of the units remain affordable.

Construction of Replacement Units

The construction of new low income housing units is a means of replacing the at-risk units should they be converted to market-rate units. The cost of developing housing depends upon a variety of factors, including density, size of the units (i.e. square footage and number of bedrooms), location, land costs, and type of construction. Based on historical developments trends, the estimated total cost to develop replacement units would be approximately \$300,000 to \$350,000 per unit.¹⁸ This estimate represents only a general estimate. Actual cost would depend on many factors, including existing site conditions, zoning, number of units to be constructed, unit size, and amenities, among others.

¹⁷ Estimated based on an annual inflation rate of 2.5 percent over 55 years.

¹⁸ This estimate is similar to the per-unit development cost for a recent affordable housing project by the HACM. The development of the 171-unit Tynan Village in Salinas by the HACM required over \$51 million from various funding sources, averaging to over \$300,000 per unit.

$$\begin{array}{r}
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 161 \cdot \\
 \hline
 48,300,000 \cdot
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 \times \\
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 \end{array}$$

From: Spaur, David x5387
Sent: Wednesday, September 09, 2016 1:08 PM
To: Novo, Mike x5192; Connolly, Luke T. x5173; Osorio, Luis x5177
Subject: Planning Commission- in Summary

Sorry I can't make it.
I have an Econ Committee meeting at 1:30 pm

A couple of points of clarification should be shared with the PC members.

1. We do have affordable housing units in perpetuity (apartments) restricted in perpetuity as affordable rental housing.
2. We typically don't restrict single family housing past the 30 year mortgage period and if paid off then released from all restrictions.
3. We have a high demand for affordable single family housing units right now and not enough units available. We have 172 families on the wait list and 114 on our lottery list.
4. We just purchased and sold a deed restricted single family home and had too many qualified buyers with a capped sale price of \$329,000. Demand is high.
5. We need to encourage more affordable units and not reduce the number of units (Moro Cojo) we should require a replacement with an equal number of units (apartments or single family).
6. We would agree with removing the "in perpetuity requirement" and adding a reasonable period of time, typically 30 years. If CHISPA will take 10 years to build more units plus the 15 years requested by CHISPA that would equal the 25 year "affordability restriction."

Best Regards,

David L. Spaur, CEcD, EDFP
Economic Development Director
County of Monterey
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Section 30614. (Added by Stats. 2002, Ch. 297, Sec. 1.)
Cite as: Cal. Pub. Res. Code §30614.

(a) The commission shall take appropriate steps to ensure that coastal development permit conditions existing as of January 1, 2002, relating to affordable housing are enforced and do not expire during the term of the permit.

(b) Nothing in this section is intended to retroactively authorize the release of any housing unit for persons and families of low or moderate income from coastal development permit requirements except as provided in Section 30607.2.