



CITY COUNCIL STAFF REPORT

MEETING DATE: October 17, 2018

PREPARED BY: Donald Larkin, City Attorney
APPROVED BY: n/a

APPROVE DEVELOPMENT AGREEMENT FOR A 389 UNIT APARTMENT PROJECT ON APPROXIMATELY 19.5 ACRES AT JARVIS DRIVE AND MONTEREY ROAD

RECOMMENDATION(S)

1. Open/close the public hearing;
2. Waive first and second reading of Development Agreement Ordinance;
3. Introduce Development Agreement Ordinance; and
4. Authorize the City Manager to execute and administer the Development Agreement.

COUNCIL PRIORITIES, GOALS & STRATEGIES

GUIDING DOCUMENTS

General Plan/Housing Element

REPORT NARRATIVE:

Background

The MWest-Cochrane project is a large multi-family apartment project consisting of 389 units on 19.5 acres at the intersection of Jarvis Drive and Monterey Road. Twenty percent, or 78 units, will be restricted to very-low income households earning 50% of the Area Median Income (AMI). All the remaining units will be priced at market rate, but because of the unique nature of the Morgan Hill rental market, all or nearly all those units will be affordable to moderate income households (120% AMI).

MWest has competed in the RDCS process for three consecutive years. The first year, the project did not receive a qualifying score, but in the 2017 and 2018 competitions the MWest project was among the highest scoring.

In the 2017 competition, the project was awarded 10 units. In 2018, MWest applied for multi-year allotments, which would have allowed the project to be completed over a period of years without further competition. The Planning Commission denied MWest's application for multi-year allotments based on criteria identified in section 18.78.140 of the Zoning Ordinance but awarded 71 units in the competition.

MWest appealed the denial of their application for multi-year allotments to the City Council. On June 20, 2018, the City Council denied MWest's appeal based on the same findings as the Planning Commission (Attachment No. 7).

Immediately following the June 20, 2018 hearing, counsel for MWest informed the City Attorney that MWest intended to file a writ of mandate challenging the denial of their appeal as unlawful under recently enacted amendments to the Housing Accountability Act. MWest filed a timely writ on August 20, 2018.

Housing Accountability Act (HAA)

The Housing Accountability Act (Government Code § 65589.5) was enacted in 1982, finding that “the lack of housing, including emergency shelter, is a critical statewide problem.” As originally adopted, the Act prohibited a local agency from denying a housing development unless the agency made specific findings, based on substantial evidence, to deny the project.

The Act was amended in 2017 to further limit a local agency’s ability to deny, reduce the density of, or render infeasible housing development projects. The 2017 amendments included additional protections for projects in which 20% of the units are allocated to low or very-low income households, or projects that are 100% affordable to moderate (120% of AMI) and/or middle income (150% AMI) households.

Under the applicable provisions of the Act, an agency must make specific findings to deny an affordable housing project, reduce the density of the project, or condition the project in a way that renders the project infeasible for affordable housing. The required findings are:

- The City has adopted an approved housing element, and the City has met or exceeded its share of the regional housing need allocation for the planning period for the income category proposed for the housing development project;
- The housing development project, as proposed, would have a specific, adverse impact upon the public health or safety, and there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low- and moderate-income households;
- The denial of the housing development project or imposition of conditions is required in order to comply with specific state or federal law, and there is no feasible method to comply without rendering the development unaffordable to low- and moderate-income households;
- The housing development project or emergency shelter is proposed on land zoned for agriculture or resource preservation that is surrounded on at least two sides by land being used for agricultural or resource preservation purposes, or which does not have adequate water or wastewater facilities to serve the project; or
- The housing development project or emergency shelter is inconsistent with both the jurisdiction’s zoning ordinance and general plan land use designation as

specified in any element of the general plan as it existed on the date the application was deemed complete.

For the MWest project, the City would not be able to make any of the required findings to deny or condition the project in a manner that renders it infeasible. MWest states that the requirement to compete for allocations in multiple years would render the project infeasible. Among other problems, MWest cannot apply for financing for the very-low income units until it has received full project approval. If MWest is required to compete for units over multiple years, some of its allocations will expire before the project can obtain full approval and financing. Requiring an affordable project to compete for allotments in a way that renders project financing infeasible would violate the Act.

Writ of Mandate

A petition for writ of mandate (also called “mandamus”) is the procedure used to obtain judicial review of decisions by a public agency. In its petition, MWest alleges that:

“By rejecting the Project and conditioning its approval in a manner that renders it infeasible for the use of low-income households, without making the findings required by Gov. Code § 65589.6(d), Respondents have “not proceeded in the manner required by law.” *Honchariw v. County of Stanislaus*, 200 Cal.App.4th 1066, 1081 (2011) (quoting Code Civ. Proc. § 1094.5(b).) Nor could Respondents validly make such findings:

- a. The City has not met its share of the Regional Housing Need Allocation pursuant to Gov. Code § 65588 for very low-income housing. Gov. Code § 65589.5(d)(1).
- b. The Project would not have any “significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions . . .” Gov. Code 65589.5(d)(2).
- c. Denial of the Project is not “required in order to comply with specific state or federal law.” Gov. Code § 65589.5(d)(3).
- d. The Project is not “proposed on land zoned for agriculture or resource preservation that is surrounded on at least two sides by land being used for agricultural or resource preservation purposes, or which does not have adequate water or wastewater facilities to serve the project.” Gov. Code § 65589.5(d)(4).
- e. The Project is consistent with “the jurisdiction’s zoning ordinance and general plan land use designation.” Gov. Code § 65589.5(d)(5).”

The petition sought an order compelling the City to comply with the HAA, including an order that the City take appropriate action to approve the project. The petition further sought recovery of attorneys’ fees and statutory fines.

Because the City could not make the findings to deny or condition the project in a way that renders it infeasible, and the fines and fees for violation of the Act would likely be in the millions of dollars, the City Council authorized the City Attorney to negotiate a settlement of the writ action.

Settlement/Judgment

In order to resolve the claims raised in the writ petition, the City and MWest agreed to a settlement (Attachment No. 4) in which:

- The parties entered into a stipulated judgment affirming that, to the extent it conflicts with the Housing Accountability Act, the City's voter-approved RDCS ordinance is preempted.
- The City agreed to introduce an Ordinance adopting a Development Agreement approving the MWest project. (Attachment No. 1 & 2)
- MWest agreed to include all its prior Measure S RDCS commitments in the Development Agreement, as well as ensure that 20% of the units would be affordable to very-low income households.
- MWest agreed not to seek attorneys' fees or penalties from the City.

On September 24, 2018, Judge Arand of the Santa Clara County Superior Court entered judgment (Attachment No. 5), confirming that:

"[t]he Housing Accountability Act (Government Code section 65589.5) preempts conflicting requirements of the City's RDCS ordinance. Specifically, provisions of the City's RDCS Ordinance, including but not limited to subsection B of section 18.156.050 of the Morgan Hill Municipal Code, are ineffective and unenforceable as applied to the Project, which qualifies as a housing development project "for very low, low-, or moderate income households" pursuant to Gov. Code § 65589.5(h) and for which none of the findings described in Gov. Code § 65589.5(d) can be made. Accordingly, the Project must be treated as exempt from the requirement to receive RDCS allotments."

The Court further issued a writ of mandate, directing the City "to take action on the Cochrane-MWest Project to comply with the Housing Accountability Act, consistent with the parties' stipulation and consistent with the Court's judgment and order, within 60 days from the date of the Court's order, pursuant to Gov. Code § 65589.5(k)(1)(A)."

Development Agreement

The Development Agreement (Attachment No. 2) allows the project to be developed as exempt RDCS in accordance with the Housing Accountability Act and the Stipulated Judgment. Exhibit C describes the Developer Commitments, which are consistent with

the commitments the project made in the RDCS competition. The primary impact of the Development Agreement is that the project will be allowed to develop as a single phase, without the need to compete for housing allotments.

COMMUNITY ENGAGEMENT: Not Applicable

This action is mandated by state law and a judgment of the Santa Clara County Superior Court. Future action will be taken to educate the community about changes to state housing law and its implications for maintaining paced growth in Morgan Hill.

ALTERNATIVE ACTIONS:

Not Applicable.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On May 6, 2015, the City Council adopted a resolution changing the General Plan designation for the project site from Industrial to Multi-Family Medium.

On September 2, 2015, the Council held a public hearing on an ordinance amending the zoning designation for the site to be consistent with the General Plan. The ordinance was adopted on October 7, 2015.

On November 10, 2015, the Planning Commission adopted Resolution No. 15-66, adopting final scores for the 2015 RDCS competition. The project did not receive a passing score. The City Council adopted Resolution No. 15-310 on December 16, 2015 denying an appeal of the project scores. The project did not qualify for allotments.

On January 10, 2017, the Planning Commission adopted Resolution No. 17-01 awarding the project 10 residential building allotments. The City Council adopted Resolution 17-017 denying appeals by two other projects and reaffirmed the distribution by the Planning Commission.

On May 22, 2018, the Planning Commission adopted Resolution No. 18-13, which awarded the project 71 residential allotments, but denied the project's request for multi-year allotments.

On June 20, 2018, the City Council adopted a Resolution denying an appeal of the Planning Commission's decision not to award multi-year allotments to the project.

FISCAL AND RESOURCE IMPACT:

As required by the Development Agreement, the developer will remit all impact and development processing fees payable to the City.

CEQA (California Environmental Quality Act):

A program-level Environmental Impact Report for the Butterfield-MWest General Plan Amendment and Addendum was adopted in July 2014 (Attachment No. 7.)

A project level Initial Study/Consistency Checklist demonstrating consistency with the Butterfield – MWest General Plan Amendment Project GPA 14-04 Environmental

Impact Report and Addendum (State Clearinghouse No. 2014072009) and the Morgan Hill 2035 Environmental Impact Report (State Clearinghouse No. 2015022074) is attached (Attachment No. 3.)

LINKS/ATTACHMENTS:

1. Ordinance Approving DA
2. MWest Development Agreement
3. Butterfield - CEQA Consistency Document
4. MWest - Settlement Agreement and Release - Executed
5. 2018-09-25 Judgment and Order MWest Propco XXIII LLC v City of Morgan Hill (002)
6. 2018-09-25 Peremptory Writ of Mandate MWest Propco XXIII LLC v City of Morgan Hill
7. General Plan Amendment Staff Report and EIR
8. June 20, 2018 Appeal Denial (weblink)