



BOARD OF SUPERVISORS
AGENDA LETTER

Agenda Number:

Clerk of the Board of Supervisors
105 E. Anapamu Street, Suite 407
Santa Barbara, CA 93101
(805) 568-2240

Department Name: Housing & Community
Development and
Planning and
Development
Department No.: 055 /053
For Agenda Of: 08/09/11
Placement: Departmental
Estimated Tme: n/a
Continued Item: 6/7/11
If Yes, date from:
Vote Required: Majority

TO: Board of Supervisors

FROM: Department Sharon Friedrichsen, Housing and Community Development, Interim Director, 568-2068
Director(s) Glenn Russell, Planning and Development Director, 568-2085
Contact Info: Dianne Black, Development Services Director, Planning and Development, 568-2086

SUBJECT: *Amendment to Agreement to Provide Affordable Housing and Resale Restrictive Covenant - Old Mill Run* [TM 14,532, 99-DP-029]. Orcutt area, Fourth Supervisorial District, Assessor Parcel Number(s) 105-020-046.

County Counsel Concurrence

As to form: Yes

Auditor-Controller Concurrence

As to form: N/A

Recommended Actions:

Approve and direct the Chair to execute the attached *Amendment to Agreement to Provide Affordable Housing - Old Mill Run*, [TM 14532, 99-DP-029] between the County and MLB OM 54, LLC and direct its recordation.

Summary Text:

The recommended Board action requests the Board of Supervisors approve and execute the attached *Amendment to Agreement to Provide Affordable Housing* (“Amendment”) and the *Resale Restrictive Covenant and Preemptive Right* for Old Mill Run between the County of Santa Barbara, a subdivision of the State of California (“County”) and MLB OM 54, LLC, a Delaware limited liability company (“Developer”). The *Agreement to Provide Affordable Housing - Old Mill Run* was executed in 2006 and required the Developer to construct 6 affordable housing units concurrently with the build out of 54 market rate residential units in the 60 unit project. The proposed *Amendment to Agreement to Provide Affordable Housing* includes a schedule that provides for the construction of the affordable units before building permits for the market rate units are obtained as follows:

- Construct the affordable units on Lots 44 and 45 prior to or at the issuance of the 40th building permit for a market rate home
- Construct the affordable units on Lots 57, 58, 20 and 21 prior to or at the issues of the 45th building permit for a market rate home

Reasons for the proposed *Amendment* include allowing more flexibility to the developer in light of the change in economy and downturn in both the market and financing conditions since 2006. The proposed *Amendment* also includes a more definitive schedule for the construction of the affordable units. If the affordable units are not constructed as articulated within the proposed *Amendment*, then Planning and Development will not issue building permits for the remaining market rate housing units.

Background:

The Planning Commission approved the Old Mill Run Housing Project of 60 single family residential units on May 19, 2004. Condition 38 of the approved project required the applicant to enter into an agreement to provide six affordable units at sale prices affordable to low income households, but did not specify the timing for construction of the affordable units in relation to the market rate units. The County executed the subsequent *Agreement to Provide Affordable Housing - Old Mill Run* ("Agreement to Provide") on June 25, 2006 that required the Developer to construct six affordable housing units affordable to low income families concurrently with construction of the single family market rate homes. At the time the County and Developer entered into the Agreement to Provide, the Developer anticipated construction of the affordable and market rate units in TM 14,532, 99-DP-029 at approximately the same time. However, the Developer has constructed houses on a unit-by-unit basis as changes to market conditions have made concurrent build out of all houses more difficult. Similarly, the Developer expressed an interest to continue the unit-by-unit approach for the remainder of the project, including the affordable units.

To date, the Developer has built 21 market rate homes, which are occupied and has obtained building permits for 5 additional market rate homes. It was recently determined by Housing and Community Development ("HCD") and Planning and Development ("P&D") that the development is not in compliance with the original Agreement to Provide Affordable Housing. This proposed Amendment would remedy that situation and would ensure that the required affordable units are constructed with the remaining market units. The two Departments have developed coordinated procedures to ensure project conditions and the Agreements to Provide Affordable Housing Units for existing and future projects are monitored and enforced appropriately.

On June 6, 2011, the Board of Supervisors considered the proposed Amendment, which included the following schedule:

- Affordable units on Lots 44 and 45 to be completed prior to or at the issuance of the 47th building permit for a market rate home;
- Affordable units on Lots 57 and 58 to be completed prior to or at the issuance of the 52nd building permit for a market rate home in the project; and,
- Affordable units on Lots 20 and 21 to be completed prior to or at the issuance of the 57th building permit for a market rate home in the project.

The Board made several comments and directed staff to return with this item for further consideration. Items for consideration include:

- *Comment:* Consider building the affordable units earlier than the anticipated completion of the entire project of 60 market rate homes.
Response: The Proposed *Amendment* allows for two affordable units to be built prior to or at the issuance of the 40th building permit for a market rate home rather than at the 47th building permit as proposed on June 6, 2011. In addition, the remaining four affordable units will be built prior to or at the issuance of the 45th building permit for a marker rate home. The previous proposal allowed for two units at the 52nd building permits and two more units at the 57th building permits respectively. This approach accelerates the construction schedule for the affordable units while accounting for the current financial and market conditions of the Old Mill Run project.

- *Comment:* Include assurances that the affordable units will be built.
Response: No building permits will be issued for the remaining market rate homes if the affordable housing units are not built in accordance with the schedule provided within the proposed *Amendment*. The option of bonding for the affordable units was discussed with the Developer and deemed to be financially infeasible.
- *Comment:* Clarify if the proposed *Amendment* pertains to other conditions placed upon the Old Mill Run project.
Response: Other conditions placed upon this project by the Planning Commission remain in place. The proposed *Amendment* only refers to the timing of the buildout for the affordable units and does not change the number of units that are required to be built or other factors pertaining to the project.
- *Comment:* Clarify the intent of language within the proposed *Amendment* pertaining to the County's inclusionary policy and in lieu fees.
Response: References to any forthcoming changes to the County's Inclusionary Policy have been omitted from the proposed *Amendment*. Any changes to the Inclusionary Policy and its potential impact to Old Mill Run and any other approved or forthcoming projects is a decision to be made by the Planning Commission and/or the Board at a later date. The proposed *Amendment* before the Board for consideration today only considers the schedule for the building of the affordable units.

Fiscal and Facilities Impacts:

Budgeted: Yes

Fiscal Analysis:

The Department of Housing and Community Development will expend funds for advertisements to market the affordable homes; to screen potential buyers through the Certification process; to monitor the affordable homes in this project, and to enforce the "Grant of Preemptive Right: Resale Restriction Covenant and Option to Purchase Secured by Deed of Trust" (see Exhibit B Covenant, Exhibit C Marketing Plan and Exhibit D Lottery Plan). Application fees offset a portion of the expenses; the remainder will be paid from Santa Maria HMA In-Lieu Fees in the Affordable Housing Trust Fund. The affordable units remain affordable for a period of 45 years which shall be restarted when the unit is sold or transferred for a maximum of 90 years unless preempted by state or federal programs.

Staffing Impacts: N/A

Special Instructions:

- Clerk of the Board to forward the executed Amendment to Agreement to Provide Affordable Housing - Old Mill Run, TM 14532, 99-DP-029 to the Department of Housing and Community Development to forward to the County Clerk Recorder for recordation.
- Clerk of the Board shall send copies of the Minute Order and executed document to Margo Wagner, Department of Housing and Community Development.

Attachments:

Attachment A, Amendment to Agreement to Provide Affordable Housing – Old Mill Run including
Exhibit A, Legal Description of Property
Exhibit B, Grant of Preemptive Right: Resale Restriction Covenant and Option to Purchase Secured
by Deed of Trust
Exhibit C, Marketing Plan for Old Mill Run Affordable Homes
Exhibit D, Lottery Plan for Old Mill Run Affordable Homes