

May 24, 2004

Supervisor Lou Calcagno, Chair [Sent By FAX and Email – 831-755-5888]
Monterey County Board of Supervisors
240 Church Street
Salinas, CA 93901

Re: Moro Cojo Affordability Requirements

Dear Chairperson Calcagno and Members of the Board of Supervisors:

This letter is to follow up on a meeting held on May 18, 2004, to discuss the housing affordability requirements imposed on the Moro Cojo subdivision by the Judgment in the case of *Alliance to Enforce Mandates v. County of Monterey, CHISPA* – Monterey County Superior Court Case Number 102344. LandWatch very much appreciates having had the opportunity to attend the May 18th meeting, and to discuss the difficulties now faced by the County, as it considers how best to respond to the requirements of the Judgment. We urge the Board promptly to take whatever steps may be necessary to implement that Judgment.

As Board Members know, the Board's approval of the Moro Cojo subdivision was challenged by a lawsuit brought by the "Alliance to Enforce Mandates," and by individual petitioner David H. Green. That lawsuit was settled in late 1995, and the Judgment incorporated a Settlement Agreement and Stipulation for Judgment that provided in its second paragraph 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." Additionally, the Settlement Agreement and Stipulation for Judgment said that "...the conditions of approval, as interpreted by Paragraph 2 of this Settlement Agreement, shall be *a permanent deed restriction on the project parcels...* [Emphasis added]."

In fact, no "permanent deed restriction" was ever recorded against "the project parcels," to achieve the requirements outlined in Paragraph 2 of the Settlement Agreement and Stipulation for Judgment. Instead, a "general" deed restriction was recorded on October 13, 1997. This deed restriction not only did not mention that the "175 single family homes" and "90 multi-family rental units" would be restricted as specified in Paragraph 2, it also did not specifically reference any of the new parcels created by the approved subdivision. Instead it only referenced "all of Tract No. 1284 of Moro Cojo, filed 9-30-97 in Volume 19, Cities and Towns, at Page 48, Monterey County Records." Its language was also significantly different from the language of Paragraph 2 of the Settlement Agreement and Stipulation for Judgment, specifying only 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.”

The way that the court Judgment was implemented has caused serious problems.

First, because the condition does not specifically reference each of the new parcels created by the subdivision, the owner or prospective purchaser of any specific parcel may not receive adequate notice, by a title report or otherwise, that there is an “affordability restriction” on the property. That problem has already surfaced.

Second, and much more serious, the language of the “general” restriction actually recorded is significantly at variance with the requirement of the Judgment, and the effect of the difference is extremely detrimental to the public interest. While there is significant uncertainty in the language of the actually recorded restriction, it appears that a property owner or prospective purchaser could argue that the only “affordability restriction” imposed is one that requires that the sale be at a price “affordable to ... moderate income households.” This is apparently the interpretation that County representatives propose, as I understood the discussion in the May 18th meeting.

There are two problems with this proposed interpretation. The first problem is caused by the specific language of the recorded restriction. The restriction as recorded says that “*all of the units*” must be “affordable to very low, low, *and* moderate income households...” In order for “all” of the units to be affordable to “very low income” households (which is what the sentence literally says, because of the use of the word “and,” instead of the word “or”) the units would all need to be sold at a price that a “very low income” family could afford. If that interpretation prevailed, many of the current owners would lose significant value, and the future of the development would become entirely “very low income,” as to the 175 single family homes in the development. This would undermine the mixed-income character of the project.

On the other hand, if the condition as recorded were interpreted to allow “all of the units” to be sold at prices that “moderate income households” can afford, which is the interpretation that seemed to be favored by County representatives at the May 18th meeting, the long term effect would be to eliminate any low income purchasers for the single family units. This, again, would significantly disrupt the “mixed income” character of the development. It would also mean that the 175 single-family homes that should be sold (in today’s market) for something like \$160,000 (the price that a low income family can afford) would be sold for about \$260,000 (the price that a moderate income family can afford), with the net effect being to transfer approximately \$17.5 million dollars in value from potential future “low income” families, who might be able to purchase a unit in Moro Cojo if sold at the \$160,000 price, to the current owners.

LandWatch strongly urges the Board of Supervisors to direct the CAO and County Counsel to return to the Board with a recommendation for whatever action is needed promptly to implement the actual terms of the Settlement Agreement and Stipulation for Judgment. Only this is fair to the public – and to the current owners of units within the Moro Cojo subdivision.

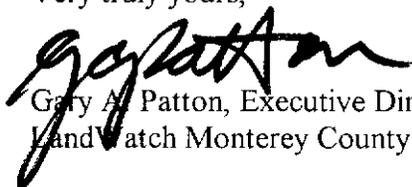
While there may be an “easier way,” and if there is, we certainly urge the County to employ it, one way that the County can achieve the correct result is to initiate an action to “reform the deeds” governing the restricted units (as specified in Paragraph 2 of the Settlement Agreement and Stipulation for Judgment”), properly to incorporate the restriction that the court in fact ordered. It seems hard to believe that a court, upon request, would not reform the deeds in this way, to achieve what the court itself ordered.

Attempting to modify the existing court order, to transform the 175 single family units from “low income” units to “moderate income” units, which is the “solution” advanced by County staff at the May 18th meeting, would greatly disadvantage low income families in Monterey County. To be clear, if the provisions of the current court Judgment are enforced, low income families will have real opportunities to buy a home in Moro Cojo, as the resale of the units in Moro Cojo occur over time. If the “solution” advanced in the May 18th meeting were implemented, then low income families would lose those opportunities. I think it is clear, because of this very significant impact on their housing opportunities, that low income families would have the right to appear in court, and to argue the issue, were the County to go to Court with an effort to modify and “water down” the court’s Judgment, based on the 1995 Settlement Agreement and Stipulation for Judgment.

We strongly believe that the County should not focus on the past, and who may have made the mistake in this case. Instead, the County should promptly take action to do (now) what the 1995 Settlement Agreement and Stipulation for Judgment said they would do. That’s the only fair thing!

Thank you for taking these very serious concerns into account.

Very truly yours,


Gary A. Patton, Executive Director
LandWatch Monterey County

cc: Sally Reed, CAO
Charles McKee, County Counsel
David Green
CHISPA
Anthony Lombardo
Líderes Comunitarios de Salinas
Mexican American Political Association (MAPA)
Other Interested Persons