



CITY of CALABASAS

CITY COUNCIL AGENDA REPORT

DATE: JANUARY 5, 2024

TO: HONORABLE MAYOR AND COUNCILMEMBERS

FROM: KINDON MEIK, CITY MANAGER
MATTHEW T. SUMMERS, CITY ATTORNEY

SUBJECT: ADOPTION OF RESOLUTION NO. 2024-1881, CERTIFYING AN AMENDED FINAL ENVIRONMENTAL IMPACT REPORT AND APPROVING A STATEMENT OF OVERRIDING CONSIDERATIONS, ASSOCIATED WITH FILE NO. 160003152, ANALYZING PROPOSED DEVELOPMENT OF A 77-ACRE VACANT PROPERTY LOCATED AT 4790 LAS VIRGENES ROAD AT THE EASTERN TERMINUS OF AGOURA ROAD (APNS: 2069-078-009 AND 2069-078-011). THE PROPOSED PROJECT, SITUATED WITHIN A TOTAL DEVELOPMENT FOOTPRINT OF ELEVEN ACRES, INCLUDES: (1) A RESIDENTIAL COMPONENT CONSISTING OF 180 MULTI-FAMILY CONDOMINIUM UNITS (INCLUDING EIGHTEEN AFFORDABLE UNITS) WITHIN FIFTEEN THREE-STORY BUILDINGS OCCUPYING APPROXIMATELY 9.5 ACRES (12.3%) OF THE PROPERTY; (2) A COMMERCIAL COMPONENT CONSISTING OF A 5,867 SQUARE-FOOT RETAIL COMMERCIAL SHOPPING CENTER SITUATED IN TWO ONE-STORY BUILDINGS OCCUPYING APPROXIMATELY 1.19 ACRES (1.5%) OF THE PROPERTY; (3) A 0.36 ACRE COMMUNITY GREEN SPACE (PARK); (4) PERMANENT DEDICATION OF A PUBLIC TRAIL EASEMENT THROUGH THE PROPERTY CONNECTING TO OPEN SPACE LANDS TO THE EAST, AND (5) PRESERVATION OF APPROXIMATELY 66.0 ACRES (86% OF THE SITE) AS PERMANENT OPEN SPACE. ANCILLARY FEATURES INCLUDE THE CONSTRUCTION OF TWO DETENTION/DEBRIS BASINS, SITE ACCESS AND INTERNAL ROADWAY SYSTEM WITH SIDEWALKS AND PARKWAYS, RETAINING WALLS, LANDSCAPING, COMMON RECREATION AREAS, AND LIGHTING. DEVELOPMENT OF THIS PROJECT WOULD REQUIRE A SIGNIFICANT AMOUNT OF REMEDIAL GRADING TO STABILIZE A LANDSLIDE HAZARD AREA ON THE SOUTHERN PORTION OF THE SITE. THE PROJECT SITE IS CURRENTLY ZONED PLANNED DEVELOPMENT (PD); RESIDENTIAL-MULTIFAMILY, 20 UNITS PER ACRE (RMF (20)); OPEN SPACE DEVELOPMENT RESTRICTED (OS-DR); AND IS WITHIN THE SCENIC CORRIDOR (SC) OVERLAY ZONE.

MEETING JANUARY 10, 2024
DATE:

SUMMARY RECOMMENDATION:

Staff recommends the City Council, consistent with the litigation settlement agreement, consider certification of City Council Resolution No. 2024-1881 (Attachment A), certifying the Amended Final Environmental Impact Report and Approving a Statement of Overriding Considerations and Mitigation Monitoring and Reporting Program. Staff recommends further the Council adopt the Resolution, as the first step towards a revised project with up to 76 units.

PROJECT BACKGROUND:

On May 31, 2016, the City Council approved, by a 3-2 vote, the Canyon Oaks project on the subject site, which included 67 single-family detached homes and four affordable units, a three-story hotel, and preservation of about 61 acres as permanent open space. On November 8, 2016, the Canyon Oaks project entitlements were rescinded when Calabasas voters passed Measure F, a referendum to reverse the project’s amendments to the General Plan and Development Code.

In October 2016, the developer applied for a mixed-use residential and commercial development project on the same site, now named West Village. The final application proposed 180 condominium units and 5,867 square feet of retail commercial space, with 18 units reserved for very-low income households, and significant remedial hillside grading, and preservation of about 66 acres of permanent open space.

In July 2019, the Planning Commission recommended the City Council deny the proposed project and/or consider one of the alternatives identified in the Final Environmental Impact Report (EIR) prepared for the project. In 2019 and 2020, the developer provided more geotechnical analyses in order to address the feasibility of the alternatives. Based on the new information, the City determined that the California Environmental Quality Act required amendments to the original EIR. In April 2021, the Planning Commission recommended the City Council approve a reduced-scale version of the project with 135 housing units.

After hearings on May 12 and 17, 2021, the City Council voted unanimously on May 26, 2021 to adopt Resolution No. 2021-1731 denying the proposed project.

PROJECT LITIGATION:

On June 4, 2021, the developer sued in Los Angeles County Superior Court to challenge the City's denial of the proposed 180-unit project. On August 20, 2021, the Building Industry Association of Southern California also sued to challenge the City's project denial. For the past two years, the City vigorously defended its denial of the West Village project in court.

After consolidating the two lawsuits and hearing oral argument by the City and developers, the court ruled against the City, overturning the City's denial of the 180-unit project by applying new State laws expediting the building of more housing. The court ruled the City's open space protections, Measures D and O, do not apply to the project. The court also rejected the City's fire and public safety reasoning for denying the project. Last, the judge determined that in denying the project, the City acted in bad faith, a term of legal significance which would force the City to approve the 180-unit project, let the developer build immediately, and raises the risk of significant fines and penalties.

LITIGATION SETTLEMENT:

Following the ruling, the City hired legal counsel with specific knowledge in appellate cases to review the options. Legal counsel has analyzed the record closely and concluded that the City, on appeal, would have an extremely difficult time challenging the ruling. To initiate this appeal, the court will require that the City post a bond to cover potential liabilities associated with the appeal. Legal counsel has determined that the bond could be beyond the City's ability to pay. While many appeals do not require a bond, part of the Housing Accountability Act now requires cities to post bonds to appeal housing project cases.

In December 2023, the developer, The New Home Company, approached the City to discuss a settlement agreement. Following negotiations between the City and the developer and considering the significant reduction in density and the financial risk to the City should our appeal fail, the City Council agreed on January 5, 2024, to a settlement. The settlement reduces the project from multi-family units to single-family homes and significantly reduces the number of units from 180 to no more than 76. Additionally, the developer has agreed to help the City with its state mandate to provide affordable housing, either by contributing approximately \$2.25 million to the City's affordable housing fund or constructing at least 5% (4 units out of 76 units) on-site affordable units. Finally, the settlement relieves the City of the court order to pay the developer an estimated \$1 million for their attorney fees incurred to date and significant financial liabilities if our appeal was unsuccessful.

REVISED UP TO 76-UNIT PROJECT PER SETTLEMENT AGREEMENT

As part of the settlement agreement, the City has agreed to certify the Amended Final Environmental Impact Report (EIR) for the original 180-unit project, as the first step in developing the revised, up to 76-unit project – the action discussed in this staff report. Certifying the original amended final environmental impact report allows the revised, up to 76-unit project, to rely on that EIR for its future, project-specific environmental review.

The second step will be for the developer to apply for applicable Planning Entitlements for the revised project. The revised project will have up to 76 single-family homes. Affordable housing would be provided either on-site or by in-lieu fee. The City will provide certain development impact fee and permitting fee credits, up to \$3.25 million in fee credits, in return for the developer agreeing to a significant reduction in density and waiving their right to collect an estimated \$1 million for their attorney fees incurred to date and significant financial liabilities if an appeal was unsuccessful. The settlement agreement also avoids the risk of significant penalties given the bad faith finding by the court. The settlement agreement specifies the process the City will use to consider the significantly reduced revised project of up to 76 units.

CERTIFICATION OF THE AMENDED FINAL ENVIRONMENTAL IMPACT REPORT FOR ORIGINAL 180-UNIT PROJECT

The Amended Final EIR's analyses evaluated potential impacts to resource areas: Aesthetics, Biological Resources, Greenhouse Gas Emissions, Land Use/Planning, Transportation/Traffic, Tribal Cultural Resources, Utility and Service Systems, Air Quality, Geology/Soils. With one exception, impacts to all other resource areas would be less-than-significant, provided the appropriate mitigation measures described in the Amended Final EIR, which substantially reduce the impacts of the project on these resources areas, are incorporated and implemented. Mitigation measures will be incorporated into the revised project's conditions, if approved, via the Mitigation Monitoring and Reporting Program, on file with the City Clerk's office, to reduce any potential impacts to these other resource areas to levels that are less-than-significant.

The analysis of aesthetic impacts in the Amended Final EIR found the proposed project would substantially degrade the visual character of the site and be a significant and unavoidable impact. All feasible mitigation measures were incorporated to lessen impacts to the visual character of the site to the fullest extent feasible. Any development of this site would cause a significant and

unavoidable aesthetic impact to the existing, undeveloped visual character of the site, both by itself and because, as required by the trial court's ruling, any development of the site must include the remediation of the large, existing, unstable landslide on the prominent southern hillside slope to be consistent with the General Plan and development code. The proposed Resolution finds the impact upon aesthetic resources to be outweighed by state housing laws and the court's November 27, 2023 ruling requiring the City to approve residential development on this site. The proposed Resolution further finds that the housing benefits of the proposed project to the community override the project's aesthetic impacts.

Staff recommends that the Council adopt the attached Resolution certifying the Amended Final EIR for the original, 180-unit project, including the related Statement of Overriding Considerations and Mitigation Monitoring and Reporting Program. The program ensures compliance with the mitigation measures to ensure significant environmental impacts are reduced to less than significant, except for aesthetics. If and when the Council approves the revised, up to 76-unit project, the Council may impose a condition of approval requiring the applicant to follow the EIR's mitigation measures, together with standard and reasonable conditions of approval substantially similar to those conditions as were proposed on the 180-unit project, to the extent applicable to, and that do not undermine the feasible development of, the revised up to 76-unit project.

FISCAL IMPACT/SOURCE OF FUNDING:

The processing of the original, 180-unit project application, including the costs of paying for the amended final environmental impact report, was paid for by the developer via planning application fees, as established by the current fee schedule. If approved, the development, mitigation, and landslide repair costs of the revised up to 76-unit project would be paid by the developer.

Per the settlement agreement, the City agreed to certain fee credits, up to \$3.25 million, for the revised up to 76-unit project in return for the developer agreeing to a significant reduction in density and waiving their right to collect an estimated \$1 million for their attorney fees incurred to date and significant financial liabilities if our appeal was unsuccessful. The City also avoids the risk of significant penalties due to the bad faith finding.

REQUESTED ACTION:

That the City Council adopt City Council Resolution No. 2024-1881 (Attachment A), certifying the Amended Final Environmental Impact Report and Approving a Statement of Overriding Considerations and Mitigation Monitoring and Reporting Program.

ATTACHMENTS:

Attachment A: City Council Resolution No. 2024-1881

Attachment B: Settlement Agreement

The Amended Final Environmental Impact Report is available on the City's website at the following link:

<https://www.cityofcalabasas.com/our-city/current-projects/west-village-at-calabasas>