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Agenda Date: 11/20/2013

Agenda Placement: 9D

Napa County Planning Commission Board Agenda Letter

TO: Napa County Planning Commission

FROM: John McDowell for Pete Parkinson - Interim Director
Planning, Building and Environmental Services

REPORT BY: SHAVETA SHARMA, PLANNER III - 707-299-1358

SUBJECT: Density Bonus Ordinance Text Amendment

RECOMMENDATION

DENSITY BONUS ORDINANCE ZONING ORDINANCE TEXT AMENDMENT P13-00376-ORD

CEQA Status: General Rule. It can be seen with certainty that there is no possibility the proposed action may have a significant effect on the environment and therefore CEQA is not applicable. The proposed Ordinance implements State density bonus law and merely incorporates provisions of existing State law, and is required by the judgment in *LUNA v. County of Napa*. [See Guidelines For the Implementation of the California Environmental Quality Act, 14 CCR 15061(b)(3)].

Request: Technical revisions to the County's zoning ordinance to make it consistent with the state density bonus law as interpreted by the appellate court in *Latinos Unidos del Valle de Napa y Solano ("LUNA") v. County of Napa et. al.* (Napa County Superior Court Case No. 26-50568).

Ordinance Title: AN ORDINANCE OF THE BOARD OF SUPERVISORS OF NAPA COUNTY, STATE OF CALIFORNIA, AMENDING SECTIONS 18.82.050 (SITE DENSITY), 18.107.080 (RESIDENTIAL PROJECTS - BASIC INCLUSIONARY REQUIREMENT), 18.107.150 (STATE INCENTIVES FOR AFFORDABLE HOUSING-DENSITY BONUS), 18.107.160 (STATE INCENTIVES FOR AFFORDABLE HOUSING—STATE-DEFINED INCENTIVES), 18.107.170 (STATE INCENTIVES FOR AFFORDABLE HOUSING—APPLICATION PROCEDURES) AND 18.107.230 (GENERAL - DEFINITIONS) OF THE NAPA COUNTY CODE AS THEY RELATE TO THE STATE DENSITY BONUS LAW

Staff Recommendation: That the Planning Commission conduct a public hearing and forward a recommendation of approval to the Board of Supervisors.

Staff Contact: Shaveta Sharma, 299-1358 or shaveta.sharma@countyofnapa.org

EXECUTIVE SUMMARY**Recommendation:**

That the Planning Commission:

1. Recommend to the Board of Supervisors that they find the proposed ordinance exempt from review under the California Environmental Quality Act (CEQA) pursuant to the General Rule (CEQA Guidelines Section 15061(b)(3)); and
2. Recommend to the Board of Supervisors that they find the proposed ordinance consistent with the Napa County General Plan for the reasons articulated in this staff report and adopt the proposed ordinance

Discussion:

In January, 2010, the County adopted a density bonus ordinance as required by State law, to provide a bonus for projects of five or more units where affordable units are constructed. In November, 2009, LUNA filed a lawsuit against the County alleging that the housing element failed to comply with various housing and land use laws. The lawsuit also alleged violations of the State density bonus laws. The trial court ruled in the County's favor on all grounds. On appeal, the appellate court upheld the County's housing element and held that the County had not violated any housing laws. The appellate court ruled in favor of LUNA with respect to the density bonus ordinance and held that the County needed to make technical amendments to bring its density bonus ordinance into compliance with State law. The court held that the provision in the County's density bonus ordinance that did not allow a density bonus for required inclusionary units was inconsistent with State law. The proposed amendments are intended to address the court's findings. Accordingly, required inclusionary units may be counted for purposes of a density bonus. Additionally, the court's reasoning requires amendment of provisions of the Affordable Housing Combination Zoning District (particularly, Section 18.82.050), to allow a density bonus for projects falling within the combination district.

FISCAL IMPACT

Is there a Fiscal Impact? No

ENVIRONMENTAL IMPACT

General Rule. It can be seen with certainty that there is no possibility the proposed action may have a significant effect on the environment and therefore CEQA is not applicable. The proposed Ordinance implements State density bonus law and merely incorporates provisions of existing State law and is required by the judgment in *LUNA v. County of Napa*. [See Guidelines For the Implementation of the California Environmental Quality Act, 14 CCR 15061(b)(3)].

BACKGROUND AND DISCUSSION

In January, 2010, the County adopted a density bonus ordinance as required by State law, to provide a bonus for

projects of five or more units where affordable units are constructed. Pursuant to State law, a density bonus is granted for residential projects of five or more units where affordable units are constructed. The County's ordinance was written to require that these affordable units be built in addition to those already required by the County's affordable housing ordinance, before a density bonus could be obtained. The rationale was that this requirement would actually produce more affordable units. The density bonus ordinance defined target units as affordable units constructed in addition to those already required by the affordable housing ordinance. Projects containing target units affordable to very low income households were granted a bonus of from 20% (for 5% target units) to 35% (for 11% target units). Projects containing target units affordable to low income households are granted a bonus of from 20% (for 10% target units) to 35% (for 20% target units). Projects containing for sale moderate income units in a common interest development are granted a bonus of from 5% (for 10% affordable units) to 35% (for 40% affordable units).

In November, 2009, LUNA filed a lawsuit against the County alleging that the housing element failed to comply with various housing and land use laws. The lawsuit was amended in 2010 to allege violations of the State density bonus laws. LUNA made various technical challenges to the ordinance, including the argument that the County should not require target units to be built in addition to the affordable units required under the County's affordable housing ordinance before a density bonus is provided.

The trial court ruled in the County's favor on all grounds and upheld the County's housing element. On appeal, the appellate court upheld the County's housing element as legally sufficient and held that the County had not violated any housing laws. With respect to the density bonus ordinance, the appellate court held that the provision in the County's density bonus ordinance that did not allow a density bonus for required inclusionary units was inconsistent with State law. The proposed amendments are intended to address the court's findings, and target units are no longer required to be in addition to the ones required under the affordable housing ordinance. In short, inclusionary units may trigger eligibility for a density bonus. Additionally, the court's reasoning requires amendment of provisions of the Affordable Housing Combination Zoning District (particularly, Section 18.82.050), to allow a density bonus for projects located on a Specified Priority Housing Development site as defined in the housing element. The provision requiring the applicant to apply for a density bonus either under the density bonus ordinance or the affordable housing combination district, but not both, has been removed.

SUPPORTING DOCUMENTS

- A . Ordinance (redlined version)
- B . Ordinance (Clean)

Napa County Planning Commission: Approve

Reviewed By: John McDowell