



San Bernardino County

Legislation Text

File #: 8065, Agenda Item #: 107

**REPORT/RECOMMENDATION TO THE BOARD OF SUPERVISORS
SITTING AS THE GOVERNING BOARD OF THE FOLLOWING:
SAN BERNARDINO COUNTY
SAN BERNARDINO COUNTY FLOOD CONTROL DISTRICT
AND RECORD OF ACTION**

May 23, 2023

FROM

**CHAD NOTTINGHAM, Interim Director, Land Use Services Department
TERRY W. THOMPSON, Director, Real Estate Services Department
BRENDON BIGGS, Chief Flood Control Engineer, Flood Control District**

SUBJECT

Agreement for the Provision of Affordable Housing with All-Era Properties, LLC

RECOMMENDATION(S)

Acting as the governing body of San Bernardino County and San Bernardino County Flood Control District, approve the Agreement for the Provision of Affordable Housing, including non-standard terms, with All-Era Properties, LLC, for the commitment of eight affordable condominium units of a 181-unit multi-family condominium complex project, located in the unincorporated area of Bloomington, subject to subsequent project approval and property acquisition.

(Presenter: Chad Nottingham, Interim Director, 387-4431)

COUNTY AND CHIEF EXECUTIVE OFFICER GOALS & OBJECTIVES

Create, Maintain and Grow Jobs and Economic Value in the County.

Ensure Development of a Well-Planned, Balanced, and Sustainable County.

Provide for the Safety, Health and Social Service Needs of County Residents.

FINANCIAL IMPACT

Approval of this item will not result in the use of additional Discretionary General Funding (Net County Cost).

BACKGROUND INFORMATION

San Bernardino County Flood Control District (District) is the owner of certain real property known as Assessor Parcel Numbers (APN) 0257-012-12 and 0257-021-02 (District Property), located south of Slover Avenue between Linden Avenue and Cedar Avenue, in the unincorporated area of Bloomington. All-Era Properties, LLC (Developer), has entered into a purchase agreement for certain real property known as APNs 0257-021-28 and 0257-031-35 (Pending Property) located adjacent to the District Property, and applied for a conditional use permit with San Bernardino County (County) for the development of a 181-unit multi-family condominium complex and a tentative tract map to create a single lot subdivision (Project). The Project proposes the development and construction of improvements on the Pending Property and District Property and is therefore contingent on the Developer's fee acquisition of both of the mentioned Properties.

As a public benefit of the Project to the County, and to the District's consideration of the future disposition of the District Property, the Developer has offered to commit eight units of the 181-unit Project as affordable housing in an Agreement for the Provision of Affordable Housing (Agreement). The Agreement memorializes the Developer's affordable housing commitment and sets forth a timeline for the parties to finalize the specific units within the Project that will be subject to the restriction, the type of affordable restriction that will be applied, and to enter into a recordable restrictive covenant that ensures the enforceability of the affordable housing restriction, for a period of 55 years from the date of the initial sale of each applicable unit, in the event the Project is approved and the District Property is sold to the Developer. In the event the Developer and the District agree on terms for the sale of the District Property, but the parties have failed to agree upon the housing restriction, the Agreement includes a default affordable housing commitment that applies to the largest size units within the Project and would restrict those units to lower-income households. The Agreement provides that the recordable restrictive covenant must be finalized prior to, or concurrent with, the disposition of the District Property.

The disposition of the District Property is not a part of this Agreement and nothing in the Agreement constitutes a commitment or agreement of any kind regarding the District's intention or obligation to sell the District Property to the Developer. In addition, any future disposition of the District Property would be subject to compliance with all applicable laws and legal requirements.

The Agreement with the Developer includes the following non-standard term that differs from the standard County contract terms:

1. The Agreement requires binding arbitration for claims related to the failure of the parties to enter into or execute the restrictive covenant related to the affordable housing restriction.
 - The standard County contract does not require binding arbitration.
 - **Potential Impact:** While arbitration decisions are not appealable, the potential impact of the arbitration clause is advantageous to the County. Binding arbitration clauses have been found favorable in uphold contracts similar to the Agreement that require an agreement of the parties to negotiate future terms. An agreement for binding arbitration is enforceable under California law.

The departments recommend approval of the Agreement, including the non-standard term, as it will provide the County and District with a legal venue to enforce the default affordable housing commitment and only applies if the Project is approved and an agreement is reached for the disposition of District Property.

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Jason Searles, Supervising Deputy County Counsel, 387-5455) on May 9, 2023; Real Estate Services (Brandon Ocasio, Manager of Acquisitions and Right of Way, 387-5000) on May 1, 2023; Finance (Penelope Chang, Administrative Analyst, 387-5412) on May 1, 2023; and County Finance and Administration (Robert Saldana, Deputy Executive Officer, 387-5423) on May 1, 2023.