

EXHIBIT C

STATEMENT OF OVERRIDING CONSIDERATIONS

**OF THE CITY COUNCIL OF
THE CITY OF CALISTOGA**

for the

**ENCHANTED RESORTS PROJECT
City of Calistoga, California**

JUNE 20, 2012

STATEMENT OF OVERRIDING CONSIDERATIONS

Introduction

The City Council's approval of the Project will result in significant adverse environmental effects that cannot be avoided even with the adoption of all feasible mitigation measures. Despite occurrence of these effects, however, the City Council, in accordance with CEQA Guidelines Section 15093 chooses to approve the Project because, in its view, the economic, social and other benefits of the Project will render the significant effects acceptable.

In determining whether to approve the Project, CEQA requires a public agency to balance the benefits of a project against its unavoidable environmental risks. (CEQA Guidelines, § 15093.) In accordance with Public Resources Code section 21081(b) and CEQA Guidelines section 15093, the City Council has, in determining whether or not to approve the proposed Project, balanced the economic, social, technological, academic, and other benefits of the Project against its unavoidable environmental effects, and has found that the benefits of the Project outweigh the significant adverse environmental effects that are not mitigated to less-than-significant levels as set forth below. This statement of overriding considerations is based upon the City Council's review of the DEIR and the FEIR and other information in the administrative record.

Significant and Unavoidable Impacts

Implementation of the mitigation measures discussed in the DEIR and FEIR will avoid or substantially lessen to less-than-significant levels all but three (3) of the Project-specific significant impacts and one (1) significant cumulative impact.

Project Specific

The Project's significant and unavoidable project specific impacts even with the implementation of all feasible mitigation measures are as follows:

- The Project could result in adverse physical impacts associated with the provision of new offsite improvements, the construction of which could cause significant environmental impacts by exposing nearby residences to temporary noise levels, in order to maintain acceptable service levels for public facilities.
- Development of the Project would generate motor vehicle trips that would contribute to unacceptable intersection operations within the Project study area under Baseline plus Project conditions.

- Development of the Project would generate motor vehicle trips that would contribute to unacceptable intersection operations within the Project study area under Future plus Project conditions.

Cumulative

The City Council further recognizes that the Project will cause a cumulatively considerable contribution to the following one (1) cumulative impact and that impact cannot be mitigated to a level that is less than cumulatively considerable:

- Development of the Project would generate new vehicle trips that my contribute to unacceptable intersection operations and roadway operations under Baseline plus Project and Future plus Project operating conditions. Therefore, the Project, in conjunction with other projects would have a cumulatively considerable contribution to unacceptable intersection and roadway operations.

The City Council has carefully balanced the benefits of the proposed Project against the unavoidable adverse impacts identified in the DEIR, the FEIR, and the City Council's Findings of Fact ("Findings"). Notwithstanding the disclosure of impacts identified as significant and which have not been eliminated or mitigated to a level of insignificance, the City Council, acting pursuant to CEQA Guidelines section 15093, hereby determines that the benefits of the Project outweigh the significant unmitigated adverse impacts.

Specific Findings

Project Benefits Outweigh Unavoidable Impacts

In the City Council's judgment, the Project and its benefits outweigh its unavoidable significant impacts. The following statement identifies the specific reasons why, in the City Council's judgment, the benefits of the Project as approved, outweigh its unavoidable significant effects. Any one of these reasons is sufficient to justify approval of the Project. Thus even if a court were to conclude that not every reason is supported by substantial evidence, the City Council would adhere to its determination that each individual reason is sufficient. The substantial evidence supporting the various benefits is found in the preceding Findings, which are incorporated by reference into this Section, and the documents found in the record of proceedings.

Balance of Competing Goals

The City Council finds it imperative to balance competing goals in approving the proposed Project and the environmental documentation for the proposed Project. Not every policy or environmental concern has been fully satisfied because of the need to satisfy competing concerns to a certain extent. Accordingly, in some instances, the City Council has chosen to accept certain environmental impacts because to eliminate them

would unduly compromise important economic, technological, or other goals. The City Council finds and determines that the proposed Project approval documents and the supporting environmental documentation provide for a positive balance of the competing goals and that the economic, fiscal, social, planning, land use, and other benefits to be obtained by the proposed Project outweigh the environmental and related potential impacts of the proposed Project.

Overriding Considerations

Substantial evidence is included in the record of these proceedings and in documents relating to the Project demonstrating the benefits that the City would derive from the implementation of the proposed Project. The City Council has balanced the benefits of the proposed Project against the unavoidable environmental impacts identified in the DEIR and the FEIR and concludes that the economic, fiscal, social, planning, land use, and other benefits that will be derived from the implementation of the proposed project outweigh those environmental impacts. These are addressed in the City Council's Findings. In particular, the City Council considered whether there would be impacts related to: population, employment, and housing; public services and utilities; transportation and circulation; air quality; noise; soils and geology; hydrology and water quality; public safety and hazards; biological resources; cultural resources; visual resources; and land use. Upon balancing the environmental risks and countervailing benefits, the City Council concludes that the benefits which the City will derive from the implementation of the Project outweigh those environmental impacts.

A. The Project Will Provide Orderly Build-out of Residential and Resort Uses That Protect The Small Town Qualities of Calistoga

The Project provides a high quality planned development in the City that includes single family housing combined with resort uses, recreational amenities, tourist activities, forest preservation and resource management areas. It will ensure the orderly build-out of 13 single family residential units and 20 fractional ownership residential units combined with a high quality destination resort. The custom residential lots would interface with the fractional ownership units and the resort hotel, providing a type of housing product that is not currently available in Calistoga. The Project also includes housing fees for the City to develop affordable housing. A "Planned Development Overlay" general plan designation allows for this property to include a range of destination resort amenities and single family homes while remaining consistent with existing residential densities for rural residential hillside development, thereby advancing the objective of permitting desired development while also preserving Calistoga's small town character. The City Council finds that this level of comprehensive planning is desirable and beneficial to the City.

The Project design is consistent with community goals of harmonizing new development with the surrounding environment and the town's character. The use of design guidelines will result in a desirable and consistent style of housing. The entire

Project is designed to utilize the natural features of the landscape such as forest cover and slope, clustering development towards the rear of the site, permanently preserving nearly 1/3 of the Project site as forest reserve, and provide open space areas throughout the Project to further preserve trees and screen most of the Project from the City's view. These measures individually and combined, insure that the Project compliments Calistoga's small town rural character. The design theme centers around the evergreen and redwood forest and sloping terrain. Naturalized design elements that include, terracing and low profile building design, natural stone-like materials and textures, earthen colors and warm hues which are common to the region will contribute to the unique identity of the Project and reinforce locally distinctive patterns of development, architectural diversity and landscape. Design review of the entire Project has been conducted as part of the Project's review and approval. Design review has insured that the Project is aesthetically pleasing, provides buffering between land uses, and retains open space, unique land features and small town rural character.

The Project's entry frontage consists of a two lane road and terraced landscaping which respects the City's goals of preserving and enhancing the entry corridors to Calistoga and protecting Calistoga's entrance points as important components of local community identity. The Project site is located close to the downtown core which serves as an employment and tourist center in the town. The Project promotes a self contained walkable community close to downtown Calistoga. This reinforces local patterns of development, culture, walkability and neighborhoods.

B. The Project will Provide Important Public Services and Facilities

The Project will improve existing public facilities and services and will provide new public facilities and services as detailed in the DEIR, and Development Agreement, and as summarized below.

Wastewater

The Project is served by an existing connection to the City's sewer system. The Project will include up-sized offsite upgrades to the sewer system and may extend recycled water service to the site. Specifically, the Project will install the "Washington Street Main Wastewater Trunk Line" and "Pine Street Lift Station Upgrades" as defined in the record of these proceedings.

Potable Water

The Project will provide necessary onsite water conveyance and offsite water infrastructure improvements to meet the City's policies of adequate water infrastructure. The Project applicant installed an 8 inch water main in 2010 that meets current standards. Onsite water storage facilities will be installed to provide adequate peak day demand and fire flow supplies. Specifically the Project will install "Public Safety Water Line Improvements" as defined in the record of these proceedings.

Reclaimed Water

The Project will extend recycled water infrastructure to the site if recycled water is used and this has been analyzed as part of environmental review and the City's coordination between land use planning and water reclamation.

Storm Water

The proposed Project will install new and updated stormwater collection infrastructure and would maintain it in good condition, thereby insuring that stormwater is collected, stored and disposed of in a safe, sanitary and environmentally acceptable manner. The Project will also pay its fair share of Citywide stormwater system upgrades and expansion.

Schools

The Project will provide fees for school facilities in accordance with the School District fee schedule.

Police and Fire

The Project will provide for the payment of Public Safety Development Impact Fees to offset the costs for fire and other emergency services.

Parks and Recreation

The Project will provide Quality of Life fees to the City for park and recreational facilities to insure that the City can meet its goals of developing a full complement of parks and other recreational lands for public use and enjoyment

C. The Project Will Provide Environmental Benefits

Water Conservation and Water Quality

The Project includes the implementation of water conservation measures and practices including installation of drought tolerant landscaping, storm water storage, rain gardens, grey water reuse and storage, and possible use of recycled wastewater for landscape irrigation.

The Project will protect water quality by carefully managing all storm water runoff. Best management practices such as engineered storm water detention ponds would collect, store and dispose of storm water in an environmentally acceptable manner.

Forest Preservation

One hallmark of the Project is the Northern Mixed Evergreen Forest and a minimal area of Upland Redwood Forest. The Project includes 27 acres of permanent forest preservation area which totals thirty percent (30%) of the entire 88 acre Project site that will be preserved in perpetuity. This environmentally sensitive design will facilitate screening the Project from view of the surrounding land uses. This permanent forested open space area will be visible from many areas within the City.

A Forest Management Plan will be in place as part of the Project approval as the overarching management plan for all forest resources on the site. Any subsequent Timber Harvest Plan or Tree Removal/Disturbance Permit issued in accordance with the City Tree Removal Ordinance, must be consistent with this Forest Management Plan. Compliance with federal, state and local laws is also mandatory and the Forest Management Plan is as stringent as those laws if not more stringent in some particulars. This tailored management plan will insure continued protection and management of all areas of the forest including those 27 acres to be preserved.

In conjunction with the preservation and conservation efforts, timber harvesting pursuant to an approved Timber Harvest Plan and consistent with the City Tree Preservation Ordinance, will improve the health of the forest by thinning overgrown areas.

Energy Consumption Reduction

The Project's structures will be designed to meet the California Green Building Standards Code energy efficiency standards which are deemed the most stringent in the nation. Implementation of these standards will contribute to the reduction of greenhouse gas emissions. The Project would also use outdoor water efficiency measures and practices that are consistent with green construction techniques to reduce energy consumption and minimize the environmental impacts of the Project.

Emissions Reductions

The Project has been designed to emphasize the use of alternative modes of transportation, including a pedestrian oriented design which is a network of pedestrian pathways throughout the development connecting the project amenities and facilities. Additionally, the Project layout emphasizes the use of alternatives to motor vehicles such as bicycle and electrical carts, all in close proximity to the City core and regional transportation options. These design strategies will provide for the reduction of vehicular emissions.

The Project's structures are required to be designed to meet the California Green Building Standards Code energy efficiency standards which are deemed the most

stringent in the nation. Implementation of these standards will also contribute to the reduction of greenhouse gas emissions.

D. The Project Provides Local and Regional Transportation Benefits and Alternative Modes of Transportation

The Project has been designed to emphasize the use of alternative modes of transportation, including a pedestrian oriented design which is a network of pedestrian pathways throughout the development connecting the Project amenities and facilities. Additionally, the Project layout emphasizes the use of alternatives to motor vehicles such as bicycles and electrical carts, all in close proximity to the City core and regional transportation options. These design strategies will provide for alternative modes of transportation.

The Project will pay its fair share obligation of impact fees to the City for improvements to the intersections of SR-128, SR-29, and SR29 as defined in the City's Municipal Code. The Project will provide adequate half width improvements along SR-28/128 frontage to provide sufficient road width for the future Class II bicycle lanes. Additionally, the Project will provide regularly scheduled van shuttle service for employees and guests that would connect to existing VINE service transit in Calistoga. This insures that frequent and high quality transit is in place

These improvements will individually and collectively support local and regional traffic goals and objectives.

E. The Project Will Generate Direct and Indirect Economic Benefits for City

Background

The City will realize both direct and indirect economic benefits from the Project. The Direct Benefits are the monetary valuation of the various taxes and impact fees collected by the City, in addition to the public infrastructure installed. Indirect Benefits are those myriad other ancillary economic benefits to the community that do not have a directly quantifiable dollar value, but through other means, provide social and economic benefits to the community. (*See Icon Resorts , Economic Report, Enchanted Resorts Project (May 18, 2012)).*

Direct Benefits Include:

- Impact Fees: The City has adopted and listed certain Impact Fees designed to offset the impacts of development on the community. The Project will pay these fees in an amount of \$2,323,500.00.
- Transit Occupancy Tax (TOT): This tax is paid directly to the City of Calistoga as a direct percentage of the charge for overnight accommodations.

- Infrastructure: The Project will install water and wastewater infrastructure for the direct and immediate use by both the Project and general community.
- Property Taxes: Through the implementation of construction, Napa County will reappraise the Project site's property value, and taxes will be paid accordingly.
- Sales Tax: At the direct point of a sales transaction, a tax is paid directly to the State of California. A percentage of those proceeds will return directly to the City. (*Id.*)

Indirect Benefits Include:

- Employment: The Project will employ approximately 200 full time equivalent jobs to the local economy at build-out.
- Marketing: Resort promotions will consist of an international marketing campaign highlighting its location in the City.
- Internship Programs: The Project Proponent will work with the local schools and community colleges, to ensure that students will have learning opportunities in the hospitality industry at the Project. (*Id.*)

Direct Benefits

Resort Spending

It is expected that guests of the Resort will contribute \$10.6 million in direct spending: the combination of general sales and food and beverage, by year five (5). Included in these revenue projections are restaurant, general food and beverage, and event sales. It is anticipated that event sales will result from weddings, corporate meetings and retreats. Additional supplemental revenue will also be generated via incidental retail sales on ancillary items such as movie rentals, sundries, and other miscellaneous goods and services. (*Id.*)

Impact Fees

The Project will comply with the City's fee schedule applicable to all development projects. This list of fees are derived from various formulas and applied based on the size of the project and impacts to the community. Enchanted Resorts will contribute to the City a total of \$2,323,500 in impact fees. (*Id.*)

Transient Occupancy Tax (TOT)

A major revenue source for the City's general fund is generated by a tax on overnight accommodations or a Transient Occupancy Tax (TOT). It is expected that the Project will command a premium room rate, similar to other high-end properties in the Napa Valley. Based on 12% of the amount charged per night, the City can expect to see a return of approximately \$1.7 million initially, increasing to approximately \$4.5 million after five (5) years. (*Id.*)

Infrastructure

The Project is required to connect and be serviced by City water and wastewater. The Project has agreed to install up-sized new water and wastewater lines at a value of \$5,151,924. Additionally, through the approvals of the existing 35-lot subdivision, a new water line was recently installed by the Project owners on Foothill Blvd. and a wastewater line was also installed the length of Pine Street from the Napa River to Foothill Blvd. to the Project's connection point. (*Id.*) These infrastructure improvements will benefit other areas of the City as well.

Property Taxes

The property tax revenue generated by the Project is estimated to be in excess of \$1,650,000 per year resulting from opening the Resort. With reasonable assumptions regarding real estate values and the estimated rate of Project build-out, the Project property taxes are estimated to be in excess of \$1,820,000 at build-out. As part of the County's redistribution of these collected funds, a portion of the proceeds go back to the City's school district, services and infrastructure improvements, and other direct funds. (*Id.*) These substantial tax revenues will help to fund City services and operate City facilities.

Sales Tax

Through direct points of sale, which include food and beverage, group, and general sales, the State of California calls for a 7.75% sales tax on all transactions. A portion of those funds collected go directly to the City at a rate of 1.25%. Not including overnight accommodations, the Project Resort is expected to generate \$3.6 million in the first year (1) of operations and escalate to \$10.06 million after 5 years of stabilized growth. The City can expect to receive \$45,000 in the first year (1) and escalating to \$125,750 by year five (5) and beyond. (*Id.*) These substantial tax revenues will help to fund city services and operate City facilities.

Indirect Benefits

Employment

Staffing for the Resort will require the highest quality service to meet guest expectations. To obtain the best talent and staff retention, wages must meet or exceed the competitive market rate. When fully operational, the Project will employ approximately 200 full time equivalent jobs to the local economy. Before accounting for benefits, salaries for administrative personnel will range from \$60,000 per year for accounting staff, to over \$100,000 per year for executive staff. For all positions, the median salary is estimated at \$38,000 per year. It is anticipated the Project will contribute over \$8 million in annual compensation. Because employees will live in the City and the surrounding

area, a substantial amount of these wages will be spent on goods and services provided in the local Calistoga economy. (*Id.*)

The jobs created will provide an opportunity for unemployed residents to gain employment and may also attract new residents to the community. To help offset the impacts that the creation of new jobs may have on the supply of available housing, the project will be required to make a significant financial contribution towards the construction of off-site housing units that are affordable to lower-income households. As such, the proposed project reasonably advances the City's interests and objectives for achieving a jobs/housing balance.

Payment of in-lieu housing impact fees will contribute significantly to the cost of constructing new affordable housing units. In-lieu fees are typically pooled by a jurisdiction and then used as a source of funds to help non-provide affordable housing developers leverage greater resources (such as State and Federal grant funds, land acquisition and development costs, etc.). This statewide practice is legally appropriate and is successful in California communities.

Marketing

For the initial advertising campaign, the Project proponent anticipates that over \$2 million will be invested in general marketing activities in various regional, national and international periodicals and digital material. Through the promotion of the Resort and its affiliated real estate sales, a select clientele will be sought after that frequents this type of product. In nearly all cases, Calistoga will be identified in the materials noting the location of the Resort. Through the identification of the Resort location there is a multiplier effect whereby tourists will seek out the property on their visit to Napa Valley and hence Calistoga as an ultimate destination. (*Id.*)

Education

The school district will benefit greatly through the development of the Project. Per Chapter 17.10 of the Calistoga Municipal Code and School Board Resolution No. 0708.3 the Project must pay a fee to the Calistoga Joint Unified School District in the amount of \$2.97 per sq ft of Residential and \$0.47 per sq ft of Commercial buildings.

The Project is currently programmed to consist of approximately 245,000 square feet of built out commercial structures and will contribute approximately \$115,150 accordingly. Separately, the finished sizes of the residential structures have not been determined, but prior to permit issuance a fee will be paid accordingly. (*Id.*)

Additionally, through the collection of property taxes collected by the County of Napa approximately 64% of those fees are redistributed back to the school districts on a proportional basis. Through the escalation in assessed value the schools will benefit through those proceeds on an annual basis. (*Id.*)

Conclusion

The City will realize a number of positive economic impacts from the Enchanted Resorts Project. To reiterate, through Direct Impacts the City is anticipated to receive \$2,323,500 in Impact Fees, over \$4,500,000 annually, and \$5,701,924 in newly installed infrastructure. Additionally, the City will benefit from sales and property taxes being generated annually that will add to its general fund and school district.

Separately, indirect impacts will be realized as a number of people will be employed by the Project, which will benefit the local economy. Local merchants will benefit from the added tourism from increased visitors from the Project's marketing campaign.

Overall, the Project will have a positive economic impact for the citizens of Calistoga.

F. The Project Will have a Beneficial Impact on the Existing City of Calistoga as a Vibrant Cultural, Social and Economic Center

Downtown Calistoga is a small town environment that is also a magnet for cultural, social and economic activity in the region. The Project will build upon and enhance that role in a way that compliments the existing small town character. The Project will improve the recreational, social and retail experience in the existing City, providing an economic boost to existing business by drawing more locals and tourists to the historic core.

The City has the opportunity to serve both residents and visitors alike as a destination for restaurants, shopping, entertainment, recreational and cultural opportunities. The Project benefits and amenities will compliment and enhance the City in a positive manner at a pace that reflects market demand.

Conclusion

The City Council has balanced the specific economic, legal, social, technological, or other benefits of the Project and has concluded that the benefits of the proposed Project outweigh unavoidable environmental risks. The City has determined that any remaining environmental effects attributable to the proposed Project that are found to be unavoidable in the Findings, are acceptable due to the overriding concerns set forth in this Statement of Overriding Considerations.

The City Council reiterates its finding that each of the benefits or reasons described above in this Statement of Overriding Considerations is individually sufficient by itself to outweigh and override the environmental risks and support the approval of the

proposed Project. Thus, even if a court were to conclude that not every reason is supported by substantial evidence, the City Council would adhere to its determination that each individual reason is sufficient to justify approval of the Project.

In conclusion, the City Council finds that any remaining significant adverse impacts attributable to the Project are acceptable to the City Council due to the overriding concerns set forth in this Statement of Overriding Considerations. The City Council has concluded that even with the unavoidable environmental risks, the proposed Project should be approved.