

# City of Calistoga

## Staff Report

**TO** Honorable Mayor and City Council  
**FROM** Lynn Goldberg, Planning and Building Director  
**DATE** February 2, 2016  
**SUBJECT** Annual Review of Development Agreement for Calistoga Hills Project

APPROVAL FOR FORWARDING:




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Michael T. Kirn, Interim City Manager

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1 **ISSUE:** Consideration of the annual report on the development agreement for the  
 2 Calistoga Hills project

3 **RECOMMENDATION:** Approve the attached resolution finding that that the Developer  
 4 is in good faith compliance with the terms and conditions of the Calistoga Hills  
 5 development agreement.

6 **BACKGROUND:** The City of Calistoga entered into a development agreement  
 7 (Agreement) with Enchanted Resorts, Inc. (Developer), on April 9, 2013 (Ordinance No.  
 8 687). The Agreement provided the Developer with certain assurances that they could  
 9 proceed with a development project (now known as "Calistoga Hills") that includes a  
 10 resort hotel consisting of up to 110 keys, up to 20 residence club homes, up to 13  
 11 custom homes, and other public amenities and infrastructure. It also requires the  
 12 Developer to make certain improvements, such as the installation of the Washington  
 13 Street main wastewater trunk line, Pine Street Lift Station upgrades, public safety water  
 14 line improvements, and the payment of development impact fees, among other  
 15 obligations. Development impact fees totaling \$1.2 million were paid by the Developer in  
 16 2013.

17 The initial term of the Agreement is five years, with the possibility of term extensions.  
 18 The Agreement provides that each January 1, the City shall review the Developer's  
 19 good faith compliance with the Agreement and that the Developer shall work with City in  
 20 good faith in connection with any such review, including by providing such additional  
 21 information as City may reasonably request in connection therewith.

22 The Developer has completed an Annual Compliance Evaluation Form that provides  
 23 evidence of its good faith compliance with its obligations under the Agreement

24 (Attachment 2). During 2015, the Developer undertook the following activities in  
25 preparation for project development:

- 26 • Obtained approval of a Timber Harvest Plan from Cal Fire
- 27 • Began construction of off-site infrastructure, namely replacement of the City's  
28 wastewater trunk line
- 29 • Began on-site infrastructure plan preparation.

30 The Developer has also certified that there are no facts or circumstances that may be  
31 construed as a default by the Developer.

32 **DISCUSSION:** As required in the Agreement and by Government Code Section  
33 65865.1, the City Council must determine whether the Developer has, in good faith,  
34 substantially complied with the terms of the Agreement up to and including the date of  
35 the review. Based on the project status described above, this finding can be made.

36 **ENVIRONMENTAL REVIEW:** The annual review of the Agreement is not subject to the  
37 California Environmental Quality Act (CEQA) under CEQA Guidelines Section  
38 15061(b)(3) because it can be seen with certainty that there is no possibility it could  
39 have a significant effect on the environment.

40 **FISCAL IMPACT:** There are no fiscal impacts associated with the preparation of the  
41 annual report. However, the City's economy will benefit from the project by its promotion  
42 of tourism, payment of transient occupancy and property taxes, and job creation.

43 **ALTERNATIVES TO RECOMMENDATION:** Pursuant to Government Code Section  
44 65865.1, "If, as a result of such periodic review, the local agency finds and determines,  
45 on the basis of substantial evidence, that the applicant or successor in interest thereto  
46 has not complied in good faith with the terms or conditions of the agreement, the local  
47 agency may terminate or modify the Agreement." There is no evidence that this has  
48 occurred.

## **ATTACHMENTS**

1. Draft resolution
2. Annual Compliance Evaluation Form for Enchanted Resorts, Inc. Development Agreement

RESOLUTION NO. 2016-XXX

1 RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CALISTOGA, COUNTY OF  
2 NAPA, STATE OF CALIFORNIA FINDING THAT THE DEVELOPER OF THE CALISTOGA  
3 HILLS PROJECT IS IN GOOD FAITH COMPLIANCE WITH THE TERMS AND  
4 CONDITIONS OF THE PROJECT'S DEVELOPMENT AGREEMENT  
5

6 WHEREAS, on April 9, 2013, the City of Calistoga (City) entered into a Development  
7 Agreement (Agreement) with Enchanted Resorts, Inc. (Developer) through its approval of  
8 Ordinance No. 687; and

9 WHEREAS, the Agreement provided the Developer with certain assurances that they  
10 could proceed with a development project, now known as Calistoga Hills, on property located  
11 west of Foothill Boulevard; and

12 WHEREAS, the term of the Agreement is for a period of five years commencing on  
13 April 9, 2013; and

14 WHEREAS, as required by Government Code Section 65865.1 and by the Agreement  
15 beginning the second January 1 after November 9, 2013 and each January 1 thereafter, the  
16 City shall determine whether the Developer has, in good faith, substantially complied with the  
17 terms of the Agreement up to and including the date of the review; and

18 WHEREAS, at its meeting of February 2, 2016, the City Council considered the  
19 Annual Compliance Evaluation Form completed by the Developer that provides evidence of  
20 its good faith compliance with its obligations under the Agreement; and

21 WHEREAS, the Developer and members of the public were provided an opportunity to  
22 be heard regarding the Agreement's status before the City Council conducted its review.

23 NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Calistoga  
24 hereby finds that:

- 25 1. The Developer is in good faith substantial compliance with the terms and  
26 conditions of the Development Agreement between the City of Calistoga and  
27 Enchanted Resorts, Inc. for the Calistoga Hills project.
- 28 2. This review satisfies the annual review of development agreement as provided in  
29 Government Code §65865.1.

30 PASSED, APPROVED, AND ADOPTED by the City Council of the City of Calistoga at  
31 its meeting held the 2nd day of February, 2016 by the following vote:

- AYES:
- NOES:
- ABSTAIN:
- ABSENT:

\_\_\_\_\_  
CHRIS CANNING, Mayor

ATTEST:

\_\_\_\_\_  
KATHY FLAMSON, City Clerk

ANNUAL COMPLIANCE EVALUATION FORM

This Annual Compliance Evaluation Form is submitted to the City of Calistoga ("City") by CHR Inc. ("Developer") pursuant to the requirements of California Government Code Section 65856.1 and Chapter 17.39 of the City Municipal Code regarding Developer's good faith compliance with its obligations under the Development Agreement between the City and Developer by Ordinance No. 687 ("Development Agreement").

Annual Review Period: 1/1/15 to 1/1/16

Please attach description and/or documentation in support of any "Yes" answers

- A. Development activities during this annual review period: Yes:  No:
- B. Development impact Fees, processing fees, architectural review fees and/or other fees paid during this annual review period: Yes:  No:
- C. On- and/or off-site infrastructure improvements completed or paid for during this annual review period: Yes:  No:
- D. Other Development Agreement obligations completed during this annual review period: Yes:  No:
- E. Transfers, assignments, or dedications from or by Developer during this annual review period: Yes:  No:
- F. Awareness of any facts or circumstances that may be construed as a default by Developer during this annual review period: Yes:  No:

The undersigned representative of Developer confirms that Developer is:

- In compliance with its obligations under the Development Agreement for this annual review period.
- Not in compliance with its obligations under the Development Agreement for this annual review period, in response to which Developer is taking the actions set forth in the attachment hereto.

IN WITNESS WHEREOF, Developer has executed this Annual Compliance Evaluation Form as of this 11 day of January, 2016.

By: 

Its: Project Manager



Annual Compliance Evaluation

Review Period: January 1, 2015 to January 1, 2016

Supplemental Responses

Item A: Yes, the following Development Activities are ongoing:

- Timber Harvest Plan Certification; State Calfire has reviewed and approved the project THP. Website [ftp://thp.fire.ca.gov/THPLibrary/North Coast Region/THPs/THPs2013/1-13-126NAP/](ftp://thp.fire.ca.gov/THPLibrary/North_Coast_Region/THPs/THPs2013/1-13-126NAP/)
- Off-site Infrastructure for the City's Wastewater Trunk Line project is in process. Seasonal rains have caused delays for construction activities.
- On-site Infrastructure plan review is at beginning stages.

Item B: Yes, Off-site Improvement plan review and inspectional services. See Developer Deposit Account #42-2232

Item C: Yes, Off-site Infrastructure Improvements have been paid for and partially installed as part of the Washington St Trunk Line project. On-site infrastructure review is beginning to commence.

Item D: No, Other Development Agreement obligations, which are not yet due, have not been completed at this time.

Item E: No, There have been no transfers, assignments, or dedications.

Item F: No, There are no facts or circumstances that may be construed as a default at this time.