

City of Calistoga

Staff Report

TO Honorable Mayor and City Council
FROM Lynn Goldberg, Planning and Building Director
DATE January 17, 2017
SUBJECT Annual Review of Development Agreement for Calistoga Hills Project

APPROVAL FOR FORWARDING:



Dylan Feik, City Manager

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

16 The initial term of the Agreement is five years, with the possibility of term extensions. It
 17 provides that each January 1, the City review the Developer's good faith compliance
 18 with the Agreement and that the Developer work with the City in good faith in
 19 connection with any such review.

20 The Developer has completed an Annual Compliance Evaluation Form that provides
21 evidence of its good faith compliance with its obligations under the Agreement
22 (Attachment 2). During 2016, the Developer undertook the following activities in
23 connection with the project's development:

- 24 • Commenced work under an approved Timber Harvest Plan
- 25 • Completed construction of off-site infrastructure, namely the replacement of the
26 City's wastewater trunk line
- 27 • Began on-site infrastructure construction.

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

30 **DISCUSSION:** As required in the Agreement and by Government Code Section
31 65865.1, the City Council must determine whether the Developer has, in good faith,
32 substantially complied with the terms of the Agreement up to and including the date of
33 the review. Based on the information contained in the submitted Annual Compliance
34 Evaluation Form and the project status described above, this finding can be made.

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

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

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

ATTACHMENTS

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

RESOLUTION NO. 2017-XXX

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

5
6 **WHEREAS**, on April 9, 2013, the City of Calistoga (City) entered into a
7 Development Agreement (Agreement) with Enchanted Resorts, Inc. (Developer)
8 through its approval of Ordinance No. 687; and

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

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

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

18 **WHEREAS**, at its meeting of January 3, 2017, the City Council considered the
19 Annual Compliance Evaluation Form completed by the Developer that provides
20 evidence of its good faith compliance with its obligations under the Agreement, and the
21 facts as described in the staff report; and

22 **WHEREAS**, the annual review of the Agreement is not subject to the California
23 Environmental Quality Act (CEQA) under CEQA Guidelines Section 15061(b)(3)
24 because it can be seen with certainty that there is no possibility it could have a
25 significant effect on the environment.

26 **NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of
27 Calistoga hereby finds that:

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

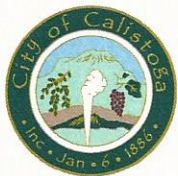
34 **PASSED AND APPROVED** by the City Council of the City of Calistoga at its
35 meeting held the **17th day of January, 2017** by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

CHRIS CANNING, Mayor

ATTEST:

MELISSA VELASQUEZ, Deputy City Clerk



**ANNUAL DEVELOPMENT AGREEMENT
COMPLIANCE EVALUATION FORM**

Annual Review Period: 2016

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").

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 19th day of December, 2016.

By: 

Its: Project Manager



Annual Compliance Evaluation

Review Period: January 1, 2016 to December 31, 2016

Supplemental Responses

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

- Timber Harvest Plan Certification; by State Calfire has been approved. Harvest activities for Phase 1 roadway work has commenced.
- Off-site Infrastructure for the City's Wastewater Trunk Line and Pine Street Lift Station project has been completed.
- On-site Infrastructure for the Phase 1 Roadway construction is underway.

Item B: Yes, Off-site Improvement plan review and inspectional services. Phase 1 Roadway plan review. See Developer Deposit Account #42-2232

Item C: Yes, Off-site Infrastructure Improvements have been installed and accepted as part of the Washington St Trunk Line project. On-site Roadway infrastructure is underway.

Item D: Yes, Other Development Agreement obligations, completion of off-site infrastructure commitments.