



## Legislation Details (With Text)

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| <b>File #:</b>       | 23-1063   | <b>Version:</b>      | 1  | <b>Name:</b> |  |
| <b>Type:</b>         | Report Item   | <b>Status:</b>       |  | Passed       |  |
| <b>File created:</b> | 11/21/2023  | <b>In control:</b>   | City Council/Public Finance and Economic Development Authority/Parking Authority |              |  |
| <b>On agenda:</b>    | 1/16/2024   | <b>Final action:</b> | 1/16/2024  |              |  |
| <b>Title:</b>        | SUBJECT: Approval of Density Bonus #23-02, Initiated by Devonwood Apartments, LP, on Behalf of Devonwood 64, LP, Property Owner; this Application Involves a Request to Reduce the Minimum Parking Requirements and Concessions for Relief from Certain Design Standards for Multi-Family Dwellings, the Reduction in Parking Requirements and Granting of Concessions Would Allow the Construction of a 156-Unit Affordable Apartment Complex on Approximately 5.90 Acres of Land, Generally Located on the South Side of Devonwood Drive Between Loughborough Drive and Austin Avenue; and, Approval of City Council Resolution No. 2024-12 Approving Various Financing Transactions and Documents for Affordable Housing on Behalf of Devonwood Apartments, L.P. in the Approximate Amount of \$10,171,476.06 Consisting of Loan Agreements, Regulatory Agreements, Subordination Agreements, and Related Loan Documents; and, Authorizing Certain Other Actions in Connection to the Devonwood Apartments Project |                      |  |              |  |

### REPORT IN BRIEF

Considers approval of a Regulatory Agreement with Devonwood Apartments, LP, approving Density Bonus #23-02 and granting certain concessions to Multi-family Development Design Standards to allow the construction of a 156-unit affordable apartment complex generally located on the south side of Devonwood Drive between Loughborough Drive and Austin Avenue; and, Considers approval of Resolution 2024-12, approving various financial transactions and documents for Affordable Rental Housing on behalf of Devonwood Apartments, L.P. in the approximate amount of \$10,171,476.06 consisting of Loan Agreements, Regulatory Agreements, Subordination Agreements, and Related Loan Documents; and, Authorizing certain other actions in connection therewith.

### RECOMMENDATION

City Council - Adopt a motion:

- A. Finding that the adoption of the Regulatory Agreement is exempt from review under the California Environmental Quality Act (CEQA) through adoption of a Categorical Exemption based on the previous environmental review (Initial Study #20-32 for GPA #20-01) remains sufficient and no further documentation is required (CEQA Section 15162 Finding); and,
- B. Approving the Affordable Housing Regulatory Agreement with Devonwood Apartments, LP, for the approximate 5.90-acre property generally located on the south side of Devonwood Drive between Loughborough Drive and Austin Avenue, to construct a 156-unit affordable apartment complex; and,
- C. Approving Resolution 2024-12, A Resolution of the City Council of the City of Merced, California, Approving Various Financing Transactions and Documents for Affordable Housing on Behalf of Devonwood Apartments, L.P. in the total approximate amount of \$10,171,476.06 consisting of Loan Agreements, Regulatory Agreements, Subordination Agreements, and Related Loan Documents, and authorizing certain other actions in connection therewith; and,
- D. Approving all necessary agreements relating to the project and commitment of project funding; and,
- E. Authorizing the Finance Officer to make the necessary budget adjustments; and,
- F. Authorizing the City Manager to execute the necessary documents, with authority to make minor

modifications, if needed, with City Attorney review and approval.

**Sponsors:**

**Indexes:**

**Code sections:**

**Attachments:** 1. Location Map.pdf, 2. Site Plan.pdf, 3. Elevations.pdf, 4. Guide to the California Density Bonus Law, Meyers-Nave, 5. Letter regarding Patios/Balconies, 6. Letter regarding Parking, 7. Planning Commission Resolution #4123, 8. Planning Commission Staff Report #23-824, 9. Categorical Exemption, 10. Affordable Housing Regulatory Agreement (Density Bonus Agreement)-Devonwood Apts.pdf, 11. Agreement & Lien Affecting Real Prop-Loan of Water and Sewer Connection Fees, 12. ARPA- Notice of Affordability Restrictions on Transfer of Property-Devonwood.pdf, 13. ARPA-Agreement Containing Covenants Affecting Real Property, 14. ARPA-Deed Restriction Covenant and Grant Agreement-Devonwood.pdf, 15. ARPA-Regulatory Agreement and Declaration of Restrictive Covenants-Devonwood.pdf, 16. CDBG-Agreement Containing Covenants Affecting Real Property Devonwood.pdf, 17. CDBG-City of Merced Note Devonwood.pdf, 18. CDBG-Deed of Trust and Security Agreement Devonwood.pdf, 19. CDBG Deed Restriction Covenant n Loan Agreeemt.pdf, 20. CDBG-Notice of Affordability Restrictions on Transfer of Property.pdf, 21. CDBG-Regulatory Agreement and Declaration of Restrictive Covenants-Devonwood.pdf, 22. CHDO HOME Agreement Containing Covenants Affecting Real Property- Devonwood.pdf, 23. CHDO HOME Deed of Trust and Security Agreement.pdf, 24. CHDO HOME Deed Restriction Covenant and Loan Agreement-Devonwood.pdf, 25. CHDO HOME Notice of Affordability restrictions on Transfer of Property-Devonwood.pdf, 26. CHDO HOME Prommissory Note (City of Merced)-Devonwood.pdf, 27. CHDO HOME Regulatory Agreement and Declaration of Restrictive Covenants-Devonwood.pdf, 28. Devonwood - BOA-City Subordination Agreement(80281474.1).doc, 29. Resolution 2024-12, 30. Devonwood Presentation.pdf

| Date      | Ver. | Action By  | Action   | Result |
|-----------|------|--|----------|--------|
| 1/16/2024 | 1    | City Council/Public Finance and Economic Development Authority/Parking Authority | approved | Pass   |

*Report Prepared by: Francisco Mendoza-Gonzalez, Associate Planner, Leah Brown, Management Analyst, and Kim Nutt, Housing Program Supervisor; Development Services Department*

**SUBJECT:** Approval of Density Bonus #23-02, Initiated by Devonwood Apartments, LP, on Behalf of Devonwood 64, LP, Property Owner; this Application Involves a Request to Reduce the Minimum Parking Requirements and Concessions for Relief from Certain Design Standards for Multi-Family Dwellings, the Reduction in Parking Requirements and Granting of Concessions Would Allow the Construction of a 156-Unit Affordable Apartment Complex on Approximately 5.90 Acres of Land, Generally Located on the South Side of Devonwood Drive Between Loughborough Drive and Austin Avenue; and, Approval of City Council Resolution No. 2024-12 Approving Various Financing Transactions and Documents for Affordable Housing on Behalf of Devonwood Apartments, L.P. in the Approximate Amount of \$10,171,476.06 Consisting of Loan Agreements, Regulatory Agreements, Subordination Agreements, and Related Loan Documents; and, Authorizing Certain Other Actions in Connection to the Devonwood Apartments Project

**REPORT IN BRIEF**

Considers approval of a Regulatory Agreement with Devonwood Apartments, LP, approving Density Bonus #23-02 and granting certain concessions to Multi-family Development Design Standards to allow the construction of a 156-unit affordable apartment complex generally located on the south side of Devonwood Drive between Loughborough Drive and Austin Avenue; and, Considers approval of Resolution 2024-12, approving various financial transactions and documents for Affordable Rental Housing on behalf of Devonwood Apartments, L.P. in the approximate amount of \$10,171,476.06

consisting of Loan Agreements, Regulatory Agreements, Subordination Agreements, and Related Loan Documents; and, Authorizing certain other actions in connection therewith.

## RECOMMENDATION

**City Council** - Adopt a motion:

A. Finding that the adoption of the Regulatory Agreement is exempt from review under the California Environmental Quality Act (CEQA) through adoption of a Categorical Exemption based on the previous environmental review (Initial Study #20-32 for GPA #20-01) remains sufficient and no further documentation is required (CEQA Section 15162 Finding); and,

B. Approving the Affordable Housing Regulatory Agreement with Devonwood Apartments, LP, for the approximate 5.90-acre property generally located on the south side of Devonwood Drive between Loughborough Drive and Austin Avenue, to construct a 156-unit affordable apartment complex; and,

C. Approving **Resolution 2024-12**, A Resolution of the City Council of the City of Merced, California, Approving Various Financing Transactions and Documents for Affordable Housing on Behalf of Devonwood Apartments, L.P. in the total approximate amount of \$10,171,476.06 consisting of Loan Agreements, Regulatory Agreements, Subordination Agreements, and Related Loan Documents, and authorizing certain other actions in connection therewith; and,

D. Approving all necessary agreements relating to the project and commitment of project funding; and,

E. Authorizing the Finance Officer to make the necessary budget adjustments; and,

F. Authorizing the City Manager to execute the necessary documents, with authority to make minor modifications, if needed, with City Attorney review and approval.

## ALTERNATIVES

1. Approve the Density Bonus request as recommended by Planning Commission and staff; and,
2. Approve the various financial and regulatory agreements as presented; or,
3. Deny the request; or,
4. Approve, subject to modifications as conditioned by Council; or,
5. Refer to staff for reconsideration of specific items (specific items to be addressed in City Council motion); or,
6. Continue to a future City Council meeting (date and time to be specified in City Council motion).

## AUTHORITY

California Government Code Sections 65915-65918 (Density Bonus Law) and Merced Municipal Code Section 20.56 - Density Bonus. Charter of the City of Merced, Section 200, et seq.

## CITY COUNCIL PRIORITIES

This action is consistent with the adopted FY 2023-2024 Goals and Priorities related to housing and homelessness, and Pro-Housing Policies of the City of Merced.

## DISCUSSION

Density Bonus Application #23-02

Density Bonus #23-02 is a request to grant a reduction in parking requirements and concessions from certain development standards in accordance with California State Density Bonus Law. The granting of the requested reduction in parking requirements and concessions would allow for the construction of a 156-unit affordable housing project on a 5.90-acre parcel generally located on the south side of Devonwood Drive between Loughborough Drive and Austin Avenue (refer to the Location Map at Attachment 1 and Site Plan at Attachment 2). Two of the units would be dedicated to use by on-site managers.

### Density Bonus Law

The California State Density Bonus Law (SDBL) was adopted in 1976 in recognition of California's acute and growing affordable housing needs. The SDBL has been amended multiple times since adoption in response to evolving housing conditions, to provide clarification on the legislation, to respond to legal and implementation challenges, and to incorporate new or expanded provisions. The SDBL, as originally enacted, sought to address the affordable housing shortage by encouraging development of low- and moderate-income units; over time, the law was expanded to recognize the need for housing individuals and families at a wider range of income levels and with specialized needs.

The SDBL incentivizes affordable and other specialized housing production by requiring local agencies to grant an increase to the maximum allowable residential density for eligible projects, and to support the development of eligible projects at greater residential densities by granting incentives, concessions, waivers, or reductions to applicable development regulations. An example of a concession or incentive is a reduction in the number of parking spaces that may be required for a project, or an increase in the allowable building height that applies to the project. The SDBL applies to projects providing five or more residential units, including mixed-use developments. Density bonuses and associated incentives, concessions, waivers, or reductions are intended to offset the financial burden of constructing affordable or specialized units.

The City of Merced originally adopted a local Density Bonus Ordinance in 1993 and amended it in 2016 (included in Zoning Ordinance Chapter 20.56) to comply with State law at the time the ordinances were adopted. Several updates to SDBL have occurred since the Zoning Ordinance was adopted in 2016. An ordinance amending the Density Bonus section of the Zoning Ordinance was adopted by City Council on September 5, 2023. This ordinance became effective on October 18, 2023, and brought the City's ordinance into compliance with current state law. The ordinance also included a provision that if there were changes to the state law that were not reflected in the City's Ordinance, the state law would prevail.

To provide additional information and a more in-depth overview of the SDBL, the document entitled [Guide to the California Density Bonus Law](#) (revised January 2023), prepared by Jon Goetz and Tom Sakai of the Meyers-Nave Law Firm, is provided as Attachment 4.

One of the basic elements of this law is that a development that meets the requirements of the state law is entitled to receive a density bonus to increase the density of a project by right. This means that no discretionary review is required to allow an increase in the density of a project. The requested density is allowed to exceed the density established by the General Plan and/or Zoning Ordinance. Additionally, the developer may ask for concessions and waivers to certain design standards that may make the project infeasible. In the case of the project under consideration, the request is not for

an increase in density, but to obtain concessions related to certain Design Standards and parking requirements.

The City is required to grant the concession or incentive proposed by the developer unless it finds one of the following:

- That the proposed concession or incentive does not result in identifiable and actual cost reductions; or,
- Would cause a public health or safety project; or,
- Would cause an environmental problem; or,
- Would harm historical property; or,
- Would be contrary to law.

The City has the burden of proof in the event it declines to grant a requested incentive or concession. Financial incentives, fee waivers, and reductions in dedication requirements may be, but are not required to be, granted by the City.

The number of required incentives or concessions is based on the percentage of affordable units in the project as shown in the table below:

| <b>No. of Incentives / Concessions</b> | <b>Very Low- Income Percentage</b>           | <b>Low-Income Percentage</b>                 | <b>Moderate Income Percentage</b>            |
|--|--|--|--|
| 1                                      | 5%   | 10%  | 10%  |
| 2                                      | 10%  | 17%  | 20%  |
| 3                                      | 15%  | 24%  | 30%  |
| 4                                      | 100% Low/Very Low/Mod (20% Moderate allowed) | 100% Low/Very Low/Mod (20% Moderate allowed) | 100% Low/Very Low/Mod (20% Moderate allowed) |

A concession or incentive is defined as:

1. A reduction in site development standards or a modification of zoning requirements or architectural design requirements that exceed the minimum State building standards, such as reductions in setback, square footage, or vehicular and bicycle parking space requirements. The requested concession or incentive must result in an identifiable and actual cost reduction to provide for affordable housing costs or rents.
2. Approval of mixed-use zoning for housing projects if associated commercial, office, industrial, or other land uses will reduce the cost of the housing project, and existing or planned development in the immediate area.
3. Other regulatory incentives or concessions that result in identifiable and actual cost reductions to provide for affordable housing costs, which may include the provision of direct financial incentives or land for the housing development by the City.

Concessions and incentives are differentiated from waivers and reductions in the SDBL. Projects that are eligible for a density bonus, and that are approved for concessions or incentives, cannot be

subjected to any development standard that will have the effect of physically precluding the construction of the project. If a local development standard is found to have this effect, applicants have the option of requesting a waiver or reduction of any development standard that may preclude completion of the project; there is no limit on the number of waivers that may be requested. Waivers or reductions do not take the place of concessions or incentives that the project is qualified to receive.

Proposed Project - Devonwood Apartments

The proposed project is located on an approximately 5.90-acre site located on the south side of Devonwood Drive, between Loughborough Drive and Austin Avenue (refer to the Location Map at Attachment 1). The project would provide 156 units, all being affordable to either Acutely Low-, Extremely Low-, Very Low-, or Low-income households.

The site would consist of 5 three-story apartment buildings, an office/clubhouse building, open space, a swimming pool, and parking. The project would provide 1, 2, and 3-bedroom units. Three of the buildings would contain 36 units (12 units on each floor) and two of the buildings would contain 24 units (8 units on each floor) for a total of 156 units. The complex would be gated with the primary entrance on Devonwood Drive near the center of the complex. A secondary access is located near the western edge of the property (refer to the Site Plan at Attachment 2).

Each of the three-story buildings would be approximately 37’ 10” tall at the highest point. The office/clubhouse would be a single-story building located next to the main entrance (shown as Building 6 on the Site Plan at Attachment 2). The elevations for all the building would be the same. The color palette for the buildings would be a combination of light brown/gray, dusty blue, light gray, and white. Railings for the stairways would be black wrought iron. The building elevations are provided at Attachment 3.

The proposed project would provide affordable housing for tenants whose household income is between 0% and 80% of the Area Median Income (AMI). The Area Median Income for 2023 in Merced County is \$83,800. The table below shows the income limits for the different income levels based on household size:

| No. of Persons in Household                      | 1                    | 2     | 3     | 4     | 5            | 6      | 7      | 8      |        |
|--|----------------------|-------|-------|-------|--------------|--------|--------|--------|--------|
| Merced County<br>Area Median Income:<br>\$83,800 | Acutely Low          | 8800  | 10050 | 11300 | 12550        | 13550  | 14550  | 15550  | 16550  |
|  | Extremely Low        | 17350 | 19800 | 24860 | 30000        | 35140  | 40280  | 45420  | 50560  |
|  | Very Low Income      | 28900 | 33000 | 37150 | 41250        | 44550  | 47850  | 51150  | 54450  |
|  | Low Income           | 46200 | 52800 | 59400 | 65950        | 71250  | 76550  | 81800  | 87100  |
|  | <b>Median Income</b> | 58650 | 67050 | 75400 | <b>83800</b> | 90500  | 97200  | 103900 | 110600 |
|  | Moderate Income      | 70400 | 80450 | 90500 | 100550       | 108600 | 116650 | 124700 | 132750 |

As part of the process for a Density Bonus, the developer/property owner will enter into a agreement specifying the length of time the units will be kept affordable. This agreement will be recorded and will remain in effect for the term of the agreement. The developer is proposing to keep the units affordable for a term of 55 years. The agreement is presented with this report for approval and execution.

In addition to the concessions and waivers allowed by the SDBL, the law also places maximum parking requirements the City is allowed to impose on a development if the developer requests a reduction in parking. This reduction is not considered a concession or waiver. The minimum parking requirements are shown in the table below:

| Type of Unit | Parking Spaces Required Per Unit |
|--------------|----------------------------------|
| Studio       | 1                                |
| 1 Bedroom    | 1                                |
| 2 Bedroom    | 1.5 spaces                       |
| 3 Bedroom    | 1.5 spaces                       |
| 4 Bedroom    | 2.5 spaces                       |

Background

The project site was approved for a 156-unit apartment complex with General Plan Amendment #20-01 and Site Utilization Plan Revision #23 to Planned Development (P-D) #16, and Site Plan Review Permit #479 in 2021. At that time, another developer intended to construct the project, but was unable to secure funding for the project. The current developer wants to construct the project as originally proposed with the exception of a few minor changes to the site related to the location of parking spaces, the orientation of the office/ clubhouse building, and the request for the concessions outlined below.

The proposed developer recently completed the Childs Court/The Retreat Apartment complex at Childs Avenue and B Street. They are experienced developers in both market-rate and affordable multi-family developments.

Requested Concession and Waiver

The Density Bonus request is not for additional units. The density of the project is consistent with the developer’s vision and design for the site. However, in order to provide affordable housing, the developer is seeking a reduction in the minimum parking requirements and relief from the Multi-Family Design Standard requiring each unit to have a private outdoor space (i.e., a patio or balcony) and the standard prohibiting roof-mounted mechanical equipment.

As previously described, Density Bonus law allows concessions, incentives, waivers, and reductions to allow for the construction of affordable housing. Based on the income level served by the proposed units, this project is eligible for 4 concessions or incentives (refer to the information previously provided in this report regarding how the number of concessions is determined). In addition to those concessions or incentives, the City may not impose any development standard that would physically preclude the construction of the affordable housing units. According to Density Bonus law, the reduction in parking does not count as a concession or waiver.

The table below shows the applicant’s request for two concessions. As previously mentioned, the project is eligible for 4 concessions. Justification for each concession is provided in the following paragraphs. In addition to these concessions, the developer is requesting a reduction in parking requirements which does not constitute a concession or waiver.

| Standard              | Requested Concessions/Incentives  | Type of Request |
|-----------------------|---|-----------------|
| Private Outdoor Space | Allow relief from the requirement of Private Outdoor Space as required by MMC Section 20.46.030 (I) (1) and (2). MMC Section 20.46.030 (I) (1) and (2) states that every unit should have a private outdoor usable space, if feasible, of a minimum size of 5 feet by 8 feet. | Concession      |
| Mechanical Equipment  | Allow roof-mounted mechanical equipment if screened from public view. Roof-mounted mechanical equipment is prohibited by Zoning Ordinance Section 20.46.040 (A) (5a).   | Concession      |

Each requested concession is described below along with the justification for the concession (*in italics*).

Private Outdoor Space (Concession)

Merced Municipal Code (MMC) Section 20.46.040 establishes design standards for any multi-family dwelling with 5 or more units (or 3 or more units on corner lots). Section 20.46.030 (I) - Private Outdoor Space, subsection (1) states: “**Ground Floor Units.** Every dwelling unit which is on the ground floor should have a private outdoor usable space, if feasible, of a minimum size of 5 feet by 8 feet.” Subsection (2) of this section states: “**Units Above Ground Floor.** Every dwelling unit which is above the ground floor should, if feasible, have a usable outdoor balcony space of a minimum size of 5 feet by 8 feet.

*Justification:*

*The applicant has requested this concession primarily due to the increased costs involved with providing private outdoor space. The cost of including patios/balconies would have a significant impact on structural design, material cost, waterproofing, and long-term maintenance. Please refer to the letter at Attachment 5 for additional details.*

*Additionally, the noise pollution related to the nearby train tracks would expose the private outdoor spaces to above-average noise pollution levels. An acoustic study concluded that the exterior noise level is 75 DNL, which is an above-average level.*

Roof Mounted Equipment (Concession)

*The applicant is requesting a relief from Zoning Ordinance Section 20.46.040 (A)(5a) which prohibits roof-mounted mechanical equipment.*

*Justification:*

*Allowing roof-mounted mechanical equipment screened from public view, allows more space on the ground for this small parcel. Placing mechanical equipment on the ground takes up space that could*

*be otherwise used for open space or general outdoor area. Additionally, the cost of a roof-mounted HVAC unit is typically less because the entire unit is on the roof. Ground-mounted units require a portion of the unit to be inside the living area. This not only takes up space but adds cost to the apartment unit.*

As described above, the applicant is requesting two concessions. Without the requested concessions, the project would not be feasible to build. The requested concessions would not result in any of the conditions previously described in this report that would result in the denial of the requested concession. Therefore, the concessions comply with State Density Bonus Law.

### Reduction in Parking

As described above, SDBL allows a reduction in parking if requested by the developer as part of a Density Bonus application. The developer is requesting a reduction in parking as described below.

The proposed project consists of 156 units. Based on the current requirements of the Zoning Ordinance, the project as proposed would be required to provide 248 parking spaces. Based on the maximum parking requirements allowed under the Density Bonus Law, the project maximum number of parking spaces the City would be able to require is 200 spaces. The project is proposing 200 parking spaces. Therefore, the project complies with the SDBL and the City shall not require additional parking spaces.

Although the project complies with the minimum parking requirements allowed by SDBL, the letter at Attachment 6 provides more details as to why the reduction in parking is needed and the cost savings attributed to the reduction.

### Zoning Ordinance Findings

Merced Municipal Code Section 20.56.080 (C) establishes specific findings that must be made to approve a Density Bonus. These findings are as following:

1. *The findings included in Section 20.56.030 (land Donation) if the density bonus is based all or in part on donation of land.*

This finding does not apply as the project does not include land donation.

2. *The findings included in Section 20.56.040 (Child Care Facilities) if the density bonus, incentive, or concession is based all or in part on the inclusion of a childcare facility.*

This finding does not apply as the project does not include a childcare facility.

3. *The findings included in Section 20.56.070 (Modifying Development Standards) if the incentive or concession includes mixed use development.*

This finding does not apply as the project does not include a mixed-use development.

4. *If a waiver or modification is requested, the developer has to prove by submitting substantial evidence that the waiver or modification is necessary to make the housing units economically feasible.*

A 2021 appellate court case, *Schreiber v. City of Los Angeles*, held that a local government may not require an applicant to submit a pro forma or other documentation to prove that a requested incentive or concession is required in order to make the housing development economically feasible. However, local agencies can require applicants to show that requested incentives and concessions will result in cost reductions for the project to provide for affordable housing costs or rents. The local jurisdiction has the burden of proof in the event it declines to grant a requested incentive or concession.

The requested concessions are outlined below along with the applicant's justification as to how the concession would result in cost reductions to provide affordable housing costs or rents.

#### Affordable Housing Regulatory Agreement

Although the City has little discretion on granting a density bonus or concessions and waivers, State Density Bonus Law does allow the City to require an agreement to memorialize the affordability of the project.

This project would provide 156 affordable housing units (two manager units) for individuals with an income not exceeding 60% of the area's median income. The affordability of the project would last for an initial period of 55 years. The proposed agreement at Attachment 10 provides covenants that stipulate this affordability period as well as limitations on rent increases, lease provisions, security deposits and other items. This agreement would be recorded and run with the land for the duration of the 55-year period.

Although this application was initiated by The Richman Group, on behalf of Devonwood 64, LP, property owners, the property would be purchased by Devonwood Apartments, LP. Devonwood Apartments, LP, would enter into the Regulatory Agreement and develop the property if the project is approved.

#### Environmental Review

Planning staff has conducted an environmental review (Environmental Review #23-30) of the project in accordance with the requirements of the California Environmental Quality Act (CEQA), and recommends a Categorical Exemption based on the previous environmental review (Initial Study #20-32 for GPA #20-01) remains sufficient and no further documentation is required (CEQA Section 15162 Findings - Attachment 9).

Additionally, Housing Division staff has worked with the Developer's environmental consultant in obtaining separate Federal environmental review clearance, with the City as Lead Agency, for the use of U.S. Department of Housing and Urban Development (HUD) funding, in compliance with the National Environmental Protection Act (NEPA) and related Federal laws and authorities.

#### Planning Commission Action

The Zoning Ordinance states that the City Council may request a recommendation from the Planning Commission prior to taking action on a Density Bonus request. Although the code does not specifically require a recommendation from the Planning Commission, past practice has been to have the Planning Commission review the request and make a recommendation.

The Planning Commission considered this request at their meeting on October 4, 2023. The Planning Commission recommended approval to the City Council (refer to Planning Commission Resolution #4123 at Attachment 7). Planning Commission Staff Report #23-824 is provided at Attachment 8.

City Council Resolution 2024-12

The Richman Group and the Central Valley Coalition for Affordable Housing are the developer and sponsor of the Devonwood Project. On June 21, 2022, the City Council of the City of Merced approved and recommended that the City of Merced make a funding commitment reservation to The Richman Group of California Development Company for the Devonwood Apartments project located on Devonwood Drive between Loughborough Drive and Austin Avenue in a total amount of \$6,500,000.

Since the initial funding commitment reservation, the cost of construction has increased steadily, causing funding gaps for affordable housing transactions due to supply chain issues and labor shortages, rising interest rates on both construction and permanent financing due to federal rate hikes, and reduced tax credit pricing due to rising investor yield requirements. Additionally, the City Council recently approved an amendment to the 2023 Annual Action Plan that repurposes unspent HUD Community Development Block Grant (CDBG) funds to further support affordable housing. To assist with these development cost increases, and to show the City's ongoing commitment, staff proposes an adjusted commitment to the project now totaling \$10,171,476.06.

The total City funding will assist with the acquisition of land, construction, and other development costs of this 156-unit affordable multifamily rental housing project, of which 154-units will be designated as affordable units for households with incomes up to 70% of AMI, as determined by the California Tax Credit Allocation Committee (TCAC). As previously mentioned, two units will be set aside for on-site management.

|                     |                 |
|---------------------|-----------------|
| Total Commitment:   | \$10,171,476.06 |
| ARPA Grant          | \$1,309,538.00  |
| PFFP Reduction      | \$1,329,318.15  |
| Water/Sewer Loan    | \$1,311,571.91  |
| HOME/HOME CHDO Loan | \$3,845,734.00  |
| CDBG Loan           | \$2,375,314.00  |

The loan rates were set (0-3%) and terms recorded within the agreement containing covenants affecting real property, regulatory agreements, loans, deeds, and promissory notes attached and drafted by the City's affordable housing consultants (RSG), City staff, the City Attorney, and Richman's legal team.

In consideration of the various City funding sources, seventeen (17) of the project's one hundred fifty-four (154) affordable units shall be restricted for occupancy by households with incomes at or below thirty percent (30%) of the AMI for the County for a period of fifty-five (55) years. Should the

Developer have multiple restrictions on unit affordability required by multiple funding sources, the Developer will be required to adhere to the more restrictive (lower) income limits.

The previously approved commitment reservation was contingent upon the Developer obtaining all other necessary financing to complete the project, as well as formal approval by the City Council. As such, the Developer applied for and was awarded a tax credit allocation from TCAC, as well as an Infill Infrastructure Grant (IIG) award from the California State Housing and Community Development Department (HCD). Additionally, the developer team has coordinated with City staff in completing the required Subsidy Layering Review (SLR), Neighborhood Standards Review (NSR), and previously mentioned NEPA environmental review clearance prior to this request for final funding commitment action.

After approval, the City's committed funds will be transferred to the Central Valley Coalition for Affordable Housing (CVCAH), a non-profit organization who will be the Project Sponsor and Managing General Partner and is the City's sole currently recognized Community Housing Development Organization (CHDO) partner, a designation required by HUD for the City's administration of Home Investment Partnership Program (HOME) funding, which is also a part of the project funding package proposed. The CVCAH, in turn, will transfer funds to the Richman Group in their capacity as Administrative General Partner in the proposed development project.

Each funding source has its own set of documents, agreements, and covenants and are all attached to this report.

### City Council Action

The City Council is being asked to grant the Density Bonus request by approving the Affordable Housing Regulatory Agreement at Attachment 10 and to authorize the City Manager to execute the agreement. The Council is also being asked to approve the attached Resolution (Attachment 29) that subsequently approves the various financing transactions and funding source documents for the Devonwood Apartments project. The Resolution, if approved, will also authorize certain other actions in connection with the agreements and related transactions.

### **IMPACT ON CITY RESOURCES**

The project would impact City services by creating additional housing units that would require typical municipal City services.

The project would be required to pay Public Facilities Financing Plan (PFFP) Impact Fees at the time of building permit issuance. However, as an affordable housing project and because it is being built in the Infill Opportunity Zone, those fees are significantly reduced. As a potentially qualifying affordable housing project, the property owner could apply for a Welfare Exemption that would preclude the City/County from collecting any special property taxes.

The property is currently part of the CFD-Services Improvement Area #30 Highland Park. It is possible that the developer will request a waiver to be removed from the CFD and instead create a Maintenance District. This would require future council actions.

The funds granted are from the City's American Rescue Plan Act (ARPA) funds for affordable housing and the PFFP policy for reduced fees for the development of affordable infill development. The other

funding sources are loans from CDBG, HOME, and for Water and Sewer Connection (not inclusive of a deposit due for water and sewer).

## ATTACHMENTS

1. Location Map
2. Site Plan
3. Elevations
4. Guide to the California Density Bonus Law, Meyers-Nave
5. Letter regarding Patios/Balconies
6. Letter regarding Parking
7. Planning Commission Resolution #4123
8. Planning Commission Staff Report #23-824
9. Categorical Exemption
10. Affordable Housing Regulatory Agreement (Density Bonus Agreement)
11. Agreement & Lien Affecting Real Prop-Loan of Water and Sewer Connection Fees
12. ARPA-Notice of Affordability Restrictions on Transfer of Property
13. ARPA-Agreement Containing Covenants Affecting Real Property
14. ARPA-Deed Restriction Covenant and Grant Agreement
15. ARPA-Regulatory Agreement and Declaration of Restrictive Covenants
16. CDBG-Agreement Containing Covenants Affecting Real Property
17. CDBG-City of Merced Note
18. CDBG-Deed of Trust and Security Agreement
19. CDBG-Deed Restriction Covenant and Loan Agreement
20. CDBG-Notice of Affordability Restrictions on Transfer of Property.
21. CDBG-Regulatory Agreement and Declaration of Restrictive Covenants
22. CHDO HOME Agreement Containing Covenants Affecting Real Property
23. CHDO HOME Deed of Trust and Security Agreement
24. CHDO HOME Deed Restriction Covenant and Loan Agreement
25. CHDO HOME Notice of Affordability Restrictions on Transfer of Property
26. CHDO HOME Promissory Note (City of Merced)
27. CHDO HOME Regulatory Agreement and Declaration of Restrictive Covenants
28. Subordination Agreement
29. Resolution 2024-12
30. Devonwood Presentation