

3RD MILLENNIUM INVESTMENTS

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July 26, 2019

City of Merced
678 W. 18th Street
Merced, CA 95340
Attn: City Clerk

Re: Objection to Approval of Final Resolution (Staff File #19-359)
Extension of VTSM #1291 (Bright Development)
Notice of Breach of Pre-Annexation Development Agreement
Reservation of Rights to Enforce Agreement
City Council Hearing Date: August 5, 2019

Honorable Mayor Mike Murphy and Members of the Merced City Council:

Notice is given on behalf of Leeco, LLC; BP Investors, LLC; Exposition Properties, LLC, and the undersigned that we renew our objections to the approval and adoption of the Final Resolution described above by the City of Merced based on all grounds and arguments previously communicated to the City both orally and in writing. As we have previously made clear, the application for extension by Bright Development should be denied for several reasons, including the fact that Bright Development's delays have adversely impeded the development of the balance of the project described in the Pre-Annexation Development Agreement ("PADA"). While the application for extension should be denied on the other grounds previously discussed, the focus of this letter is to explain to the City the adverse impact of the multiple extensions of the VTSM #1291, especially in its current form.

Some context is important for the City to consider regarding Bright Development's VTSM #1291 and its impact on the PADA and the project to the east. Specifically, Merrill Place is planned to be extended from "G" Street east along the southern border of the 100 acre Absolute-Leeco annexation area. Both Bright and BP Investors own land along this southern border.

In August 2015, the City approved Conditional Use Permit #1200 for BP Investors, LLC to construct a 216-unit apartment complex on a 9.8-acre parcel located on the north side of Merrill Place ("Student Housing Project"). The Student Housing Project is located on the parcel of land designated as Village Residential under the PADA. As a condition of approval of the conditional use permit for the Student Housing Project, BP Investors is required to construct Merrill Place, curb to curb, from its most easterly point to "G" Street. This requirement is consistent with the PADA which requires the "Owner" (including Bright Development) to improve/upgrade/replace all existing County infrastructure within the Project, including acquiring and dedicating the

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necessary rights-of-way. (See Requirement 2 on Exhibit D to PADA.) BP Investors has been willing and ready to construct Merrill Place, thereby connecting its Student Housing Project with “G” Street. However, in order to do so, Bright must dedicate its right-of-way along its portion of Merrill Place.

Bright has also sought the City’s approval regarding its subdivision contemplated by the PADA (“The Bright Subdivision”). The Bright Subdivision sits between the Student Housing Project and “G” Street, along the northern portion of Merrill Place. The Bright subdivision likewise contemplates use of the Merrill Place access to “G” Street. VTSM #1291, the tentative subdivision map for the Bright Subdivision, has been extended multiple times since its original approval in 2007, shortly after the approval of the PADA. In its current form, VTSM #1291 requires Bright to dedicate the north ½ of the future Merrill Place right of way (that portion owned by Bright) upon the recordation of their FINAL MAP (Attachment 2 to the Administrative Report). However, Bright has to date refused to dedicate it before recordation of a Final Map even though the failure to dedicate has prevented our Student Housing Project from moving forward. Our Conditional Use Permit approved by the City required us to fully improve Merrill Place, including that portion fronting Bright’s planned subdivision, at no cost to Bright. Bright’s failure to dedicate the right-of-way, choosing instead to successively renew VTSM #1291 with no end in sight, has essentially blocked the Student Housing Project’s access to “G” Street, thereby undermining the PADA, Conditional Use Permit #1200, and sound land use planning. Bright has not provided us with any reasonable justification for not dedicating the Merrill Place right of way at this time, and we are unaware of any explanation that Bright has provided to the City. Such actions by Bright demonstrate a lack of commitment to their VTSM #1291 and subverts the intent of the PADA. Any actions to facilitate and condone Bright’s unwarranted delays likewise violates the intent of the parties to the PADA, one of which is the City.

The actions of the City in approving an extension allows Bright to further delay honoring its obligations under the PADA which constitutes a breach of the terms and covenants of the PADA referred to in our previous written communications and objections, including, without limitation, the failure of the City and the Applicant to comply with the requirement to obtain our prior written consent to the approvals given and actions taken to grant the permits and entitlements incorporated in the Final Resolution that are in direct conflict with the PADA, including but not limited to, sections 22.3, 22.6, and 22.7. As a result of Bright’s actions and the City’s apparent capitulation to Bright, the project contemplated by the PADA is becoming more and more remote and less and less feasible. The fundamental purpose of the PADA has been frustrated and the full consideration for which we bargained has failed. Accordingly, the PADA should be terminated or bifurcated between Bright and us, so that Bright can no longer stand in the way of

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the development originally contemplated by the PADA. The City is therefore encouraged to give serious consideration to a termination of the PADA.

Under the circumstances discussed above, we expressly reserve our rights under the PADA to seek specific performance, cancellation, or termination of the PADA and/or other remedies in law or equity from the Merced County Superior Court, in the event that the Merced City Council approves and adopts the Final Resolution included as part of Staff File #19-359 without adequately addressing the actions of Bright and their impact on the PADA.

Very truly yours,



Rick Telegan
Partner

CC: Lee J. Kolligian
James Ardaiz, Esq.
Marshall Whitney, Esq.
John Dunn, Esq.