



1331 N. California Blvd.
Suite 600
Walnut Creek, CA 94596

T 925 935 9400
F 925 933 4126
www.mslegal.com

Nadia L. Costa
Direct Dial: 925 941 3235
nadia.costa@msrlegal.com

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VIA E-MAIL

Planning Commission
City of Merced
678 West 18th Street
Merced, California 95340

Re: Applicant Response to Appeal by Rick Telegan of City Approval of Extension for VTSM # 1291

Dear Honorable Planning Commissioners:

On behalf of the Applicant, Bright Homes Corporation (“Bright Development”), this letter serves as a response to the appeal filed by Rick Telegan challenging the City of Merced (“City”) Site Plan Review Committee’s June 16, 2022 approval of a one-year extension for Vesting Tentative Subdivision Map No. 1291 for the 161-lot residential subdivision project located on 39.8 acres at the northeast corner of G Street and Merrill Place (“Project”).

As a preliminary matter, we would like to provide some context regarding the pending appeal. The appellant, Mr. Telegan, is a representative of the owners of the adjacent 140-lot subdivision project known as the Palisades Project (VTSM #1312). Mr. Telegan has consistently (and unsuccessfully) attacked previous map extensions for Bright Development’s Project and has repeatedly argued for the addition of new conditions on the Project.

Unlike Mr. Telegan, Bright Development has not challenged the City’s recent approval of a six-year tentative map extension for the Palisades Project, nor has Bright Development sought to impose additional conditions of approval on the Palisades Project.¹ Of particular relevance here, consistent with the longtime vision for development of the area and construction of public improvements benefitting both the Palisades Project and Bright Development Project and the fundamental principles of cost sharing for shared infrastructure, Bright Development has long

¹ The Site Plan Review Committee approved a six-year extension of the Palisades Project’s VTSM #1312, and this extension was not subject to any new conditions of approval. While we agree that the City is legally authorized to grant extensions for up to six years under the Subdivision Map Act, we would note that there is ambiguity as to whether the Site Plan Review Committee, as an administrative body, has the authority under the City’s Code to grant more than three years of extensions. (Merced Mun. Code, § 18.24.010.)

sought confirmation (to no avail, to date) from Mr. Telegan that he will contribute his fair share of the costs associated with the construction of “G” Street, which will serve both developments. Despite Mr. Telegan’s historic lack of coordination and cooperation in this regard, Bright Development has still refrained from challenging approvals associated with the Palisades Project. Instead, Bright Development continues to focus its efforts on moving forward with this important, long-planned residential development that will provide much-needed additional, high-quality housing in this community.

Turning to Mr. Telegan’s present appeal, in his comments and his appeal letter he has identified himself, respectively, as a partner of 3rd Millennium Investments and a member of Regency Court II, LLC, and has raised concerns regarding access to a 9.8-acre property located along the north side of Merrill Place adjacent to the Bright Development Project, which Mr. Telegan states was proposed for development of an affordable housing project. Mr. Telegan has appealed for the sole purpose of demanding that the City impose a new condition of approval on the Bright Development Project that would require *immediate dedication* of the Project’s share of the Merrill Place right-of-way within 10 days of the City’s grant of the subdivision map extension (preceding final map recording) for the sole purpose of benefitting the 9.8-acre undeveloped parcel owned by Regency Court II, LLC. The existing conditions of approval require dedication of right-of-way and easements along the northern half of Merrill Avenue, and, consistent with the Subdivision Map Act, such dedication is to occur with the final map. Mr. Telegan’s request asks the City to require irrevocable dedication of private property by Bright Development’s *prior to* approval or recording of the final map and would clearly constitute an unlawful condition.

Mr. Telegan has identified Government Code section 66498.1(e) as a legal basis to support the addition of such a condition; however, that provision of the Subdivision Map Act does not authorize the requested condition. Subdivision (e) of Section 66498.1 allows public agencies to impose reasonable conditions on approvals and permits subsequent to the approval of the vesting tentative map that are “authorized by the ordinances, policies, and standards described in subdivision (b),” i.e., those in effect at the time the vesting tentative map was approved. Mr. Telegan has not identified any City ordinance, policy, or standard in effect in 2006 that would require Bright Development to irrevocably dedicate right of way in advance of approval and recording of a final map. Moreover, any such a condition would directly conflict with the Subdivision Map Act, which provides for such dedication as part of the approval of the final map, and effective upon recording of a final map. (Gov. Code, §§ 66477.1, 66477.3.) The timing of dedication under the Subdivision Map Act is influenced by long-standing principles governing constitutionally protected property rights. Without a final map, a property owner is not entitled to develop, and thus any dedication requirement cannot precede recording of the final map since such a

condition would clearly violate constitutional principles governing land use exactions.²

Finally, we note that the City is authorized to condition an extension of a vesting tentative map where it determines that “(1) [a] failure to do so would place the residents of the subdivision or the immediate community, or both, in a condition dangerous to their health or safety, or both” or “(2) [t]he condition or denial is required in order to comply with state or federal law.” (Gov. Code, § 66498.1(c).) Mr. Telegan does not rely upon this provision in his appeal; however, we wish to clarify that the requested condition of approval pertaining to Merrill Avenue would likewise not be authorized pursuant to the authority of subdivision (c) of Section 66498.1.

For the reasons stated above, Bright Development respectfully request that the Planning Commission affirm the decision of the Site Plan Review Committee and approve the one-year extension of VTSM #1291 and reject Mr. Telegan’s demand to impose an unlawful condition thereon.

Sincerely,

MILLER STARR REGALIA

Nadia L. Costa

Nadia L. Costa

cc: Julie Nelson, Senior Planner
Erik Ramakrishnan, City Attorney’s Office
David Butz, Bright Development
Laura Erickson, Bright Development

² See e.g., *Nollan v. California Coastal Commission* (1987) 483 U.S. 825; *Dolan v. City of Tigard* (1994) 512 U.S. 374.