



Legislation Text

File #: 19-268, **Version:** 1

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SUBJECT: Public Hearing - Consideration of an Appeal of the Planning Commission's Decision to Grant a One-Year Extension to Bright Development for Vesting Tentative Subdivision Map #1291 for the Subdivision Involving 39.8 Acres Generally Located on the East Side of G Street at Merrill Place (Extended)

REPORT IN BRIEF

Considers the appeal filed by BP Investors, LLC, Leeco, LLC, Exposition Properties, LLC and Rick Telegan, as adjacent landowners, of the Planning Commission's decision to grant a one-year extension for Vesting Tentative Subdivision Map (VTSM) #1291 to Bright Development. Requests that direction be given to staff to prepare findings either in support of the appeal (overturning the Planning Commission's decision) or denying the appeal (upholding the Planning Commission's decision).

RECOMMENDATION

City Council:

To **Approve** the appeal and overturn the Planning Commission's decision to grant a one-year extension of VTSM #1291, adopt a motion:

- A. Providing Direction for staff to prepare Findings in support of the appeal of the extension of Vesting Tentative Subdivision Map (VTSM) #1291 for Bright Development, thus overturning the Planning Commission's decision to grant a one-year extension for VTSM #1291.

OR

To **Deny** the appeal and uphold the Planning Commission's decision to grant a one-year extension of VTSM #1291, adopt a motion:

- B. Providing Direction for staff to prepare Findings to deny the appeal of the extension of Vesting Tentative Subdivision Map (VTSM) #1291 for Bright Development, thus upholding the Planning Commission's decision to grant a one-year extension for VTSM #1291.

AND

- C. Directing staff to bring a Resolution back for consideration of adoption at a future meeting to include the findings made by the City Council to either approve or deny the appeal.

ALTERNATIVES

1. Approve the appeal; or,
2. Deny the appeal; or,
3. Refer back to staff for reconsideration of specific items as requested by Council; or
4. Continue item to a future Council meeting (date and time to be specified in City council motion).

AUTHORITY

City of Merced Zoning Ordinance Section 20.74 - Appeals addresses the procedure for appealing a decision made by the Planning Commission.

DISCUSSION

Summary

Vesting Tentative Subdivision Map (VTSM) #1291 was approved on January 16, 2007, to subdivide 39.8 acres of land generally located on the east side of G Street at Merrill Place (extended) (Attachments 1 and 2). In accordance with the Subdivision Map Act Section 66452.6 (a), the initial life of a tentative subdivision map (including a vesting tentative subdivision map) is two years from the date of approval. Subsequent extensions may be granted by the City to extend the life of the map, but not to exceed a total of 6 years [Subdivision Map Act Section 66452.6 (e)]. However, beginning in 2008, the State of California began granting automatic extensions in an effort to grant additional time to the life of maps already approved. These extensions were granted in 2008, 2009, 2011, and 2013 and are in addition to the extensions which may be granted by the City. As a result of these automatic extensions, the expiration date for VTSM #1291 was extended to January 16, 2018. An additional one-year extension was granted by the Planning Commission on June 6, 2018, resulting in the expiration date being extended to January 16, 2019.

Bright Development requested an additional one-year extension on January 10, 2019. This request was considered by the Site Plan Review Committee, but was ultimately referred to the Planning Commission for action. At their meeting of April 3, 2019, the Planning Commission granted a one-year extension for the map, thus extending the map to January 16, 2020.

On April 12, 2019, a request for an appeal of the Planning Commission's action was received from Rick Telegan on behalf of BP Investors, LLC; Leeco, LLC; and Expostion Properties, LLC (refer to Attachment 3), all of which have an interest in property adjacent to the area to be subdivided by VTSM #1291.

As noted above, the expiration and extension time frames are governed by Section 66452.6 (a) and (e). Section 66498.1 of the Subdivision Map Act provides for the regulations for denying an extension or adding additional conditions to an approved vesting tentative subdivision map. Section 66498.1 states that additional conditions may only be added to a Vesting Tentative Subdivision Map (VTSM) or an extension request for a VTSM may only be denied if the Legislative Body determines any of the following:

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.
2. The condition or denial is required in order to comply with state or federal law.

The above regulations narrowly define the circumstances for which the extension of a vesting tentative map could be denied.

On April 3, 2019, the Planning Commission did not make these findings, and thus, approved the requested one-year extension of VTSM #1291.

The information below is a detailed history of the project including the past actions taken to approve, modify, and extend VTSM #1291, as well as information on the appeal of the Planning Commission's action to extend the map to January 16, 2020. Staff is asking the City Council to consider the information provided, hear public testimony, and provide direction for staff to prepare Findings to either approve or deny the appeal and to bring a Resolution back to the City Council for adoption at a future date.

Background

On April 17, 2006, a Pre-Annexation Development Agreement was executed by Absolute, LLC, Leeco, LLC, BP Investors, LLC, and Bright Development, a California Corporation, as part of the "Absolute-Bright Annexation." The Development Agreement is provided at Attachment 4 and a map of the annexation area showing the current property owners is provided at Attachment 5.

Vesting Tentative Subdivision Map #1291 was originally approved on January 16, 2007. This map as well as the Tentative Map for the Palisades subdivision to the north of this site (Attachment 6) were submitted at the same time. Both the developers of the Palisades subdivision (Rick Telegan and Lee Jay Kolligian for Leeco LLC) and Bright Development were using the same engineering firm (Golden Valley Engineering). In order to maximize the number of lots within each subdivision, the engineer designed the subdivisions with lots on each other's property (Attachment 7). At the time the maps were approved, the property owners planned to do a Lot Line Adjustment to rectify this situation. However, this never occurred, which resulted in 16 lots from the Bright Development Subdivision Map being located on property owned by Leeco LLC, and approximately 14 lots from the Palisades Map (VTSM #1291) being located on property owned by CEB Holdings, LLC (Bright Development). The Palisades Tentative Map expired as of January 2, 2018. Therefore, the lots associated with the Palisades map are no longer on property owned by CEB Holdings, LLC.

Extension Request from Bright Development - September 22, 2017

On September 22, 2017, Bright Development submitted a request for an extension for Vesting Tentative Subdivision Map (VTSM) #1291. On March 15, 2018, the Site Plan Review Committee heard the request to extend Vesting Tentative Subdivision Map #1291. At that time, the Site Plan Committee voted to refer the request to the Planning Commission. The Planning Commission considered the request at their meeting of June 6, 2018, and granted a one-year extension of the map, subject to the following conditions:

- 1) A revised vesting tentative map shall be submitted within 60 days of the date this extension is granted. The revised map shall include the following:
 - a. All lots shall be on property owned by the applicant.
 - b. All roads through the subdivision shall be on property owned by the applicant.

- c. Access from Merrill Place into the subdivision on Palisades Drive shall be on property owned by the applicant or the right-of-way must have been dedicated to the City of Merced prior to submitting the revised map.

- 2) If after 60 days the above conditions have not been met, Vesting Tentative Map #1291 will automatically expire.

An excerpt from the Site Plan Committee meeting of March 15, 2018, is provided at Attachment 8 and an excerpt of the Planning Commission meeting of June 6, 2018, is provided at Attachment 9.

Modification of Vesting Tentative Subdivision Map #1291 (Bright Development)

In compliance with the conditions imposed by the Planning Commission on June 6, 2018, Bright Development submitted a request to modify VTSM #1291. This modification moved all the proposed lots onto property owned by CEB Holdings, LLC (Bright Development), which resulted in the reduction in the number of lots from 168 to 161 lots and the addition of a Temporary Emergency Vehicle Access Easement (EVA) providing access to G Street as a secondary means of access to the subdivision (refer to Attachment 2 for the modified VTSM #1291). At the Planning Commission meeting, Mr. Telegan voiced concerns related to the proposed EVA stating that the proposed EVA was in violation of the City's General Plan and a possible safety hazard. Dave Butz, representative for Bright Development, explained to the Planning Commission that the EVA had been reviewed by City staff, including the Police and Fire Departments and there had been no concerns with the proposal. After considering the testimony provided, the Planning Commission voted to approve the proposed modification, subject to modifications to the existing conditions, the deletion of Condition #26, and the addition of Conditions #32 through #44 as proposed by staff (refer to the Minutes Excerpt of this meeting at Attachment 10 and amended Planning Commission Resolution #2904 at Attachment 11). It should be noted that the approval of the modification to VTSM #1291 did not alter the map's expiration date of January 16, 2019.

Extension Request from Bright Development - January 10, 2019

On January 10, 2019, Bright Development submitted a request for a one-year extension of VTSM #1291. This would be the second one-year extension allowed by Section 66452.6 (e) of the Subdivision Map Act. The request went before the Site Plan Committee on January 31, 2019. On January 30, 2019, an objection letter from Mr. Telegan was received (Attachment 12). Because the Site Plan Committee had not had time to adequately review the information provided by Mr. Telegan, they voted to continue the request to their meeting of February 14, 2019 (refer to the Minute Excerpt at Attachment 13).

The Site Plan Committee considered the requested extension at their meeting of February 14, 2019. Mr. Telegan spoke in opposition to the extension citing the reasons in his letter of opposition previously submitted (Attachment 12), the CEQA review done for the modification, and that the proposed storm drainage facilities underneath the PG&E power lines would not be feasible given PG&E regulations. Mr. Telegan provided an email he received from PG&E regarding the storm drainage facilities (Attachment 14). Dave Butz spoke in favor of the extension stating that the request was consistent with the Subdivision Map Act. After hearing the testimony, the Site Plan Committee unanimously voted to refer the matter to the Planning Commission for consideration and action. An excerpt of the Minutes for this meeting are provided at Attachment 15.

On March 20, 2019, the Planning Commission held a duly noticed public hearing to consider this matter. On March 14 and 19, 2019, staff received additional information from Rick Telegan regarding the requested extension and the CEQA review process (Attachments 16 and 17). In order to allow time for staff and the applicant to review the information submitted, the applicant requested the extension request be continued to the April 3, 2019, Planning Commission meeting. The Planning Commission granted the applicant's request and continued the public hearing to April 3, 2019.

On April 2, 2019, Mr. Telegan submitted additional information for the Planning Commission to consider at their meeting on April 3, 2019 (Refer to Page 5 of Attachment 3). Additionally, correspondence from Sean R. Marciniak, with the Law Firm of Miller Starr Regalia, attorney for Bright Development, was submitted on April 2, 2019 (Attachment 18). All the information submitted on April 2, 2019 by Mr. Telegan and Mr. Marciniak was distributed to the Planning Commission prior to the meeting on April 3, 2019.

The Planning Commission opened the public hearing on April 3, 2019, and heard testimony from Mr. Telegan. Mr. Telegan noted that he supports the proposed subdivision, but reiterated his objections based on his assertion that the EVA was a health and safety concern and that the EVA violated the *Merced Vision 2015 General Plan* regarding access to an arterial road, which in turn, violated the Pre-Annexation Development Agreement. Testimony was also heard in support of the requested extension from Dave Butz, John Dunn, and Mark Beisswanger, all with Bright Development. After hearing all the testimony and discussing the Findings required to deny the extension of a vesting tentative subdivision map, the Planning Commission determined those findings could not be made and voted to grant the one-year extension for VTSM #1291. An excerpt from the Planning Commission Minutes for April 3, 2019, are provided at Attachment 19. The Planning Commission Staff Report for the April 3, 2019, Planning Commission meeting is provided at Attachment 20.

Appeal of the Planning Commission's Action on April 3, 2019

On April 12, 2019, Mr. Telegan submitted a request to appeal the Planning Commission's decision to grant a one-year extension of VTSM #1291 (Attachment 3). Mr. Telegan submitted a letter setting forth his grounds for appeal citing that the EVA created a health and safety concern due to unsafe access, the extension violates the Pre-Annexation Development Agreement, and that the references to the *Merced Vision 2030 General Plan* in the modified Planning Commission Resolution #2904 violates the Pre-Annexation Development Agreement.

Mr. Telegan's appeal contends that the intersection of Merrill Place and G Street would be unsafe due to the number of units within the subdivision and the apartment units planned on property owned by BP Investors, LLC, (an entity in which Mr. Telegan has an interest in), to the east of the subdivision. Mr. Telegan is correct in his assertion that the intersection of Merrill Place and G Street is not planned to be a signalized intersection, however, if in the future, it was determined a signal was needed due to the traffic volume or accident history, a signal could be added. Conditions of approval for Mr. Telegan's apartment project require the intersection of G Street and Merrill Place to be constructed to City Standards for the intersection of an arterial (G Street) and collector (Merrill Place). In addition, a 150-foot-long deceleration lane is required on G Street, south of the intersection, and a 150-foot-long acceleration lane is required north of the intersection. G Street would ultimately be constructed to a 128-foot width that would include 6 travel lanes, a median, and bike lanes. Left turns from Merrill Place onto G Street would be allowed, but could be restricted in the future if needed or, as previously

mentioned, the intersection could be signalized. Ultimately, once the property to the north of the Bright subdivision is constructed and Palisades Drive is constructed to provide access to the traffic signal at Foothill and G Street, it is likely that most vehicles would use that route to go south on G Street.

Mr. Telegan's appeal asserts that the extension constitutes a breach of contract by violating the Pre-Annexation Development Agreement by allowing the Temporary EVA in violation of the *Merced 2015 General Plan* and that the revised conditions of approval referring to the *Merced Vision 2030 General Plan* are also a violation. Mr. Telegan maintains that the Pre-Annexation Development Agreement is subject to the requirements of the *Merced Vision 2015 General Plan*, not the *Merced Vision 2030 General Plan*, as the agreement is subject to the rules and regulations in place at the time the agreement was executed (April 17, 2006). Although the Pre-Annexation Development Agreement does state that development within the annexation area would be subject to the Land Use Regulation in effect at the time, Section 21.2 of the Agreement does allow the City to apply subsequent Land Use Regulation if they do not conflict with the Development Plan. The addition of the Temporary EVA and references to the *Merced Vision 2030 General Plan* made in the amended Planning Commission Resolution #2904 do not conflict with the Development Plan envisioned at the time of annexation. In fact, the only substantial revision to the General Plan that affects this area is that the 2030 General Plan would now allow the intersection of Merrill Place and G Street to be signalized whereas the 2015 General Plan would not. Additionally, Section 22.7 considers changes to the Existing Development Approvals to be considered "minor" and not require an amendment to this Agreement provided such change does not:

- a) Alter the permitted uses of the Property as a whole; or
- b) Increase the density or intensity of the use of the Property as a whole, or,
- c) Increase the maximum height and size of permitted buildings; or,
- d) Delete a requirement for the reservation or dedication of land for public purposes within the Property as a whole; or,
- e) Constitute a project requiring a subsequent or a supplemental Environmental Impact Report pursuant to Section 21166 of the Public Resources Code.

Mr. Telegan's appeal also states that the *Merced Vision 2015 General Plan* does not mention Emergency Vehicular Access. While Mr. Telegan is correct that the General Plan does not specifically mention Emergency Vehicular Access, the plan is not intended to address every possible situation and staff does not consider a Temporary EVA the same as a typical street intersection. Emergency vehicles would only use the EVA on rare occasions when access through the primary entrance to the subdivision off Merrill Place was not available.

Based on the above information, staff does not find Mr. Telegan's appeal to be substantiated.

City Council Action

The information above has provided a detailed description of the events and actions leading to this appeal. The City Council is being asked to provide direction to staff to prepare findings either in support or denial of the appeal. Once direction has been given, staff will prepare a Resolution and bring it back to the City Council for adoption at a future meeting.

ATTACHMENTS

1. Location Map
2. Vesting Tentative Subdivision Map #1291 - Modified
3. Appeal Request from Rick Telegan
4. Absolute-Bright Pre-Annexation Development Agreement
5. Property Owned by BP Investors, Leeco, LLC, and Exposition Properties, LLC
6. Vesting Tentative Subdivision Map #1292 (Palisades Park) - Expired
7. Map of Palisades and Bright Development Subdivisions showing lots on each other's property
8. Minutes Excerpt from Site Plan Committee Meeting of March 15, 2018
9. Minutes Excerpt from Planning Commission Meeting of June 6, 2018
10. Minutes Excerpt from Planning Commission Meeting of October 3, 2018
11. Planning Commission Resolution #2904 - Amended
12. Objection Letter from Mr. Telegan Dated 1/30/2019
13. Minutes Excerpt from Site Plan Committee Meeting of January 31, 2019
14. Email from PG&E Submitted by Mr. Telegan 2/14/2019
15. Minutes Excerpt from Site Plan Committee Meeting of February 14, 2019
16. Information Submitted by Mr. Telegan 3/14/2019
17. Information Submitted by Mr. Telegan 3/19/2019
18. Letter from Miller Star Regalia
19. Minutes Excerpt from Planning Commission Meeting of April 3, 2019
20. Planning Commission Staff Report #19-11 - Addendum