

February 26, 2021

BY ELECTRONIC MAIL

Mayor Matthew Serratto and Honorable Members of the Merced City Council
678 W. 18th Street
Merced, California
Email: cityclerk@cityofmerced.org

Re: Public Hearing - to Consider Approving Environmental Review #20-20 (CEQA Section 15162 Findings) and Approving Amendments to Resolution 2015-33

Dear Mayor Matthew Serratto and Honorable Members of the Merced City Council:

This office represents the Bandoni family and respectfully submits the following comments in opposition to the proposed revisions to the development.

OVERVIEW

This letter raises two major issues:

1) As this specific project has evolved since the 2004 CEQA review conducted and therefore there is not a sufficient evaluation of identified problems posed by the development. This situation (proceeding with the last part of the development plan first) causes short term harm to the adjoining neighbors and long term problems for Merced as the area builds out. A more comprehensive assessment of problems and potential solutions to these problems needs to be conducted before considering the development.

2) The original master development, plus eventual development of the Bandoni property, was premised on the idea that the development would buildout in a logical and contiguous manner. This request "cuts to the front of the line" and asks to develop out of order. This request causes new or more intensive land use conflicts that need to be constructively address and resolved. To date the problems remain unaddressed, making this request premature and untimely.

IT IS PREMATURE TO CONSIDER THIS REQUEST AT THIS TIME

An overarching concern is that it is premature to consider this request at this time. For reasons explained subsequently changes to this project are either inconsistent with

assumptions made in previous studies of this project or amount to changes that were not contemplated by earlier studies. Yet the developer relies upon these earlier studies to support for its request. As explained below more work is required before this request is ready to be addressed and considered by the City Council.

THE PROPOSAL HAS NOT RECEIVED ADEQUATE REVIEW OF THE POTENTIAL IMPACTS

Three of the previous documents relied upon for this request actually explain why this matter should be denied or suspended until additional analysis can be conducted and evaluated. The three important documents are CEQA Initial Study #04-02, CEQA Initial Study #15-07 and the August 3, 2015 Administrative Report prepared by the Merced Planning Department explaining the basis to deny the development.

Indeed, CEQA review #20-20 expressly indicates it is based on and relies upon CEQA Initial Study #04-02. But the project has changed since 2004 as has the environmental setting. As a result the impacts have not actually been studied, evaluated and mitigated. It would be an error to proceed in light of this incomplete and wobbly analysis of the project's impacts.

The August 3, 2015 Administrative Report explaining the Planning Commission Denial

The August 3, 2015 Administrative Report highlighted Planning Commission and Planning Department concerns with the development.

The project "would have a greater likelihood" of causing land use conflicts and become a nuisance.

First, the Administrative Report disclosed the project was not well-thought out and designed, and consequentially would be responsible for land use conflicts and could become a nuisance. In the opinion of the Merced Planning Department:

"the project would have a greater likelihood of introducing problems within the area and future residential neighborhoods, such as excessive on-street parking in the area, increased police calls, increased noise, and other nuisances."

Thus, the project was expected to "introduce...nuisances" to the City and immediate area. The project was not conditioned or mitigated to lessen these "other nuisances".

According to the Planning staff the development could cause traffic and parking problems

The Planning Department staff assumed this remote student housing project density would disrupt existing and future community. The Planning Department staff writes:

the unique needs and parking demands of student housing are not addressed...If each bedroom is occupied by a single occupant, the maximum number of people occupying the apartment complex in Phase One would be 465 people. Phase Two would add an additional 213 people for an overall total of 678 people. If each bedroom were occupied by 2 people, the total project occupancy could be up to 1,356 people. **The proposal does not include any measures to limit the occupancy of rooms**, which could lead to parking demands that exceed the spaces provided (362 spaces).

According to the Planning Department staff the proposal's "unique needs...are not addressed" and there is nothing in the record to show us that the developer has addressed these "unique needs" since the Planning staff expressed this concern. These concerns need to be fully addressed and ventilated before the development is considered.

The Developer did not perform as promised.

Apparently, in response to these concerns, the developer agreed to work with the University to provide bus service. The Administrative Report discloses:

The developer would also be working with UC Merced to provide bus service to the site.

But, there is no evidence that bus service would correspond to the unique and differing student class schedules and correspondingly reduce traffic and parking issues. However, more importantly, no evidence is presented that the developer ever seriously engaged with the University regarding bus service to the project. Is bus service available? If available how often is it available to this property? Would service be frequent enough that students would not want to have private automobiles and therefore reduce traffic and parking issues? We do not know the answers to any of these pertinent questions.

BY DEVELOPING OUT OF ORDER THE REQUEST CAUSES NEW OR MORE INTENSIVE LAND USE CONFLICTS THAT HAVE NOT BEEN ADDRESSED.

Starting at the end of the development plan with a student housing project is responsible for land use conflicts that are not present if this project occurred at the conclusion of the master development plan. For instance, the assumption was that Bandoni and Bright would partially or totally build out prior to the student apartments being constructed.

This means the student housing would have adequate streets meeting full city standards to travel to and from the university. Here. In order to shoehorn this project into an immediate development status students will travel on a partial street without bike lanes, sidewalks and other normal street amenities. From a land use conflict

perspective this creates a safety problem and fosters incentives to trespass through neighboring farming property. None of these conflicts have been sufficiently studied and mitigated.

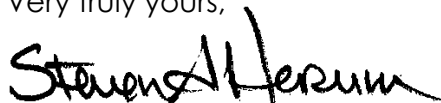
Also, the request impairs or renders unusable portions of the existing productive farmland. From a land use conflict perspective it requires a secondary access road that disrupts irrigation systems and normal farming practices. Also, it destroys rows of productive trees and creates an uncertain and chaotic storm water system. None of these conflicts have been sufficiently studied and mitigated. The loss of agricultural land and/or the lower productivity of this prime agricultural land has not been assessed.

CONCLUSION

In conclusion, this effort to accelerate development of the last property in the development pattern—call it cutting in front of the line or leap frog building—produces unaddressed land use conflicts and therefore shifts the burdens of the conflict to the City of Merced or adjoining property owners.

We understand Bright is preparing a tentative map for the first phase of the development plan. We recommend the City reject this request and encourage the developer to work with Bright on common infrastructure and development issues. This would significantly lessen the land use conflicts caused by allowing this apartment project to proceed remotely and prematurely.

Very truly yours,

A handwritten signature in black ink that reads "Steven A. Herum". The signature is written in a cursive, slightly slanted style.

STEVEN A. HERUM
Attorney-at-Law

SAH:lac