

CITY OF MERCED
Planning & Permitting Division

STAFF REPORT: #18-10 - Addendum

AGENDA ITEM: 4.2

FROM: Kim Espinosa,
Planning Manager

PLANNING COMMISSION
MEETING DATE: June 6, 2018,
(Continued from April 18, 2018)

PREPARED BY: Julie Nelson,
Associate Planner

SUBJECT: **Vesting Tentative Subdivision Map (VTSM) #1291 (“Bright Homes”)**, initiated by Bright Development. This application involves a request for an extension of time for filing a final map for VTSM #1291. VTSM #1291 was approved on January 16, 2007, to allow the subdivision of 39.8 acres of land into 168 single-family lots generally located on the east side of G Street at Merrill Place (extended) within an R-1-5 zone with a General Plan designation of Low Density Residential (LD). This extension request was referred to the Planning Commission for final action by the City’s Site Plan Review Committee on March 15, 2018. *PUBLIC HEARING*

ACTION: Approve/Disapprove/Modify
1) Extension of Tentative Subdivision Map #1291

SUMMARY:

Vesting Tentative Subdivision Map #1291 was approved January 16, 2007, to subdivide 39.8 acres of land generally located on the east side of G Street at Merrill Place (extended) (Attachments A and B). This map would have expired after two years per the Subdivision Map Act. However, the State of California started granting automatic extensions for tentative subdivision maps in July 2008, which granted a 1 year extension for maps that had not expired. Since that time, the State has granted four additional extensions each giving an additional 2 years each time to the life of a tentative map. Therefore, the current expiration date for VTSM #1291 was January 16, 2018. On September 22, 2017, Bright Development submitted a request (Attachment C) for an extension for this map.

Upon request for an extension of a tentative map, the life of the map is automatically extended by 60 days per the Subdivision Map Act, which extended the expiration date to March 16, 2018. The Site Plan Review Committee heard the request for an extension on March 15, 2018. At that time, the Site Plan Review Committee voted to refer the request to the Planning Commission for action. The map is automatically extended while the Planning Commission review process takes place. Planning Staff is recommending approval of the extension subject to the conditions below.

RECOMMENDATION

Planning staff recommends that the Planning Commission approve the Extension of Vesting Tentative Subdivision Map #1291 for one year or to January 16, 2019, (including the adoption of

the Revised Resolution at Attachment I) 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.

PROJECT DESCRIPTION

This project is a request to extend Vesting Tentative Subdivision Map #1291 for a period of one year from the date of expiration (January 16, 2018). This map would allow the subdivision of 39.8 acres of land into 168 single-family lots (Attachment B). The subdivision is generally located on the east side of G Street at Merrill Place (extended). The lots range in size from approximately 5,000 square feet to 12,000 square feet.

BACKGROUND

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 D) 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 E). 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, and now 16 lots from the Bright Development Subdivision Map are on property owned by Leeco LLC. The Palisades Tentative Map has expired as of January 2, 2018. Therefore, none of the lots originally approved with the Palisades subdivision are on the Bright property any longer.

Site Plan Review Committee Meeting

On March 15, 2018, the Site Plan Review Committee heard the request to extend Vesting Tentative Subdivision Map #1291. At that time, staff had recommended denial of the request. The information provided to the Site Plan Review Committee is provided at Attachment F. Prior to the meeting, staff received a letter from Miller Starr Regalia, attorneys for Bright Development (Attachment G). This letter outlined reasons they believed the map should be extended. At the Site Plan Review Committee meeting, Rick Telegan spoke on behalf of Leeco LLC in opposition to the extension of the map. Mr. Telegan is opposed to the extension due to the fact that lots for the Bright map are on his property. Based on the information and testimony provided, the Site Plan Review Committee voted to refer this matter to the Planning Commission.

This item was scheduled to be heard by the Planning Commission on April 18, 2018. Prior to the meeting, Bright Development requested the item be continued to allow Bright and Leeco, LLC time to try to reach an agreement on the issues related to the map. To date, an agreement has not been reached. The Site Plan Committee Minutes are provided at Attachment H.

FINDINGS/CONSIDERATIONS:

General Plan Compliance

- A) Vesting Tentative Subdivision #1291 complies with the General Plan designation of Low Density Residential (LD) and the Zoning designation of R-1-5.

Subdivision Map Act and Municipal Code

- B) As previously discussed, during the downturn of the economy, the State issued some automatic extensions for subdivisions. These extensions allowed VTSM #1291 to remain valid until January 16, 2018. Prior to the expiration date, Bright Development requested an extension of the map. Upon request of an extension, the life of the map is automatically extended 60 days pending action by the City.

Section 66498.1 of the Subdivision Map Act provides 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.

Merced Municipal Code (MCC) Section 18.04.020 states that this section is to supplement and implement the Subdivision Map Act. It further states that all provisions of the Subdivision Map Act which are mandatory in nature are incorporated by reference in this title. MCC Section 18.04.060 states that the provisions of Chapter 18 of the Municipal Code shall be in addition to and shall be considered as supplementing the provisions of the Subdivision Map Act of the State.

Staff has determined that approving the extension request with the added conditions regarding revising the map and dedication of right-of-way complies with the requirements of the Subdivision Map Act and Municipal Code.

Required Modifications to Map

- C) As per Conditions #1 and #2 above, the approval of the requested extension is contingent upon certain revisions being made to the vesting tentative map. Within 60 days, the applicant shall submit a revised map for approval by the Planning Commission. The map shall have all proposed lots on property owned by the applicant. Additionally, all roads within the subdivision shall be on land owned by the applicant or the necessary right-of-way shall have been obtained prior to approval by the Planning Commission. It should be noted that if a secondary access is required for the subdivision prior to Palisades Drive and Foothill Drive connecting to G Street, full access to G Street would not be allowed as it would conflict with the General Plan Circulation Element. Consideration would be given to a temporary right in/out emergency vehicle access onto G Street only. Condition #2

requires that the map would automatically expire if all the conditions related to this extension have not been satisfied within the specified time-frame.

Environmental Clearance

- D) The act of extending a tentative map does not require an additional environmental review. This previous environmental review (Environmental Review #06-26 - CEQA Section 15162 Findings) remains sufficient for this project.

Attachments

- A) Location Map
- B) VTSM #1291 (Bright Subdivision)
- C) Extension Request from Bright
- D) VTSM #1292 (Palisades Subdivision)
- E) Map of Palisades and Bright Development Subdivisions showing lots on each other's property
- F) Site Plan Packet
- G) Letter from Miller Star Regalia
- H) Site Plan Review Committee Minutes
- I) Revised Planning Commission Resolution #2904



FOOTHILL

SUBJECT
SITE

MERRILL

G

CARDELLA

Mercy
Hospital

MERCY

ATTACHMENT A



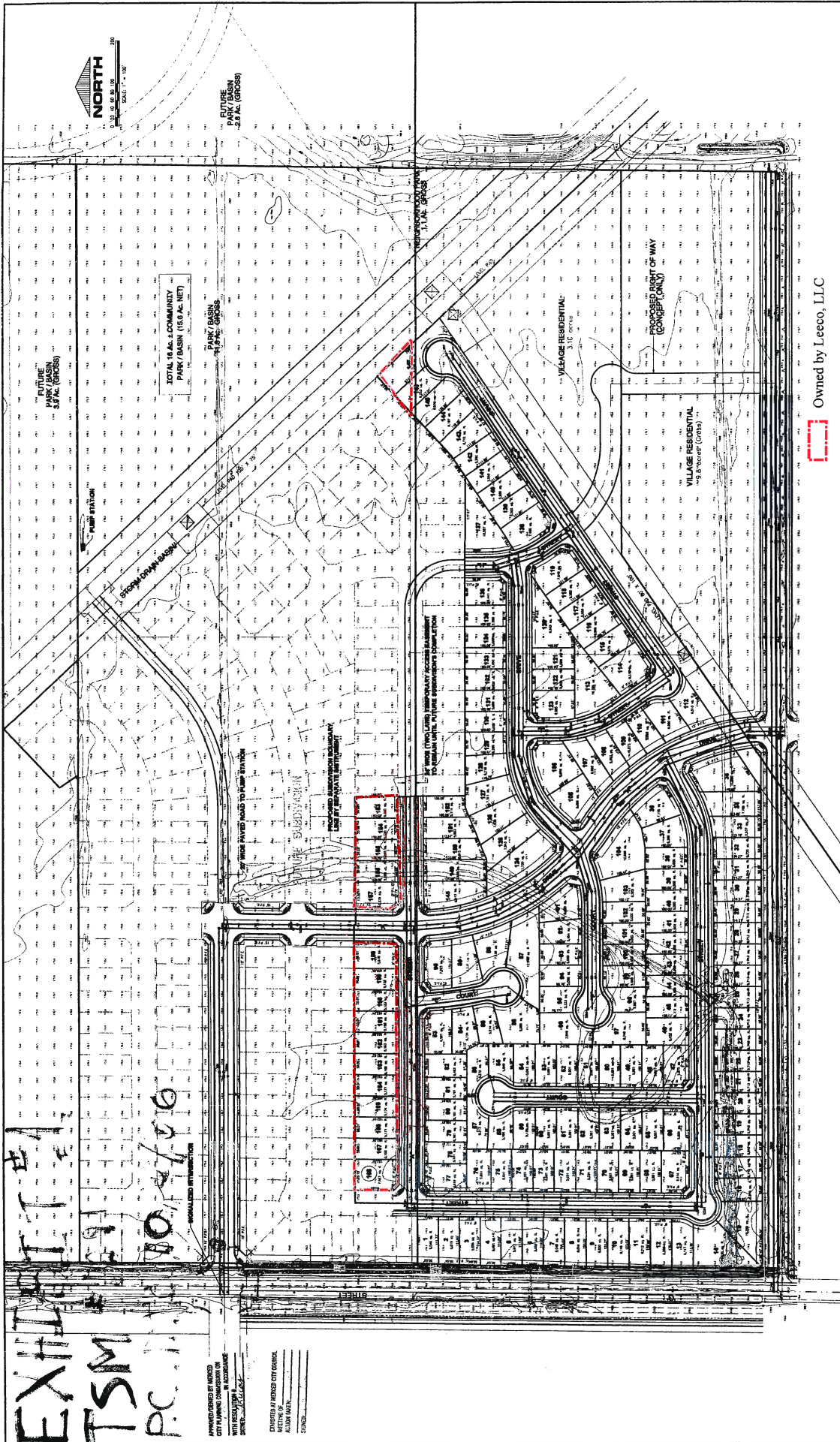


EXHIBIT #1
TSM
PC

Owned by Leeco, LLC

DESIGNED: GOLDEN VALLEY ENGINEERING
DRAWN: BT/LJC/CL
CHECKED: JAU
DATE: JUNE 2008
JOB NO.: 04101, 04111, 04102
SHEET
2

VESTING TENTATIVE SUBDIVISION MAP
FOR
BRIGHT DEVELOPMENT
PORTION SECTION 5 & 8, T.7 S., R.14 E., M.D.B.A. M.
CITY OF MERCED, CALIFORNIA

TENTATIVE MAP
BRIGHT HOMES
1000 W. STREET, SUITE 115
MERCED, CA 95371-1155
PROJECT: (209) 571-9425
CELL: (209) 682-2817
FAX: (209) 682-0824

GOLDEN VALLEY
ENGINEERING & SURVEYING
608 W. 18th Street • P.O. Box 948 • Merced, CA 95340
Phone (209) 725-5200 • Fax (209) 725-5204

<small> This map was prepared by Golden Valley Engineering & Surveying, Inc. (GVE) under contract to Leeco, LLC. It is based on information provided by Leeco, LLC and other sources. GVE warrants that the map is a true and accurate representation of the information provided to it. It does not warrant that the map is a true and accurate representation of the actual conditions on the ground. The user of this map should verify the accuracy of the information shown on the map before relying on it. </small>
<small> GVE is a professional engineering and surveying firm. It is not a law firm. It does not provide legal advice. The user of this map should consult with a lawyer for legal advice. </small>

ATTACHMENT B



1620 N. CARPENTER ROAD
BUILDING B
MODESTO, CALIFORNIA 95351

PHONE: 209.526.8242
BRIGHT-HOMES.COM
BRE#0978136

September 19, 2017



City of Merced Planning Department
Attn: Julie Nelson
678 West 18th Street
Merced, CA 95340

Subject: Vesting Tentative Subdivision Map #1291 (Merzoian)

Dear Ms. Nelson,

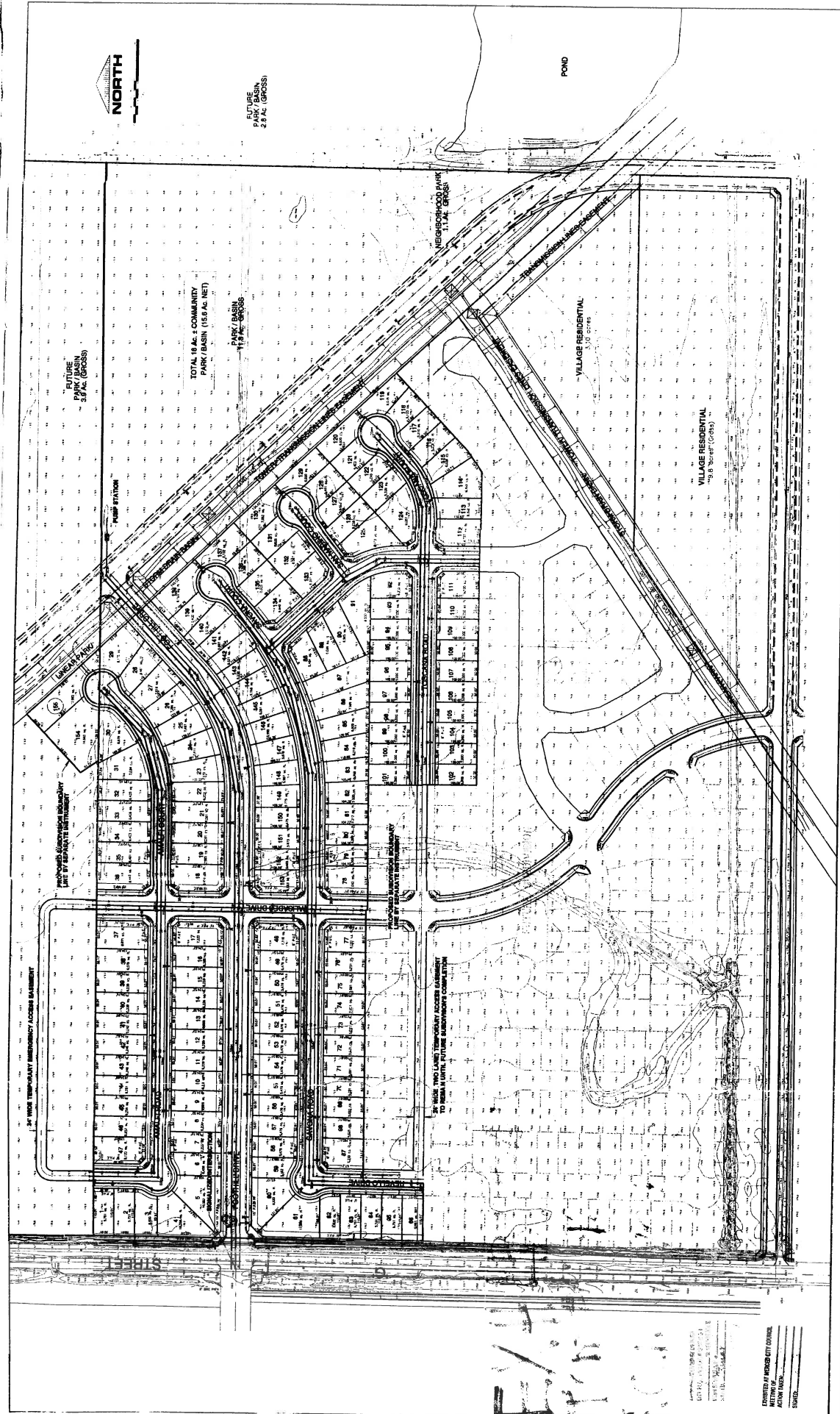
We are writing to request a one year time extension for the above referenced Vesting Tentative Subdivision Map. Attached please find Check No. 263427 for \$239 for the application fee. Our records indicate that the map has an expiration date of January 16, 2018. With the approval of this first of three city issued extensions the new expiration date would be January 16, 2019.

If you have any questions or need additional information please contact me.

Sincerely,

A handwritten signature in blue ink that reads "D. W. Butz".

David W. Butz
Bright Development



2

VESTING TENTATIVE SUBDIVISION MAP
FOR
THE PALISADES
ABSOLUTE, LLC / LECCO, LLC
PORTION SECTION 5 & 8, T.7 S., R.14 E., M.D.B.A. M.
CITY OF MERCED CALIF.

DATE DRAWN:
TENTATIVE MAP
ABSOLUTE, LLC / LECCO, LLC
9 RIVER PARK PLACE EAST
SUITE 101
FRESNO CA 93720
PROJECT: 559-434-1234

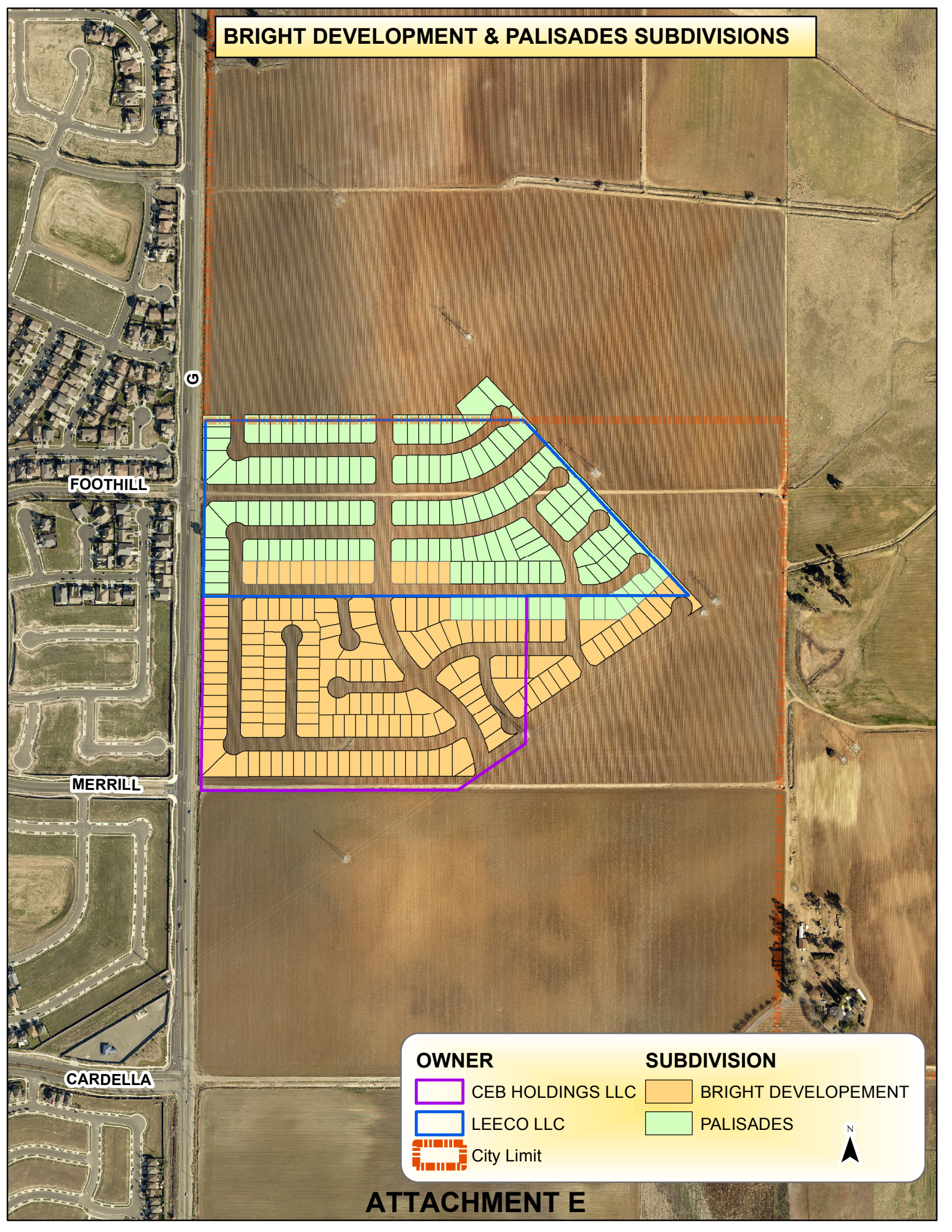
GV
GOLDEN VALLEY
ENGINEERING & SURVEYING
400 W. 18th Street - P.O. Box 946 - Merced, CA 95340
Phone: (209) 725-0229 - Fax: (209) 725-0224

REVISIONS:

NO.	DATE	DESCRIPTION

ATTACHMENT D

BRIGHT DEVELOPMENT & PALISADES SUBDIVISIONS








FOOTHILL

MERRILL

CARDELLA

G

OWNER		SUBDIVISION	
	CEB HOLDINGS LLC		BRIGHT DEVELOPEMENT
	LEECO LLC		PALISADES
	City Limit		



City of Merced
MEMORANDUM

DATE: March 15, 2018
TO: Site Plan Review Committee
FROM: Julie Nelson, Associate Planner
SUBJECT: Extension of Vesting Tentative Subdivision Map #1291 (“Bright Development”)

Merced Municipal Code (MMC) Section 18.04.035 authorizes the Site Plan Review Committee to act on requests for an extension of a tentative subdivision map.

On September 22, 2017, Bright Development submitted a request (Attachment A) for an extension for Vesting Tentative Subdivision Map (VTSM) #1291 (Attachments B and C).

This map was originally approved on January 16, 2007, and would have expired after two years per the Subdivision Map Act. However, the State of California started granting automatic extensions for tentative subdivision maps in July 2008, which granted a 1 year extension for maps that had not expired. Since that time, the State has granted four additional extensions each giving an additional 2 years to the life of a tentative map. Therefore, the current expiration date for VTSM #1291 is January 16, 2018.

The Subdivision Map Act Section 66452.6 (e) allows a city to approve discretionary extensions for a period or periods not exceeding a total of 6 years.

Prior to VTSM #1291 for Bright Homes being approved, VTSM #1292 for Palisades was approved directly north of this site. The Palisades subdivision provided additional access from G Street to the Bright Homes subdivision (Attachment D). The Palisades map expired on January 2, 2018, eliminating this secondary access to the Bright Subdivision.

The VTSM for Bright Homes had lots located on the parcel to the north owned by Leeco LLC and the Palisades map had lots on the property owned by Bright Development (Attachment E). At the time of approval, the owners had planned to do a boundary adjustment to rectify this situation. However, this never occurred and now 16 lots from the Bright Development Subdivision Map are on property owned by Leeco LLC.

Section 66498.1 of the Subdivision Map Act provides that additional conditions may only be added to a Vesting Tentative Subdivision Map (VTSM) or an extension

ATTACHMENT F

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.

Merced Municipal Code (MCC) Section 18.04.020 states that this section is to supplement and implement the Subdivision Map Act. It further states that all provisions of the Subdivision Map Act which are mandatory in nature are incorporated by reference in this title. MCC Section 18.04.060 states that the provisions of Chapter 18 of the Municipal Code shall be in addition to and shall be considered as supplementing the provisions of the Subdivision Map Act of the state.

After reviewing this request with City staff, including legal counsel, Planning Staff recommends the Site Plan Committee deny the requested extension of TSM #1291 based on the following Findings:

Findings for Denial:

- A) Vesting Tentative Subdivision Map #1290 for Palisades directly north of this site has expired. This map provided a secondary access to the Bright Subdivision.
- B) Adequate access to this subdivision could not be provided without the secondary access through the adjacent property to the north. Therefore, the Bright Subdivision does not have adequate access.
- C) Without adequate access to the subdivision, residents would not be able to access their homes and public safety response (police, fire, etc.) times would be hindered or possibly blocked completely.
- D) Merced Municipal Code (MCC) Section 18.18.030 requires all subdivisions to be consistent with the City's General Plan. Vesting Tentative Map #1291 would not comply with the General Plan's Circulation Element without the roads going through the property to the north.
- E) Section 66474 of the Subdivision Map Act allows a map to be denied if the design does not comply with applicable General Plan requirements. "Design" is defined under Section 66418 of the Subdivision Map Act to include street alignment, the location and size of easements and rights-of-way, fire roads and fire breaks, and traffic access.

- F) VTSM #1291 contains lots on property not owned by or under the control of Bright Development or CEB Holdings, LLC. Merced Municipal Code Section 18.16.080 (3) and (4) and Section 18.18.060 require the name and address of the owner and developer on each application for a tentative subdivision. The application for VTSM #1291 does not contain this information for all the property owners who own property that would be subdivided under this map. Additionally, signatures from all property owners consenting to this subdivision have not been provided.
- G) In order for a Final Map to be filed, the property owner of all property being divided must agree to the subdivision. MCC Section 18.24.040 requires a title report be filed with a final map showing all property owners of record and a guarantee executed showing that the persons consenting to the preparation and recordation of the map are all persons necessary to pass clear title to the subdivision and dedications thereon. In this case, Leeco, LLC, has given the City written notice that they are opposed to this map being extended. Therefore, it is unlikely that they would agree to the subdivision of lots on their property or the recordation of a final map.
- H) Any reconfiguration of the subdivision to remove the lots from the adjacent property would require a new map be approved by the Planning Commission.

Attachments:

- A) Letter from Bright Development
- B) Location Map
- C) VTSM #1291 (Bright Development)
- D) VTSM #1292 (Palisades Subdivision)
- E) Map of Palisades and Bright Development Subdivisions showing lots on each other's property



1620 N. CARPENTER ROAD
BUILDING B
MODESTO, CALIFORNIA 95351

PHONE: 209.526.8242
BRIGHT-HOMES.COM
BRE#0978136

September 19, 2017

City of Merced Planning Department
Attn: Julie Nelson
678 West 18th Street
Merced, CA 95340



Subject: Vesting Tentative Subdivision Map #1291 (Merzoian)

Dear Ms. Nelson,

We are writing to request a one year time extension for the above referenced Vesting Tentative Subdivision Map. Attached please find Check No. 263427 for \$239 for the application fee. Our records indicate that the map has an expiration date of January 16, 2018. With the approval of this first of three city issued extensions the new expiration date would be January 16, 2019.

If you have any questions or need additional information please contact me.

Sincerely,

A handwritten signature in blue ink that reads "D. W. Butz".

David W. Butz
Bright Development



FOOTHILL

SUBJECT
SITE

MERRILL

G

CARDELLA

Mercy
Hospital

MERCY

ATTACHMENT B



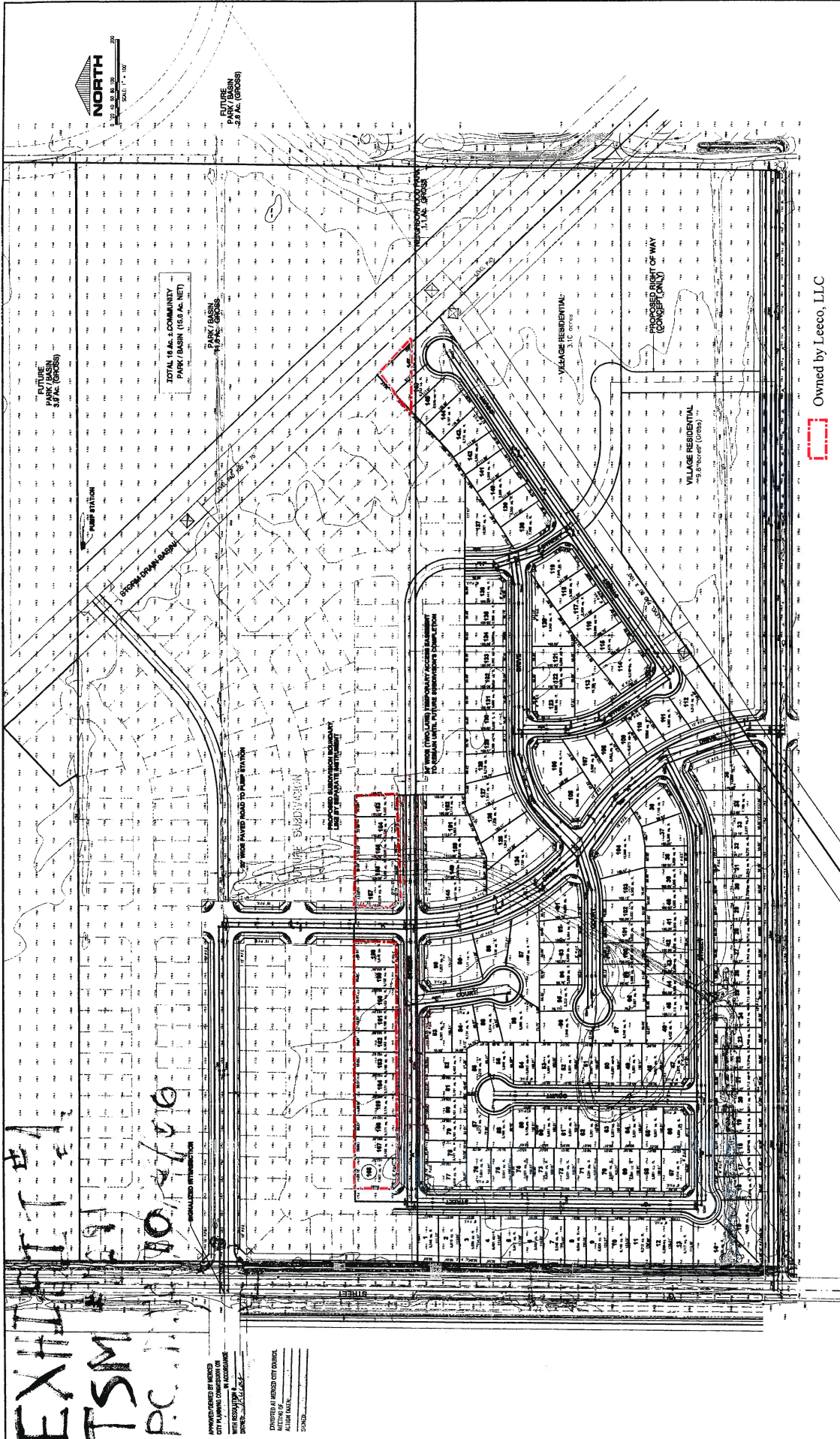


EXHIBIT #1
TSM
PC



Owned by Leeco, LLC

DESIGNED: GOLDEN VALLEY ENGINEERING
DRAWN: BT/JL/CCL
CHECKED: JAU
DATE: JUNE 2008
JOB NO.: 04101, 04111, 04102
SHEET
2

**VESTING TENTATIVE SUBDIVISION MAP
FOR
BRIGHT DEVELOPMENT**

PORTION SECTION 5 & 8, T.7 S., R.14 E., M.D.B.& M.
CITY OF MERCED, CALIFORNIA

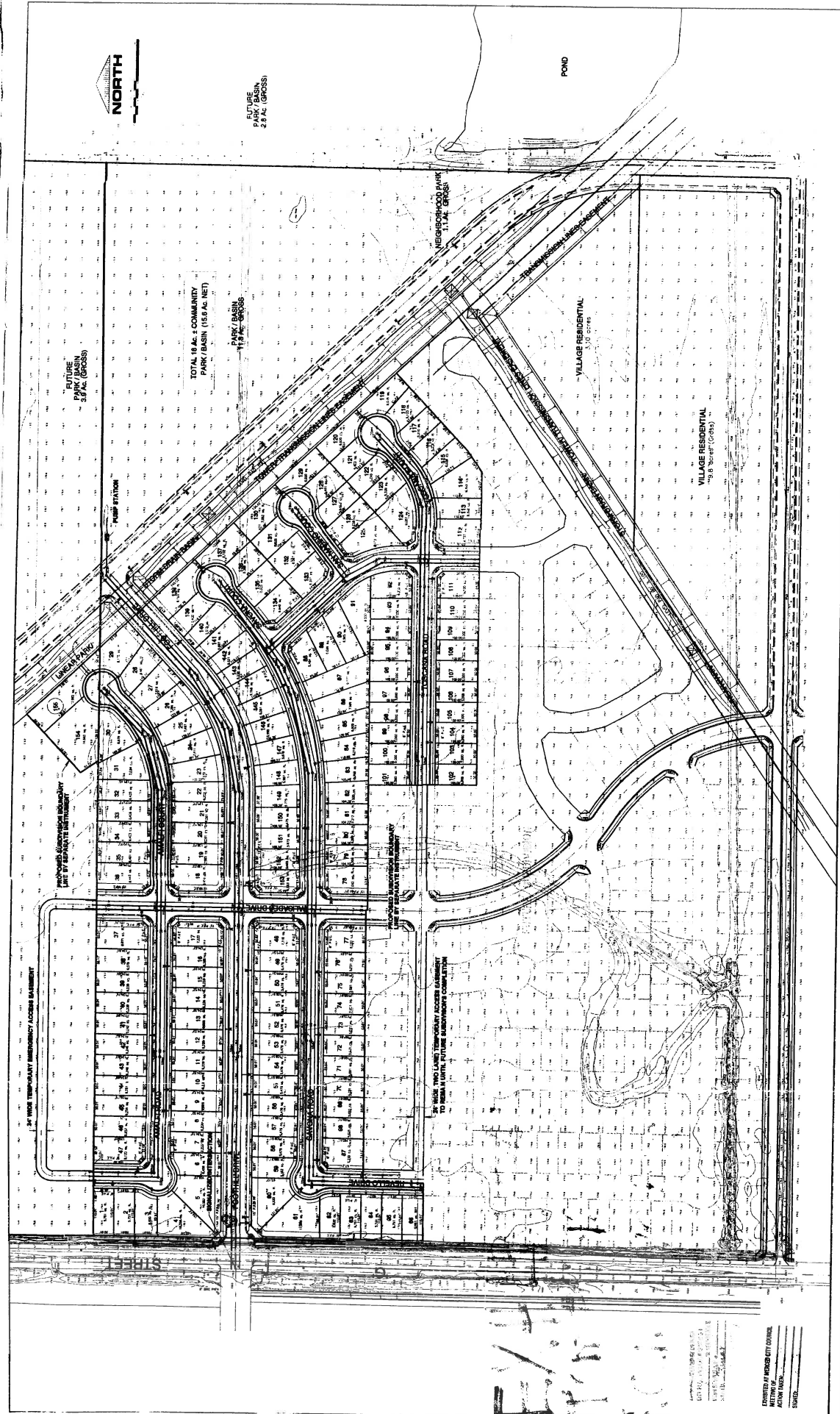
TENTATIVE MAP

BRIGHT HOMES
1000 W. STREET, SUITE 115
MERCED, CA 95371-1155
PROJECT: (209) 371-9425
CELL: (209) 682-2817
FAX: (209) 382-0264

GOLDEN VALLEY ENGINEERING & SURVEYING
408 W. 18th Street - P.O. Box 948 - Merced, CA 95340
Phone: (209) 725-5259 • Fax: (209) 725-5264

<p>THIS MAP WAS PREPARED BY GOLDEN VALLEY ENGINEERING & SURVEYING, INC. (G.V.E.S.), A PROFESSIONAL ENGINEERING FIRM LICENSED UNDER THE PROFESSIONAL ENGINEERING ACT OF 1907, CHAPTER 103, SECTIONS 4900-4960, AND THE PROFESSIONAL SURVEYING ACT OF 1907, CHAPTER 103, SECTIONS 4961-4970, BY GOLDEN VALLEY ENGINEERING & SURVEYING, INC. (G.V.E.S.), A PROFESSIONAL ENGINEERING FIRM LICENSED UNDER THE PROFESSIONAL ENGINEERING ACT OF 1907, CHAPTER 103, SECTIONS 4900-4960, AND THE PROFESSIONAL SURVEYING ACT OF 1907, CHAPTER 103, SECTIONS 4961-4970, BY GOLDEN VALLEY ENGINEERING & SURVEYING, INC. (G.V.E.S.), A PROFESSIONAL ENGINEERING FIRM LICENSED UNDER THE PROFESSIONAL ENGINEERING ACT OF 1907, CHAPTER 103, SECTIONS 4900-4960, AND THE PROFESSIONAL SURVEYING ACT OF 1907, CHAPTER 103, SECTIONS 4961-4970.</p>
<p>DATE: 6/10/08</p>

ATTACHMENT C



2

VESTING TENTATIVE SUBDIVISION MAP
FOR
THE PALISADES
ABSOLUTE, LLC / LEECO, LLC
PORTION SECTION 5 & 8, T.7 S., R.14 E., M.D.B. & M.
CITY OF MERCED

TENTATIVE MAP
ABSOLUTE, LLC / LEECO, LLC
9 AMER PARK PLACE EAST
SUITE 101
FRESNO CA 93720
PROJECT: 559-434-1234

GV
GOLDEN VALLEY
ENGINEERING & SURVEYING
400 W. 18th Street - P.O. Box 946 - Merced, CA 95340
Phone: (209) 725-0228 - Fax: (209) 725-0284

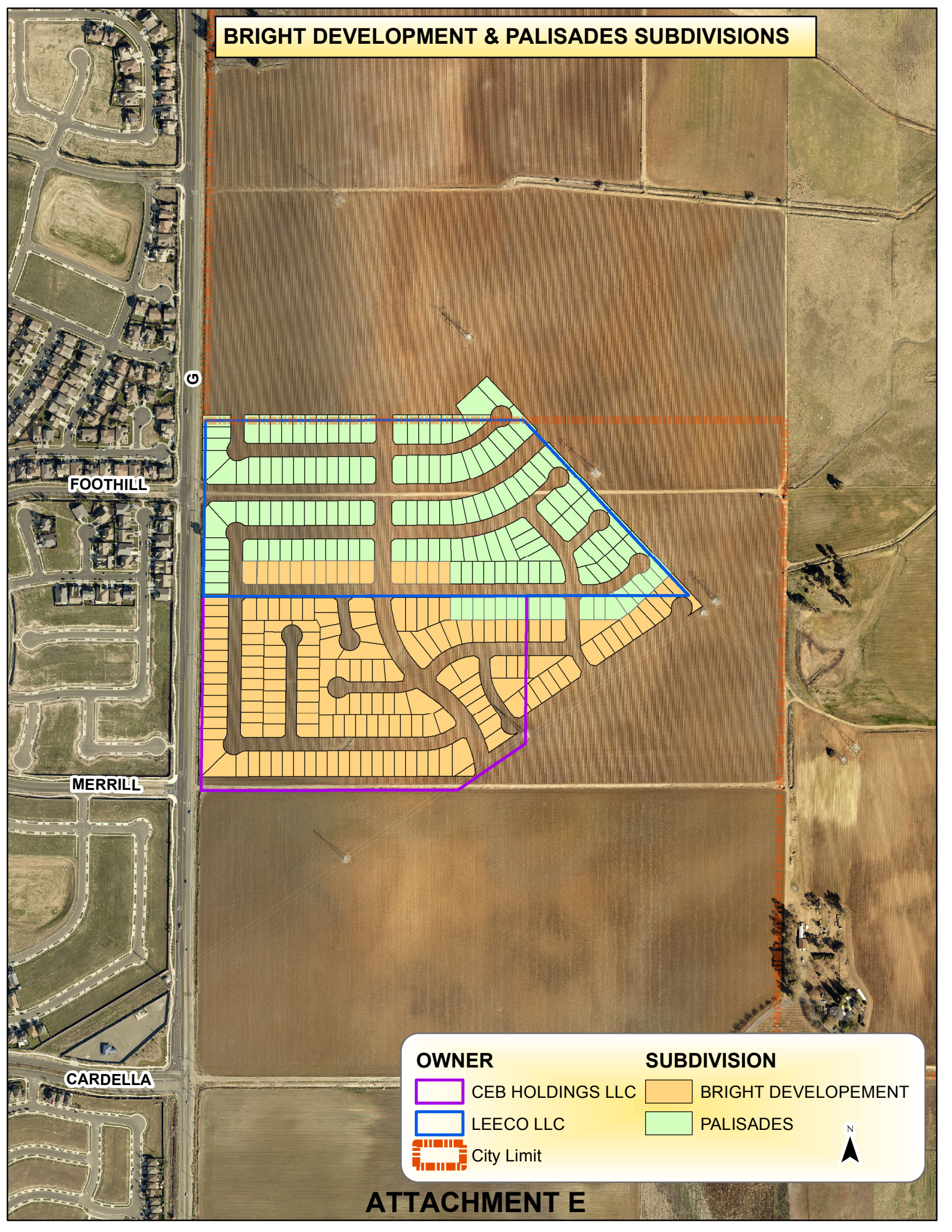
EXHIBITS

EXHIBITS

EXHIBITS

ATTACHMENT D

BRIGHT DEVELOPMENT & PALISADES SUBDIVISIONS








FOOTHILL

MERRILL

CARDELLA

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OWNER		SUBDIVISION	
	CEB HOLDINGS LLC		BRIGHT DEVELOPEMENT
	LEECCO LLC		PALISADES
	City Limit		





**MILLER STARR
REGALIA**

1331 N. California Blvd.
Fifth Floor
Walnut Creek, CA 94596

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F 925 933 4126
www.msrlgal.com

Sean Marciniak
sean.marciniak@msrlgal.com

Anthony M. Leones
anthony.leones@msrlgal.com

March 14, 2018

VIA E-MAIL AND U.S. MAIL

City of Merced
Site Plan Review Committee
Scott McBride, Development Services Director
Steven Son, City Engineer
Denise Frazier, Chief Building Inspector
678 West 18th Street
Merced, CA 95340
E-Mail: McBrideS@cityofmerced.org
sons@cityofmerced.org
frazierd@cityofmerced.org

Re: Request to Extend Vesting Tentative Map #1291; Item 4.1 on Site Plan Review Committee Agenda for March 15, 2018

Dear Messrs. McBride, Son, and Ms. Frazier:

Miller Starr Regalia represents Bright Development¹ in its application to extend Vesting Tentative Map #1291 (the "Bright Subdivision Map"). As you know, you will be considering this application at the Site Plan Review Committee meeting on March 15, 2018, under Agenda Item 4.1. As you also know, staff have recommended that you deny our client's request on a number of bases, including alleged health and safety concerns, general plan consistency concerns, and the failure of BP Investors, LLC and/or Leeco, LLC to consent to the map's extension.

As we explain below, none of the foregoing concerns are warranted, and we respectfully request that the Committee approve the extension of the Bright Subdivision Map.

¹ Bright Development as used herein is at times meant to be inclusive of all interests held by Bright-related entities, including, but not limited to, CEB Holdings, LLC.

I. Extending the map does not create health and safety concerns.

In the staff report for Agenda Item 4.1, staff note that a neighboring subdivision map, VTM #1292 (the “Palisades Park Subdivision”) expired on January 2, 2018, eliminating secondary access to the Bright Development’s proposed subdivision (the “Bright Subdivision”). On this basis, staff recommend that the Committee make the following findings:

- “Adequate access to this subdivision could not be provided without the secondary access through the adjacent property to the north. Therefore, the Bright Subdivision does not have adequate access.”
- “Without adequate access to the subdivision, residents would not be able to access their homes and public safety response (police, fire, etc.) times would be hindered or possibly blocked completely.”

(3/15/18 Staff Report, p. 2, Findings B & C.)

This conclusion is puzzling, for the following reasons:

- When the City approved BP Investors’ neighboring apartment project in 2015, which would (1) offer the *inferior* vehicular access compared to the Bright Subdivision, and (2) would generate *more* traffic, the City did not find any health and safety concerns existed.
- The Bright Subdivision is subject to emergency response requirements set forth in the conditions of its vesting tentative map and the terms of a development agreement that our client, the City, and neighboring developers entered into more than ten years ago.
 - These response time requirements reflect the goals of the City’s General Plan.
 - The existing map conditions and development agreement terms neutralize staff’s concerns about the project’s impacts on health and safety.
- The Palisades Park Subdivision would have provided access to the Bright Subdivision from a northerly route, whereas all of the City’s fire stations are located to the south.
- The Bright Subdivision meets all applicable requirements of the modern California Fire Code.

Each of these issues is discussed below.

A. The City approved an adjacent apartment project which has inferior vehicular access, and did not find the project was detrimental to the public's health and safety.

In 2015, the City approved a proposal by BP Investors to construct 216 apartments on land located immediately east of the Bright Subdivision, which has no secondary access. In the following map, the Bright Subdivision's lots are depicted on the left, whereas BP Investors' apartment project (the "Apartment Project") is shown on the right. Please note that the north-south connector road through the Apartment Project Site, shown in **Figure 1**, is *not* part of the 2015 approvals, and that no secondary access was required (see discussion in Section II, *supra*, and **Figure 9**).

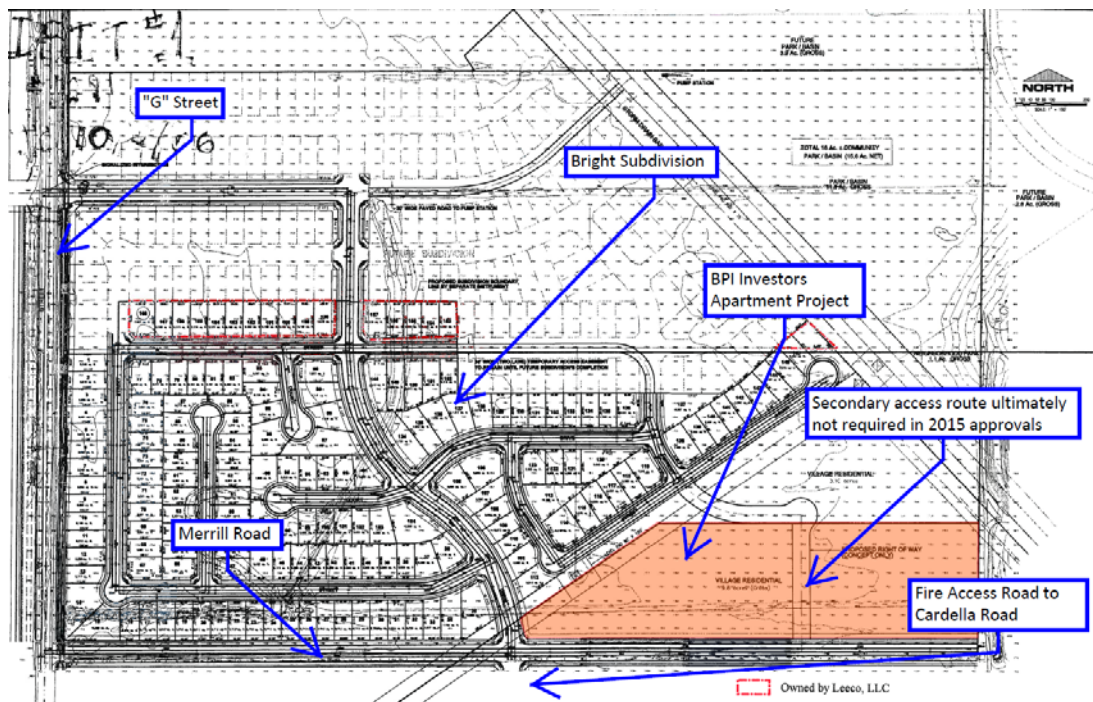


Figure 1: Location of Bright Subdivision and BPI Investors Apartment Project

The Apartment Project effectively sits at the end of a cul-de-sac, farther east along Merrill Road than our client's proposed subdivision. To satisfy access requirements, the conditions of approval for the Apartment Project originally required that "the project shall construct the collector road connecting Merrill Place to Cardella Road to the south (approximately 1,300 feet)." (Conditional Use Permit #1200, Condition 12, in draft form attached to August 3, 2015 Staff Report.) The original conditions also required that this "road shall be constructed according to the same standards and design as the south side of Merrill Place" — i.e., with a 74-foot right of way, travel lanes, 5-foot-wide bike lanes, street lights, curbs and gutters. (*Id.*, Conditions 10 and 12.) At the City Council hearing on August 3, 2015, the applicant indicated this roadway made the Apartment Project economically infeasible, and the City Council modified this condition to require that an all-weather, north-south access be constructed, to the satisfaction of the fire department.

Simply, the City determined that this level of access was safe for a denser, 216-unit multifamily project. The Bright Subdivision, which consists of 168 single family residences located adjacent to “G” Street, would be accessible by *the same exact circulation system*, and thus it is incomprehensible why the City now is proposing to find that firefighters will have difficulty reaching our client’s project in a timely manner. This unequal treatment raises equal protection concerns, which are constitutional in nature. (U.S. Const., 14th Amend.; Cal. Const., art. I, § 7(a).)

B. *The Bright Subdivision is subject to emergency response requirements through the conditions of its vesting tentative map and the terms of a development agreement entered into by our client and the City.*

Condition 2 of Bright Development’s subdivision map provides that, in building a residential development, our client must “comply with the 6-minute emergency response time in the Pre-Annexation Development Agreement” that the City, BP Investors, and Bright Development entered into on April 17, 2006. (See DA, § 4, Ex. D, p. D-2.) This six-minute threshold is consistent with the City’s General Plan, which provides that the fire department “has a goal of maintaining a response time of four to six minutes for the first crew to arrive at a fire or medical emergency within an assigned district.” (General Plan, Public Services and Facilities Element, § 5.2.1, p. 5-4.)

In other words, Bright Development cannot build its subdivision unless it can show compliance with a fixed, quantitative threshold — i.e., fire personnel must be able to respond within six minutes. At the time this condition was imposed, the City contemplated that Bright Development could meet this performance standard by constructing fire access roads or undertaking other mitigation. (See 1-16-2007 Staff Report, p. 2, Attch. 3.) However, circumstances appear to have changed for the better, rendering mitigation unnecessary. Based on the City’s approval of BP Investors’ Apartment Project, which also was subject to the Development Agreement and the six-minute response threshold, it appears the City has already determined that access to this area is sufficient so long as fire personnel can access the site by (1) the “G” Street/Merrill Road intersection and (2) the all-weather, north-south access between Merrill Road and Cardella Road.

C. *The Palisades Park Subdivision provided access to the Bright Subdivision from a northerly route, whereas all of the City’s fire stations are located to the south.*

The proposed findings in the staff report contemplate that, with the expiration of the Palisades Park Subdivision, the Bright Subdivision will lose a critical, secondary access that will lengthen fire response times. However, the geography at play and the location of the City’s fire stations do not comport with such a proposal.

The Palisades Park Subdivision, as contemplated in the expired map, would have been located to the north of the Bright Subdivision, as depicted in Attachment E to the staff report. (See **Figure 2**, below.) Meanwhile, each of the City’s five fire stations *are located to the south* of the Bright Subdivision, with Merced Fire Station 55, located at 3520 Parsons Avenue, being the closest. (See **Figure 3**, below.) Firefighters leaving this station (or any station, for that matter) would approach an emergency in the area from the south, either along “G” Street or the fire access road BP Investors must build between Merrill Place and Cardella Road. Travel times for ordinary cars and trucks navigating this route, meanwhile, do not exceed six minutes during peak hours, and presumably emergency vehicles with lights and sirens could arrive more quickly. (See **Figures 4 and 5** [showing travel times during peak hours, 4:45 pm and 5:45 pm].) The northerly access through the Palisades Park Subdivision would be circuitous, and involve negotiating a travel route that is more than 30 percent longer.

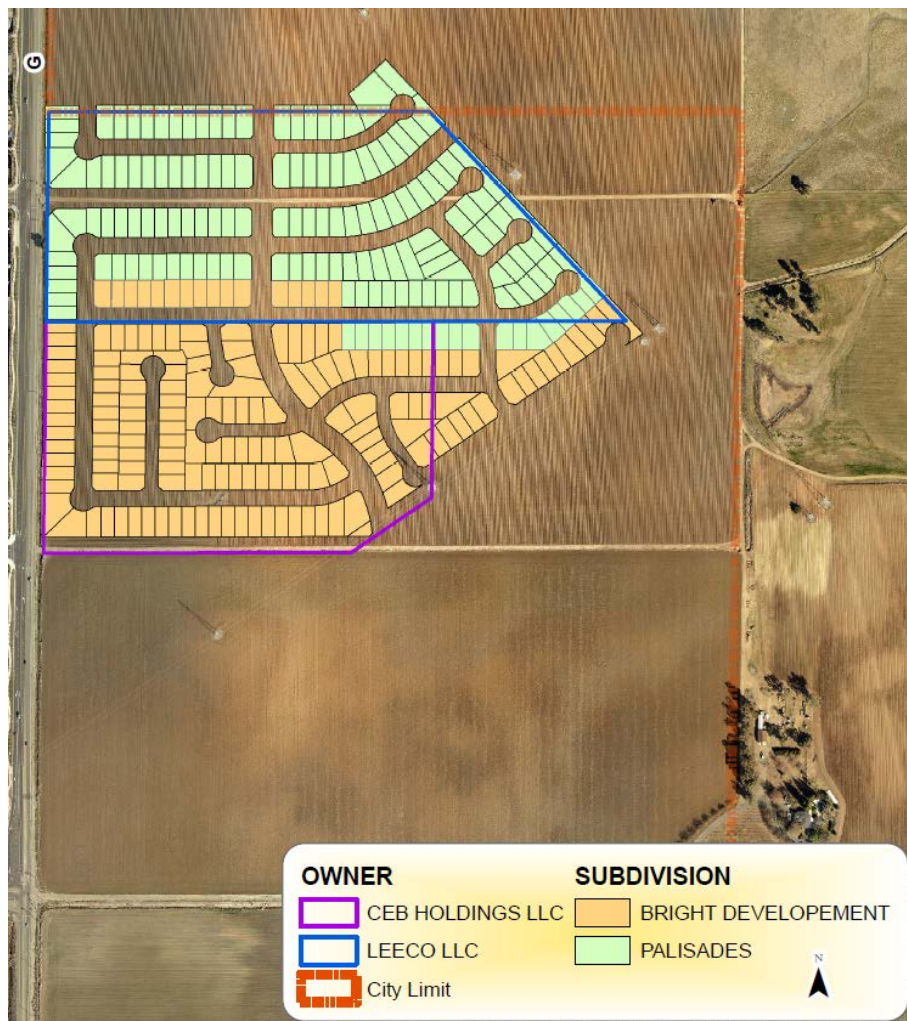


Figure 2: Location of Bright Subdivision and Palisades Park Subdivision

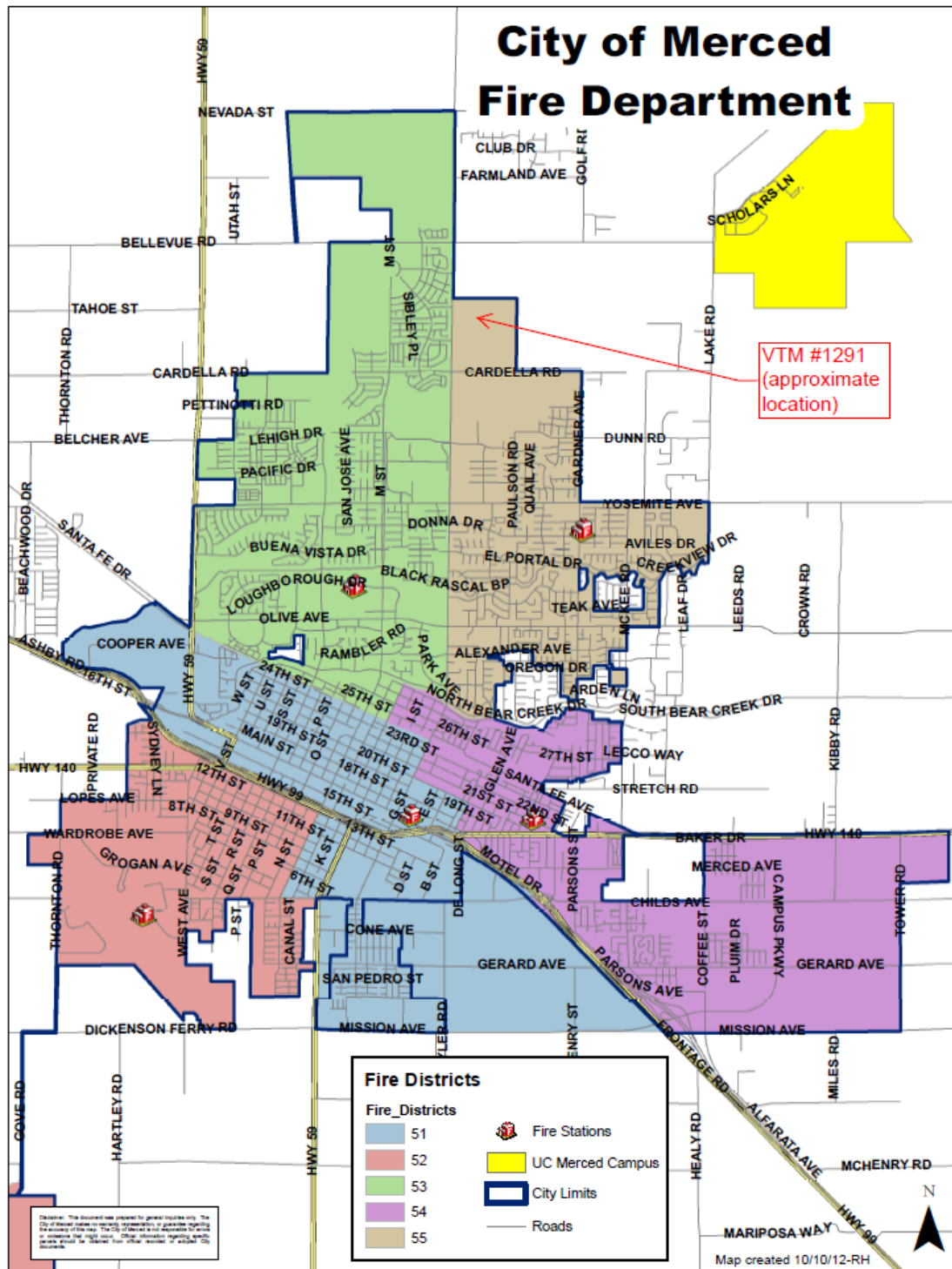
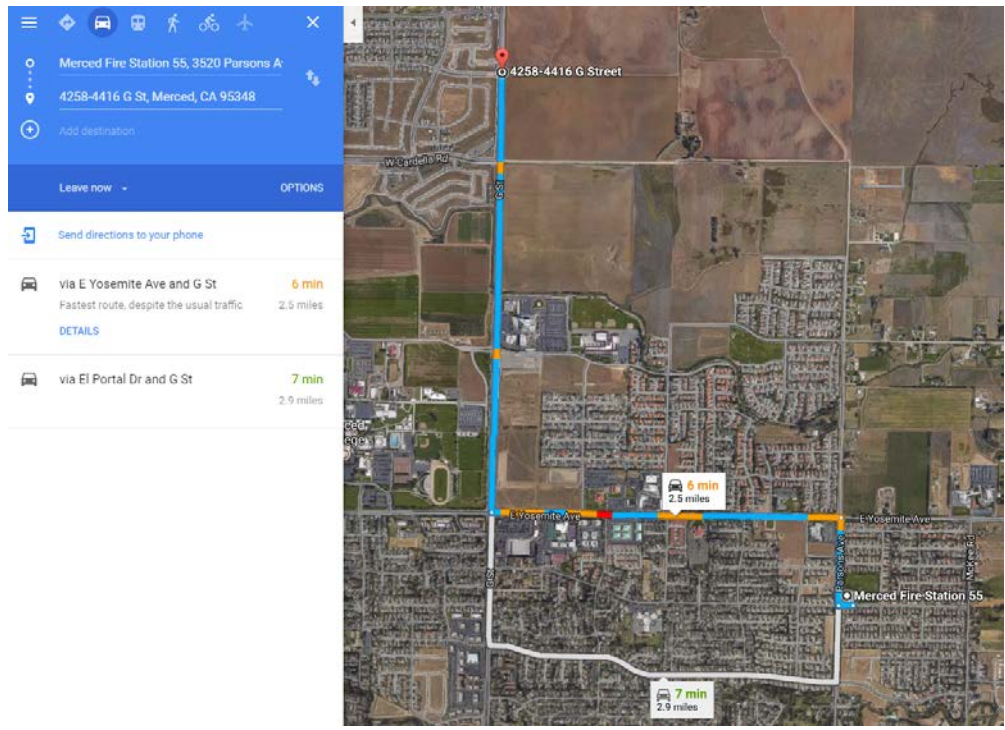
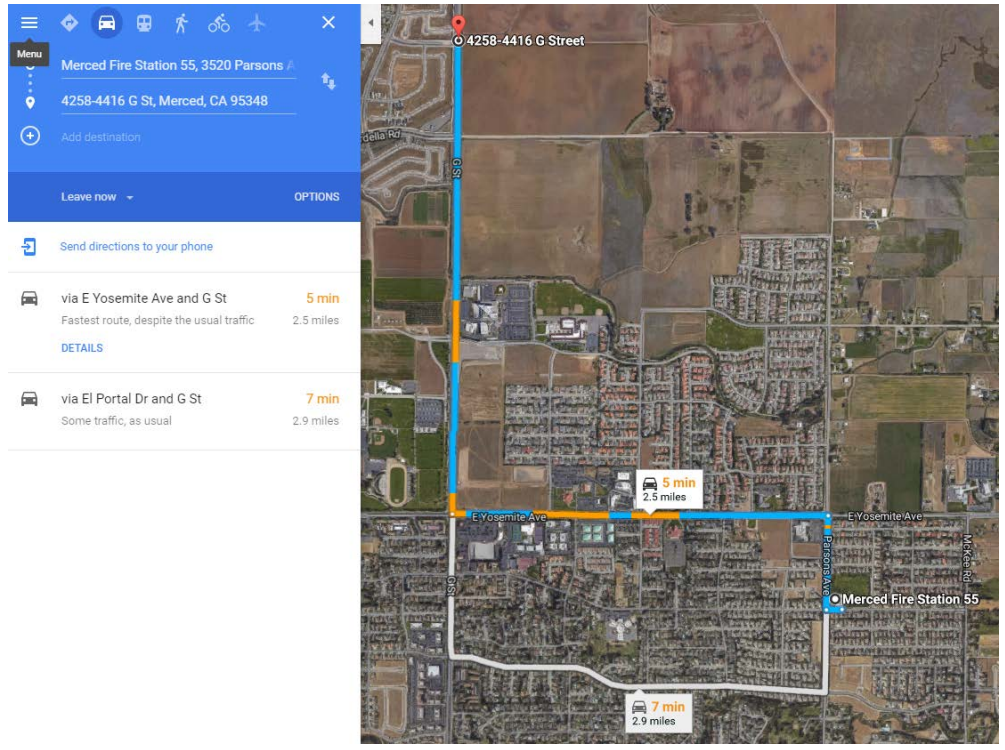


Figure 3: Location of Merced Fire Stations



Figures 4 and 5: Travel Times from Station 55 to Bright Subdivision during rush hour

D. *The Bright Subdivision meets all applicable requirements of the modern California Fire Code.*

The Bright Subdivision was designed to meet all modern fire access requirements, which are found in the 2016 California Fire Code. This state uniform code, in turn, has been incorporated by reference into the City Municipal Code. (See MMC, § 17.32.040.)

The California Fire Code requires that 20-foot-wide access roads be located within 150 feet of every structure. (CFC, §§ 503.1.1, 503.2.1.) Each of the Bright Subdivision's interior roadways are at least 20 feet wide, and pass within 150 feet of all proposed residential buildings. The City effectively determined these roadway designs were compliant, and that the interior circulation plan of the subdivision map was safe, when it approved our client's vesting tentative map in 2007. To the extent mitigation was necessary to ensure safe access, conditions were imposed at that time, though recent City actions suggest mitigation is no longer necessary. (See Section III.B, above.)

E. *While unnecessary, Bright Development is willing to offer a temporary, secondary access into the subdivision until property to the north is developed.*

While not legally necessary, Bright Development is willing to leave one lot within its subdivision undeveloped, with fire access to "G" Street, until such time that lands previously within the Palisades Park Subdivision are developed consistent with the Development Agreement and site zoning, which would require northerly linkages between the Bright Subdivision and "G" Street. The City has permitted this type of approach in other subdivision approvals, and delaying the development of one lot would be in substantial compliance with the existing tentative map here. (See Final Map No. 5282 [temporary emergency access across six lots established]; Vesting Tentative Map No. 2727, Condition 15 (temporary access easement established].)

II. *Extending the map does not create a General Plan inconsistency.*

In recommending that the Committee reject our client's map extension request, staff proposed the following findings:

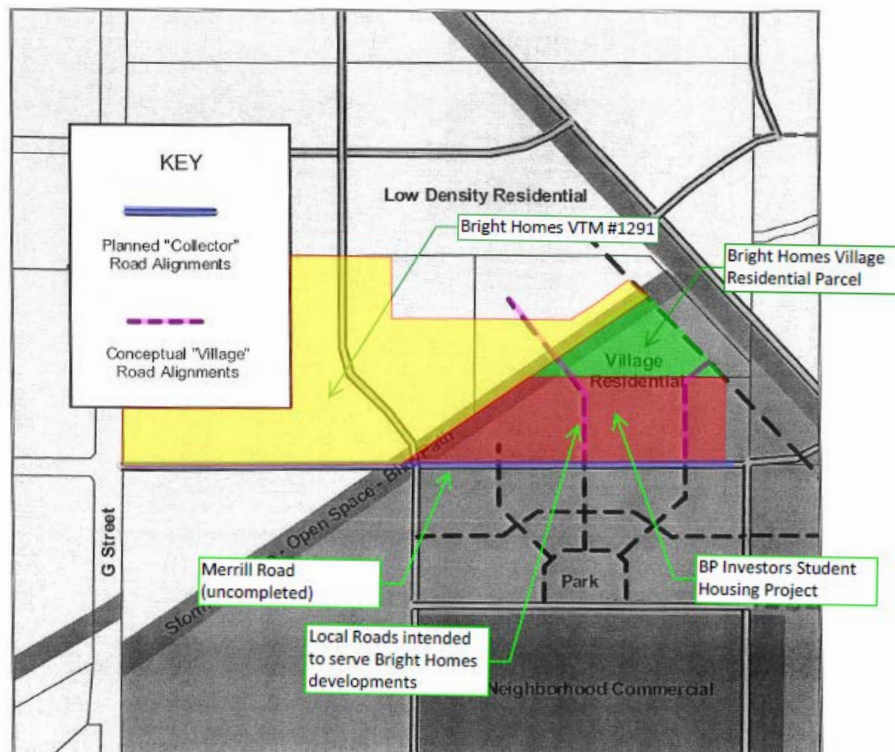
- "Merced Municipal Code (MCC) Section 18.18.030 requires all subdivisions to be consistent with the City's General Plan. Vesting Tentative Map #1291 would not comply with the General Plan's Circulation Element without the roads going through the property to the north."
- "Section 66474 of the Subdivision Map Act allows a map to be denied if the design does not comply with applicable General Plan requirements. 'Design' is defined under Section 66418 of the Subdivision Map Act to include street alignment, the location and size of easements and rights-of-way, fire roads and fire breaks, and traffic access."

(3/15/18 Staff Report, p. 2, Findings D & E.)

Nothing about the Bright Subdivision has changed since the City found it complied with all laws in 2007 except that the Palisades Park Subdivision map expired. But this expiration does not make for a General Plan inconsistency. Our client's subdivision still provides access to future development in the north and, because northerly development must include residential homes and the Bright Subdivision's main roadway (per the terms of the Development Agreement and all applicable law), the City's vision for the area will be realized.

A frustration of a General Plan objective looks much different. One such example occurred with the City's approval of BP Investors' Apartment Project in 2015. The area was supposed to have been developed as shown in the attached zoning map, with multiple local roads traversing the Apartment Project site, as follows:

Residential Planned Development #61; Conceptual Site Utilization Plan

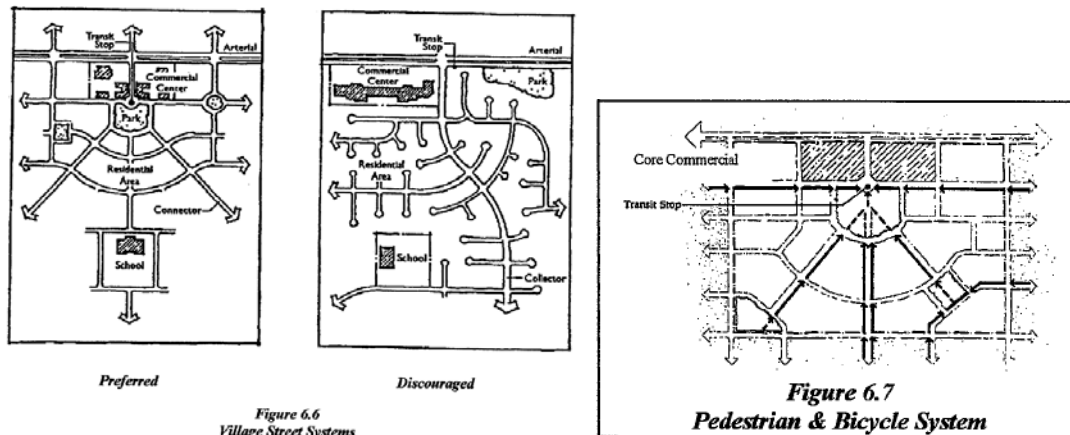


NOTE: As a conceptual plan, Planning Staff has the authority to allow modifications of the plan provided that such change is consistent with the eight "Road Design Standards" adopted for Residential Planned Development #61.

Figure 6: Zoning map for Bright Development Subdivision and Apartment Project

This circulation system is the implementation of the Merced General Plan, which specifically envisioned that this neighborhood would provide “direct and easy access to Core Commercial areas and transit stops,” with “multiple direct street and bicycle connections to the center without use of an arterial street.” (Policy UD-1.1, Implementing Actions 1.1.c and 1.1.d.) Further, the General Plan provides that the “collector street pattern should be simple and memorable,” discouraging “[w]inding roads, dead end streets and cul-de-sacs that cut off direct access to the Village Centers.” (Policy UD-1.2, Implementing Action 1.2.d.) Local streets, meanwhile, “should connect the Inner and Outer Village to Core Commercial areas ... without the use of arterials.” (Policy UD-1.2, Implementing Action 1.2.f.)²

The following figures from the City’s General Plan illustrates these concepts (and match the circulation system set forth in **Figure 6**):



Figures 7 and 8: General Plan Figures 6.6 and 6.7, showing approved street configurations.

In considering BP Investors’ Apartment Project, the City approved a development that allowed for *no access* through its interior to more northerly lands. The map below is the site plan for the Apartment Project, where the yellow shading indicates rights of way still potentially available for public use, whereas the red shading

² It appears that these General Plan provisions survived when the City adopted its new *Merced Vision 2030 General Plan* in 2012. (See pp. 6-8 to 6-14 of Chapter 6, Urban Design.) That said, the Development Agreement among the parties, discussed further below, operates to vest Bright Development and BP Investors into the laws existing in 2006.

depicts the local roads that should have been included in the map under General Plan and zoning requirements, but were not:³

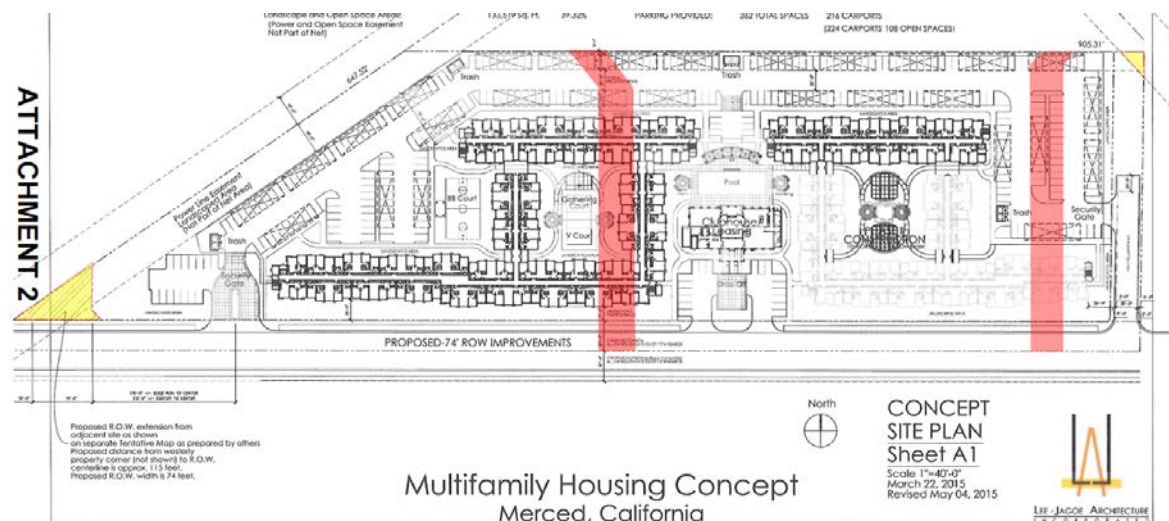


Figure 9: Annotated site plan for BP Investors' Apartment Project

By contrast, the failure of BP Investors to construct the Palisades Park Subdivision does not affect our client's compliance with the General Plan. The Bright Subdivision continues to show a north-south collector road traversing the site, in the exact same location depicted in the governing land use plan (see **Figure 6**). Moreover, as stated above, no development on property to the north will be permitted that does not extend this north-south collector. The General Plan, applicable zoning, and the Development Agreement all guarantee this result.

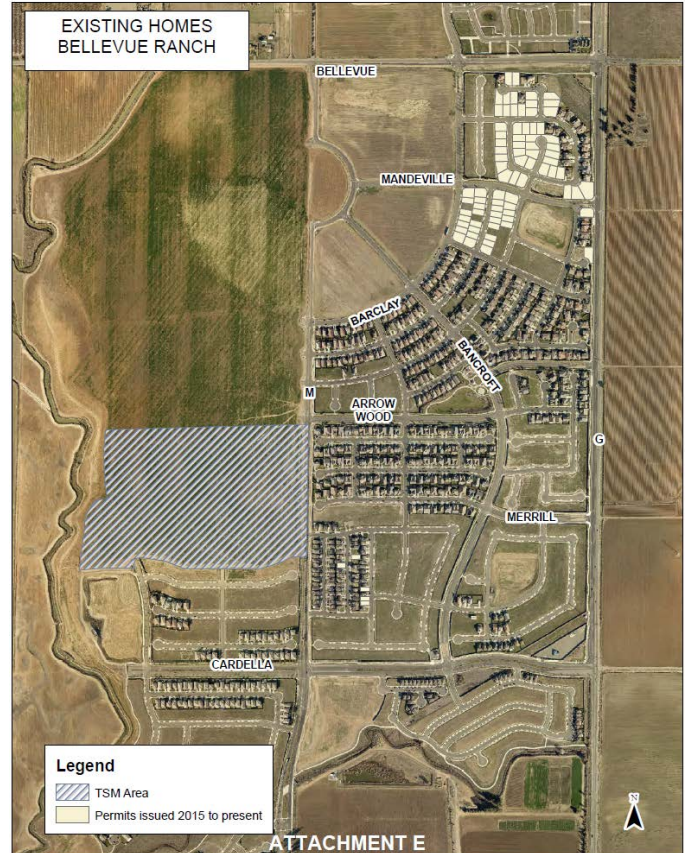
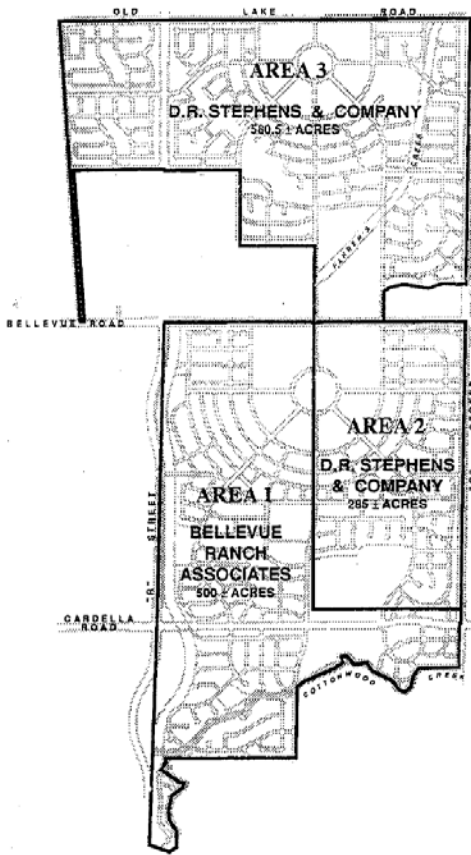
The City has, in many cases before, allowed for one subdivision to move forward while neighboring properties remain fallow. One example sits just across the road: the Bellevue Ranch Master Development Plan, which envisions the construction of thousands of residential homes on almost 1400 acres situated across "G" Street. In 2016, the City approved Vesting Tentative Map #1304, which contemplated the development of only 55 of these acres, despite the fact that not all of the master planned roadways had been constructed. Compare **Figures 8 and 9**, which show planned development levels versus actual development levels, and that great portions of Bellevue Ranch's planned circulation system were not yet constructed.

Finally, while staff assert the Bright Subdivision is inconsistent with the General Plan, the staff report fails to identify a single map or General Plan policy that the subdivision frustrates. We caution that, per the Development Agreement, the City policies existing in 2006 are those that govern review of the project here.

³ For more information, please see the attached letter to BP Investors, which is incorporated herein by this reference.

Notwithstanding the above, it appears the Bright Subdivision satisfies both the current, 2030 General Plan, and the former 2015 General Plan, and there is nothing in the administrative record to the contrary.

BELLEVUE RANCH



Figures 10 and 11: Bellevue Ranch Master Development Plan, compared to actual buildout today.

It appears, then, that Bright Development is being singled out. There is no City document or regulation, in the City's General Plan or anywhere else, requiring the buildout of the Palisades Park Subdivision as a precondition to developing the Bright Subdivision. Never before has the City required something similar, or found a project to be inconsistent with the General Plan simply because a neighboring project has fallen behind, raising serious concerns that the staff recommendation is arbitrary, and discriminates against Bright Development for no lawful reason.

III. The consent of BP Investors is unnecessary for the City to process Bright Development's subdivision map extension request.

Staff have recommended that the Committee deny our client's map extension request based on the following, proposed finding:

VTSM #1291 contains lots on property not owned by or under the control of Bright Development or CEB Holdings, LLC. Merced Municipal Code Section 18.16.080 (3) and (4) and Section 18.18.060 require the name and address of the owner and developer on each application for a tentative subdivision. The application for VTSM #1291 does not contain this information for all the property owners who own property that would be subdivided under this map. Additionally, signatures from all property owners consenting to this subdivision have not been provided.

(3/15/18 Staff Report, p. 3, Finding F.)

BP Investors (or an affiliate) does own property within the area that is subject to the Bright Subdivision Map, but its consent is not required by law.

The Subdivision Map Act and the City's municipal code require only that the "subdivider" timely file an application for extension, where "subdivider" is defined simply to mean the person, firm, or other entity who subdivides property. (Gov. Code, § 66423; MMC, §§ 18.08.100, 18.18.090(C); see also 18.16.120 [tentative map may be extended by mutual consent of subdivider and planning commission or city council].)⁴ Here, that party is Bright Development. Meanwhile, there appears to be nothing in the Development Agreement or map approvals requiring the consent of BP Investors.⁵

City staff cite Merced Municipal Code sections 18.16.080 and 18.18.060 for the proposition that property owners must consent to map extension applications, but these ordinances do not contain such a requirement. Specifically:

- Sections 18.16.080(3)&(4) provide that the following information must be shown on a tentative map: (a) the name and address of the recorded owner or owners; and (b) the name and address of the subdivider. First, these

⁴ The City's municipal code does not appear to set forth application requirements for a tentative map extension.

⁵ While the conditions incorporated into the Development Agreement require a signed statement of adjacent property owners where an "application for a Conditional Use Permit or Tentative Subdivision Map within the 'Village Residential' land use designation" (DA, § 22.3, Ex. G [Condition #11]), there is (1) no consent requirement for the extension of a map; and (2) no legal or equitable reason why the foregoing requirement should apply to the Bright Subdivision, which is not located in the Village Residential zone.

provisions do not require the “consent” or “signature” of the owners, but merely that the owners be identified. Second, these provisions address information required on a tentative map, and do not address in any manner a request for an extension of a previously approved tentative map.

- Section 18.18.060 merely provides that the filing and processing requirements of tentative maps also apply to vesting tentative maps (an indirect reference to section 18.16.080), and imposes no substantive requirements.

Accordingly, the City’s Municipal Code contains no requirement that all property owners consent to a map extension request, and no such requirement appears in the Subdivision Map Act either.

We understand City staff also recommended the denial of Bright Development’s map extension because BP Investors’ consent (or Leeco, LLC’s consent) will be necessary, regardless, prior to filing a final map.⁶ (3/15/18 Staff Report, p. 3, Finding G.) Indeed, under the Subdivision Map Act, the filing of a *final map* must be accompanied by a statement signed and acknowledged by all parties with record title interests in the real property being subdivided, consenting to preparation and recordation of the final map. (Gov. Code, § 66436.) However, (1) the final map is a completely separate approval from the tentative map extension, and is not relevant here; and (2) Bright Development can elect to record final maps in phases, with the first phase covering only properties owned by Bright Development. In fact, there is language in the Development Agreement that *requires* Bright Development to submit (and, by extension, requires the City to approve) phased final maps.⁷

We also believe the parties are likely to work something out before the time Bright Development applies for a final map. If the Bright Subdivision Map expires, then Bright Homes will be relieved of all standing obligations to dedicate land that must

⁶ We’d like to note that processing a final map is a separate approval, and is independent of an approval to extend a tentative map. Even assuming for the sake of argument, then, that consent was needed for Bright Development’s final map, it still would not be necessary for extending VTM #1291.

⁷ More specifically, the Subdivision Map Act allows a subdivider to record multiple, phased final maps if the subdivider and the relevant local agency concur in this approach. (Gov. Code, § 66456.1.) Meanwhile, the DA requires that subdividers must “submit a development phasing plan that phases construction and development from south to north.” (DA, § 7, Ex. D [Requirement 9].) What this means is that the Development Agreement expressly contemplated the approval of final maps for the Bright Subdivision Map in phases, whereby Bright Development can first record a final map on lots within the property it owns exclusively, and plan a “phase 2” whereby it would record a final map on those lots encompassed by property owned by BP Investors.

occur if BP Investors or an affiliate company intends to satisfy the conditions of its Apartment Project. Such dedicated property includes those rights of way necessary to complete various Merrill Place and "G" Street improvements. (See attached letter to BP Investors, which is incorporated herein by this reference.)

For the foregoing reasons, the City does not require the consent of BP Investors or any other party to approve our client's request for an extension of the Bright Subdivision Map.

IV. Conclusion

We ask that the you consider a number of issues on Thursday, when you decide whether to accept or reject Bright Development's map extension application, including:

- The City has already determined that northerly access to our client's property is not necessary for public safety, given its approval of the Apartment Project in 2015. The Apartment Project is more difficult to access, includes a greater density of housing, and would generate more vehicle trips than the Bright Subdivision.
- The claim that the northerly access route is required for the fire department is unsupported given all fire stations are located to the south. The City determined this when it approved the Apartment Project without requiring north-south collector roads through that project site.
- The City, BP Investors, and Bright Development entered into a Development Agreement on April 17, 2006, and this binding contract does not expire until 2026. This agreement contemplates that the area covered by both the Bright Subdivision and Palisade Park Subdivisions Maps will be low density residential (i.e. single family housing), and that they must comply with various zoning principles that fix in place the conceptual circulation system shown in **Figure 6**.
 - No one has made a proposal, of which we are aware, to modify the land uses permitted under the Development Agreement, and Bright Development has no plans to consent to such a modification. Therefore, the City's position on the extension of the Bright Subdivision Map is perplexing given that there is no possible development on the adjacent, northerly property that the City could approve, other than that for which is currently mapped (i.e. single family residential with a north-south road connecting to the Bright Subdivision Road).
 - Equally perplexing is the determination that expiration of the Palisades Park Subdivision map has resulted in a General Plan inconsistency, given that all applicable regulations would compel any

future developer to adopt, essentially, the same land use plan as that depicted in the Palisades Park Subdivision map.

- The City has the ability to allow a phased final map, which would avoid many of the “consent” issues the City raises. That said, neither the City’s laws nor the Subdivision Map Act requires any consent for a tentative map extension, other than the consent of the “subdivider.” Here, that party is Bright Development.
- Extension of Bright Subdivision Map harms no one, waives no conditions to a final map, and is the most prudential course at this time.
- A decision to deny Bright Development’s request to extend the Bright Subdivision Map would be unlawful. As discussed above, the City has consistently found that other developments in similar circumstances are perfectly safe, and are consistent with the General Plan. To decide otherwise would violate my client’s equal protection guarantees under the federal and state constitutions. It also would be contrary to the City’s planning documents, including the General Plan, applicable zoning, and the Development Agreement.

We therefore respectfully request that the Site Plan Review Committee approve our client’s request to extend the Bright Subdivision Map to January 16, 2019.

Thank you for your attention to these important matters.

Sincerely,

MILLER STARR REGALIA



Sean Marciniak



Anthony M. Leones

SRM:srm

encls: Letter to BP Investors

cc: Jolie Houston, City Attorney, City of Merced (Houston, Jolie.Houston@berliner.com)
Julie Nelson, Assistant Planner, City of Merced (NelsonJ@cityofmerced.org)
Kim Espinosa, Planning Manager, City of Merced (EspinosaK@cityofmerced.org)
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March 14, 2018

VIA E-MAIL AND U.S. MAIL

BP Investors, LLC
c/o Lee Jay Kolligian and Rick Telegan
8050 N. Palm Avenue, Ste. 300
Fresno, CA 93711¹
E-Mail: leekolligian@gmail.com

Re: Request to cease and desist from opposition of Bright Development's application to extend subdivision map, and from efforts to convince City of Merced to institute condemnation action against Bright Development: Notification of Breach of Development Agreement.

Dear Messrs. Kolligian and Telegan,

Miller Starr Regalia represents Bright Development², which as you know has rights to develop properties in northeast Merced adjacent to property owned by BP Investors. By this letter, we wish to notify you that:

- BP Investors' opposition to our client's application to extend Vesting Tentative Subdivision Map #1291 ("VTM #1291"), if successful, delays any standing obligations of Bright Development to dedicate land to the City certain land that BP Investors needs to complete Merrill Place (and, by extension, BP Investors' apartment project). In this way, BP's continued opposition to Bright Development's map extension application decreases the likelihood that any such dedication will occur in the near term, meaning BP Investors self-inflicts harm to its own interests.
- BP Investors' apartment project, which entails the development of a 9.8-acre property with 216 apartments in northeast Merced (the "Apartment Project"),

¹ Copies of this letter have also been sent to 233 Wilshire Boulevard, Ste. 400, Santa Monica, CA 90401 and 233 Colorado Ave, Ste. 400, Santa Monica, CA 90401, as these addresses for BP Investors are on file with the California Secretary of State and identified in the Development Agreement.

²Bright Development as used herein is at times meant to be inclusive of all interests held by Bright-related entities, including, but not limited to, CEB Holdings, LLC.

directly conflicts with the City's planned circulation network and, in doing so, effectively (1) "landlocks" my client's property in both the Village Residential zone and the area subject to VTM #1291, and (2) blocks access to the park which the City purchased from BP Investors. Accordingly, this Project conflicts with General Plan and zoning requirements.

- The approval of the Apartment Project was a breach of the Development Agreement that BP Investors, Bright Development, and the City entered into in 2006. We note that the project was approved despite planning staff's recommendation to deny it, and a unanimous Planning Commission vote against it. The actual implementation of this apartment project, as it currently is configured, would constitute further breach of the Development Agreement
- The Development Agreement does not expire until 2026. Unless and until there is an agreement between the City, BP Investors, and our client to terminate or modify the Development Agreement, Bright Development will continue to insist on compliance with the Development Agreement and the land uses agreed to therein by BP Investors, the City and Bright Development, and will oppose all attempted unilateral modifications such as the apartment complex. Deviations from the Development Agreement, the General Plan, and other local requirements cause Bright Development material harm, and Bright Development will explore all actions available under the law to redress this harm.
- We understand BP Investors has argued that the City must condemn our client's land for purposes of constructing Merrill Place (the "Merrill Place right of way"), asserting the City must institute condemnation proceedings according to a use permit condition governing the Apartment Project. As explained more fully below, the City is under no obligation to institute condemnation proceedings, and any such action would be unlawful, and subject participating parties to liability.
- Aside from the Merrill Place right of way, BP Investors must wait for Bright Development to dedicate certain "G" Street right of way before BP Investors may proceed with its Apartment Project. BP Investors is responsible for both "G" Street frontage and intersection improvements that have not been discussed, and failure to complete this infrastructure would preclude BP Investors from completing its project. To date, it appears that all involved parties have ignored this important requirement.

It is Bright Development's hope that the parties can settle these disputes amicably, but our client may deem it necessary to institute formal administrative and/or legal proceedings if BP Investors does not desist from its current courses of action. We

are unaware that BP Investors is represented by legal counsel³ and, if that is the case, please forward the name of the company's attorney and we will direct further communications directly to that individual.

Each of the foregoing points are explained in greater detail below.

I. Summary of pertinent land use development history.

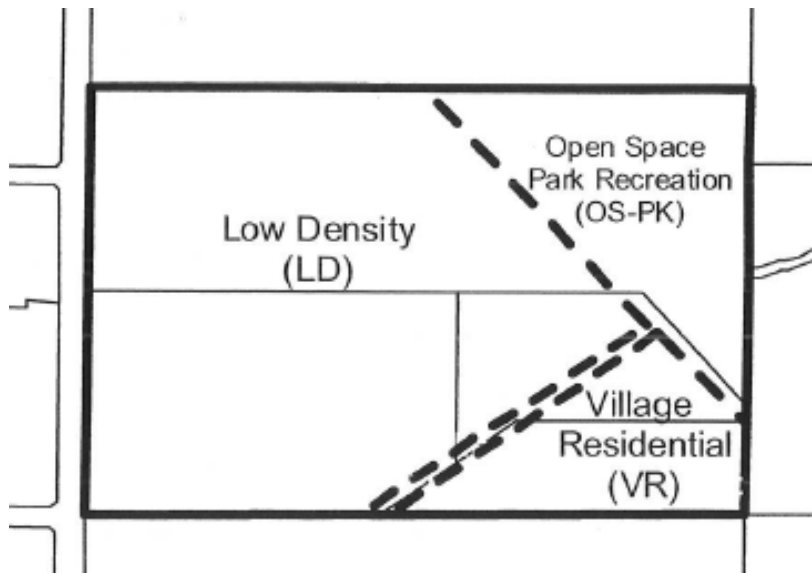
It is imperative to establish a factual foundation for the benefit of all involved parties, including those carbon copied on this letter.

A. Identification of key parties and their property interests.

In 2006, the City annexed and zoned 100 acres of land for three types of uses:

- (1) Low Density residential, supporting 320 single family dwelling homes at a density of about 4.7 units per acre;
- (2) Village Residential, supporting 258 dwelling units in a denser configuration, at about 20 units per acre; and
- (3) Open Space/Park/Recreation, supporting a community park, a neighborhood park, and linear open space.

This configuration of land is depicted in the illustration below:

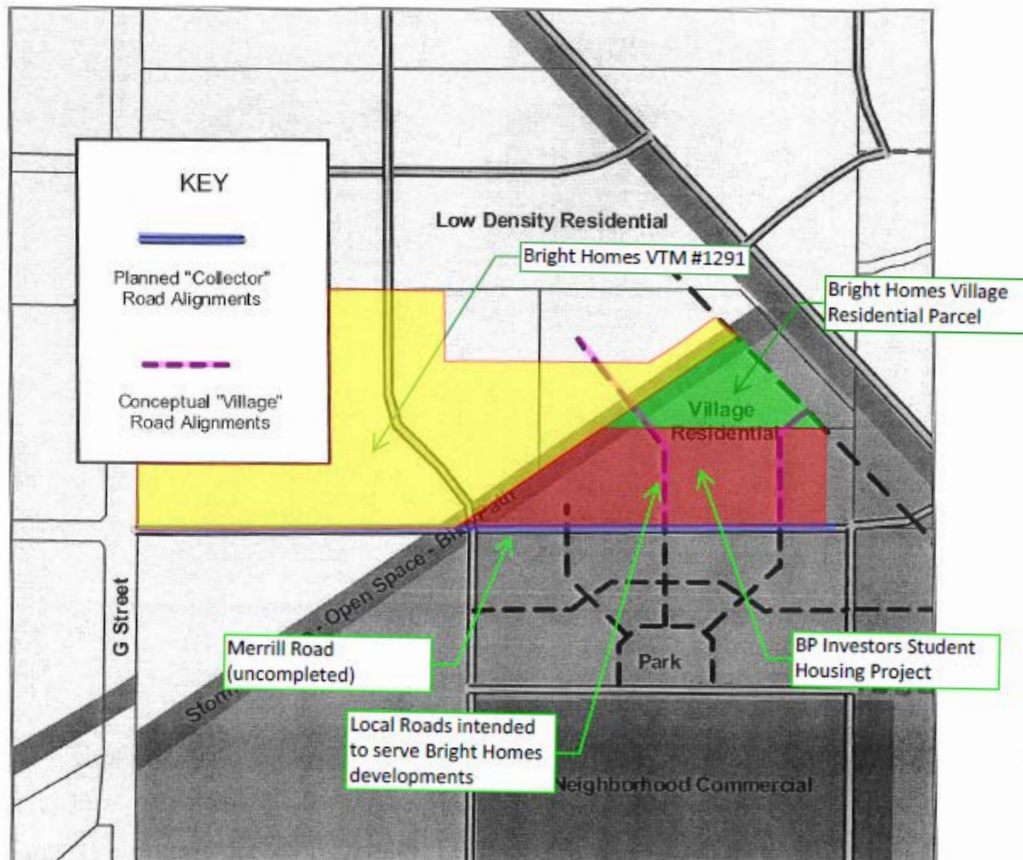


³ We understand Mr. Kolligian is licensed to practice law, but are unaware that he represents BP Investors in a legal capacity.

Bright Development has two interests in this 100-acre planning area that are relevant here: (1) a 39.8-acre portion of the Low Density Residential zone, which is subject to Vesting Tentative Subdivision Map #1291, subdividing this portion into 168 single-family residential lots; and (2) a triangular portion of the Village Residential zone, encompassing about 3.1 acres and capable of supporting between 42 and 92 units.

Bright Development's interests are depicted in green and yellow in the map below, which is an annotated reproduction of Exhibit 2 to the Conceptual Site Utilization Plan. BP Investors, as you know, has an interest in a 9.8-acre portion of the Village Residential zone, which is shaded red in the map below.

Residential Planned Development #61; Conceptual Site Utilization Plan



NOTE: As a conceptual plan, Planning Staff has the authority to allow modifications of the plan provided that such change is consistent with the eight "Road Design Standards" adopted for Residential Planned Development #61.

B. Land use plan for development of Village Residential Zone.

Originally, the Village Residential zone was intended to be developed in an integrated manner, with convenient vehicle and pedestrian access to a commercial area located to the south. The Merced General Plan specifically envisions that this neighborhood would provide “direct and easy access to Core Commercial areas and transit stops,” with “multiple direct street and bicycle connections to the center without use of an arterial street.” (Policy UD-1.1, Implementing Actions 1.1.c and 1.1.d.) Further, the General Plan provides that the “collector street pattern should be simple and memorable,” discouraging “[w]inding roads, dead end streets and cul-de-sacs that cut off direct access to the Village Centers.” (Policy UD-1.2, Implementing Action 1.2.d.) Local streets, meanwhile, “should connect the Inner and Outer Village to Core Commercial areas ... without the use of arterials.” (Policy UD-1.2, Implementing Action 1.2.f.)⁴

When the City Council annexed property belonging to Bright Development and BP Investors, the City also adopted a more specific land use plan for the Village Residential zone. This land use plan is known as Residential Planned Development #61 (“PD #61”), and it contains (1) tailored development standards for this zone and (2) a “Conceptual Site Utilization Plan,” which is a conceptual circulation system showing ideal alignments for collector and local roads within the annexation area. In identifying this roadway network, the plan specifically applied and cited to the General Plan standards identified above.

Note, the Conceptual Site Utilization Plan is the map reproduced above, which we have annotated and shaded. As the Plan shows, the City envisioned that Merrill Place would serve as an east-west collector road, with no less than four north-south local roads passing through BP Investors’ property and providing direct access to Bright Development’s properties. The plan itself indicates that it is “conceptual,” and that staff have the authority to allow modifications, but only insofar as the resultant development is consistent with the terms of PD #61, which incorporate various General Plan circulation guidelines (e.g., requiring direct and multiple local access routes).

To date, Merrill Place has not been constructed, nor has it been dedicated in whole for public use. At this time, the Merrill Place alignment crosses over property owned, at least in part, by Bright Development (i.e., the Merrill Place right of way).

⁴ It appears that these General Plan provisions survived when the City adopted its new *Merced Vision 2030 General Plan* in 2012. (See pp. 6-8 to 6-14 of Chapter 6, Urban Design.) That said, the Development Agreement among the parties, discussed further below, operates to vest Bright Development and BP Investors into the laws existing in 2006.

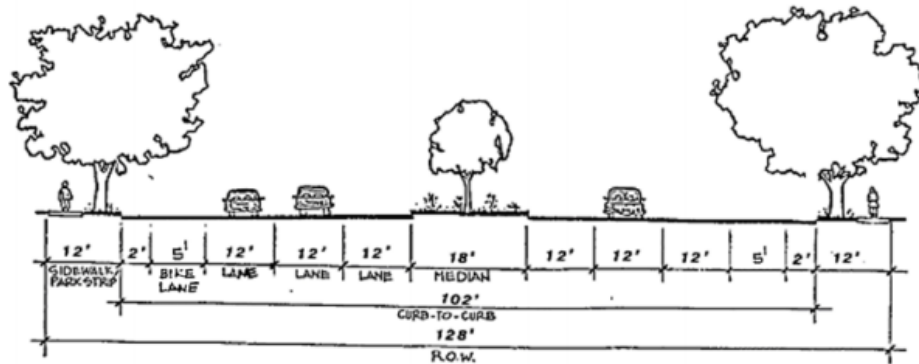
C. Summary of Development Agreement and Its relevance.

In conjunction with the annexation and zoning for the Apartment Project site and its surrounding properties, the City also entered into a development agreement with BP Investors and Bright Development (the “Development Agreement,” or “Agreement”).

The Development Agreement obligated the contracting developers to build out the annexation area according to the provisions of PD #61. (DA, §§ 2.6, 6, Ex. B.) It also obligated the Owner to comply with various conditions of approval. (DA, § 22.3 [requiring compliance with conditions in Planning Commission Resolution No. 2871, attached to the Agreement as Exhibit G].) These requirements include:

- (1) That the “developer/applicant shall construct and operate the project in *strict compliance* with the approvals granted herein [i.e., the annexation, zoning, and PD #61], City standards, laws, and ordinances” (DA, Ex. G., Condition #5 [emphasis added].)
- (2) Collector street locations in subsequent Tentative Subdivision Map and *Conditional Use Permit entitlements* shall be provided consistent with the adopted circulation plan” for the area, which designates Merrill Place as a collector road, “as well as with the local ‘road design standards’ of Planned Development #61,” which incorporates the 2015 General Plan urban and road design standards identified above. (DA, Ex. G., Condition #8 [emphasis added].)
- (3) That any applicant for any subsequent Subdivision Map dedicate right of way for an expansion of “G” Street (to extend to a width of 128 feet) and, in one construction phase, install a laundry list of improvements, including sidewalks, traffic signals, piping, landscaping, a six-foot-tall decorative wall, and other infrastructure. (Ex. G, Condition 7.) The “G” Street condition contemplates the improvement of 1,651 feet of frontage, and its configuration must be consistent with Figure 4.4 of the *Merced Vision 2014 General Plan*, which is depicted as follows:

Figure 4.4
Major Arterial/Arterial
Cross-Section

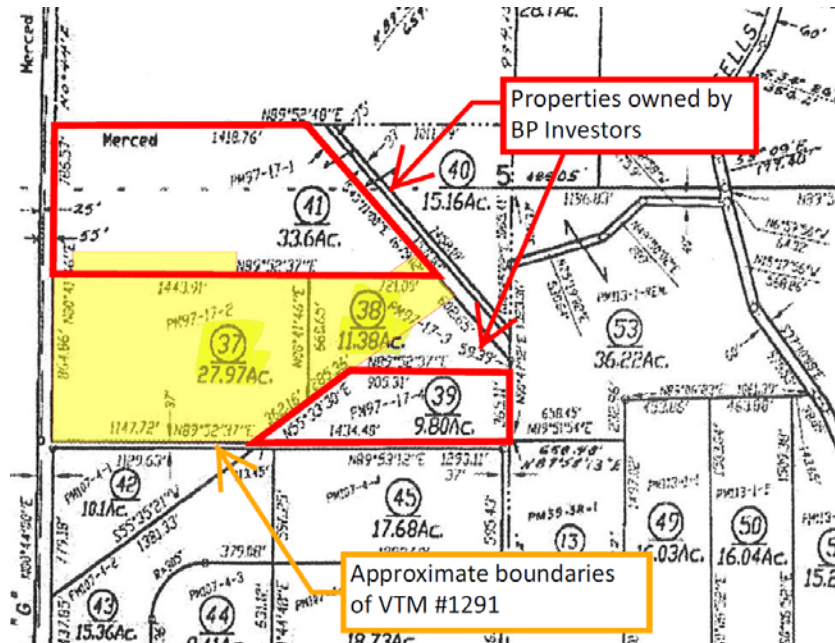


As shown, the segment of “G” Street adjacent to the frontage of the annexation area encompasses a 128-foot-wide right of way, with three travel lanes in each direction, a 5-foot-wide bicycle lane, and a 2-foot-wide shoulder.

D. *Bright Development’s Vesting Tentative Map Approval and Subsequent Extensions.*

In early 2007, the City approved a Vesting Tentative Subdivision Map #1291 (“VTM #1291”), facilitating Bright Development’s efforts to subdivide a 39.8-acre parcel into 168 single-family residential lots. The location of this subdivision is located generally west of the Village Residential Zone, as depicted on the annotated Conceptual Site Utilization Plan, above.

Complicating matters is that a portion of the tentative map is located on property owned by BP Investors. Conversely, as BP Investors knows, this arrangement did not happen in a vacuum, as a portion of BP’s VTM #1292 plotted lots on Bright Development’s property as well. On the map below, the yellow shaded portions represent the approximate boundaries of VTM #1291, whereas the red outlining represents the approximate boundaries of land in which BP Investors has an interest. A small portion of VTM #1291 encompasses land to the north, which is owned by BP Investors. As BP Investors is aware, Bright Development has prepared a revised map for VTM #1291, which includes zero lots on BP Investors’ property.

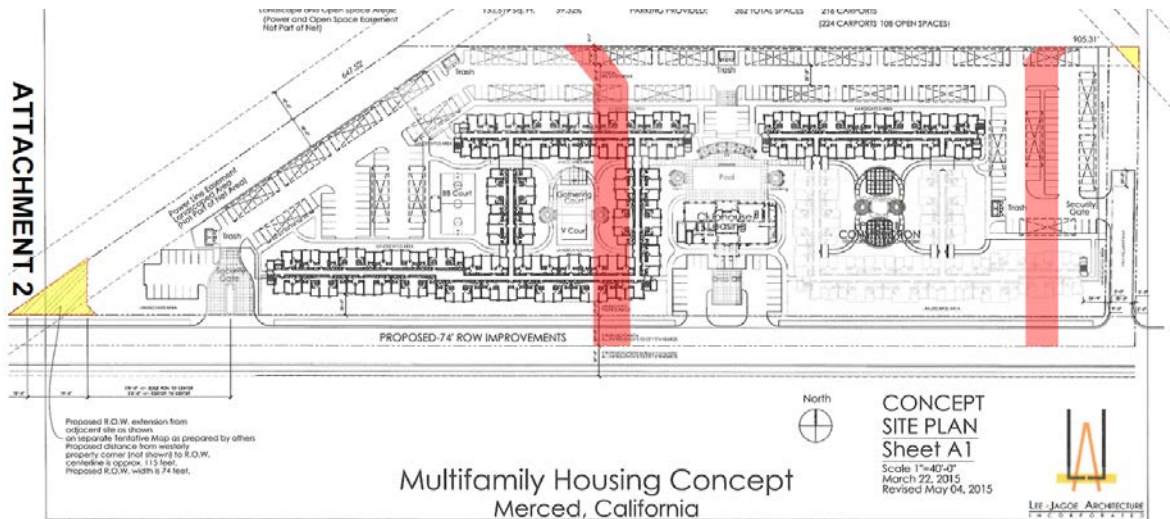


This map was set to expire on January 16, 2018, having been extended by operation of law for a number of years. (See Gov. Code, §§ 66452.21, -.22, -.23, & -.24.) Under Subdivision Map Act section 66452.6, Bright Development sought another map extension this past autumn, triggering the grant of an automatic, 60-day extension. As such, the map will expire on March 16, 2018, unless the City extends it.

BP Investors, as you know, has opposed this application for a map extension. On October 30, 2017, the City forwarded a series of comments attacking the validity of VTM #1291. The validity of these claims is addressed and analyzed below.

E. *BP Investors Upsets Expectations with Use Permit Application for Apartment Project.*

In 2015, BP Investors sought to develop its 9.8-acre portion of the Village Residential zone with 216 apartments distributed throughout five buildings. Importantly, the Apartment Project did not follow the conceptual circulation plan identified in the Conceptual Site Utilization Plan, which contemplated no less than four north-south collector roads traversing BP Investors' Apartment Project site. BP Investors' new project merely provided for rights of way at the very west and east corners of that site. The map below is the site plan for the Apartment Project, where the yellow shading indicates rights of way still potentially available for public use, whereas the red shading depicts the local roads depicted in the Site Utilization Plan that would be incompatible with the Apartment Project:



On August 3, 2015, the City Council approved a conditional use permit (CUP #1200), allowing BP Investors to implement the Apartment Project.

In approving this use permit, the City adopted various conditions of approval, including:

- (1) “The Project shall comply with all applicable conditions set forth in Resolution #2871” and “the Design Standards for RP-D #61, except as modified by these conditions” (CUP #1200, Condition #4);
- (2) The developer shall construct and operate the project in “strict compliance with the approvals granted herein, City standards, laws, and ordinances ...” (CUP #1200, Condition #8); and
- (3) The developer is required to “construct Merrill Place⁵ (a Collector Road with a 74-foot right-of-way) from “G” Street to the eastern edge of the project site,” though would be “eligible for reimbursement for any improvements that do not front on the project site” (CUP #1200, Condition #10).

To the extent rights of way were required for the construction of roadways or any other public improvements, BP Investors was obligated to “work with the affected property owners to obtain the necessary right-of-way.” (CUP #1200, Condition #21.) But if the affected developers were unable to reach an agreement, the use permit provided that “the City will take steps to obtain the necessary right-of-way with the applicant paying all costs for such actions.” (*Id.*)

⁵ In other documents, this collector road is referred to as Merrill Drive. For the sake of consistency, the roadway will be referred to in the memorandum as Merrill Place.

BP Investors also promised to pick up other City costs. Specifically, the developer was obligated to indemnify the City for “all claims, actions, suits, proceedings, or judgments against the City ... to attack, set aside, void, or annul an approval of the City concerning the project and the approvals granted herein.” (CUP #1200, Condition #7.)

In late 2017, BP Investors sought to modify the Apartment Project use permit. Specifically, BP Investors’ application stated that it sought to “modify all appropriate ‘Conditions of Approval’ necessary to allow the intended project to be developed and operated with having constructed only the south half of Merrill Place from ‘G’ Street east to the western edge of future Merrill Place that was previously dedicated to the City of Merced by BP Investors, LLC.” A City notice dated December 21, 2017 indicated the modifications would have affected Conditions #10 and #21, and any other conditions the Planning Commission deemed appropriate. On January 12, 2018, the applicant submitted a letter to the City, withdrawing the application.

I. Bright Development does not require the consent of BP Investors to extend Vesting Tentative Map #1291; BP Investors’ attack on the map is meritless.

1. *Approval of the map extension and issuance of the final map does not require consent from BP Investors.*

BP Investors appears to have a property interest in a small portion of the land encompassed by VTM #1291, raising the prospect that its consent may be necessary to implement the tentative map.

That said, it does not appear there exists any requirement that Bright Development obtain the written consent of all parties with an interest in the subject property when seeking an extension of Vesting Tentative Map #1291. The Subdivision Map Act and the City’s municipal code require that only that the “subdivider” timely file an application for extension, where “subdivider” is defined simply to mean the person, firm, or other entity who subdivides property. (Gov. Code, § 66423; MMC, §§ 18.08.100, 18.18.090(C); see also 18.16.120 [tentative map may be extended by mutual consent of subdivider and planning commission or city council].)⁶ The City may deny an extension request if it finds the denial is necessary to prevent a dangerous condition or to comply with state or federal law. (MMC, § 18.18.090.)⁷

⁶ The City’s municipal code does not appear to set forth application requirements for a tentative map extension.

⁷ For vesting tentative maps, denials may be appealed within ten days to the planning commission. (MMC, § 18.18.090(C)(4).)

Meanwhile, there appears to be nothing in the Development Agreement or map approvals requiring the consent of BP Investors.⁸

We understand the City might have indicated that BP Investors' consent will be necessary, regardless, prior to filing a final map.⁹ Indeed, under the Subdivision Map Act, the filing of a *final map* must be accompanied by a statement signed and acknowledged by all parties with record title interests in the real property being subdivided, consenting to preparation and recordation of the final map. (Gov. Code, § 66436.) There is no such requirement for an extension of a vesting tentative map.

With respect to final map approval, however, Bright Development can elect to record final maps in phases, with the first phase covering only properties owned by Bright Development. In fact, there is language in the Development Agreement that *requires* Bright Development to submit (and, by extension, requires the City to approve) phased final maps.

More specifically, the Subdivision Map Act allows a subdivider to record multiple, phased final maps if the subdivider and the relevant local agency concur in this approach. (Gov. Code, § 66456.1.) Meanwhile, the DA requires that subdividers must "submit a development phasing plan that phases construction and development from south to north." (DA, § 7, Ex. D [Requirement 9].) What this means is that the Development Agreement expressly contemplated the approval of final maps for VTM #1291 in phases, whereby Bright Development can first record a final map on lots within the property it owns exclusively, and plan a "phase 2" whereby it would record a final map on those lots encompassed by property owned by BP Investors.

As such, Bright Development does not need the consent of BP Investors to proceed with its subdivision map development.

2. *Recent attack on validity of VTM are meritless.*

On October 30, 2017, the City forwarded a list of reasons to Bright Development, authored by BP Investors, as to why Bright Development's tentative map was illegal.

⁸ While the conditions incorporated into the Development Agreement require a signed statement of adjacent property owners where an "application for a Conditional Use Permit or Tentative Subdivision Map within the 'Village Residential' land use designation" (DA, § 22.3, Ex. G [Condition #11]), there is (1) no consent requirement for the extension of a map; and (2) no legal or equitable reason why the foregoing requirement should apply to VTM #1291, which is not located in the Village Residential zone.

⁹ We'd like to note that processing a final map is a separate approval, and is independent of an approval to extent a tentative map. Even assuming for the sake of argument, then, that consent was needed for Bright Development's final map, it still would not be necessary for extending VTM #1291.

One “category” of attack has a common DNA, insofar as it alleges that environmental review supporting the tentative map is “stale.” For instance, at various points BP Investors claims that the initial CEQA review for the map is ten years old, and updated baselines, air quality assessments, traffic counts, etc., are required. (See 10/30/17 Correspondence, Comments 2, 3.)

Bright Development needs only the approval of a final map and various other ministerial permits (e.g., grading, building, electrical permits) to complete its single family home project. CEQA, meanwhile, does not require an update to the tentative map’s environmental review, as the “legal hook” for environmental review of any project is the need for discretionary approvals by a public agency. (Pub. Res. Code, § 21002.) It is only in these cases that a subsequent or supplemental Environmental Impact Report or Negative Declaration is needed. (*San Diego Navy Broadway Complex Coalition v. City of San Diego* (2010) 184 Cal.App.4th 924.) Once all discretionary approvals for a project have been obtained, no agency has jurisdiction to require further CEQA review. (14 CCR, § 15162(c); *Cucamongans United for Reasonable Expansion v. City of Rancho Cucamonga* (2000) 82 Cal.App.4th 473.) Because no discretionary approvals are involved in extending VTM #1291, no further CEQA review is required.

A second “category” of attack involves claims that, because applicable laws affecting land use development have changed over time, Bright Development’s tentative map is invalid (or requires further analysis of conditions). (See 10/30/17 Correspondence, Comments 1, 6, 17-#12.) First, these claims fail to recognize that Bright Development’s entitlement is a *vesting* tentative map, which essentially freezes the laws that existed at the time the map was approved in 2007. Thus, insofar as BP Investors alleges the tentative map is inconsistent with the City’s 2012 General Plan, or incompatible with state legislation such as Senate Bill 375, its claims are baseless. Bright Development also has a claim of vested rights pursuant to the Development Agreement it entered into with the City. As such, BP Investors’ claims that our client’s project must be adjusted to conform to contemporary laws are meritless.

A third “category” of attack involves claims that various conditions to VTM #1291 refer to the wrong property, and in fact affects the build-out of the Palisades Park subdivision proposed by BP Investors on property immediately to the north of Bright Development’s subdivision. First, the time to challenge the approval of the tentative map expired years ago. Moreover, to the extent a condition of the map mistakenly affects a different property (e.g., because it was cut-and-pasted from the City’s approval of another subdivision), the City could clarify what conditions meaningfully apply, and strike those that do not, in reviewing a final map application. (See Gov. Code, § 66469(g) [allowing for ministerial correction of any errors in a map approval].)

With respect to the remaining allegations, our preliminary determinations are as follows:

- **Comments 1 and 11 (Allegation that VTM #1291 cannot be built out as approved because it extends onto property owned by BP Investors; BP Investors will not provide consent under Government Code sections 66436 and 66439):** These claims arise from the fact that Bright Development's tentative map encompasses land owned by BP Investors, and the cited provisions refer to the requirement that all record property owners must consent to the preparation and filing of a final map. As discussed above, BP Investors' consent is unnecessary, and the Development Agreement contemplates that Bright Development can defer affecting any of BP Investors' property by filing multiple final maps, in a phased-development approach.
- **Comment 5 (Allegation that VTM #1291 negatively impacts BP Investors' property rights and clouds title):** Bright Development's subdivision map does not negatively affect adjacent properties, and BP Investors has articulated no facts to support this assertion.
- **Comment 7-#1 (Allegation that VTM #1291 extends into BP Investors' property in violation of local ordinance):** It is not clear how Bright Development's tentative map, which spans two parcels owned by two separate developers, violates the local code. Regardless, the time to challenge the approval of the tentative map expired years ago. Finally, insofar as BP Investors alleges that final map phasing is necessary, this issue has been addressed above.
- **Comment 7-#29 (Allegation that Bright Development should be responsible for 25 percent of the cost of a traffic signal at "G" Street and Merrill Place):** This is condition 29 of VTM #1291, and it is not clear this responsibility is in dispute.
- **Comment 8 (Allegation that Bright Development is in default of Development Agreement):** BP Investors has not articulated any specific ground for default, and so it is difficult to assess its claims. Our client agrees that BP Investors is in privity with our client (and the City), but that it is BP Investors that has breached the agreement (as outlined below).
- **Comment 9, 7-#14 (Allegation that water conservation measures should be applied as a new condition to VTM #1291):** A city has no ability to add conditions to an approved map under the Subdivision Map Act's "one-bite-at-the-apple" rule, which limits a city to imposing only conditions that are authorized by ordinances, policies, and standards in effect at the time the application for a tentative map is complete. (Gov. Code, § 66575.2.) That said, Bright Development plans to adhere to all applicable water conservation measures in moving forward with its project-related landscaping and other components.

- **Comment 10 (Allegation that Bright Development has not submitted all necessary items in request for extension of map):** BP Investors claims that Bright Development has failed to provide, in requesting an extension of VTM #1291, the following: (1) the name and address or recorded property owners; (2) a statement as to whether the subdivision will be recorded in stages; (3) the existing use and ownership of land adjacent to the subdivision; and (4) a preliminary title report issued not more than 60 days prior to the filing of the tentative map. The requirements cited by BP Investors pertain to the filing of a tentative map (see MMC, § 18.16.080), and not to its extension. Bright Development has satisfied all applicable requirements..

II. The Project Violates the City's General Plan and Zoning Ordinances.

As proposed, the Project would, if approved, result in a development that violates the City's General Plan and zoning for the Project site.

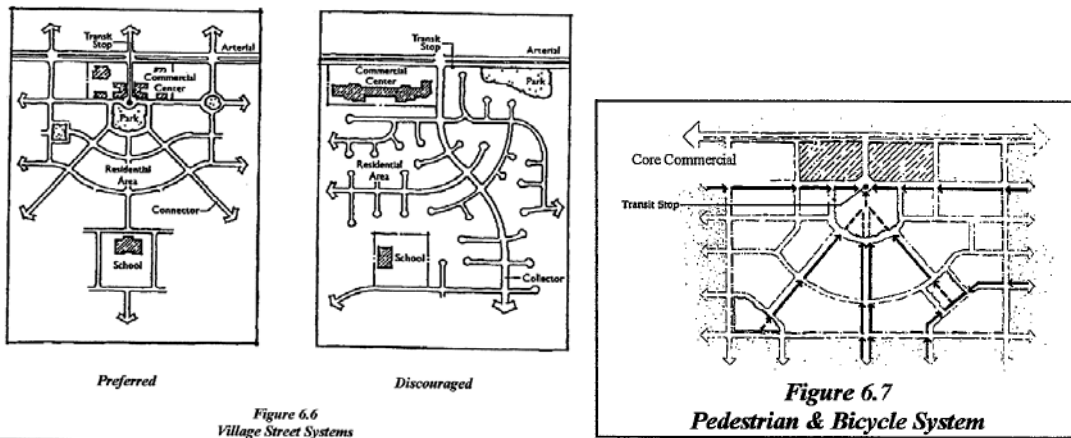
A. *Development permitted by a conditional use permit must be consistent with a city's general plan and zoning provisions.*

A general plan is the "constitution for all future development," and a City's zoning laws are a close second in a municipality's hierarchy of land use regulations. Any decision by a city affecting land use and development must be consistent with these overarching land use frameworks. (See, e.g., *Leshar Communications, Inc. v. City of Walnut Creek* (1990) 52 Cal.3d 531, 540; *Friends of Lagoon Valley v. City of Vacaville* (2007) 154 Cal.App.4th 807, 815; *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 580.) Accordingly, a conditional use permit cannot allow something otherwise disallowed in a general plan or zoning ordinance. As the California Supreme Court succinctly put it, "The tail does not wag the dog." (*Leshar*, 52 Cal.3d at 541.)

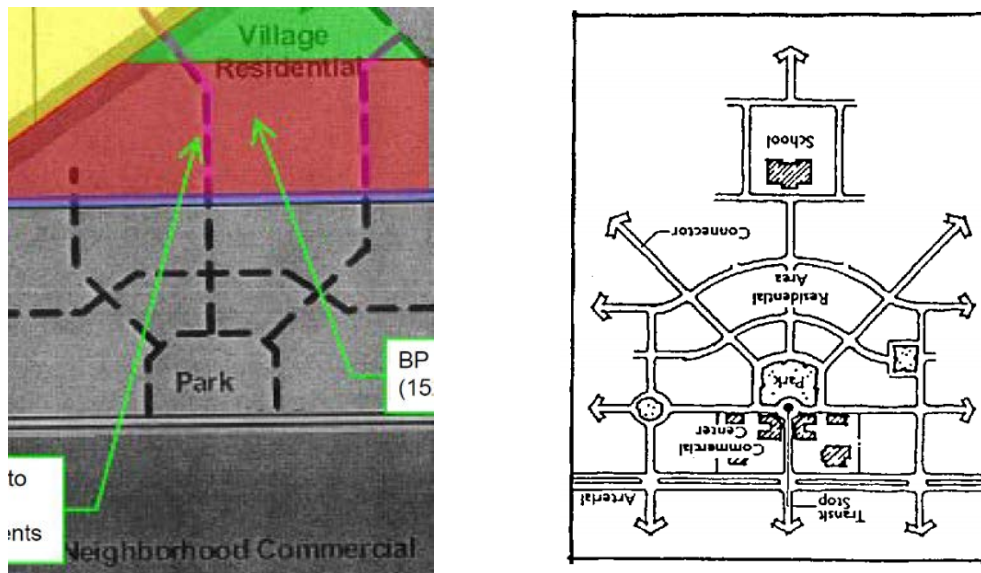
B. *The Project violates the City's circulation network for the Project site and its surrounding properties.*

In adopting the General Plan, the City designated the Project site as "Village Core Residential," which contemplates higher density residential development with "direct and easy access to Core Commercial areas and transit stops." (See, e.g., 2015 General Plan, p. 6-9; 2030 General Plan, pp. 6-6, 6-9 [UD Implementing Action 1.1(c).] Connectivity is key, and the General Plan's urban design and circulation policies underscore this goal. More specifically, village street networks must provide "multiple direct street and bicycle connections to the center without use of an arterial street," "provide multiple and parallel" streets in a "simple and memorable" pattern while discouraging "winding roads, dead end streets and cul-de-sacs," and otherwise "maximize access to Core Commercial Areas from their adjacent neighborhoods." (2015 General Plan, pp. 6-9 to 6-13; 2030 General Plan, pp. 6-10 to 6-14 [UD Implementing Actions 1.1d, 1.2a, 1.2d, and 1.2f].)

The following figures from the City's General Plan illustrates these concepts:



This vision is implemented in the City's zoning for the Apartment Project site and the surrounding properties — i.e., PD #61”). In identifying this roadway network, PD #61 specifically applied and cited to the General Plan standards identified above and, upon review of the PD #61 conceptual plan, one can clearly link its organization to the blueprint in the General Plan (compare Conceptual Site Utilization Plan with General Plan figures):



Importantly, the BP Investors' Apartment Project does not follow, either in letter or spirit, the conceptual circulation plan identified in the General Plan and Conceptual

Site Utilization Plan, which contemplated no less than four north-south collector roads traversing the Project site. BP Investors' Apartment Project merely provides for rights of way at the very west and east corners of its property, with a block of buildings in the site's center that precludes the construction of the expected roadways. (See annotated site plan included on page 8 of this letter.)

Finally, the Project is inconsistent with many other General Plan policies, and the actions that implement them, as outlined below:

General Plan Policy (2015)	Consistency Analysis
UD-1.2 Distribute and Design Urban Villages to Promote Convenient Vehicular, Pedestrian, and Transit Access.	The Project, as proposed, would discourage/prevent residents in surrounding properties from accessing transit stops and any future commercial center to the south by eradicating half of the planned local roads linking residential neighborhoods to a prospective, commercial center and existing and/or future transit stops. (See Project's inconsistency with Policy UD-1.2's implementing actions, as discussed above.)
L-2.7 Locate and Design New Commercial Developments to Provide Good Access from Adjacent Neighborhoods and Reduce Congestion on Major Street.	See analysis above.
L-3.1 Create Land Use Patterns That Will Encourage People to Walk, Bicycle, or Use Public Transit for an Increased Number of Their Daily Trips.	The Project, as proposed, would promote a land development pattern that reduces pedestrian and bicycle connections by eliminating direct and easy north-south connections through the development area, thereby discouraging/preventing non-vehicular travel.
L-3.2 Promote Site Designs That Encourage Walking, Cycling, and Transit Use.	See analysis above.
T-1.4 Promote Traffic Safety.	The Project, as proposed, would not afford sufficient right of way at planned intersections, and would create traffic safety dangers at the intersection of Merrill Place and "G" Street, as discussed above. (See discussion of "G" Street improvements, below.)
T-1.5 Minimize Unnecessary Travel Demand on Major Streets.	The Project, as proposed, does not contain critical north-south local road linkages between residential and proposed commercial areas, displacing traffic onto "G" Street, which is a major, arterial thoroughfare.

T-2.2 Support and Enhance the Use of Public Transit.	The Project, as proposed, would promote a land development pattern that reduces pedestrian, bicycle, and vehicular connections, thereby building barriers to increased use of existing and/or prospective public transit options. (See Implementing Actions 2.2.a to 2.2.g.)
T-2.3 Support a Safe and Effective Public Transit System.	See analysis above.
T-2.4 Encourage the Use of Bicycles as Alternative Transportation.	The Project, as proposed, reduce planned bicycle connections and does not appear to include bicycle lanes on the roads it does propose to construct. For instance, as discussed elsewhere in this letter, it appears the new Merrill Street proposal does not contain adequate sidewalks. (See Implementing Action 2.7.c.)
T-2.6 Maintain and Expand the Community's Existing Bicycle Circulation System.	See analysis above.
T-2.7 Maintain a Pedestrian Friendly Environment.	See analysis above.
T-2.8 Improve Planning for Pedestrians.	The Project, as proposed, erects pedestrian barriers that create unnecessarily circuitous access to existing and prospective community and commercial areas.

Accordingly, in order to comply with the General Plan and PD #61, the Planning Commission must condition the Project to require north-south local roads along at least two alignments running through the center of the Project site, so that residential neighborhoods to the north, and potentially a city park, will have direct and easy access to the prospective neighborhood commercial center to the south. These local roads must comply with the General Plan's street design parameters, which require ~50- to 60-foot-wide rights of way, two 10-foot wide lanes for vehicular travel, two 7-foot-wide lanes for vehicle parking, and areas for landscaping and sidewalks on either side of the main way of travel. (2015 General Plan, pp. 4-82, 4-86; 2030 General Plan, pp. 4-10, 4-78.)

C. The Project's height and setbacks are inconsistent with applicable zoning requirements.

Per updated site plans dated May 4, 2015 and the County's August 3, 2015 staff report for the use permit, some of the Apartment Project's buildings reach a height of 45 feet, 3 inches, and have front setbacks of 17 to 25 feet. None of these measurements meet applicable zoning requirements.

The maximum height in the PD #61 zoning district, which applies to the Project site, is 35 feet. A number of the Project's buildings, therefore, exceed the maximum height permitted by more than 10 feet.

Meanwhile, multi-family projects in Planned Developments must comply with Merced Municipal Code section 20.46.040(A)(1), which requires a 1:1 height/setback from an exterior property line for more than 50 percent of the building length. As currently proposed, the necessary setback would be 45 feet, 3 inches for more than 50 percent of the Project buildings' length. Once heights are reduced to 35 feet, as detailed above, the proper setback would be 35 feet. In either case, the proposed 17- to 25-foot setbacks are not adequate.

The height of various Project buildings also violates the terms of the Development Agreement. Section 6 of the Development Agreement provides that the maximum height in the PD #61 zone is 40 feet,¹⁰ whereas the Project building heights are, again, 45 feet, 3 inches. These maximum height limits were carefully selected to ensure that any one development would be compatible with neighboring developments. Here, buildings taller than 40 feet would be incompatible with Bright Development's prospective adjacent neighborhoods which will be designed to respect City standards. Separately and independently, then, approving or constructing a building with a non-compliant height also would constitute a breach of the Development Agreement. (See DA, § 22.7 [changes to maximum heights require amendment to Development Agreement].).

III. Approval of BP Investors' Project would result in a breach of the Development Agreement to which the City, BP Investors, and Bright Development are parties.

As described above, in conjunction with the annexation and zoning of the Apartment Project site and surrounding properties, the City also entered into a development agreement with BP Investors and Bright Development. Again, the Development Agreement obligated the contracting developers to construct and operate projects in "strict compliance" with the conditions and requirements set forth in the City's approval of the annexation, PD #61, and other City standards, laws, and ordinances ... (DA, §§ 2.6, 6, 22.3, Ex. B, Ex. G [Conditions #5].) Contractual obligations also included building "[c]ollector street locations in subsequent Tentative Subdivision Map and *Conditional Use Permit entitlements* ... consistent with the adopted circulation plan" for the area, which designates Merrill Place as a collector road, "as well as with the local 'road design standards' of Planned Development #61." (DA, Ex. G., Condition #8 [emphasis added]).

¹⁰ We recognize there is a disparity between building height maximums set forth in the PD #61 zoning (35 feet) and the Development Agreement (40 feet). It is unnecessary to reconcile these differences, since the Project building heights and setbacks exceed both.

BP Investors' Apartment Project, as proposed, materially alters the circulation network identified in the Development Agreement and its incorporated land use plans and policies. It also violates height and setback restrictions. The 2015 use permit approval therefore breached the Development Agreement and, insofar as the City ultimately fails to condition the Project to (1) require north-south roads aligned through the Project site; (2) require collector and local roads meeting the City's road design standards; and (3) require BP Investors to reduce the height and increase setbacks, then the City and BP Investors will be in continuing breach of the Development Agreement.

IV. Issues concerning the Merrill Place right of way.

In issuing BP Investors' use permit, the City required the applicant "to construct Merrill Place (a Collector Road with a 74-foot right-of-way) from "G" Street to the eastern edge of the project site." (CUP #1200, Condition #12.)

A portion of the right-of-way contemplated to support Merrill Place extends across the southern edge of Bright Homes' proposed subdivision, VTM #1291 — i.e., the Merrill Place right of way. In order for BP Investors to fulfill its condition of approval for the use permit, it must therefore have the rights to access and undertake construction on Bright Homes' property.

The conditions to the Apartment Project's use permit contemplate such a scenario, providing:

If additional right-of-way is required for construction of roadways or any other public improvements, the developer shall work with the affected property owners to obtain the necessary right-of-way. If, after diligent efforts have been made, the developer and the affected property owners are unable to reach an agreement, the City will take steps to obtain the necessary right-of-way with the applicant paying all costs for such actions.

(CUP #1200, Condition #21.)

A. *Bright Development presently is relieved of any obligation to dedicate Merrill Place .*

The City generally requires that offers of dedication occur with submission of a final map. (See, e.g., MMC, § 18.24.120(A).) Aside from the fact that the deadline to file any final map has yet to elapse, Bright Development is currently relieved of any and all obligations to dedicate any rights of way. The Development Agreement provides that, during the time when Bright Development or another developer alleges the existence of a default, that party "shall not be obligated to proceed with or complete the Project or any phase of the Project, nor to reserve *or dedicate any property* pursuant to the Development Plan or this Agreement." (DA, § 27.2.) As alleged above, the approval and continued implementation of the Apartment Project, as currently configured, constitute defaults of the Development Agreement.

B. *BP Investors' use permit does not obligate the City to institute condemnation proceedings with respect to the Merrill Place right of way.*

Condition #21 of the use permit requires only that (1) BP Investors make diligent efforts to work with Bright Development to obtain the necessary right-of-way; and (2) the City step in, to the extent such efforts fail, and “take steps” to obtain the necessary right-of-way, with the applicant paying all associated costs.

First, while our client has made good faith efforts to resolve differences with BP Investors, BP Investors has thus far proved uncooperative, if not intractable. Its efforts have not been “diligent,” and the precondition to City involvement has not been fulfilled. Even if diligent efforts are made, the use permit does not obligate the City to institute condemnation proceedings. It merely requires the City to “take steps.” Reasonable steps do not include instituting an unlawful condemnation actions (see next section), nor do they require the City to effectively breach the Development Agreement by attempting to force Bright Development to dedicate any property that Bright Development, as a matter of contract, has no obligation to dedicate (see DA, § 27.2). Moreover, it is not even clear that a City can obligate itself to a course of action through imposition of conditions of approval, the purpose of which is to regulate and restrict *an applicant's* implementation of an approval.

C. *Any action by the City to condemn the Merrill Place right of way would be a sham as a predetermined commitment to a course of conduct.*

Condition #21 must be interpreted to mean that if after “diligent efforts” by the developer, the parties are unable to reach agreement, then the City will participate in the process in an effort to obtain the necessary right of way. The City is in no way obligated to initiate any legal action. In fact, the City is prohibited from filing an eminent domain action pursuant to Condition #21, since the adoption of any resolution of necessity to take the property at this time and under these circumstances will be deemed to have been predetermined and improper to initiate an eminent domain action.

The City must hold a public hearing to determine whether a proposed taking meets the necessary criteria as a condition precedent to filing an eminent domain action. (Code Civ. Proc., sec. 1245.235.) If the criteria are met, the City must adopt a resolution of necessity before proceeding to condemn the property. (Code Civ. Proc., sec. 1240.040, 1245.220.) “Implicit in this requirement of a hearing and the adoption of a resolution of necessity is the concept that, in arriving at its decision to take, the Agency engage in a good faith and judicious consideration of the pros and cons of the issue and that the decision to take be buttressed by substantial evidence of the existence of the three basic requirements set forth in Code of Civil Procedure, section 1240.030.” (*Redevelopment Agency v. Norm's Slauson* (1985) 173 Cal.App.3d 1121, 1125-1126.) Therefore, it is improper for a condemning agency to

predetermine a course of action, such as the “necessity” for taking the property. (*id.* at 1127.) Any attempted effort to take Bright Development’s property pursuant to Condition #21 will be challenged and ultimately deemed improper.

D. *Approval of modifications to the Project’s size should be conditioned upon the applicant’s construction of a collector road between Merrill Place and Cardella Road.*

When Conditional Use Permit #1200 was initially approved in 2015, the Project contemplated two phases: a first phase consisting of 150 units, and a second phase consisting of 66 units. (Environmental Review #15-07.) As originally conceived, the conditions of approval required that, with “the second phase of construction, the project shall construct the collector road connecting Merrill Place to Cardella Road to the south (approximately 1,300 feet).” (Conditional Use Permit #1200, Condition 12, in draft form attached to August 3, 2015 Staff Report.) The original conditions also required that this “road shall be constructed according to the same standards and design as the south side of Merrill Place” — i.e., with a 74-foot right of way, travel lanes, 5-foot-wide bike lanes, street lights, curbs and gutters. (*Id.*, Conditions 10 and 12.) At the City Council hearing on August 3, 2015, the applicant indicated this roadway makes the Project economically infeasible, and the City Council modified this condition to require that an all-weather, north-south access be constructed with a minimum width of 24 feet, to the satisfaction of the fire department.

This condition was modified without a sound basis. First, condition 10 of the use permit provides that BP Investors “shall be eligible for reimbursement for any improvements that do not front the project site in accordance with” the Municipal Code. Given its right of reimbursement, the applicants “economic infeasibility” protest, then, is without foundation. Moreover, it is unclear whether the City will require any neighboring developers to construct this same north-south collector road (e.g., the developer of the property to the south of the Project site). If so, the County has essentially given BP Investors a free pass, whereas later developers will have to shoulder a disproportionate burden in financing the improvement. This approach makes the City vulnerable to equal protection and *Nollan/Dolan* challenges insofar as it requires future developers to construct or contribute fees toward this connector road in an amount disproportionate to that developer’s contribution to any traffic/safety impact.

Second, the north-south collector road at issue was not invented by Conditional Use Permit #1200, but is a material part of PD #61. The City, then, did not have the authority to modify the area’s zoning through the conditional use permit process, and thus the present approach is not lawful, nor consistent with the Development Agreement.

V. The Apartment Project cannot be built until Bright Development dedicates right of way along “G” Street.

Before BP Investors can complete the Apartment Project, it is required to undertake a number of street improvements. It does not appear these conditions have been discussed in a public forum, and failure to complete these improvements would expose BP Investors and the City to liability.

A. As a condition to the Apartment Project, BP Investors must improve 1,651 linear feet of frontage along “G” Street.

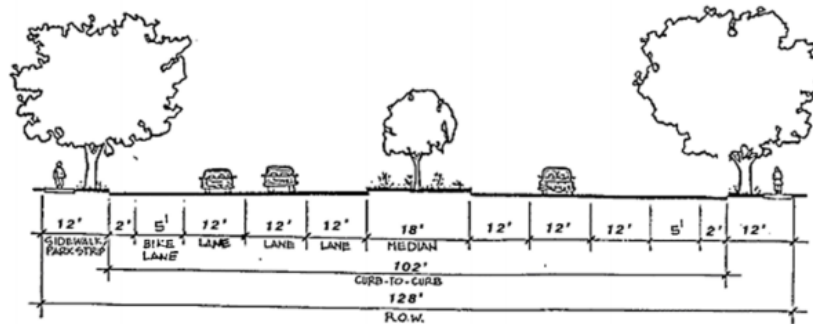
A condition of approval of BP Investors’ Apartment Project requires that BP Investors comply with all applicable conditions set forth in Resolution #2871 (approving the annexation, zoning, and establishment of PD #61). (See DA, § 22.3 [separately requiring compliance with all conditions in Resolution #2871].) One of these conditions, in turn, requires that, as a condition to development in the annexation area, an applicant must make certain improvements to “G” Street“ in “one construction project,” where this responsibility shall “not be divided by ownership or tentative map.” (DA, Ex. G [Condition #7].) The “G” Street improvements contemplate a 128-foot-wide right of way spanning 1,651 feet of frontage, along with frontage improvements, sidewalks, traffic signals, piping, landscaping, the undergrounding of telephone wires, and a decorative wall. (DA, Ex. G [Condition #7].) This configuration also contemplates six lanes of travel, two bicycle lanes, and small roadside shoulders. (See Figure 4.4 of City’s 2030 General Plan [which presumably is the same as Figure 4.4 of the City’s *Merced 2015 General Plan*, cited by DA, Ex. G, Condition #7].)

In order for this construction to occur, Bright Development must dedicate right of way along “G” Street. This dedication requirement, however, is tied to “Tentative Subdivision Map entitlement processes.” (DA, Ex. G [Condition #7].) As such, Bright Development’s obligation to do so is delayed insofar as BP Investors seeks to delay the extension of VTM #1291.

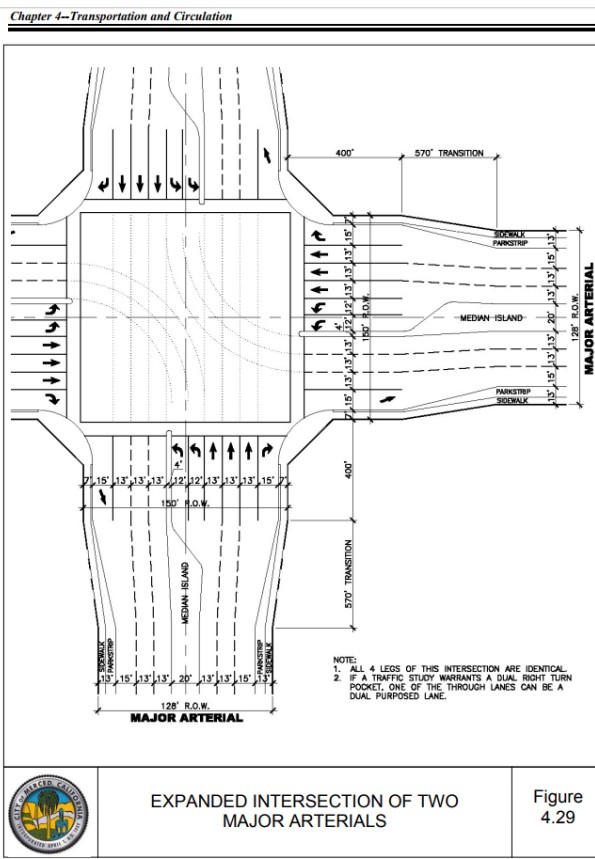
B. As a separate condition to the Apartment Project, BP Investors must improve the Merrill Place and “G” Street intersection.

Separately and independently, BP Investors’ use permit for its Apartment Project requires that the “intersection of “G” Street and Merrill Place shall be constructed per City Standards for the intersection of an arterial road and collector road, including the construction of a 150-foot long deceleration lane on “G” Street south side of Merrill Place and a 150-foot acceleration lane on “G” Street north side of Merrill Place.” (CUP #1200, Condition #20.) To the extent the use permit incorporates “City Standards,” this refers to, in part, the General Plan figures that require six lanes of travel and other amenities, such as bicycle lanes, shoulders, and a 12-foot-wide strip on either side of the road for landscaping and sidewalks. For convenience, the General Plan figure that applies is reproduced here:

Figure 4.4
Major Arterial/Arterial
Cross-Section



The term “City Standards” also refers to a separate set of intersection standards appearing in Figure 4.24 of the City’s General Plan. Figure 4.29 of the General Plan is included immediately below.



Of significance is that this figure requires that, on the approach to an intersection involving a major arterial road such as “G” Street, the required right of way is not 128 feet wide, but 150 feet wide. This additional width is necessary to accommodate acceleration and deceleration lanes, as specified in the use permit conditions. At the same time, there does not appear to be any requirement that any party, including Bright Development, dedicate right of way along “G” Street outside the 128-foot-wide footprint. (See, e.g., DA, Ex. G [Condition #7]; VTM #1291, Condition #12.)

In summary:

- BP Investors must construct all of the “G” Street Improvements before obtaining final permits (e.g., certificates of occupancy) for its Apartment Project;
- BP Investors must wait for Bright Homes to dedicate the necessary land along “G” Street to complete both the “G” Street Improvements and the Merrill Place/”G” Street intersection, whereas Bright Development is relieved of all obligations to do so under the Development Agreement (see DA, § 27.2.); and
- The Apartment Project’s requirement of acceleration and deceleration lanes on “G” Street cannot be completed absent the consent of Bright Homes, since neither the annexation approvals or VTM #1291 require Bright Homes to dedicate all the necessary land as conditions of approval.

The failure to construct each of the necessary improvements would result in a violation of both Conditional Use Permit #1200 and Resolution #2871. Meanwhile, BP Investors continued opposition and delay of our client’s project will ultimately result in a delay to BP Investor’s own development interests.

VI. Conclusion.

Bright Development wishes to resolve all issues with BP Investors in an amicable and constructive matter. For such resolution to happen, our client hopes that BP Investors will be willing to engage in good faith negotiations towards this end. We acknowledge that BP Investors and Bright Development have met in the past few months, but it is Bright Development’s perception that BP Investors has not been willing to make any reasonable concessions. Instead, it appears BP Investors sought to undermine these negotiations by attempting to modify its Apartment Project approvals in a way that would nullify BP Investors’ obligation to improve Merrill Place and G Street.

Given the parties share a common land use entitlement history, it appears undeniable that the success of both parties and their development projects are tied together, and that any resolution will require a mutual agreement to formally modify the Development Agreement. The tactics employed by BP Investors since June 2017 have not worked for either BP Investors or Bright Development, and we expect that further opposition by BP Investors’ to its neighbors’ development interests will ultimately result in significant delay and financial loss to both parties. This result would be an unfortunate outcome.

Thank you for your attention to these important matters.

Sincerely,

MILLER STARR REGALIA



Sean Marciniak



Anthony M. Leones

SRM:srm

cc: Jolie Houston, Interim City Attorney, City of Merced (Jolie.Houston@berliner.com)
Julie Nelson, Associate Planner, City of Merced (NelsonJ@cityofmerced.org)
Scott McBride, Development Services Director, City of Merced
(McBrideS@cityofmerced.org)
Kim Espinosa, Planning Manager, City of Merced (EspinosaK@cityofmerced.org)
George "Bill" Speir, Esq., Miller Starr Regalia
Clients

CITY OF MERCED
Site Plan Review Committee

MINUTES

Planning Conference Room
2nd Floor Civic Center
Thursday, March 15, 2018

Chairperson McBRIDE called the meeting to order at 1:35 p.m.

ROLL CALL

Committee Members Present: Development Services Director McBride, Acting City Engineer Son, and Engineering Technician IV England (for Acting Assistant Chief Building Official Frazier)

Committee Members Absent: None

Staff Present: Associate Planner/Recording Secretary Nelson, Planning Manager Espinosa, City Surveyor Cardoso, Interim City Attorney Houston (by phone)

1. **MINUTES**

M/S SON-ENGLAND, and carried by unanimous voice vote, to approve the Minutes of February 8, 2018, as submitted.

3. **COMMUNICATIONS**

None.

4. **ITEMS**

4.1 Extension of Vesting Tentative Subdivision Map (VTSM) #1291 (“Bright Development”) for 168 single-family lots on 39.8 acres, located at the northeast corner of G Street and Merrill Place.

Associate Planner NELSON reviewed the request for the extension of VTSM #1291. She recapped the history of the approvals and previous extensions granted by the State of California. She stated that a letter from Miller Starr Regalia,

Site Plan Review Committee Minutes

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March 15, 2018

attorneys for Bright Development, had submitted a letter to the Site Plan Review Committee on March 14, 2018, which stated that the Findings for denial (recommended by staff) were unwarranted and requested the Site Plan Committee approve the request for an extension. She also stated that a letter from Rick Telegan had been submitted on October 30, 2017, in opposition to the extension. For further information, refer to the memo to the Site Plan Review Committee dated March 15, 2018.

Chairperson McBRIDE opened the public hearing at 1:42 p.m.

Mark BEISSWANGER, representative for Bright Development, spoke in favor of the extension request. He read into the record the three bullet points from page 16 of the letter from Miller Starr Regalia to the City of Merced.

Rick TELEGAN, spoke in opposition to the extension. He stated that his map for the Palisades Subdivision (located north of the Bright Development Subdivision) was never valid because a portion of the property shown on the Palisades map was never annexed into the City.

The public hearing was closed at 1:47 p.m.

Interim City Attorney HOUSTON acknowledged receipt of the letter from Miller Starr Regalia and recommended to the Committee that this request be forwarded to the Planning Commission for final review and decision per Merced Municipal Code Section 20.68.050 C(2). She explained that the Committee may also deny the extension request or approve the request. Both of these actions would be subject to appeal to the Planning Commission and City Council.

Interim City Attorney HOUSTON further explained that by referring the decision to the Planning Commission, the Vesting Tentative Map would not expire on March 16, 2018. The map would remain active until all actions have been taken and appeals have been heard.

M/S SON-ENGLAND, and carried by the following vote, to refer the request for an extension of VTSM #1291 to the Planning Commission for review and action:

Site Plan Review Committee Minutes

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March 15, 2018

AYES: Committee Members Son, England, and Chairperson
McBride

NOES: None

ABSENT: None

5. **INFORMATION ITEMS**

5.1 Calendar of Meetings/Events

There was no discussion regarding the calendar of meetings/events.

6. **ADJOURNMENT**

There being no further business, Chairperson McBRIDE adjourned the meeting at 1:59 p.m.

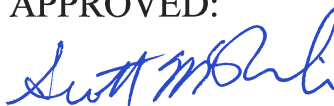
Respectfully submitted,



Julie Nelson, Secretary

Merced City Site Plan Review Committee

APPROVED:



Scott McBride, Chairperson/Development
Services Director
Merced City Site Plan Review Committee

CITY OF MERCED
Planning Commission

Resolution #2904

Extended on 7/15/08, 7/15/09, 7/15/11, 7/11/13, and 10/10/15--See Page 9

AMENDED by City Council on 1/16/07 – Pg 3

WHEREAS, the Merced City Planning Commission at its regular meeting of November 8, 2006, held a public hearing and considered **Vesting Tentative Subdivision Map #1291** (“Bright Development”), initiated by Golden Valley Engineering, applicants for Bright Homes Corporation, property owner, to allow the subdivision of 39.8 acres into 168 single-family residential lots. The area is located east of G Street, and ¼ mile north of Cardella Road within an R-1-5 (Low Density Residential, 5,000-square-foot lot minimum) pre-zone; also known as Assessor’s Parcel No. 061-030-017 and -038; and,

WHEREAS, the Merced City Planning Commission does not concur with Findings A through V of Staff Report #06-41 – 4th Addendum, and finds as follows in additional Finding W:

“W. During their testimony during the public hearing, the project applicants indicated that they wanted changes to Condition Numbers 2, 16, 20, & 21 and the deletion of Condition #29. Planning staff indicated that these changes were not recommended since they appeared to be in conflict with the Voting Rights Act and the adopted Pre-Annexation Development Agreement signed by the applicants. The Planning Commission reviewed various documents regarding the Annexation Agreement and the City Attorney clarified the delay with the recordation of the annexation pending required pre-clearance under the Voting Rights Act.

“At that time, the Commission indicated that they didn't feel they had enough information to make a decision to approve the project at this point and they did not want to contradict the previous agreements. However, the applicants had asked that a decision be made at this meeting due to the previous continuances. Given the above, the Planning Commission voted to deny the applications and informed the applicants that they could appeal their decision to the City Council.”

PLANNING COMMISSION RESOLUTION #2904

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November 8, 2006 /January 16, 2007/August 3, 2010/July 15, 2011/July 11, 2013 /
October 10, 2015

WHEREAS, after reviewing the City's Initial Study and Draft Environmental Determination, and fully discussing all the issues, the Merced City Planning Commission does resolve to hereby deny Vesting Tentative Subdivision Map #1291.

Upon motion by Commissioner Amey, seconded by Commissioner Burr, and carried by the following vote:

AYES: Commissioners Acheson, Amey, Burr, and Chairman Shankland

NOES: Commissioner Ward

ABSENT: Commissioners Conte and Fisher

Adopted this 8th day of November, 2006



Chairman, Planning Commission of
the City of Merced, California

ATTEST:


Secretary

PLANNING COMMISSION RESOLUTION #2904

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November 8, 2006/January 16, 2007/July 15, 2008/July 15, 2009/July 15, 2011/July 11, 2013/Oct. 10, 2015

January 16, 2007: At their regularly scheduled City Council meeting of January 16, 2007, the City Council considered the Applicant's appeal of the Planning Commission Denial of Vesting Tentative Subdivision Map #1291 ("Bright Development") and took the following action:

Upon Motion by Council Member Gabriault-Acosta, Seconded by Council Member Pollard, duly carried, resolved, to approve Findings A through S, finding that the previous environmental review [Expanded Initial Study #04-02 (Mitigated Negative Declaration) for the Absolute/Leeco Annexation] remains sufficient and no further documentation is required (Subsequent EIR/ND Section 15162 Findings), and approves Vesting Tentative Subdivision Map Application No. 1291 ("Bright Development"), subject to the amended conditions as recommended by Staff to the Planning Commission on November 8, 2006, and modification of Condition #21 of Staff Report No. 06-42 – 4th Addendum, as follows:

(NOTE: Text with "~~strike through~~" is to be deleted.)

- *1) The proposed project shall be constructed/designed as shown on Exhibit 1 (Proposed Vesting Tentative Map) - Attachment C (of Staff Report #06-42 – 4th Addendum), subject to the listed conditions.
- *2) All conditions contained in Resolution #1175-Amended ("Standard Tentative Subdivision Map Conditions") shall apply, as well as conditions and mitigation measures spelled out in the Pre-Annexation Development Agreement for Absolute/Leeco Annexation (including the need to comply with the 6-minute emergency response time in the Pre-Annexation Development Agreement), adopted April 17, 2006, and any subsequent amendments (see Attachment F of Staff Report 306-42 – 4th Addendum for mitigation measures).
- *3) The proposed project shall comply with all standard Municipal Code (including R-1-5 design standards) and Subdivision Map Act requirements as applied by the City Engineering Department.
- *4) All other applicable codes, ordinances, policies, etc., adopted by the City of Merced shall apply.

PLANNING COMMISSION RESOLUTION #2904

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November 8, 2006/January 16, 2007/July 15, 2008/July 15, 2009/July 15, 2011/July 11, 2013/Oct. 10, 2015

- *5) Community Facilities District (CFD) formation is required for annual operating costs for police and fire services as well as storm drainage, public landscaping, street trees, street lights, parks and open space. CFD procedures shall be initiated before final map approval. Developer/Owner shall submit a request agreeing to such a procedure, waiving right to protest and post deposit as determined by the City Engineer to be sufficient to cover procedure costs and maintenance costs expected prior to first assessments being received.
- *6) The developer/applicant shall indemnify, protect, defend, and hold harmless the City, and any agency or instrumentality thereof, and any officers, officials, employees, or agents thereof, from any and all claims, actions, or proceedings against the City, or any agency or instrumentality thereof, and any officers, officials, employees, or agents thereof to attack, set aside, void, or annul, an approval of the City, or any agency or instrumentality thereof, advisory agency, appeal board, or legislative body, including actions approved by the voters of the City, concerning the project and the approvals granted herein. City shall promptly notify the developer/applicant of any claim, action, or proceeding. City shall further cooperate fully in the defense of the action. Should the City fail to either promptly notify or cooperate fully, the developer/applicant shall not thereafter be responsible to indemnify, defend, protect, or hold harmless the City, any agency or instrumentality thereof, or any of its officers, officials, employees, or agents.
- *7) The developer/applicant shall construct and operate the project in strict compliance with the approvals granted herein, City standards, laws, and ordinances, and in compliance with all State and Federal laws, regulations, and standards. In the event of a conflict between City laws and standards and a State or Federal law, regulation, or standard, the stricter or higher standard shall control.
- *8) Street names to be approved by City Engineer.
- *9) Dedicate, by Final Map, all interior street rights-of-way and all necessary easements and as needed for irrigation, utilities, drainage, landscaping, and open space.

PLANNING COMMISSION RESOLUTION #2904

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November 8, 2006/January 16, 2007/July 15, 2008/July 15, 2009/July 15, 2011/July 11, 2013/Oct. 10, 2015

- *10) Developer shall design storm drainage with consideration as to whether the shared pump station pumping rate can or needs to be constructed in phases. Developer shall share costs of pump station with the subdivision to the south (“Bright Development”) if joint use occurs, or if pump station is necessary. Storm drainage shall comply with City Storm Drainage Master Plan.
- *11) Developer shall design sanitary sewer with consideration as to whether the shared pump station pumping rate can or needs to be constructed in phases. Developer shall share costs of pump station with the subdivision to the south (“Bright Development”) if joint use occurs, or if pump station is necessary.
- *12) Dedicate additional G Street right-of-way and easements (along the western property line of the project site) to match *Merced Vision 2015 General Plan* requirements for 128-foot wide arterial, plus landscape and public facilities easements of 15-feet in width, including the construction of a 6-foot high masonry wall along the eastern portion of G Street.
- *13) Dedicate additional Foothill Drive right-of-way and easements to match *Merced Vision 2015 General Plan* requirements for 74-foot wide collector, plus landscape and public facilities easements varying from 10-feet to 12-feet in width, including the construction of a 6-foot high masonry wall.
- *14) Provide for City review and approval of landscape/irrigation plans, prepared by a licensed landscape architect, for all areas of landscaping that are to be maintained by City.
- *15) Compliance with the 40-foot visual corner is required for corner lots (approximately 17 lots), and may result in the applicant constructing smaller homes on these lots or increasing the front yard setbacks. A 4-foot encroachment for the porch area can be allowed within this area. Details to be worked out with staff.
- *16) The effective date of this tentative map approval shall be the effective date of the final annexation for Absolute/Leeco. (Annexation to the

PLANNING COMMISSION RESOLUTION #2904

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November 8, 2006/January 16, 2007/July 15, 2008/July 15, 2009/July 15,
2011/July 11, 2013/Oct. 10, 2015

- City has not yet been finalized and is subject to pre-clearance under the Voting Rights Act before the Annexation can become effective.)
- *17) The proposed Community Park shall be designed for park and recreational use only. Basin or storm-water retention allowed within this park shall be consistent with the City's Park Master Plan. All bike trails within the linear park shall be a minimum width of 10-12 feet as per the Park Master Plan.
 - 18) Refuse containers shall be stored out of site of the general public, including those homes located on the private driveways. A concrete pad (3 x 6 foot minimum) shall be installed in the side or back yard of each unit to house refuse containers with a paved path to the street.
 - 19) There shall be no valley (cross) gutters installed within this subdivision.
 - 20) The road easement along the northern property line shall have a width of 20-feet and be paved from Palisades Drive (the north-south collector) west to connect with the open-ended local street. The easement will need to be paved and functional prior to the issuance of any Building Permit involving Lots #1 through #17 and Lots #37 through #47. Details to be worked out with the Planning and Fire Departments.
 - 21) The drainage basins along the PG&E power-line easements and within the neighborhood park/basins shall be designed in an open manner with no barriers, fences, etc., hindering their use as open space. All basins will need to be constructed and functional with City acceptance prior to issuance of the first certificate of occupancy. The linear and neighborhood parks will need to be ~~shall be constructed, finalized, and dedicated~~ transferred to the City of Merced ~~prior to the issuance of the 100th Building Permit, and~~ per the terms of the Pre-Annexation Development Agreement.
 - 22) The secondary access point shall be located at the intersection of Merrill Drive and G Street. The secondary access point shall be installed prior to the issuance of the first certificate of occupancy.

PLANNING COMMISSION RESOLUTION #2904

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November 8, 2006/January 16, 2007/July 15, 2008/July 15, 2009/July 15, 2011/July 11, 2013/Oct. 10, 2015

- 23) City staff encourages and recommends the applicant to seek a water agreement with Merced Irrigation District for the usage of non-potable water for the use of irrigation of the City Landscaped areas such as Park-Strips, Parks, and any other area where non-potable water is allowed to be used and is approved by the Public Works Director.
- 24) The street tree and street light locations shall be approved by City Staff prior to approval of the first Final Map.
- 25) The cul-de-sac bulbs labeled as Savona, San Marcos, and Toscana Courts shall be an open-end design including sidewalk connectors to adjacent linear parks (within the PG&E easement) and local streets with the walls designed back-of-house to back-of-house. The linear park and PG&E Easement shall be designed in an open manner, with no fences or other hindrances that would impede pedestrian accessibility to the power-line easement.
- 26) The cul-de-sac bulb labeled 'Amalfi' Court shall be designed with park-strips due to its extended length.
- 27) City utility service (water and sewer) connections shall be located under the driveway for each lot that faces a City street. Water lines are privately owned and maintained between the meter and the home. Sewer lines are privately owned and maintained from the point of connection to the City-owned main sewer line.
- *28) Fire Hydrants to be provided and spaced in accordance with City of Merced standards. The maximum spacing between hydrants is 500 feet. Due to width issues of G Street, fire hydrants will need to be placed along the east side of this arterial roadway. The number and placement of fire hydrants to be worked out with the Fire Department.
- 29) The applicant shall pay 25% of the cost to install a signal at the intersection of 'G' Street and Foothill Drive. This would be considered the development's fair share of the intersection cost due to the project encompassing half of the above mentioned intersection.

PLANNING COMMISSION RESOLUTION #2904

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November 8, 2006/January 16, 2007/July 15, 2008/July 15, 2009/July 15, 2011/July 11, 2013/Oct. 10, 2015

30) The following design features shall be added to the elevations for the homes throughout the subdivision:

a. *Garages Doors:* Design features such as windows and door molds, or driveway pavement treatments such as aggregate, integral color, and stamped patterns, shall be added. These designs shall be varied from one lot to the other.

b. *Front Elevations:*

- i. All proposed elevations show stucco as the primary building facia material. At least one of the plans shall be amended to show wood siding as the primary facia material, or stone or brick panels (approximately 3 feet high) along the bottom of the facia as a required element, not an option.
- ii. Each elevation is to be evenly distributed throughout the site. Prior to submittal of building permits, the applicant shall provide the Development Services Director with a “distribution plan” showing the: house plan elevation, color, roof material, porch design, and garage door/pavement design selected for each lot. In no case shall any more than two adjacent lots in a row have the same elevation.
- iii. Blank rear and side elevations visible from a street are not permitted. The elevation shall include functional features (windows and doors, or be adorned with attractive features in addition to landscaping).
- iv. The color palette for houses shall be varied (at least 6 distinct sets of colors) and be consistent with the style of the house.
- v. High quality aesthetically pleasing materials (wood, stone, iron, pre-formed plastic fencing, etc.) shall be used.

PLANNING COMMISSION RESOLUTION #2904

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November 8, 2006/January 16, 2007/July 15, 2008/July 15, 2009/July 15, 2011/July 11, 2013/Oct. 10, 2015

*(Note: Items with an asterisk are mandatory per City code or previous City action or approval.)

BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS: SPRIGGS, CORTEZ, GABRIAULT-ACOSTA, POLLARD, SANDERS, WOOTEN

NOES: COUNCIL MEMBERS: NONE

ABSTAIN: COUNCIL MEMBERS: NONE

ABSENT: COUNCIL MEMBERS: OSORIO

July 15, 2008/July 15, 2009: On July 15, 2008, the State of California gave a one-year extension to all active (not expired) tentative maps that were otherwise scheduled to expire on or before December 30, 2010. On July 15, 2009, the State of California gave a second, two-year extension. Therefore, this Tentative Map #1291 hereby has its expiration date extended to January 16, 2012.

July 15, 2011: On July 15, 2011, the State of California gave a 24-month extension to all active (not expired) tentative maps that were otherwise scheduled to expire on or before January 1, 2014. Therefore, Vesting Tentative Subdivision Map #1291 hereby has its expiration date extended to January 16, 2014.

July 11, 2013: On July 11, 2013, the State of California gave a 24-month extension to all active (not expired) tentative maps that were approved on or after January 1, 2000. Therefore, Vesting Tentative Subdivision Map #1291 hereby has its expiration date extended to January 16, 2016.

October 10, 2015: On October 10, 2015, the State of California gave a 24-month extension to all active (not expired) tentative maps that were approved on or after January 1, 2002, and not later than July 11, 2013. Therefore, Vesting Tentative Subdivision Map #1291 hereby has its expiration date extended to January 16, 2018.