

City of Hesperia STAFF REPORT



DATE: August 16, 2022

TO: Mayor and Council Members

FROM: Nils Bentsen, City Manager

BY: Rachel Molina Assistant City Manager
Ryan Leonard, Senior Planner

SUBJECT: Appeal to the City Council (APP22-00001); Applicant Pacific Communities
Builder; APNs: 0405-042-23

RECOMMENDED ACTION

It is recommended that the City Council adopt Resolution No. 2022-64, denying appeal APP22-00001 and upholding the Planning Commission and Development Review Committee (DRC) denial of a third extension of time for Tentative Tract No. 17243 (TTE22-00001).

BACKGROUND

Proposal: On July 14, 2022 the Planning Commission voted 3-2 (Commissioner's Steeno and Bartz voted no) to uphold the DRC's denial of a third extension of time for TT-17243. The Planning Commission denied the extension of time for the reasons that are listed below in this staff report. Although the applicant is requesting that the City Council grant this appeal to overturn the Planning Commission's denial, the City Council is precluded from granting a discretionary extension of time.

Current General Plan, Zoning and Land Uses: The project is located on the north side of Mesa Street between Tamarisk Avenue and Topaz Avenue. The site is within the Low Density Residential (LDR) zone of the Main Street and Freeway Corridor Specific Plan (Specific Plan). The surrounding land is designated as noted on Attachment 1. The property is currently vacant. The surrounding land uses also consist of vacant land (Attachment 2).

Project Approval Timelines:

- On March 13, 2008, the Planning Commission approved TT-17243 to subdivide 20 gross acres into 125 single-family residential lots. The Small Lot Subdivision Ordinance requires a minimum lot size of 3,000 square feet and an average lot size of not less than 4,500 square feet. The smallest lot within the subdivision is 3,499 square feet, the average lot size is 4,616 square feet, and the largest lot is 9,105 square feet in area. Only four lots are over 7,200 square feet. TT-17243 was approved for 3 years and was set to expire on March 25, 2011.
- In 2009, 2011, and 2013 the California Legislature passed assembly bills automatically extending the expiration dates of tentative maps. These automatic extensions amounted to 6 years of automatic State extensions. The automatic extensions are in addition to multiple City discretionary extensions that are allowed by the Subdivision Map Act. The Subdivision Map Act allows the City to extend a tentative tract map for a maximum of 6

total years. The 6 years is a cumulative total, and the extensions of time may be broken up into multiple increments.

- On April 20, 2016, the DRC approved the first extension of time for TT-17243 that extended the tract for an additional 2 years. On May 2, 2019, the DRC approved the second extension of time that extended TT-17243 for an additional 3 years. Table 1 provides the chronological order of the entitlements for this project.

Table 1: Timeline of the Project Entitlement

Land Use Entitlement Activity	Approval Date	Effective Date	Denial Date	Expiration Date	Length of Extension
Tentative Tract No. 17243	03/13/2008	03/25/2008		03/25/2011	-
Assembly Bill 333; AB-208; AB-116	6 years of automatic State extensions			03/25/17	6 years
TTE16-00002	04/20/2016 ¹			03/25/2019	2 years
TTE19-00001	05/02/2019			03/25/2022	3 years
TTE22-00001			05/18/22		

ISSUES/ANALYSIS

In December 2021, the applicant submitted grading plans and improvement plans to the Engineering Division for plan check. The grading plan and improvement plans were reviewed and subsequently returned to the applicant with corrections. In March 2022 the applicant submitted revised grading plans and improvement plans based upon the first plan check comments. The plans were returned to the applicant in May of 2022 with corrections. City staff then informed the applicant that TR-17243 was determined to have officially expired.

On March 21, 2022, the applicant submitted an application for an extension of time. On May 18, 2022, the Development Review Committee denied the extension (Attachment 3) on the basis that the request was in conflict with Measure N. Ballot Measure N was approved by City voters in November 2020. Measure N made changes to the City General Plan, Main Street and Freeway Corridor Specific Plan, and City Municipal Code. Among other things, Measure N modified City Municipal Code Section 17.08.040 (E) to state that “no extensions of time are allowed for residential subdivisions.” Measure N was approved by a majority of voters and therefore may only be amended by a subsequent ballot measure. *As a result, there is no mechanism in the Development Code that authorizes an approval process for any discretionary extensions of time. Furthermore, the Development Code may not be modified to allow for such an approval process.*

It’s important to point out that while the City Council does not have the authority to approve a *discretionary* extension of time, the City Council is authorized under Government Code Section 65864 to enter into a development agreement that could extend the life of the tract. However, the applicant has not submitted an application for a development agreement. Furthermore, development agreements are customarily considered as part of the land use entitlement

¹ The applicant received approval for the extension 1-year prior to the actual expiration date. As a result, the extension of time became effective 1 year after the approval and only consisted of a 2-year extension.

application at the time when the project is initially approved, not 14 years after the original approval. In addition, approving a development agreement for this purpose would set a questionable precedent and would be inconsistent with Measure N.

CONCLUSION

The City Council does not have the authority to approve a discretionary extension of time. The City Council must uphold the Planning Commission's denial of a third extension of time for Tentative Tract No. 17243.

ALTERNATIVE(S)

1. Provide alternative direction to staff.

ATTACHMENTS

1. Resolution No. 2022-64
2. Planning Commission Staff Report with Attachments