



## Interoffice Memo

**DATE:** July 8, 2020

**PHONE:** (760) 995-8150

**FROM:** **MAGDA GONZALEZ**, SENIOR PLANNER *Magda Gonzalez*  
Land Use Services Department

**TO:** **HONORABLE PLANNING COMMISSION**

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**SUBJECT: PROJECT PEXT-2020-00004 EXTENSION OF TIME REQUEST FOR TRACT MAP 15791  
(CONSOLIDATED MAPS 15791-2 THROUGH 15791-9, REFERRED AS "MASTER TRACT  
MAP NO. 15791") (AGENDA ITEM #2)**

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Since the distribution of the staff report, Staff has received additional comments regarding the above-referenced project.

The correspondences are attached for your consideration.

**From:** [nolanstravel@verizon.net](mailto:nolanstravel@verizon.net)  
**To:** [Planning Commission Comments](#)  
**Subject:** Planning Commission Public Hearing Thursday, July 9, 2020 Comments  
**Date:** Monday, July 6, 2020 1:43:43 PM  
**Attachments:** [Land use - Sarboz.rtf](#)

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San Bernardino County Planning Commission

6 July 2020

Project #: PEXT-2020-00004

Hearing Date: 9 July 2020

Commissioners

This application was supposed to have been denied in April-May 2017 during a Planning Commission Hearing. I don't understand why it is being heard again. I have attached a copy of the letter I submitted at that time. There has been no other activity on the property since the last hearing.

This is beginning to look like a "three card monte" activity. Wilshire Road LLC was suspended by the State of California April 9, 1997 and reactivated by Manoucher Sarbaz on May 30, 2020. Wilshire Road LLC is shown as 100% owner of the property. I believe at the last hearing the property was listed to another entity that was also owned by Kourosh Sarbaz and Manoucher Sarbaz.

The applicant, Michael Duffy is apparently representing Wilshire Road LLC since they (Wilshire Road LLC) are the current listed 100% owner of the property per San Bernardino County PIMS. Wilshire Road LLC acquired the property April 12, 2007 while it was still under State suspension.

I cannot find a "name history" in the County Assessor computer system, it only shows Wilshire Road LLC.

Please deny the time extension request for the same reasons stated in our previous attached letter.

Allen and Susan Nolan

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San Bernardino County Zoning Administrator

RE: APN0450-381-09, 0450-391-06  
Project No: P201700218

Public Comment regarding the hearing for the proposal for denial of an "Extension of Time" on the project.

Please DENY the application for the "Extension of Time"

I'll try to keep this short and to the point:

1. There has been no construction work on the property for more than five (5) years. Earlier this week someone brought out two earthmovers, a steam roller and road surface finisher.

These were parked at the west entrance off Barstow Road apparently to make it look like they have been working on the property.

2. Dust from the project permeates my house and reduces the visibility to less than a quarter of a mile anytime the wind blows more than 20 mile per hour. At least the weeds from the past few years have begun to hold down the dust.

3. If an extension is granted they will just tear up the ground under the guise that they are actively working on the site which will aggravate the blowing dust problem.

4. On weekends and during school holidays the property has become an attraction for off-road motorcycles and people dumping trash.

Thank you for your consideration.

Allen Nolan  
33427 Rabbit Springs Road  
Lucerne Valley, CA

**From:** [Ibaraki, Kathlyn S.](#)  
**To:** [Planning Commission Comments](#)  
**Cc:** [Supervisor Rowe](#); [Cozad, Claire](#); [Runyan, Scott](#); ["Jason.Searles@cc.sbcounty.go"; v](#); [Duron, Heidi - LUS](#); [Rahhal, Terri](#); [Reznik, Benjamin M.](#)  
**Subject:** HEARING DATE: July 9, 2020, Agenda Item 2/Applicant Lucerne Valley, LLC/Project No. PEXT-2020-00004  
**Date:** Wednesday, July 8, 2020 3:43:40 PM  
**Attachments:** [68104330\\_1.pdf](#)

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Chair Chavez and Hon. Members of the County Planning Commission,  
Please find attached Benjamin Reznik's July 8, 2020 letter regarding the  
subject matter. Thank you.

**Kathlyn Ibaraki** | Secretary to attorney Benjamin M. Reznik  
**Jeffer Mangels Butler & Mitchell LLP | JMBM**  
1900 Avenue of the Stars, 7th Floor, Los Angeles, CA 90067  
**T:** (310) 201-3572 | **F:** (310) 203-0567 | **E:** [ki2@JMBM.com](mailto:ki2@JMBM.com)



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Benjamin M. Reznik  
bmr@jmbm.com

1900 Avenue of the Stars, 7th Floor  
Los Angeles, California 90067-4308  
(310) 203-8080 (310) 203-0567 Fax  
www.jmbm.com

July 8, 2020

**BY EMAIL AND U.S. MAIL**

Chair Chavez and Hon. Members of the  
County Planning Commission  
County of San Bernardino  
385 N. Arrowhead Avenue, 1st Floor  
San Bernardino, CA 92415  
E-Mail: PlanningCommissionComments@lus.sbcounty.gov

**Re: Agenda Item 2.**  
Applicant: Lucerne Valley, LLC  
Project No. PEXT-2020-00004

Dear Chair Chavez and Hon. Members of the Planning Commission:

Our firm represents Lucerne Valley, LLC *et al.*,<sup>1</sup> the owners and developers of approximately 1,367 acres in the Lucerne Valley, and the applicant requesting an extension for the expiration of Tract Map 15791 (the "Rancho Lucerne Project"). To assist the Commission in considering the merits of our client's request, we submit this letter to clarify some of the facts and procedures described in the July 3, 2020 staff report ("Staff Report"), and to urge the Commission to approve this extension request based on the mandates of state and local law.

Initially, we want to address the Staff Report's most glaring error—*i.e.*, its recommendation that the Commission deny our client's request for an extension because—supposedly—there are no more discretionary extensions available under state law. ***This is clearly incorrect.*** In fact, the Staff Report itself acknowledges that the County can grant "discretionary extensions for up to a maximum of six years." It also notes that the County has previously granted "two extensions totaling five years." (Staff Report, Pg. 7.) Obviously, and at a minimum<sup>2</sup>, the County may grant in its discretion an extension for an additional year pursuant to Government Code § 66452.6(e).

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<sup>1</sup> Club View, LLC; Monaco Investment Co., Inc.; Wilshire Road LLC; and, Makasa Equity, LLC.

<sup>2</sup> The reality is that, as we read the Staff Report, Staff is apparently treating the Settlement Agreement as a new map approval. If that is the case, then the tentative maps would be subject to an additional six years of discretionary extensions under Government Code § 66452.6(e), since the previous five years were granted prior to the execution of the Settlement Agreement.

For the reasons we explain below, there are serious questions regarding the County's compliance with the law that must be addressed. It behooves both the County and our clients to address these issues *before* the expiration of the map to avoid the potential for lengthy and costly litigation that could expose the County to millions of dollars in liabilities. Granting the additional one-year extension that is clearly available under state law will do exactly that. We urge the Commission to do so.

**The County Failed to Adopt the Modified Conditions of Approval Following the 2007 Settlement Agreement.**

The Staff Report provides a one-sided explanation of the County's responsibilities under March 1, 2007 Settlement Agreement (the "Settlement Agreement"), and its impact to our client's ability to process the subdivision. Most importantly, while the Settlement Agreement set forth an agreement between our clients and the County to modify the conditions of approval of the Rancho Lucerne Project's tentative map, we have seen no evidence that the County ever lawfully adopted those modified conditions through a public hearing as required by the Subdivision Map Act ("SMA"). Notwithstanding the Staff Report's suggestion to the contrary, the conditions of approval of a tentative tract map *may not* be modified by a private agreement. Rather, state law mandates that any modification to a subdivision approval, just like any other discretionary land use approval resulting from the exercise of the County's police powers, may only occur through a duly-noticed public hearing resulting in the adoption of required findings. Any attempt to avoid this requirement is void as a matter of law. (*Trancas Property Owners Assn. v. City of Malibu* (2006) 138 Cal.App.4th 172; *see also Summit Media LLV v. City of Los Angeles* (2012) 211 Cal.App.4th 921, 9345, a settlement agreement that circumvents "standard zoning that requires administrative proceedings and public hearings... by contract is impermissible." (Internal Cites Omitted)) Accordingly, the Staff Report's contention that the Settlement Agreement modified the project's conditions of approval—without a public hearing and without the adoption of mandatory findings—is inconsistent with state law and therefore erroneous.

**The County's Failure to Properly Adopt the Modified Conditions of Approval Has Delayed the Project**

The County's failure to properly adopt the modified conditions of approval has delayed the processing of our client's project and has placed our client in an untenable position. As noted in the Staff Report, our client submitted its Final Tract Map for Tract 15791-2 on December 2, 2019, consistent with the project conditions as approved by the County Board of Supervisors. Two months later, the County delayed processing the map, claiming that it was inconsistent with the conditions set forth in the Settlement Agreement. The County also delayed processing our client's Master Tract Map for the same reason, which was submitted in March of this year. Being that the County never properly adopted the conditions it is requiring of the project, the County's actions are unlawful and in violation of the SMA and the Housing Accountability Act.

**The Recently-Submitted Final Maps Are Consistent with the Operative  
Conditions of Approval and Entitle the Applicant to an Additional 36-Month  
Extension**

Moreover, given that the maps submitted by our client are in compliance with the currently-operative conditions of approval of the tentative map, the maps qualified for an additional 36-month extension from the date they were submitted under Government Code § 66452.6(d), which provides an automatic 3-year extension upon submittal of each phase of a multi-phased tract map.

**The County's Failure to Properly Adopt the Modified Conditions of Approval  
Amounts to a Moratorium Further Extending the Life of the Tentative Map**

Finally, by failing to properly adopt the modified conditions of approval described by the Settlement Agreement and by refusing to process our client's maps based upon the operative conditions of approval, the County has imposed a *de facto* development moratorium, which tolls the expiration of the Project map. Government Code § 66452.6 provides that a map's period of validity does not include any period of time during which a development moratorium is in place. The SMA explains that a "development moratorium" is deemed to exist where for any period of time a condition imposed by the local agency could not be satisfied because the "condition was one that, by its nature, necessitated action by the city or county, and the city or county either did not take the necessary action or by its own action or inaction was prevented or delayed in taking the necessary action prior to expiration of the tentative map." *See* Gov. Code § 66452.6(f)(1). This is precisely the roadblock our clients are faced with today, as the County is requiring our clients to comply with conditions of approval that the County failed to properly adopt. Accordingly, these circumstances constitute a *de facto* development moratorium under the SMA, which further tolls the map's expiration.

**Conclusion**

Clearly, there are substantial questions regarding the propriety of the County's actions following the execution of the Settlement Agreement, which have impeded our clients' ability to satisfy the conditions of approval of the approved tentative maps. Should the County decline to recognize some form of extension or tolling and take the position that the maps have expired, our clients would be left with little choice but to litigate. That would be in no party's interest.

Based on the foregoing, we urge the Commission to approve the additional one-year discretionary extension that is clearly available under Government Code § 66452.6(e) while we work through these issues with County staff and legal counsel. In the alternative, the Commission should find that the present circumstances faced by our client constitute a development moratorium under the SMA, and recognize that the expiration of the tentative maps

has been tolled until the County either (i) accepts the project map as originally approved by the Board of Supervisors, or (ii) takes the necessary actions required under the SMA to adopt the Settlement Agreement conditions it seeks to enforce. As an additional alternative, the Commission should find that our clients are entitled to a further three-year phased-map extension pursuant to Government Code § 66452.6(a)(1) running from the date the Master Tract Map was submitted to the County for approval.

Any of these alternatives would be in the interest of both our client and the County. A finding that the map has expired—as suggested by the Staff Report—would spell the death knell of our client's development Project and could result in millions of dollars in damages to our client and the project's investors for which the County would face significant exposure. Thank you for your consideration.

Sincerely,



BENJAMIN M. REZNIK and  
DANIEL F. FREEDMAN of  
Jeffer Mangels Butler & Mitchell LLP

BMR:df

CC: Supervisor Dawn Rowe, Third District, County of San Bernardino Board of Supervisors.  
Clair Cozad, Third District, County of San Bernardino Board of Supervisors.  
Scott Runyan, Deputy County Counsel, County of San Bernardino County Counsel.  
Jason Searles, Deputy County Counsel, County of San Bernardino County Counsel.  
Heidi Duron, Supervising Planner, County of San Bernardino Land Use Services.  
Terri Rahhal, Director, County of San Bernardino Land Use Services.  
Michael Duffy