

## Exhibit H



May 5<sup>th</sup>, 2020

Jennifer Clark, Director  
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Planning and Development Department  
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**SUBJECT: APPEAL OF PROPOSED CONDITIONS PLACED ON MAP EXTENSION FOR TRACT 5434/UGM**

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Ms. Clark,

This letter serves as an appeal to the condition proposed for the approval of the time extension for Vesting Tentative Tract 5434. In the staff report to Planning Commission, City staff has indicated that the approval of the map extension will be subject to the payment of current Development Impact Fees. KB Home respectfully appeals this condition and requests that the project be allowed to pay the development impact fees as conditioned in the original tentative map approval that occurred in 2017. This condition is being appealed for the following reasons:

1. KB Home and the project engineer (Precision Civil Engineering (PCE)), have been diligently working towards finalizing plans and documents needed to record the final map. There have been unexpected delays due to the complexity of designing the required lift station and creating a specialized CFD. **Please see attached timeline (Exhibit 1) that demonstrates the efforts made by the applicant to continuously keep the project moving.** The applicant should not be penalized due to unforeseen circumstances.
2. A map extension should not have been required in the first place since the Final Map was filed in February of 2019 (within 24 months of Tentative Map approval).
3. The evidence used to make the findings contained in Section 15-3316-C-2(c and d) to support the imposition of new fees are based on a comparison to 2006 conditions, even though the map was approved in 2017. This is not the intent of the ordinance.

Below is a detailed analysis of the items listed above.

1. **KB Home and our Engineer (PCE) have been diligently working towards finalizing plans and documents needed to record the final map, but there have been delays due to the complexity of designing the required lift station and creating a specialized CFD.**

As demonstrated by the attached timeline (Exhibit 1), significant effort has been made to prepare all plans and documents necessary to finalize the map. Our engineer (PCE) has had multiple meetings to coordinate with stakeholders to determine a feasible location for the temporary lift station. The most difficult element was that the only acceptable location for the lift station by the City is not per Fresno Irrigation District's (FID) standards in regard to spacing from the Mill ditch canal. This caused delays in proposing alternatives to the routing of how the force main will cross the Mill Ditch. City wastewater officials tested variations of bends for maintenance many of which resulted in negative outcomes.

In addition to this, PCE had a difficult time proposing a lift station that met the needs of the project and was also acceptable to the City. Originally, the demands and costs of a temporary lift station that the City would accept was not feasible nor cost effective to the project. Because of these complex issues, our engineer spent much longer than expected coming up with a solution that would serve the project and would be accepted by all parties.

Furthermore, the Community Facilities District (CFD) that needed to be created for the lift station was not standard and took more time to draft. For example, PCE had several back and forth discussions with the City on determining the maintenance costs over the life of the lift station. Because of this non-standard agreement and process, PCE spent much longer than expected to submit the complete application package required for the creation of the CFD.

2. **A map extension should not have been required in the first place since the Final Map was filed in February of 2019 (within 24 months of Tentative Map approval).**

Based on the staff report, it can be concluded that the City is relying on Section 15-3403 to indicate that Vested Rights (including the right to be protected from the imposition of new impact fees) granted through the approval of a Vesting Tentative Tract Map expire if a Final Map is not approved before the expiration of the Vesting Tentative Tract Map. Based on a review of the Development Code and Subdivision Map Act, we disagree with this interpretation. Below is an analysis of the applicable City of Fresno Development Code:

Section 15-3403 (EXPIRATION OF VESTING TENTATIVE MAP) of the Fresno Municipal Code states the following:

*The development rights vested by this section shall expire if a Parcel Map or Final Map is not approved before the expiration of the Vesting Tentative Map or Vesting Tentative Parcel Map **in compliance with Section 15-3316**, Time Limits and Expiration of Approved Maps...*

Although on first glance this implies that the Final Map must be approved by the expiration date (in this case August of 2019 or February 2020) in order to retain vested development rights, section 15-3316 (the section referred to for determining when the Vesting Tentative Map expires) **clearly indicates that a tentative map does not expire if a Final Map has been filed with the City before the original 2-year time limit ends.** Specifically, this section reads as follows:

**SEC. 15-3316. - TIME LIMITS AND EXPIRATION OF APPROVED MAPS.**

- A. *Time Limits.* An approved Tentative Map or Tentative Parcel Map is valid for 24 months after its effective date, except as otherwise provided by the Map Act (Sections 66452.6, 66452.11, 66452.13, 66452.21, 66452.22, 66452.23, 66452.24 and/or 66463.5).
- B. **Expiration.** At the end of the time period per Subsection A of this section, the approval shall expire and become void **unless**:
1. **A signed Parcel or Final Map has been timely filed with the City.** The City may process, approve, and record the map if it is prepared in accordance with the approved tentative map, subject to the limitations and requirement of the Map Act.
  2. An extension of time has been granted in compliance with this section.

The City of Fresno is basing the expiration of the map on Section 15-3316-A of the FMC (Time Limits) rather than Section 15-3316-B (Expiration). Section 15-3316-B clearly states that if a Final Map **is timely filed** with the City, the Tentative Map (and thus the rights granted under that map) do not expire within that 2-year timeframe. The Final Map was filed in February of 2019 and accepted as complete by the City in March 2019. This is well before the original map expiration date of August 17, 2019. **Thus, the map has not expired, and no map extension is required.**

3. **The evidence used to make the findings contained in Section 15-3316-C-2(c and d) to support the imposition of new fees are based on a comparison to 2006 conditions, even though the map was approved in 2017. This is not the intent of the ordinance.**

As shown in Exhibit H of the City of Fresno's staff report for this project, the City of is basing the justification for imposing new fees on Finding 15-3316-C-2-c and d.

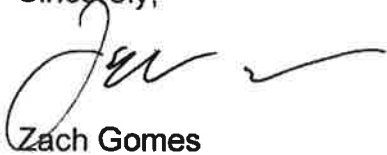
Finding C states the following: *There have been no changes in the character of the site or its surroundings that affect how the policies of the General Plan or other standards of this Development Code apply to the project.*

Finding D states the following: *There have been no changes to the capacities of community resources, including roads, schools, sewage treatment or disposal facilities, or water supply, so that there is no longer sufficient remaining capacity to serve the project.*

The intent of these findings is to determine if there have been substantial changes **since the original project approval** that would disallow an extension, or require additional conditions to accommodate any changes that have occurred since the original approval. Rather than compare conditions/circumstances that existed in August of 2017 when the map was originally approved, the City is comparing current conditions/circumstances to

conditions that existed in 2006. This applicant disagrees with this analysis as this appears to not be the intent of the Development Code.

Sincerely,

A handwritten signature in black ink, appearing to read 'Zach Gomes', with a long horizontal flourish extending to the right.

Zach Gomes  
Vice President, South Valley Business Unit  
KB Home

## EXHIBIT 1

### TRACT 5434 TIMELINE FOR FINAL MAP APPROVAL

- 12/5/2018 Submittal of preliminary sewer design.
- 12/5/2018 Was asked to hold off on Final Map submittal due to a number of development in the area that the City needed to decide how it was going to sewer Temperance area. This was after multiple meetings where client and City officials mutually agreed on the lift station.
- 12/13/2018 Confirmation to move forward with the lift station.
- 1/23/2019. Received amount of initial review fee to request from client to be able to submit. (requested from City 12/5/2018)
- **2/8/2019 Final Map Submittal/Improvement plans submittal**
- 3/26/2019 City approached the client to install 10" sewer main down Temperance to Floradora instead of the sewer lift station.
- 4/25/2019 City meeting to discuss proposed 10" sewer by DPU.
- 5/22/2019 Meeting with County as City's 10" sewer proposed alignment was through County property
- 5/23/2019 PCE redesigned and submitted City's proposed 10" sewer.
- 6/4/2019 City changed proposed alignment from Temperance to Floradora to Armstrong to Temperance to Olive.
- 6/12/2019 Meeting with City where it was decided that lift station is the definitive direction. City to confirm flowline elevation at the intersection of Temperance and McKinley. Discussion of location of the lift station started, PCE to propose options. Also, City mentioned that they would coordinate CFD for lift station with Annadale project.
- 6/26/2019 City provided preliminary flowline elev at Temp and McKinley.
- 7/1/2019 Request from PCE for City to confirm elevation on Temp and McKinley. Also, proposed options for lift station locations on trail for better accessibility and not conflict with CFD ditch.
- 7/24/2019 Meeting with City to discuss design and lift station locations.
- 7/26/2019 Flowline elevation at the intersection of Temperance and McKinley provided to PCE, however, it did not work.
- 8/7/2019 Meeting with City to discuss lift station location (PW did not accept previous proposed locations on Trails, CFD creation couldn't be started yet since location was not finalized), well site abandonment and property transfer, and map extension. Sewer design provided to City for green light to revise the plans.
- 8/12/2019 Sewer design/tie in elevation on Temp and McKinley finalized and accepted.
- 8/15/2019 Map Extension Filed

- 8/19/2019 City requested to revise design to accommodate Tract to the east.
- 9/9/2019 Meeting with Client, Wilson's Team, and City to finalize that PCE will revise design to accommodate property on the east.
- 10/1/2019 At-Risk Approved for onsite sewer and water.
- 10/9/2019 CFD example sent from City.
- 8/2019-12/2019 Various meeting coordination with City and FID regarding sewer lift station site location. Push back from FID on clearance from Mill Ditch and boring locations, this caused multiple variations of force main bends that would work with the limited space to go under ditch. These variations needed to be tested by wastewater management for maintenance purposes.
- 12/9/2019 Sewer and Water Plans Approved (excluding lift station)
- 1/8/2020 Steps to initiate and process formation of a new CFD received from City
- 1/31/2020 CFD Formation Request and legal documents Submitted to the City.
- 2/28/2020 Comments from CFD submittal received.
- 3/11/2020 CFD accepted, Council Dates Tentative for April 23 and June 11.