



Legislation Details (With Text)

File #: ID 24-907 **Version:** 1 **Name:**

Type: Action Item **Status:** Agenda Ready

File created: 6/24/2024 **In control:** Planning Commission

On agenda: 7/3/2024 **Final action:**

Title: CONTINUED FROM JUNE 19, 2024
 Consideration of an appeal regarding Tentative Parcel Map No. 2023-13 and related Environmental Assessment No. TPM 2023-13 for approximately 2.91 acres of property located on the northeast corner of North West and West Olive Avenues (Council District 3) - Planning and Development Department.

1. APPROVE Environmental Assessment No. TPM-2023-13 dated February 6, 2024, a determination that the proposed project is exempt from the California Environmental Quality Act (CEQA) Guidelines through a Section 15315/Class 15 Categorical Exemption.
2. DENY the appeal and UPHOLD the action of the Planning and Development Department Director in the approval of Tentative Parcel Map No. 2023-13 authorizing the subdivision of approximately 2.67 acres of property into a two-lot subdivision, subject to the following:
 - a. Development shall take place in accordance with the Conditions of Approval for Tentative Parcel Map No. 2023-13 dated July 3, 2024.

Sponsors: Planning and Development Department

Indexes:

Code sections:

Attachments: 1. Exhibit A – Tentative Parcel Map 2023-13 [10-24-2023], 2. Exhibit B – Appeal Letter [2-14-2024 & 6-21-2024], 3. Exhibit C – Appeal Letter [2-16-2024], 4. Exhibit D – Operational Statement [10-24-2024], 5. Exhibit E - Aerial Map, 6. Exhibit F – Fresno Municipal Code Findings, 7. Exhibit G – Public Hearing Notice Radius Map (1,000 feet), 8. Exhibit H - Conditions of Approval for Tentative Parcel Map 2023-13 [7-3-2024], 9. Exhibit I – Comments & Requirements from Responsible Agencies, 10. Exhibit J – Environmental Assessment TPM-2023-13 [2-6-2024]

Date	Ver.	Action By	Action	Result
------	------	-----------	--------	--------

REPORT TO THE PLANNING COMMISSION

July 3, 2024

FROM: JENNIFER CLARK, Director
Planning and Development Department

THROUGH: ROB HOLT, Supervising Planner
Planning and Development Department

BY: MICHAEL TRAN, Planner II

Planning and Development Department

SUBJECT

CONTINUED FROM JUNE 19, 2024

Consideration of an appeal regarding Tentative Parcel Map No. 2023-13 and related Environmental Assessment No. TPM 2023-13 for approximately 2.91 acres of property located on the northeast corner of North West and West Olive Avenues (Council District 3) - Planning and Development Department.

1. **APPROVE** Environmental Assessment No. TPM-2023-13 dated February 6, 2024, a determination that the proposed project is exempt from the California Environmental Quality Act (CEQA) Guidelines through a Section 15315/Class 15 Categorical Exemption.
2. **DENY** the appeal and **UPHOLD** the action of the Planning and Development Department Director in the approval of Tentative Parcel Map No. 2023-13 authorizing the subdivision of approximately 2.67 acres of property into a two-lot subdivision, subject to the following:
 - a. Development shall take place in accordance with the Conditions of Approval for Tentative Parcel Map No. 2023-13 dated July 3, 2024.

EXECUTIVE SUMMARY

Todd Sheller of Lyles Diversified Inc, has filed Tentative Parcel Map Application No. 2023-13, pertaining to approximately 2.67 acres of property located on the northeast corner of North West and West Olive Avenues. The applicant proposes a two-lot subdivision of the subject property.

On February 6, 2024, the Planning and Development Director approved Tentative Parcel Map No. 2023-13 based upon the project's compliance with the required findings for Tentative Parcel Maps pursuant to Fresno Municipal Code (FMC) Section 15-3309 (**Exhibit F**). On February 14, 2024, the applicant filed an appeal of the Director's decision and subsequently filed an updated appeal, dated June 21, 2024, after discussions with staff (**Exhibit B**). On February 16, 2024, Councilmember Miguel Arias, District 3, filed an appeal of the Director's decision (**Exhibit C**).

Staff recommends upholding the Director's approval based on substantial evidence in this staff report that shows the tentative parcel map requirements are consistent with the requirements of the FMC and with the applicable policies of the Fresno General Plan and Downtown Neighborhoods Community Plan.

ITEM CONTINUED FROM MAY 15, 2024, JUNE 5, 2024, AND JUNE 19, 2024

The project was brought forth to the Planning Commission hearing on March 20, 2024, and referred back to staff to allow for the Planning and Development Department and Public Works Department to discuss any alternative solutions for improvement requirements of parcel maps. City staff explored the option of the unmerging of previously merged parcels. It is understood that the existing parcel was previously two parcels (as depicted with the proposed tentative parcel map design) that were merged on December 22, 2011. Pursuant to Subdivision Map Act Section 66451.30, a notice of parcel merger for the subject parcel was recorded after January 1, 1984, thus a parcel unmerger does not apply.

The project was subsequently brought back to the Planning Commission on May 15, 2024, where the

applicant and staff requested continuance of the item on the May 15, 2024, June 5, 2024, and June 19, 2024, Planning Commission hearings to allow the Planning and Development Department, Public Works Department, Public Utilities Department, and the applicant to clarify and/or resolve the appealed conditions of approval.

Upon meeting with staff, the two following conditions of approval are no longer required:

- General Condition No. 4: Compliance with the approved address plan dated December 15, 2023.
- General Condition No. 11: Community Facilities District (CFD) and street tree requirements of the Department of Public Works memorandum dated May 21, 2024.

Upon meeting with staff, the following two conditions of approval have been revised or are requirements upon future development:

- General Condition No. 11: The requirements from the Department of Public Works have been revised and are as shown in the memorandum dated May 21, 2024. Requirements include those relative to requirements for streetlights and for sidewalks meeting ADA compliance.
- General Condition No. 12: It was explained to the applicant that requirements of the Department of Public Utilities memorandum dated November 21, 2023, apply if future development is proposed.

BACKGROUND

The subject property is currently a developed site with office buildings surrounded by urban uses. Adjacent to the north and east are office uses and a mini storage facility, adjacent to the west is the public facility for the California Department of Transportation (Caltrans) District 6, and adjacent to the south across West Olive Avenue is Roeding Park and the Fresno Chaffee Zoo.

Analysis of the Appeal Letters

On February 14, 2024, and on February 16, 2024, Lyles Diversified Inc., and Councilmember Miguel Arias (District 3) respectively, each submitted a letter to the Planning and Development Department requesting an appeal of certain conditions of approval of Tentative Parcel Map No. 2023-13. An additional appeal letter was provided by the applicant on June 21, 2024, that provided updates from the February 14, 2024, appeal letter.

(1) Below is an analysis of the issues raised in the appeal letter dated June 21, 2024 (**Exhibit B**).

Issue #1: FMC Section 15-3202 identifies requirements tied to four or fewer parcels. This applies to the applicant's single parcel but does not apply to any reinstatement of a lot line. Simply, this is a division of land to create another parcel with improvements.

Staff Response:

FMC Section 15-3202 defines Tentative Parcel Maps and Parcel Maps. Specifically, FMC

Section 15-3202. A.1 defines a Parcel Map as “Parcel Maps, as authorized by the Map Act (Section 66428; four or fewer parcels).” The proposed project is to legally subdivide one existing parcel into two parcels, resulting in the requirement for a Tentative Parcel Map.

Reinstatement of lot lines is allowed under SMA Sections 66451.30 through 66451.33 (Unmerger of Parcels). As previously stated above, this section of the SMA does not apply to the project and thus, an application for a Tentative Parcel Map is required for the subdivision of one parcel into two parcels.

Issue #2: FMC Section 15-3202 further identifies requirements for a Waived Parcel Map that must meet requirements in compliance with FMC Section 15-3503, which specifically states that a waiver may be granted in compliance with SMA Section 66428, provided that the Director shall first find that the proposed subdivision complies with all applicable requirements of this Development Code and the Map Act as to area, improvement and design, floodwater drainage control, appropriate improved public roads, sanitary disposal facilities, water supply availability, environmental protection and all other applicable requirements of this Development Code and the SMA.

SMA Section 66428(b) specifically states that a “local agency shall, by ordinance, provide a procedure for waiving the requirement for a parcel map, imposed by this division, including the requirements for a parcel map imposed by SMA Section 66426.” SMA Section 66426 only applies to creating five or more parcels and thus, does not apply to our situation.

The exact wording of FMC Section 15-3503 whereby the ordinance shall require a finding by the legislative body [“Director”] that the proposed division of land complies with the requirements of improvement, etc. Thus, the City’s requirement to provide a procedure for waiving the requirement of a parcel map is a closed-loop circle of no formal completion or action item. Therefore, using both SMA Section 66428(b) and the corresponding FMC Section 15-3503, the applicant needs to note the importance of our specific request for a lot line reinstatement that has no improvements tied to it. It is imperative to note that that a waiver may be granted based upon the Director’s review that our lot line, in this specific case, does not fit into the broad SMA or FMC sections.

Staff Response:

SMA Section 66426 defines allowances of a parcel map with five or more parcels under subsection (b), but also cites other subsections that apply in addition to subsection (b). Subsection(a) states, “Local ordinances may require a tentative map where a parcel map is required by this chapter. A parcel map shall be required for subdivisions as to which a final or parcel map is not otherwise required by this chapter, unless the preparation of the parcel map is waived by local ordinance as provided in this section...”. Pursuant to subsection (a), a parcel map is required when a subdivision is proposed with four or less parcels. The project proposes the subdivision of an existing parcel into two parcels, applying the requirement for an application for Tentative Parcel Map.

Furthermore, the City of Fresno does provide a procedure for waiving the requirement for a parcel map, by an ordinance adopted by Council (Ordinance Bill No. 2015-39, effective January 9, 2016), under FMC Section 15-3503.

Issue #3: As identified previously, the original February 6th conditions of approval noted

several inconsistent requirements that do not provide a logical connection to the revised May 21, 2024, conditions of approval for a lot line reinstatement such as:

- Right-of-way acquisition.
- Street dedications and/or vacations.
- Frontage improvement requirements.
- Olive Avenue improvements.
- West Avenue improvements.
- Hedges Avenue improvements.
- Traffic Signal Mitigation Impact Fees.
- Fresno Major Street Impact Fees.
- Regional Transportation Mitigation Fee.
- Requirement of street trees.
- Compliance with street lighting.
- Water and sanitary sewer fees.

The city's revised requirements further stipulate that "existing driveway approaches which no longer provide access to approved vehicle parking areas shall be removed unless otherwise approved by the City Engineering. The work shall be complete and accepted before a Permit of Occupancy is issued or the building is occupied per FMC Section 13-211." As must be restated and clarified; the buildings are occupied. These are existing offices. The lot line was previously in place. There are no improvements.

Fundamentally, beyond the inconsistencies of city staff's use of the SMA, the city has focused attention on FMC Article 38 (Improvements and Security). While the applicant does not disagree that this section should certainly be used for improvement projects, they have "no" improvement plans or "proposed installation of improvements" because they are simply asking to reinstate a previous lot line for existing office buildings. Thus, by definition, all the proposed city requirements for improvements should be disregarded and not apply to the applicant's lot line reinstatement.

Staff Response:

As previously explained above, the proposed project requires an application for a Tentative Parcel Map and does not apply to the unmerging of parcels (i.e. "reinstatement of a lot line"). That said, FMC Section 15-3804.Q does provide exceptions to requiring improvements for parcel maps as follows:

1. When property is divided solely because of acquisition of lands by governmental agencies for public projects, purposes or improvements, only the parcel or parcels so acquired need to be provided with the improvements or be the basis for payments required by Subsection B.
2. The improvements and payments required by this shall not be required on or in front of any undeveloped portion of a net acreage of 10 acres or more which exists after the division of land.
3. The improvements and payments required by Subsection B are not required in whole or in part or in front of any parcel of more than four or less than 10 net acres which exists

after the division of land, whenever the City Engineer in his or her discretion determines that the omission of all or part of the improvements will not be materially detrimental to the public welfare, safety, or convenience, will not adversely affect the rights of adjacent property owners or occupants, or be injurious to property or improvements in the area, and that the installation thereof would be premature in relation to the public needs of the present and immediate future.

The subject property is not being divided solely because of acquisition of lands by governmental agencies, thus the first exemption does not apply. The subject property is not undeveloped; thus, the second exemption does not apply. The subject property is not more than four or less than 10 net acres in size, thus the third exemption does not apply.

Section 66411.1 of the Subdivision Map Act states, "Notwithstanding Section 66428, whenever a local ordinance requires improvements for a division of land which is not a subdivision of five or more lots, the regulations shall be limited to the dedication of rights-of-way, easements, and the construction of reasonable offsite and onsite improvements for the parcels being created..."

FMC Section 15-3308. A.2.f (Decision, Tentative Parcel Map) requires that upon approval, conditional approval, or disapproval of a Tentative Parcel Map, the Director shall impose conditions of approval in compliance with FMC Section 15-3311 (Conditions of Approval). FMC Section 15-3311. C.3 states that the Review Authority shall adopt conditions of approval that carry out the specific requirements of Article 38, Improvements and Security.

As described above, the appealed conditions of approval are requirements within FMC Article 38 (Improvements and Security), as previously analyzed, and thus are mandatory conditions of approval. It should be noted that existing water service and meters are adequate to serve the existing development, but any future development requiring additional services or larger meters will require the applicable fees as provided in the Department of Public Utilities memorandum dated November 21, 2023.

FMC Section 15-3311.D provides for the Review Authority to provide optional conditions of approval, which include any fees or charges related to the transportation impacts. This would apply to the requirements of the Public Works Department, Land Planning Section memorandum dated May 21, 2024, with the TSMI, FMSI, and RTMF. Public Works staff confirmed that the subject property, as developed currently, does not require any fees under the TSMI, FMSI, and RTMF. Any possible future development, reconstruction or demolition may require fees under the TSMI, FMSI or RTMF.

Based on discussions with the applicant and staff, applicable improvements required prior to recordation of a Final Parcel Map are street light requirements, a four-foot (4') path of travel of behind driveway approaches, and replacement of any existing sidewalk or curb ramps that are not in conformance with current ADA standards.

- (2) The appeal letter dated February 16, 2024 (**Exhibit C**) requests that the Planning Commission explore the applicability of conditions of approval related to public improvements. This is analyzed under the analysis of the appeal letter dated February 14, 2024, and updated letter dated June 21, 2024 (**Exhibit B**) above.

Notice of Planning Commission Hearing

The Planning and Development Department mailed notices of this Planning Commission hearing to all surrounding property owners within 1000 feet of the subject property on May 24, 2024, pursuant to FMC Section 15-5007 (**Exhibit I**).

Land Use Plans and Policies

The Fresno General Plan provides goals, objectives, and policies to guide development. As proposed, the project will be consistent with the following Fresno General Plan goals:

- Make full use of existing infrastructure, and investment in improvements to increase competitiveness and promote economic growth.

The following are applicable objectives and policies from the Urban Form, Land Use & Design, and Economic Development elements of the Fresno General Plan:

- Objective ED-1: Support economic development by maintaining a strong working relationship with the business community and improving the business climate for current and future businesses.

Downtown Neighborhoods Community Plan

Upon reviewing the policies contained in the Downtown Neighborhoods Community Plan, staff has determined that there are no policies that are applicable or are no more restrictive than those contained in the Fresno General Plan or the FMC.

Fresno County Airport Land Use Compatibility Plan

The proposed project is located within the Airport Influence Area under the Fresno-Chandler Executive Airport within the Fresno County Airport Land Use Compatibility Plan. The project site is located within the Fresno Chandler Executive Airport's Safety Zone 6 - Traffic Pattern Zone. Listed uses that include hazards to flight are prohibited in Traffic Pattern Zone 6, which generally include buildings over 100 feet in height. All existing buildings on the subject property are one story and less than 100 feet in height, which is less than the minimum height required to be considered a hazard. Therefore, the proposed project is compatible and in compliance with the Airport Land Use Compatibility Plan.

ENVIRONMENTAL FINDINGS

The California Environmental Quality Act (CEQA), Public Resource Code Section 2100 et. seq., permits a public agency to determine whether a particular project is exempt from CEQA. A determination of a Categorical Exemption from Section 15315/Class 15 was made and Environmental Assessment No. TPM-2023-13 was completed for this project on February 6, 2024 (**Exhibit J**).

FRESNO MUNICIPAL CODE FINDINGS

Based upon analysis of the applications, Staff concludes that the required findings contained within Fresno Municipal Code (FMC) Section 15-3309 (Tentative Parcel Map Required Findings) can be made. These findings are attached as **Exhibit F**.

CONCLUSION

The appropriateness of the proposed project has been examined with respect to its consistency with goals and policies of the Fresno General Plan and the Downtown Neighborhoods Community Plan; compliance with the provisions of the FMC; its compatibility with surrounding existing or proposed uses; and its avoidance or mitigation of potentially significant adverse environmental impacts. These factors have been evaluated as described above and by the accompanying environmental assessment and exhibits. Staff concludes that the required findings contained within FMC Section 15-3309 et seq. can be made. Upon consideration of this evaluation, it can be concluded that the proposed project is appropriate for the project site.

ATTACHMENTS:

- Exhibit A - Tentative Parcel Map 2023-13 [10-24-2023]
- Exhibit B - Appeal Letter [2-14-2024 & 6-21-2024]
- Exhibit C - Appeal Letter [2-16-2024]
- Exhibit D - Operational Statement [10-24-2024]
- Exhibit E - Aerial Map
- Exhibit F - Fresno Municipal Code Findings
- Exhibit G - Public Hearing Notice Radius Map (1000 feet)
- Exhibit H - Conditions of Approval for Tentative Parcel Map 2023-13 [7-3-2024]
- Exhibit I - Comments & Requirements from Responsible Agencies
- Exhibit J - Environmental Assessment TPM-2023-13 [2-6-2024]