



Legislation Details (With Text)

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**File created:** 11/1/2018    **In control:** Planning Commission  
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**Title:** Consideration of request for a discretionary two-year extension of time to the expiration date for Vesting Tentative Tract Map No. 5501/UGM pertaining to approximately 36.30 acres of property generally located on the southeast corner of the intersection of East Clinton and North Armstrong Avenues (Council District 4) - Development and Resource Management Department.

1. DENY the request to discretionarily extend the expiration date for Vesting Tentative Tract Map No. 5501/UGM from October 19, 2018 to October 19, 2020.

**Sponsors:** Planning and Development Department

**Indexes:**

**Code sections:**

**Attachments:** 1. Exhibit A - Vicinity Map, 2. Exhibit B -Aerial Photograph, 3. Exhibit C - Public Hearing Notice Radius Map, 4. Exhibit D - General Plan Land Use, 5. Exhibit E - City of Fresno Zoning Map, 6. Exhibit F - Vesting Tentative Tract Map T-5501, 7. Exhibit G - Subdivider Request for Extension of Time, 8. Exhibit H - FMC Findings

Date	Ver.	Action By	Action	Result
11/7/2018	1	Planning Commission		

**REPORT TO THE PLANNING COMMISSION**

**November 07, 2018**

**FROM:** MIKE SANCHEZ, Assistant Director  
Development Services Division

**THROUGH:** BONIQUE EMERSON, AICP, Planning Manager  
Development Services Division

**BY:** WILL TACKETT, Supervising Planner  
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**SUBJECT**

Consideration of request for a discretionary two-year extension of time to the expiration date for Vesting Tentative Tract Map No. 5501/UGM pertaining to approximately 36.30 acres of property generally located on the southeast corner of the intersection of East Clinton and North Armstrong Avenues (Council District 4) - Development and Resource Management Department.

1. DENY the request to discretionarily extend the expiration date for Vesting Tentative Tract Map

No. 5501/UGM from October 19, 2018 to October 19, 2020.

## **EXECUTIVE SUMMARY**

Century Communities, on behalf of BMC Meadowood II, LLC., has filed a request for a discretionary extension of time to the expiration date for Vesting Tentative Tract Map No. 5501/UGM pertaining to approximately 36.30 acres of property generally located on the southeast corner of the intersection of East Clinton and North Armstrong Avenues

Vesting Tentative Tract Map No. 5501/UGM is a request to subdivide the subject property for purposes of creating a 79-lot conventional single family residential subdivision.

In accordance with Government Code Section 66452.6(e), upon application of the subdivider filed prior to the expiration of the approved or conditionally approved tentative map, the time at which the map expires pursuant to the Subdivision Map Act, may be extended by the legislative body or by an advisory agency authorized to approve or conditionally approve tentative maps for a period or periods not exceeding a total of six years.

On September 24, 2018, the City of Fresno received a request from the subdivider for a two-year extension of time to the current expiration date of October 19, 2018 for Vesting Tentative Tract Map No. 5501/UGM. Therefore, if this request is approved, the tentative map expiration date will be extended to October 19, 2020.

## **BACKGROUND / PROJECT ANALYSIS**

At its scheduled meeting on October 19, 2005, the Fresno City Planning Commission adopted Resolution No. 12328 conditionally approving Vesting Tentative Tract Map No. 5501/UGM. Pursuant to Government Code Section 66452.6(a)(1) and the provisions of the Fresno Municipal Code, an approved or conditionally approved tentative map shall expire 24 months after its approval or conditional approval. Therefore the original expiration date of the tentative map was October 19, 2007.

The Fresno City Planning Commission conducted a public hearing on December 5, 2007 to consider an initial request for a discretionary two-year extension for Vesting Tract Map No. 5501/UGM. Following a full and complete hearing, the Commission adopted Resolution No. 12771 extending the time for the filing of the final map 24 months until October 19, 2009.

In addition, on July 15, 2008, the Governor of the State of California approved Senate Bill (SB) No. 1185, beginning a series of automatic legislative extensions to the expiration dates for tentative maps that had not expired as of the date the provisions were added; and, which were set to expire before January 1, 2011. In accordance with SB 1185, Vesting Tentative Tract Map No. 5501/UGM was extended for 12 months to October 19, 2010.

This act and those that followed were identified as urgency statutes for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution in order to permit cities, counties to preserve development applications that were set to expire and that could not be processed at the time due to prevailing adverse economic conditions in the construction industry which occurred during and/or immediately following the Great Recession.

On July 15, 2009, the Governor approved Assembly Bill No. 333, the next automatic State extension in the sequence; providing an additional 24 month extension to qualifying tentative maps. The expiration date for Vesting Tentative Tract Map No. 5501/UGM was therefore extended to October 19, 2012.

On July 13, 2011, the Governor approved Assembly Bill No. 208, the next automatic State extension in the sequence; providing another 24 month extension to qualifying tentative maps. The expiration date for Vesting Tentative Tract Map No. 5501/UGM was therefore extended to October 19, 2014.

On July 11, 2013, the Governor approved Assembly Bill No. 116; providing another 24 month extension to qualifying tentative maps. The expiration date for Vesting Tentative Tract Map No. 5501/UGM was therefore extended to October 19, 2016.

Finally, on October 10, 2016 the Governor approved Assembly Bill No. 1303; providing another 24 month extension to qualifying tentative maps. The expiration date for Vesting Tentative Tract Map No. 5501/UGM was again extended to its current expiration date of October 19, 2018.

It should be noted that the Subdivision Map Act provides that upon an application by the subdivider to extend a tentative map, the map shall automatically be extended for 60 days or until the application for extension is approved, conditionally approved, or denied, whichever occurs first.

With the original two-year period provided prior to expiration, the previously approved two-year discretionary extension request, and the total nine years of automatic extensions afforded through the State considered, Vesting Tentative Tract Map No. 5501/UGM has remained active for a combined 11 years. The discretionary extension presently requested would yet again contribute an additional two years to the current expiration date for a total 13 years from the original approval of the tentative map.

### **Vested Rights, Development Impact Fees & Capacity Charges.**

Section 66498.1 of the Government Code provides, when a local agency approves or conditionally approves a vesting tentative map, that approval shall confer a vested right to proceed with development in substantial compliance with the ordinances, policies, and standards in effect at the date the local agency has determined that the tentative map application is complete pursuant to Section 65943 of the Government Code. Vesting Tentative Tract Map No. 5501/UGM was accepted for processing on June 21, 2005.

The development impact fees in 2005 were significantly lower than they are today. The rates in effect in 2005 (the time at which the tentative map was vested) and the current rates are shown below:

<b><u>Development Impact Fee (per home)</u></b>	<b><u>2005 Rates</u></b>	<b><u>Current Rates</u></b>
<b><u>Wastewater</u></b>	\$3,423.00	\$3,423.00
<b><u>Water Capacity</u></b>	\$1,528.00	\$4,862.00
<b><u>Fire Facilities</u></b>	\$358.00	\$779.00
<b><u>Police Facilities</u></b>	N/A	\$602.00
<b><u>Park</u></b>	\$1,069.00	\$3,923.00
<b><u>New Growth Street</u></b>	\$1,413.00	\$9,636.00

<b><u>Regional Street</u></b>	N/A	\$3,500.30
<b><u>Major Bridge</u></b>	\$136.00	N/A
<b><u>Traffic Signals</u></b>	\$450.94	\$488.00
<b><u>Total per Home</u></b>	<b><u>\$8,377.94</u></b>	<b><u>\$27,213.00</u></b>

Many of the fees are based on the size of the lot, so the actual amount paid would vary. The amounts shown are estimated for an average lot in Tract 5501.

Development impact fees are adopted and implemented as an obligation in order for development projects to pay their fair and proportional payment of fees and all development mitigation costs. Likewise, capacity charges contribute to the City's ability to recover the costs of infrastructure, assets, and water supply that benefit new development. Development impact fees are governed by California Government Code Section 66000 et. seq.

The fees from 2005, which were conditioned with approval (and which will remain in effect upon extension) will not mitigate the impacts from these new residents and from the additional vehicles. Below are some examples of how development impact fees will be spent from this project.

**Water Capacity** - Both of these maps have a Condition of Approval to install a well and provide property for a water tank. Staff estimates that the cost of the well, the wellhead treatment, and the tank to be over \$2 million for each tract. The well and tank are no longer needed because the City constructed the Southeast Surface Water Treatment Plant. Paying the current Water Capacity Fee results in a significant savings for these tracts.

**Fire Facilities** - The City is currently negotiating to purchase land for a new fire station on Armstrong south of Clinton, right across the street from Tract 5501. Land cost and construction costs have increased significantly from 2005. The cost of a new fire station exceeds \$5 million. The lower fees will not contribute a fair share toward the development of this fire station.

**Police Facilities** - The City has purchased property on Tulare and Argyle for a new police station that will serve these homes. The police station has been designed and advertised for construction bids. The low bid was \$7,505,000, which exceeded the allocated funds by 25%. The bids were rejected on October 18, 2018. The architect is now revising the plans to try to get the cost within the budgeted funds. The City did not charge impact fees for police facilities in 2005.

**Park Facilities** - The 2035 General Plan set an ambiguous goal of providing one acre of park space per 1,000 residents. The impact fee was raised to try and meet this goal for all new housing. The revenue generated by the 2005 fees is not adequate to meet the goals of the General Plan. The City has spent over \$450,000 per acre for the last parks constructed. These tracts do not include any park or open space dedications.

**New Growth Streets** - This fee is much higher than in 2005. However, the City now reimburses the developers for the improvements that they make on arterial and collector streets, so the net cost to the developer is not as high as shown in the fee estimate. Both tracts will be improving Clinton Avenue and will get substantial fee credits for this work that they would not receive in the old fee program. Tract 5501 will also get fee credit for work on Armstrong that would not be eligible under the old fee program. The New Growth Street funds will also be used to mitigate the traffic impacts on Armstrong and Fowler. The City is currently working on widening the existing bridges where Fowler

and Armstrong cross Mill Ditch. The estimate cost of each bridge exceeds \$700k. The low fees from 2005 will not mitigate the impacts created by the traffic from these two tracts.

**Regional Streets** - This fee is only used for streets that are designated in the General Plan as an Expressway or Super Arterial. In this area, Temperance Avenue is designated as a super Arterial and is eligible for funds from the Regional Street Impact fee. Tract 5524 has Temperance frontage and will receive substantial fee credits for the work needed on Temperance. The Regional funds could also be used to widen the Temperance Bridge over Mill Creek (just south of Clinton).

**Major Bridge** - This fee is not applied to new maps. Bridge improvements are now included in the New Growth Street Fee and the regional Street Fee.

**Traffic Signals** - This fee has not increased substantially since 2005. Traffic signals needed in this area include Armstrong / Clinton, Fowler / Olive, and Temperance / Belmont.

With the request for an extension of time for the tentative map, the subdivider has consented to an amendment to the existing conditions of approval that would obligate the subdivider to pay the Citywide Fire Facilities Impact Fee instead of the UGM Fire Station Capital Fee for Service Area 10R.

However, as represented herein above, Fire Department facilities and emergency services are just one obligation to the public for which the City is responsible.

Additionally, the City of Fresno has adopted its contemporary development impact fee and capacity charges in recognition that a fiscal sustainability balance cannot be achieved or maintained due to the infrastructure and service expansion obligations that accompany substantial growth; especially, given the pace the City of Fresno has experienced prior to and over the life of the tentative map and future development. The City of Fresno's past development impact fees and capacity charges have been previously found to (a) only recover costs for some infrastructure benefitting new development; (b) not recover cost for future infrastructure and water supply projects that the City has identified as necessary to meet the demands of growth; (c) fail to recover any cost from non-UGM areas; and, (d) be administratively burdensome.

The City's current development impact fee and capacity charges have been adopted and are designed to ensure that the City ongoing tax and/or rate payers are not required to subsidize the costs of facilities benefitting new development and that all parties pay a proportionate share of costs for public systems, infrastructure and assets.

Therefore, Development and Resource Management Department and Public Works Department staff do not support further extensions of time for any tentative maps which are protected by vesting rights against payment of any and all contemporary impact fees and capacity charges.

## **Final Map Activity and Processing**

The final map for Tract 5501 has not been submitted as of the date this staff report was prepared. The map is required by the Conditions of Approval to be annexed into the Community Facility District (CFD). A final map cannot be approved until after a Tract is annexed into the CFD. Two Council meetings are required for a tract to annex into a CFD. The first Council meeting is for a Resolution of Intention. The second Council meeting is required to be a Public Hearing. The minimum time period allowed by statute between these two meetings is 15 days. Furthermore, a Final Map cannot be

scheduled for City Council on the same meeting as the CFD hearing, because the CFD can be subject to a veto by the Mayor.

The CFD documents for Tract 5501 were submitted on 9/06/2018. Typical processing time for the CFD is 120 days. Therefore, these documents were not submitted with enough time to allow the CFD's and the Final Map to be processed before the current expiration date on October 19, 2018.

## Land Use Plans and Policies

One of the 17 goals outlined within the Fresno General Plan includes resolving existing public infrastructure and service deficiencies, making full use of existing infrastructure, and investment in improvements to increase competitiveness and promote economic growth. Achieving this goal will require placing emphasis on the fair and necessary costs of maintaining sustainable water, sewer, street, and other public infrastructure and service systems in rates, fees, financing and public investment to implement the General Plan. In addition, the City is required to address accumulated deferred maintenance, aging infrastructure, risks to services continuity, desired standards of service to meet quality-of-life goals, and required infrastructure to support growth, economic competitiveness and business development.

The Fresno General Plan also acknowledges that essential City services are at a minimum level, and further reductions could have an adverse impact on the overall health and safety of residents. Less-essential City programs have been eliminated or severely curtailed, including parks maintenance and operations that come out of the City's General Fund. Many of these changes are likely for the foreseeable future. Similarly, Fresno's aging utility infrastructure has suffered from deferred maintenance. Utility rates had not been kept current to help cover costs.

At the time that Vesting Tentative Tract Map No. 5501/UGM was approved, the subject property remained in the unincorporated area of Fresno County required annexation to the City of Fresno. Although the subject property has since been annexed and is now party of the City, it should be noted that when originally approved, this project was considered new growth and City expansion.

Current General Plan Policy LU-1-e pertaining to Annexation Requirements directs adoption of implementing policies and requirements that achieve annexations to the City that conform to the General Plan Land Use Designations and open space and park system, and are revenue neutral and cover all costs for public infrastructure, public facilities, and public services on an ongoing basis consistent with the requirements of ED-5-b.

Policy ED-5-b requires new residential and commercial development that requires annexation to the City to pay its fair and proportional share of needed community improvements through impact fees, assessment districts, and other mechanisms. Approve new residential and commercial development projects that require annexation to the City only after making findings that all of the following conditions are met:

- No City revenue will be used to replace or provide developer funding that has or would have been committed to any mitigation project;
- The development project will fully fund public facilities and infrastructure as necessary to mitigate any impacts arising from the new development;

- The development project will pay for public facilities and infrastructure improvements in proportion to the development's neighborhood and citywide impacts; and,
- The development will fully fund ongoing public facility and infrastructure maintenance and public service cost.

Although these policies were adopted subsequent to vested rights having been established for the tentative map, it is important to recognize the strong testament that the adopted policies make with respect to their purpose (i.e., the absolute need for new growth and development to achieve revenue neutrality and to cover costs for public infrastructure, public facilities, and public services over the life of the project and in perpetuity).

Policy MT-2-I of the Fresno General Plan provides that the City of Fresno should continue to support the implementation of metropolitan-wide and region-wide transportation impact fees sufficient to cover the proportional share of a development's impacts and need for a comprehensive multi-modal transportation system that is not funded by other sources. Work with the Council of Fresno County Governments, transportation agencies (e.g. Caltrans, Federal Transportation Agency) and other jurisdictions in the region to develop a method for determining:

- Regional transportation impacts of new development;
- Regional highways, streets, rail, trails, public transportation, and goods movement system components, consistent with the General Plan, necessary to mitigate those impacts and serve projected demands;
- Projected full lifetime costs of the regional transportation system components, including construction, operation, and maintenance; and,
- Costs covered by established funding sources.

This policy is consistent with and supports policies and objectives for fiscal sustainability in the Economic Development and Fiscal Sustainability Element.

The Board of Directors of the Fresno County Regional Transportation Mitigation Fee Agency approved Resolution No. 2009 - 01 requiring the payment of the Regional Transportation Mitigation Fee (RTMF). Confirmation by the FCOG is required before the City of Fresno can issue building permits. However, the effective date of this resolution is January 1, 2010. Given that the vested date of the tentative map precedes the effective date of this resolution, the proposed project would also be exempt from this regional impact fee obligation if continued to be extended.

The discrepancy between developments north and south of Shaw Avenue also demonstrates the effectiveness of park and open space fees and other policies in providing park space to the residents of newer residential developments as compared to past policies, although the city as a whole still remains well below other similar-sized cities. Existing deficits of pocket, neighborhood and community parks within established neighborhoods south of Shaw, may not be considered proximate to developing areas. Thus, additional funding is needed to provide parks in these areas with deficits to equitably distribute the City's parks and open space among all Fresnans. More recent revisions to the Quimby Act through AB 1359 (2013) allows fees, paid pursuant to the act, to be used in a neighborhood other than the neighborhood being developed if specific conditions can be met. This may allow some flexibility but will not resolve the ongoing issue of limited park space in established

neighborhoods.

Objective PU-3 of the General Plan calls for enhancement to the level of fire protection to meet the increasing demand for services from an increasing population. Implementing Policy PU-3-g Cost Recovery, encourages the City to continue to evaluate appropriate codes, policies, and methods to generate fees or other sources of revenue to offset the ongoing personnel and maintenance costs of providing fire prevention and response services.

Therefore, it is the City staff's opinion and position that the requested extension of time for the tentative map will not support nor will it be consistent with the goals, objective and policies of the Fresno General Plan as referenced herein above unless subjected to and required to pay all current and contemporary impact fees and capacity charges, which have been adopted for purposes of providing essential public services and facilities to meet quality-of-life goals, and required infrastructure to support growth, economic competitiveness and business development.

### **Notice of Planning Commission Hearing**

The Development and Resource Management Department mailed notices of this Planning Commission hearing to all surrounding property owners within 1000 feet of the subject property, pursuant to Section 15-5007 of the Fresno Municipal Code.

### **FRESNO MUNICIPAL CODE FINDINGS**

Based upon analysis of the applications, staff concludes that the required findings contained within Section 15-3316-C-2 (Extensions of Time) of the FMC cannot be made and therefore recommends denial of the requested extension of time for the tentative map. These findings are attached as Exhibit H to this report.

### **CONCLUSION**

The appropriateness of the proposed request for an extension of time has been examined with respect to its conformity with the goals, objectives and policies of the Fresno General Plan and the Citywide Development Code; its continued compatibility with surrounding existing or proposed uses and character of the site and its surrounding; and with respect to any any changes to capacities of community resources which may have occurred since the tentative map was originally approved. These factors have been evaluated as described herein above. Upon consideration of this evaluation, it can be concluded that the additional two-year extension of time to the expiration date of the Vesting Tentative Tract Map No. 5501/UGM is not appropriate at this time.

#### **Attachments:**

- Exhibit A - Vicinity Map
- Exhibit B - Aerial Photograph
- Exhibit C - Public Hearing Notice Radius Map
- Exhibit D - Fresno General Plan Planned Land Use Map
- Exhibit E - City of Fresno Zone District Map



Exhibit F - Vesting Tentative Tract Map No. 5501/UGM

Exhibit G - Subdivider Request for Extension of Time

Exhibit H - Fresno Municipal Code Findings