



ATTORNEYS AT LAW

50 California Street
34th Floor
San Francisco, CA 94111
T 415.398.3600
F 415.398.2438

Michael P. Durkee
D 415.438.7203
mdurkee@nossaman.com

Refer To File #: -

VIA HAND DELIVERY

May 10, 2016

Honorable Chair and Supervisors
San Benito County
County Administration Bldg.
481 4th St, 1st Floor
Hollister, CA 95023

*Re: Board Agenda Item No. 30, May 10, 2016 Board Meeting:
Staff Proposed General Plan Amendment to Amend
Land Use Element of County General Plan to Create
Southside New Community Study Area. (SBC FILE NUMBER: 790)*

Dear Honorable Chair and Supervisors:

On behalf of my client, Hollister Land Partners LLC, and with the assistance of our client's manager, Mr. Todd Deutscher, we thank you for this opportunity to submit this letter regarding our client's Bennett Ranch "Project" and the proposed amendment of the County's General Plan to create the "Southside New Community Study Area" (SBC FILE NUMBER: 790) ("Proposed General Plan Amendment"). My client's Bennett Ranch Project is located within the area encompassed by the Proposed General Plan Amendment.

In short, for the factual and legal reasons set forth below, my client's application for a Vesting Tentative Map was "deemed" complete and accepted under the Permit Streamlining Act¹ on February 29, 2016 (if not before) by operation of law. As such, the Project secured a "vested right" under the Subdivision Map Act² to be subject to only those County laws in place on that date. As such, the Project will not be subject to the Proposed General Plan Amendment if adopted by the County.

I. BACKGROUND

The Bennett Ranch Project is a proposal to develop approximately 84 residential units in the County near the City of Hollister.

My client Hollister Land Partners LLC began conversations with County Staff regarding the Bennett Ranch Project in March of 2015. (County File No: TSM 15-93)

¹ Gov't Code §65920 *et seq.*

² Gov't Code §66410.1 *et seq.*

On April 24, 2015, my client submitted to County Staff a preliminary Vesting Tentative Map ("VTM") submittal, which included without limitation the VTM application, Site Plan, APN Maps, Title Reports, Seismic Study, Geotechnical Report, Biological Constraints Analysis, and a check (\$2803) for processing.

On May 28, 2015, more than 30 days after our client's April 24, 2015 submittal, our client received back written comments on its April submittal, including comments from the Sunnyslope County Water District, the Hollister School District, San Benito County Environmental Health, and San Benito County Public Works.

On June 11, 2015, our client met with County Staff to discuss the County's May 28, 2015 comments.

On August 31, 2015, our client submitted additional information to County Staff, including without limitation, Record of Survey Map, Title Report, Supporting Survey Documents, and additional checks aggregating \$30,000 for processing and in support of the County's reimbursement agreement.

On September 29, 2015, our client met with County Staff to discuss any comments the County might have regarding our client's August 31, 2015 submittal. The County had no comments.

On October 21, 2015, more than 30 days after our client's August 31, 2015 submittal, our client received back written comments on its August submittal, including comments from Southside School, San Benito County Environmental Health, and San Benito County Public Works.

On November 12, 2015, our client re-submitted Record of Survey materials, including without limitation, a Revised Record of Survey, and closure calculations.

On January 28, 2016, our client submitted additional information to County Staff, including without limitation, a Revised Vesting Tentative Map, an Updated Transportation Impact Study, a Geotechnical Report/Seismic Study with Peer Review, a Lot Line Adjustment, including Legal Description, and a Map Math check.

No written response from County Staff regarding my client's January 2016 submittal was received by my client in the months of February, March or April, 2016.

In early May 2016, more than 3 months after its January 28, 2016 submittal, my client received a letter from County Staff (dated May 2, 2016) in which County Staff determined that my client's application (again, County File No: TSM 15-93) was "incomplete" under the Permit Streamlining Act. That letter also stated: "[p]lease be aware that not all County Departments or requested agencies have commented, and therefore more comments may be forthcoming." No process for appealing that determination of application incompleteness was provided in the May 2, 2016 letter.

On May 10, 2016, this letter was submitted to the County Board of Supervisors for inclusion in the administrative record regarding Board Agenda Item No. 30, the Staff Proposed General Plan Amendment to Amend the Land Use Element of County General Plan to create the Southside New Community Study Area. (SBC FILE NUMBER: 790). The proposed Southside New Community Study Area is generally located in central San Benito County, south of Union Road, north/east of the San Benito River, and west of Airline Highway and would include my client's Project.

Also on May 10, 2016, an appeal of the May 2, 2016 County Staff determination of application "incompleteness" was filed on behalf of my client with the County.

II. CONTROLLING LAW

A. Streamlining and Vested Rights.

California can be a volatile place to develop. Local Land Use regulations often react to ever-changing popular and political attitudes toward development and growth. Additionally, a developer who secures approval of its project may see more than one economic "boom/bust" cycle before its project is either built or abandoned.

It was within this recognized "ever-changing environment" that the California Legislature decided in the late 1980s to create both a "streamlined" process and "vested rights" for the building/development community.

B. The Permit Streamlining Act.

The Permit Streamlining Act was specifically enacted to "ensure clear understanding of the specific requirements which must be met in connection with the approval of development projects and to expedite decisions on such projects." (Gov't Code §65921.)

Section 65943 of the Permit Streamlining Act, expressly referenced by County Staff in its May 2, 2016 letter of "incompleteness" to my client, establishes a strict protocol for application requirements, submittals, staff written response detail and timing, re-submittals, appeals, and consequences for untimely action. In short, the Act requires that development project applications, such as the Project's Vesting Tentative Map application, be reviewed and its "completeness" determined within 30 days of the submission date of the application.

The consequence of Staff failure to respond in writing within 30 days of the submission date is the application is "deemed" complete and accepted by operation of law. See, *Bickel v. City of Piedmont*, 16 Cal. 4th 1040 (1997).

In the instant case, no County response to any of my client's application submittals occurred within the required 30-day time period. This phenomenon is most recently reflected in the fact that my client's January 28, 2016 submittal was not responded to until May 2, 2016. And even then, the County's letter makes clear that "not all County Departments or requested

agencies have commented, and therefore more comments may be forthcoming.” That County practice is in direct violation of the Permit Streamlining Act.

Therefore, pursuant to the Permit Streamlining Act, in September of 2015, and certainly by February 29, 2016, my client’s application for a Vesting tentative Map was deemed complete and accepted by the County by operation of law. Such completion date is critical to the “Vested Rights” that is provided under the Subdivision Map Act, as discussed below.

C. Vested Rights Under the Subdivision Map Act.

“Vested rights” simply means that for a designated period of time, the developer knows which local land use laws *do and do not* apply to its project.

The Vesting Tentative Map provisions of the Subdivision Map Act were intended to create a greater protection earlier in the development process by "freezing" the local ordinances, policies and standards in place at the time the Vesting Tentative Map application is “completed” under the Permit Streamlining Act. (Gov’t Code §66498.1 referencing Gov’t Code §66474.2, referencing the Permit Streamlining Act; *see also, Kaufman & Broad Central Valley, Inc. v. City of Modesto* (1994) 25 Cal. App. 4th 1577.)

It is with that limited certainty that the subdivider then decides whether or not to go forward with the subdivision, whether or not to invest time money and other resources, and whether or not to build the project.

In the instant case, as stated, the Bennett Ranch Project’s Vesting Tentative Map application was deemed “complete” in August of 2015, and certainly by February 29, 2016. Whichever date is used, the law is clear: the Project secured a vested right to ***only*** those County laws in place on such “vesting” date.

III. CONCLUSION

For the factual and legal reasons presented, I respectfully submit that my client’s application for a Vesting Tentative Map was “deemed” complete and accepted under the Permit Streamlining Act in September 2015, and certainly by on February 29, 2016 by operation of law. As such, the Project secured a “vested right” under the Subdivision Map Act to be subject to only those County laws in place on such vesting date. The Proposed General Plan Amendment (proposed amendment of the County’s General Plan to create the “Southside New Community Study Area” - SBC FILE NUMBER: 790) was ***not*** a County law in place in September of 2015 nor on February 29, 2016, and therefore ***cannot*** be applied to my client’s Bennett Ranch Project.

Again, on behalf of my client, Hollister Land Partners LLC, thank you for this opportunity to present this letter for your consideration.

Respectfully submitted,

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

Michael Patrick Durkee

MPD:os

cc: **Board of Supervisors:**
Chairman Robert Rivas
Supervisor Jaime De La Cruz
Supervisor Margie Barrios
Supervisor Anthony Botelho
Supervisor Jerry Muenzer
Louie Valdez, Clerk of the Board

Planning Commission:
Chairman Ray Pierce
Commissioner Jeff Culler
Commissioner Dan DeVries
Commissioner Pat Loe
Commissioner Robert Rodriguez

Ray Espinosa, County Administrative Officer

Matthew W. Granger, County Counsel

Brent C. Barnes, AICP - Director Resource Management Agency