



County of Monterey

Item No.

Board Report

Board of Supervisors
Chambers

168 W. Alisal St., 1st Floor
Salinas, CA 93901

Legistar File Number: RES 22-185

October 11, 2022

Introduced: 10/3/2022

Current Status: Agenda Ready

Version: 1

Matter Type: BoS Resolution

Public hearing to consider an appeal of the August 24, 2022 Planning Commission decision approving a three year extension to the expiration of the Domain Corporation (Ferrini Ranch Subdivision)

Combined Development Permit and Vesting Tentative Map. **File Number:** PLN210167-DEP (originally PLN040758, stay of expiration under PLN040758-EXT1 and amended by PLN150731)

Project Location: Highway 68 between San Benancio and River Road, Toro Area

Proposed CEQA Action: Consider a previously certified Environmental Impact Report (EIR) for the Ferrini Ranch subdivision (SCH#2005091055).

RECOMMENDATION:

It is recommended that the Board of Supervisors adopt a Resolution (**Attachment A**) to:

- a. Certify that the Environmental Impact Report (EIR) for the Ferrini Ranch subdivision (SCH#2005091055) has been considered and no subsequent environmental review is required pursuant to Section 15162 of the CEQA Guidelines;
- b. Deny the appeal of the August 24, 2022 Planning Commission decision approving a three year extension to the expiration of the Vesting Tentative Map and Combined Development Permit for the Ferrini Ranch Subdivision; and
- c. Approving a three year extension to the expiration of the Vesting Tentative Map and Combined Development Permit for the Domain Corporation (Ferrini Ranch Subdivision) project extending the expiration date to March 17, 2026.

PROJECT INFORMATION:

Agent: Anthony Lombardo & Associates

Property Owner: Domain Corporation

APN: 161-011-019-000, 161-011-030-000, 161-011-039-000, 161-011-057-000, 161-011-058-000, 161-011-059-000, 161-011-078-000, 161-011-084-000, 161-031-016-000, and 161-031-017-000

Plan Area: Toro Area Plan

Flagged and Staked: N/A

SUMMARY:

On July 16, 2021, Anthony Lombardo & Associates representing the property owner, Domain Corporation, submitted a request for a six-year extension to the Ferrini Ranch subdivision project. Specifically, the request reasons that the ownership is attempting to work with developers and third parties to ensure satisfaction of conditions of approval prior to filling a final map, and that more time is needed given “changing and uncertain market conditions.” (**Attachment C**)

This extension was initially considered by the Planning Commission on July 13, 2022. At that hearing, the Planning Commission continued the matter to August 24, 2022, with direction to staff to clarify review criteria and findings for extensions to vesting tentative maps and, if the criteria include changes in circumstances, to provide clarification on changes to groundwater conditions.

The item returned to the Planning Commission on August 24, 2022, with the requested information. Granting an extension on a vesting tentative map (“VTM”) is a discretionary act. Government Code section 66452.6(e) states that a VTM may be extended for up to six years. Government Code section 66498.1(c) limits review of the extension of a VMT to consideration of the length of the extension or denial of the extension based on the following:

1. [Extension of the map] would place residents of the subdivision or the immediate community, or both, in a condition dangerous to their health or safety, or both; or
2. Denial is required in order to comply with state or federal law.

The Planning Commission focused on the length of time the map should be extended and approved a three year extension (**Attachment F**). The Planning Commission considered the following: the property owner’s justifications (**Attachment C**); the reasonable amount of time needed to satisfy the 138 conditions of approval applied to the VTM; and other social and economic factors. Specifically, excluding the stay of expiration due to litigation and accounting for the automatic 18 month extension, the owner has had a total of three and half years (October 2019 through March 2023) to work on satisfaction of these 138 conditions. The Planning Commission took into account other factors that have delayed progress on compliance with conditions, including the Covid-19 pandemic and failed negotiations to sell the property to the Agricultural Land Trust of Monterey County. The Planning Commission finally reasoned that the three year extension would not preclude the applicant from applying for another extension in the future (up to the six years maximum allowed by state law) allowing for another review in a quickly changing land use environment.

The property owner has appealed the Planning Commission’s approval of the three year extension and would like the Board of Supervisors to approve the maximum extension allowed in state law of six years (**Attachment G**). Reasoning given by the property owner in the appeal included a contention that the Planning Commission decision was not supported by the evidence, was contrary to law, and the full six year extension will allow the owner to proceed with condition compliance without potentially having to redirect efforts to another extension request in a few years.

Staff has reviewed the appeal contentions and maintains the recommendation that the Planning Commission’s decision was within its discretion and supported by law. This appeal hearing before the Board of Supervisors is de novo, so it is now in the discretion of the Board to review the criteria for the extension. Staff finds little reason to advocate for any specific length of time for the extension. For this reason, staff has provided two resolutions for the Board to consider. The staff recommended resolution for denial of the appeal and granting of a three year extension based on the Planning Commission’s decision (**Attachment A**), or an alternate resolution for granting the appeal and approving a six year extension (**Attachment B**).

DISCUSSION:

On December 16, 2014, the Board of Supervisors approved a Combined Development Permit consisting of: 1) a VTM to create 185 residential lots; 2) a Use Permit for the removal of 921 trees; and 3) a Use Permit to allow development on slopes in excess of 30 percent (“Project”) (Resolution No. 14-371) (**Attachment E**). The Board of Supervisors also certified the Final Environmental Impact Report and Statement of Overriding Considerations for the Ferrini Ranch Subdivision (Resolution No. 14-370) on that date (**Attachment D**).

The Project would have expired two years after its approval on December 16, 2014. However, a lawsuit was filed January 15, 2015, one-month into the life of the permit leaving 23 months remaining until expiration. Due to the lawsuit, the Board of Supervisors granted a stay on the expiration of the permit for a period of five years or until the case was resolved, whichever occurred first (Resolution No. 16-847). On October 17, 2019, the litigation on the project was resolved and the two-year expiration time resumed providing a new expiration date for the project of September 17, 2021. In the intervening time, an automatic extension under Assembly Bill 1561 (AB 1561) became effective granting an 18-month extension to qualifying residential development entitlements, such as a tentative map, if the entitlements were issued prior to, and were in effect as of March 4, 2020, but were set to expire prior to December 31, 2021. The project qualifies for this automatic 18-month extension, which extended the expiration date to March 17, 2023.

More than 60 days prior to the expiration of the VTM, the property owner filed a request for a six year extension. If the Board of Supervisors grants a six year extension, the new expiration date would be March 17, 2029. As approved by the Planning Commission, granting a three year extension would provide for a new expiration date of March 17, 2026.

Section 19.05.065 of the Monterey County Code (“MCC”) authorizes the County to grant extensions not to cumulatively exceed three years for standard subdivisions. In contrast, section 66452.6(e) of the Subdivision Map Act (“SMA”) authorizes local governments to approve or conditionally approve extensions to tentative maps or vesting tentative maps for a period or periods not exceeding a total of six years. The difference between MCC and the SMA timeframes for extensions is a result of a change in the SMA that has not yet been amended in Title 19. As it applies to changes in state law that are not reflected in the local subdivision regulations, MCC section 19.01.065 states: “The provisions of this Title are mandated by the Subdivision Map Act are subject to change without notice or action by the County in the event the State Legislature amends the Subdivision Map Act. This Title will be periodically updated to reflect such changes.” Given this language, the SMA controls and the County may allow a maximum extension of six years.

Staff recommends that the appeal be denied and the Board approve the three year extension. An alternative resolution has also been provided should the Board desire to grant the appeal and extend the expiration to the maximum of six years.

CEQA:

An Environmental Impact Report (EIR) was certified for the Ferrini Ranch Subdivision on December 16, 2014 (SCH#2005091055) (**Attachment C**). This proposed extension to the approval will not change the project or any of the circumstances under which the project was considered. Staff recommends that the previously certified EIR be considered prior to considering the extension.

OTHER AGENCY INVOLVEMENT:

This report has been prepared by Housing & Community Development and reviewed by the Office of County Counsel.

The extension did not warrant referral to the Toro Land Use Advisory Committee pursuant to the Board adopted policies.

FINANCING:

Funding for staff time associated with this appeal is included in the FY2022-23 Adopted Budget for HCD Unit 8543, Appropriation Unit HCD002. A fee of \$3,572.10 has been collected for the appeal of the Planning Commission's decision.

BOARD OF SUPERVISORS STRATEGIC INITIATIVES:

This action represents effective and timely response to our Monterey County Land-Use & Community Development customers. Processing this appeal in accordance with all applicable policies and regulations also provides the County accountability for proper management of our land resources.

Check the related Board of Supervisors Strategic Initiatives:

- X_ Economic Development
- X Administration
- __ Health & Human Services
- __ Infrastructure
- __ Public Safety

Prepared by: Kenny Taylor, Associate Planner, ext. 5096
Reviewed by: Craig Spencer, HCD-Chief of Planning
Approved by: Erik V. Lundquist, HCD Director



The following attachments are on file with the Clerk of the Board:

- Attachment A - Draft Resolution (3 year extension)
- Attachment B - Draft Resolution (6 year extension)
- Attachment C - Extension requested dated June 29, 2021
- Attachment D -Ferrini Ranch EIR (hyperlink to HCD webpage)
- Attachment E - Board Resolution (No. 14-371) approving the project
- Attachment F - Planning Commission Resolution No. 22-021 - PLN210167-DEP
- Attachment G - Notice of Appeal submitted August 27, 2022 from Antony Lombardo

cc: Front Counter Copy; Craig Spencer, HCD-Chief of Planning Services; Domain Corporation, Property Owner, Tony Lombardo, Agent; Erik Lundquist, HCD-Director of Planning Services; The Open Monterey Project (Molly Erickson); LandWatch (Executive Director); Project File PLN210167.