



CITY OF CHICO MEMORANDUM

TO: Map Advisory Committee (Mtg. 10/13/2022) DATE: September 30, 2022
FROM: Mike Sawley, Principal Planner (879-6811) FILE: S 15-05, UP 18-14
SUBJECT: Stonegate Vesting Tentative Subdivision Map - Extension of Time Request
AP Nos. 002-190-041, 018-510-007, -008, and -009

REQUEST

The applicant submitted a request on 08/26/2022 for an extension of time in which to file final maps for the Stonegate Vesting Tentative Subdivision Map (S 15-05), and related use permit entitlement (UP 18-14). The site is located on both sides of Bruce Road between E. 20th Street and Skyway Road. The site is designated/(zoned) a mixture of Low Density Residential (R1), Medium Density Residential (R2), Community Commercial (CC), Primary Open Space (OS1), Secondary Open Space (OS2).

BACKGROUND

The subject site is approximately 313 acres located in southeast Chico (see Location Map, **Attachment A**, and Color Map, **Attachment B**). The tentative subdivision map and use permit were approved by the City Council on 09/18/2018, resulting in an initial expiration date of 09/18/2021. The approving resolution includes Condition of Approval (COA) #13, which states in relevant part that the time period to exercise the entitlements shall be stayed for the duration of the litigation, if a legal challenge is filed against the City's approval of any of the project's entitlements.

Following the City's approval of the project, two lawsuits were filed; one against the City for its approval of the project, and a second against the United States Fish and Wildlife Service (USFWS) regarding the issuance of a Biological Opinion the attainment of which was required by the City's COA #18. The lawsuit against the City commenced on 12/17/2018, resulting in an unchallenged approval period of 90 days before the tolling provision of COA #13 applied. On 01/27/2021, the Community Development Director acknowledged that the automatic stay provision was in effect due to, and for the duration of the pending litigation against the City's approval. The lawsuit against the City became final on 04/23/2022.

The lawsuit against the USFWS commenced on 08/25/2021; before the lawsuit against the City concluded.

The applicant's legal representation has requested approval of a stay of the time period to file final maps pursuant to Subdivision Map Act (SMA) Section 66452.6(c), which states that the 3-year time period for the map approval "*shall not include the period of time during which a lawsuit involving the approval or conditional approval of the tentative map is or was pending in a court of competent jurisdiction, if the stay of the time period is approved by the local agency pursuant to this section.*" The letter requesting approval of the stay using the City's adopted procedures for approving map extensions is provided under **Attachment C**. The letter specifically requests a five-year stay, until April 23, 2027, and acknowledgement that the stay of the period in which to file final maps also applies to the approved use permit pursuant to Chico Municipal Code (CMC) Section 19.30.050.E.

The Stonegate project was previously analyzed under an Environmental Impact Report (EIR), which was certified by the Chico City Council on September 18, 2018 (State Clearinghouse #2016062049). No changes to the project are proposed, and no further environmental review is required pursuant to California Environmental Quality Act (CEQA) Guidelines Section 15162 (Subsequent EIRs and Negative Declarations).

ANALYSIS

Staff concurs with the letter requesting the stay insofar as suspending the time period allowed to file final maps for the project is appropriate since the applicant cannot reliably move forward with exercising the project during pending litigation and having the applicant “on the clock” to do so during pending litigation undermines the original intention to provide a three-year period to exercise the entitlement. Staff also agrees that the related use permit for the Stonegate project “shall have the same expiration date as the tentative map,” pursuant to CMC 19.30.050.E.

However, the specific request to approve a five-year stay is only justified if the lawsuit continues past April 23, 2027. Staff therefore recommends that the Map Advisory Committee approve a stay of the time period to file final maps of five years (until 04/23/2027), or until the conclusion of litigation with no further right to appeal, whichever is sooner.

Following the approved stay, the applicant would be back on the clock with an expiration date to begin filing final maps that is 33 months thereafter (the initial three-year approval, minus 90 days that elapsed prior to the first lawsuit filing). The applicant would still be able to seek discretionary map extensions provided under SMA Section 66452.6(e), under which the MAC may extend the time for expiration for a period or periods not to exceed a total of 72 months (six years).

RECOMMENDATION

Staff recommends that the Committee: (1) determine that the project was previously analyzed in the Stonegate EIR and that no further environmental review is required pursuant to Section 15162 of the CEQA Guidelines; and (2) approve a stay of the time period in which to file final maps of five years (until 04/23/2027), or until the conclusion of litigation involving the approval of the Stonegate Project with no further right to appeal, whichever is sooner, with 33 months remaining to file final maps thereafter.

ATTACHMENTS

- A. Location Map
- B. Stonegate Color Map
- C. Letter Requesting Stay from Scott B. Birkey, Cox, Castle & Nicholson, LLP

DISTRIBUTION

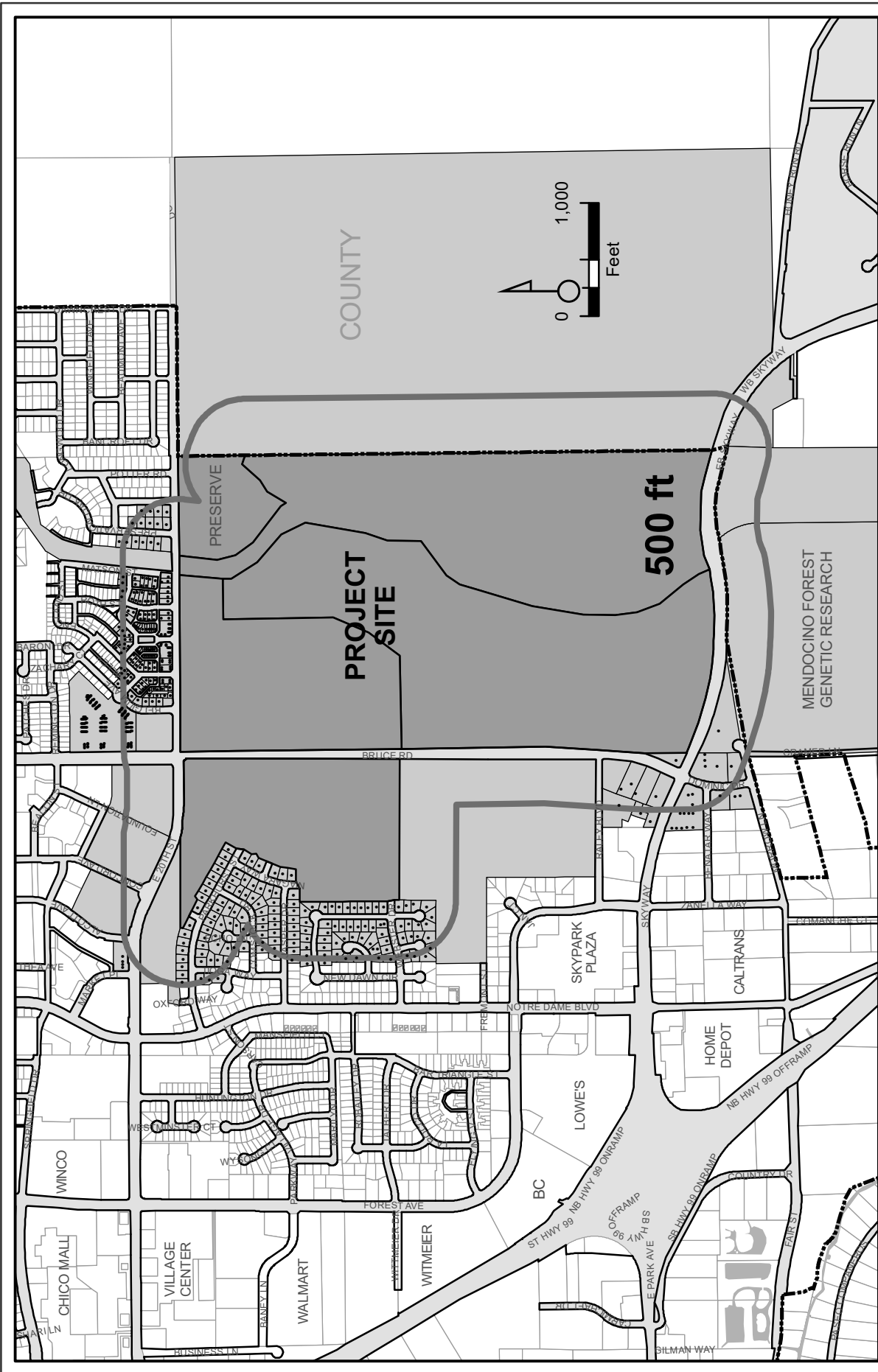
cc: Scott B. Birkey (via email)
Chris Giampaoli (via email)
Keith Doglio (via email)
Project File: S 15-05

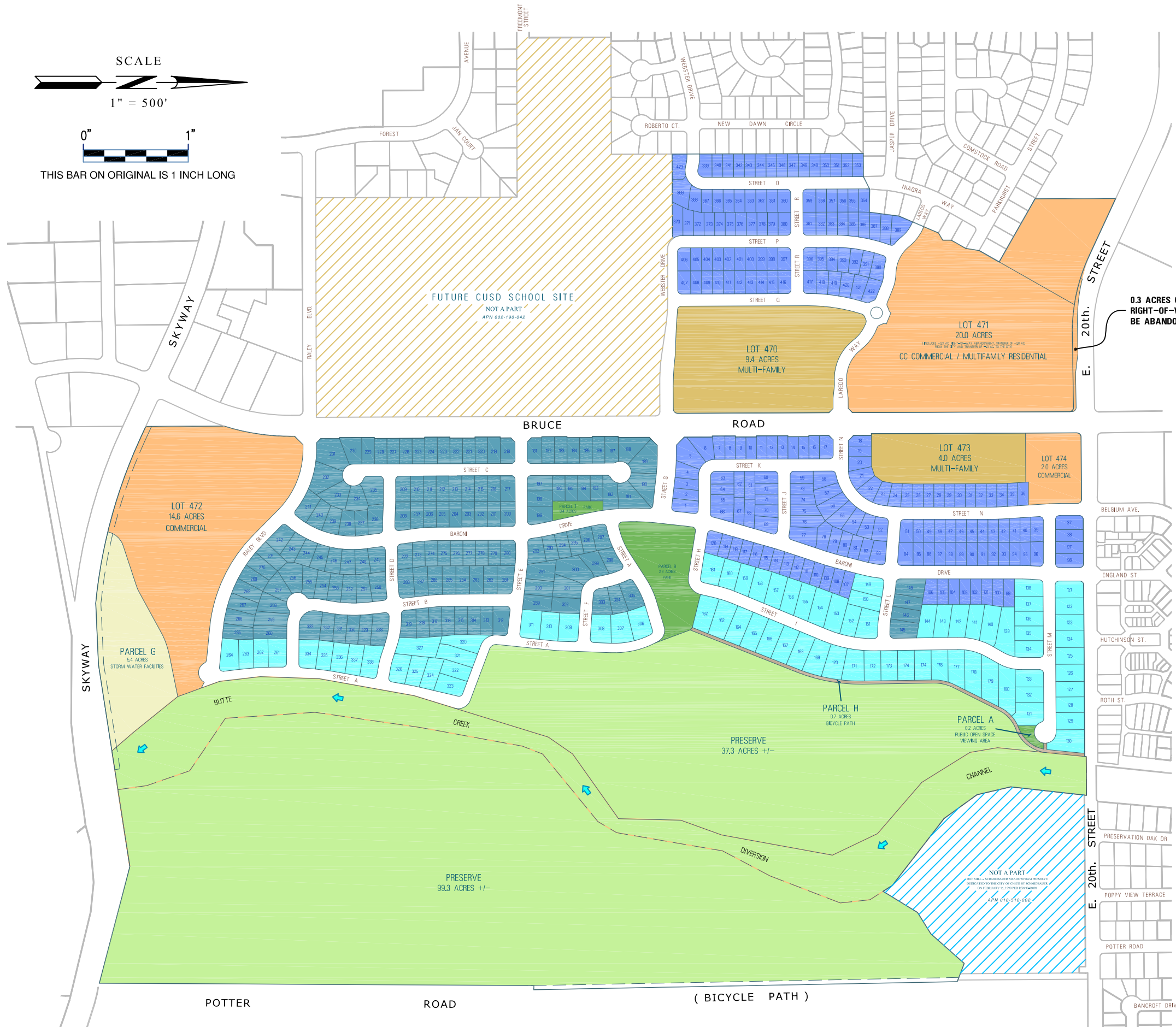
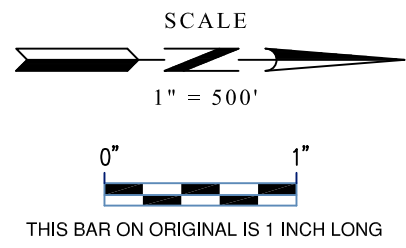


Noticed Parcels

Noticed Addresses

VTSM 15-05 (Stonegate) Extension of Time
APNs: 002-190-041-000, 018-510-(007, 008, and 009)-000





STONEGATE

BY
EPICK HOMES, INC.

RESIDENTIAL LOT COUNT 6-18-18 TOTALS

SERIES I	(50' X 110')	205 LOTS
SERIES II	(60' X 120')	139 LOTS
SERIES III	(70'/80' X 135')	79 LOTS

423 R-1 LOTS TOTAL

SUBDIVISION AREA 7-25-18 TOTALS

EXISTING PARCELS	313.3 AC.	
PRESERVE	136.6 AC.	(PARCELS C,D)
BICYCLE PATH	0.7 AC.	(PARCEL H)
PARK / PUBLIC OPEN SPACE VIEWING AREA	3.5 AC.	(PARCEL A 0.2 AC.) (PARCEL B 0.4 AC.) (PARCEL I 2.9 AC.)
SINGLE FAMILY (R-1)	81.0 AC.	423 LOTS AVERAGE LOT SIZE = 8,340 SF +/- DENSITY = 3.7 UNITS PER AC
STORM WATER FACILITY	5.4 AC.	(PARCEL G)
MULTI-FAMILY (R-2)	13.4 AC.*	(LOT 470 = 9.4 AC.) (LOT 473 = 4.0 AC.) *MAY INCREASE BY APPROXIMATELY 4 AC.
COMMERCIAL	36.6 AC.‡	(LOT 471 = 20.0 AC.†‡) (LOT 472 = 14.6 AC.) (LOT 474 = 2.0 AC.) † Note: 19.9 AC. + 0.3 AC. + 0.8 AC. - 1.0 AC. = 20.0 AC. (0.3 AC. FROM EAST 20TH STREET R.O.W. ABANDONMENT, 0.8 AC. TRANSFER FROM CITY, 1.0 AC. TRANSFER TO CITY) ‡ Approximately 4 ac. may become multifamily residential
EXISTING DOE MILL - SCHMIDBAUER PRESERVE	14.7 AC.	

RAR
ROLLS ANDERSON & ROLLS
CIVIL ENGINEERS
115 YELLOWSTONE DRIVE · CHICO, CALIFORNIA 95973-5811
TELEPHONE 530-895-1422

RECEIVED

AUG 26 2022

August 22, 2022

CITY OF CHICO
BUILDING & DEVELOPMENT
SERVICES

VIA E-MAIL

Brendan Vieg
Community Development Director
City of Chico
411 Main Street
Chico, CA 95927

Re: Additional Stay of Expiration Period for Vesting Tentative Subdivision Map 15-05 and Use Permit 18-14 for the Stonegate Mixed-Use Project Due to Pending Litigation

Dear Mr. Vieg:

On behalf of Epick, Inc. (“Epick”), we write to request an additional stay of the expiration period of Vesting Tentative Subdivision Map 15-05 (“VTM”) and Use Permit 18-14 (“Use Permit”) issued by the City of Chico (“City”) for the Stonegate Mixed-Use Project (“Project”) as a result of ongoing litigation.

As described further below, the three-year expiration period for the VTM and Use Permit was previously stayed due to the pendency of state court litigation challenging the Project. However, prior to resolution of the state court litigation, additional litigation challenging the Project was filed in federal court on August 25, 2021. The federal court challenge further stays the expiration period of the VTM and Use Permit. In accordance with Subdivision Map Act section 66452.6(c), Epick requests that the City stay the expiration period of the VTM and Use Permit for five years, until April 23, 2027, after which time the remaining term of the three-year expiration period will begin to run.

The Chico City Council approved the VTM and Use Permit on September 18, 2018, as well as a General Plan Amendment and Rezone, authorizing the development of a combination of single-family residential, multi-family residential, commercial, parks, and 131 acres of open space on an approximately 313-acre site. Pursuant to Condition of Approval (“COA”) No. 13, the VTM and Use Permit expire three years from the date of the approval, except in certain circumstances.

Pursuant to COA No. 13, you previously confirmed that the expiration period of the VTM and Use Permit was stayed until resolution of the litigation filed by the Northern California

Environmental Defense Center on December 17, 2018.¹ (*Northern California Environmental Defense Center v. City of Chico, et al.* (Butte County Superior Court Case No. 18CV04048).) On February 4, 2022, the Third Appellate District affirmed the trial court’s judgment denying the petition for writ of mandate. (*Northern California Environmental Defense Center v. City of Chico* (California Court of Appeal, Third Appellate District Case No. C092612).) The appellate court’s ruling resolved the state court litigation, which became final on April 23, 2022 when the appellate court issued a remittitur; therefore, the *Northern California Environmental Defense Center* litigation stayed the expiration period of the VTM and Use Permit until April 23, 2022.

In addition to the state court litigation described above, on August 25, 2021, AquAlliance and Center for Biological Diversion filed a challenge to the Project in the U.S. District Court for the Eastern District of California. (*AquAlliance and Center for Biological Diversity v. U.S. Fish and Wildlife Service et al.* (E.D. Cal. Case No. 2:21-cv-01527-TLN-DMC).) Specifically, AquAlliance and Center for Biological Diversion challenged the Biological Opinion and Clean Water Act Section 404 Permit issued for the Project by the U.S. Fish and Wildlife Service (“USFWS”) and U.S. Army Corps of Engineers (“Corps”). The federal lawsuit remains pending.

Pursuant to Subdivision Map Act section 66452.6(c), the expiration period of the Project’s VTM shall be stayed for “the period of time during which a lawsuit involving the approval or conditional approval of the tentative map is or was pending in a court of competent jurisdiction, if the stay of the time period is approved by the local agency pursuant to this section.” The federal lawsuit filed by AquAlliance and Center for Biological Diversion concerns the issuance of the Project’s federal permits under applicable law, the acquisition of which is a condition of the VTM. In fact, the VTM includes at least six conditions requiring the acquisition of the federal permits prior to approval and recording of the final map and issuance of subsequent construction permits:

- MM BIO-1D requires the Project to implement vernal pool mitigation at the ratios determined by the USFWS and Corps through the Section 404 process prior to issuance of a grading permit;
- MM BIO-2A requires the Project to consult with USFWS to obtain authorization for Project implementation and mitigation for Butte County meadowfoam prior to issuance of a grading permit;
- MM BIO-4 requires the Project to provide proof of authorization from the Corps for the discharge of dredged or fill materials prior to issuance of any permits for construction, grading, or other site disturbing activities;

¹ Your email confirming the stay is attached hereto as **Exhibit 1**.

- COA No. 18 requires compliance with all mitigation measures in the Mitigation Monitoring and Reporting Program, including those identified above, to proceed with Project implementation;
- Section I of the “Subdivision Report” (attached to the VTM approval) requires the Project to obtain all required permits from outside agencies prior to recordation of the final map; and
- Section H.10 of the “Subdivision Report” requires the Project to incorporate USFWS’s comments into the final map, which includes measures from the Biological Opinion.

Thus, the challenge to federal permits “involves the approval or conditional approval” of the VTM. Without the federal permits, the VTM cannot be recorded.

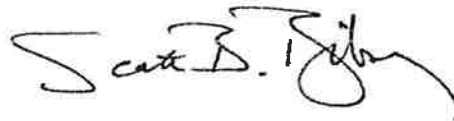
Further, under Chico Municipal Code section 19.30.050(E), “a project that is associated with the approval of a tentative map shall have the same expiration date as the tentative map.” In other words, any stay to the expiration period of the VTM due to ongoing litigation automatically applies to the Project as a whole, including the Use Permit. Accordingly, Subdivision Map Act section 66452.6(c) and Chico Municipal Code section 19.30.050(E) stay the expiration period of the VTM and Use Permit for the duration of the federal litigation.

We understand that a stay of the expiration period of the VTM under Subdivision Map Act section 66452.6(c) typically is approved by the City’s Map Advisory Committee, and we support that approach here. Subdivision Map Act section 66452.6(c) provides that the VTM’s expiration period shall not include the period of time during which the lawsuit is pending, and the City shall approve the requested stay up to five years if litigation is pending. In accordance with Subdivision Map Act section 66452.6(c), we therefore request that the City stay the expiration period of the VTM for five years, until April 23, 2027, after which time the remaining term on the three-year expiration period will begin to run. We further request that the City include this request on the Map Advisory Committee’s next agenda and approve the stay.

* * *

On behalf of Epick, we request that the City approve the stay of the expiration period of the VTM and Use Permit until April 23, 2027. Although the City need only approve the stay of the VTM's expiration period under Subdivision Map Act section 66452.6(c), we also request confirmation that the Use Permit's expiration period has been automatically extended to coincide with the VTM under Chico Municipal Code section 19.30.050(E). Please acknowledge this request at your earliest convenience.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott B. Birkey". The signature is fluid and cursive, with a large, sweeping flourish at the end.

Scott B. Birkey

Attachment

cc: Mike Sawley, Senior Planner
Andrew Jared, City Attorney

EXHIBIT 1

074936\14504350v6

Archived: Saturday, August 20, 2022 5:47:30 PM

From: Brendan Vieg

Mail received time: Wed, 27 Jan 2021 14:35:03

Sent: Wed, 27 Jan 2021 22:34:57

To: Chris Giampaoli Birkey, Scott B.

Cc: Andrew Jared Mike Sawley Pete Schmidbauer George (georges@schmidbauerlumber.com)

Subject: RE: StoneGate

Importance: Normal

Sensitivity: None

Chris:

This email serves as confirmation of receipt of a letter from Mr. Scott Birkey of Cox, Castle & Nicholson dated January 26, 2021. In response to the letter, and consistent with Condition of Approval No. 13 from Council's September 18, 2018 project approval, I concur that the expiration dates of Vesting Tentative Subdivision Map 15-05 and Use Permit 18-14 issued by the City of Chico for the Stonegate Mixed-Use Project are stayed and remained stayed until the litigation (Northern California Environmental Defense Center v. City of Chico) is resolved.

Please let me know if you have any additional questions.

Thanks –

Brendan Vieg, Director

City of Chico, Community Development Department (Planning & Housing)

(530) 879-6806 / brendan.vieg@chicoca.gov

411 Main Street, Chico, CA 95928

PO Box 3420, Chico, CA 95927



From: Chris Giampaoli <chris@epickhomes.com>

Sent: Tuesday, January 26, 2021 1:52 PM

To: Brendan Vieg <brendan.vieg@Chicoca.gov>; 'Birkey, Scott B.' <sbirkey@coxcastle.com>

Cc: Andrew Jared <andrew.jared@Chicoca.gov>; Mike Sawley <mike.sawley@Chicoca.gov>; Pete <pete@epickhomes.com>; Schmidbauer George (georges@schmidbauerlumber.com) <georges@schmidbauerlumber.com>

Subject: StoneGate

Brendan, please see the attached letter and if you have any questions feel free to reach out.

Thanks,

Chris Giampaoli

Epick Homes

President

901 Bruce Road Suite 100

Attachment C

Chico, CA. 95928
(530) 891 4757
chris@epickhomes.com