

**CITY OF DANA POINT
AGENDA REPORT**

Reviewed By:	
DH	<u> X </u>
CM	<u> X </u>
CA	<u> </u>

DATE: **SEPTEMBER 24, 2003**

TO: **CITY MANAGER/CITY COUNCIL**

FROM: **KYLE BUTTERWICK, DIRECTOR OF COMMUNITY DEVELOPMENT**

SUBJECT: **HEARING ON APPEAL OF PLANNING COMMISSION DECISION APPROVING A ONE YEAR EXTENSION OF TIME FOR TENTATIVE TRACT MAP TTM16197 TO SUBDIVIDE A 2-ACRE SITE INTO EIGHT NUMBERED LOTS AND ONE LETTERED LOT IN ORDER TO CONSTRUCT EIGHT SINGLE-FAMILY HOMES AND RELATED SITE IMPROVEMENTS ON PROPERTY LOCATED ON THE NORTH SIDE OF CAMINO CAPISTRANO, BETWEEN PASEO PINZON AND CALLE ANEJO IN THE CAPISTRANO BEACH AREA OF THE CITY**
(FF # 0610-30/TTM16197/) [AA]

RECOMMENDED ACTION: That the City Council take action to uphold the Planning Commission action to approve a one-year extension of time for TTM16197 by adopting the attached Draft Resolution, marked as Action Document A.

ISSUES: Should the City Council approve a one year extension of a previously-approved subdivision map in the Capistrano Beach area of the City.

BACKGROUND: Tentative Tract Map 16197 was approved by the Planning Commission on July 18, 2001, subject to 11 Findings and 74 Conditions. Approval was granted for a period of 24 months and due to expire July 18, 2003. The applicant submitted a letter (dated June 24, 2003, and received by the City June 25, 2003, and attached to this Staff Report) requesting a one year extension of approval of the Tentative Tract Map to allow additional time to record the Map.

Tentative Tract Map TTM16197 would allow subdivision of a two acre site into eight numbered lots and one letter lot to construct eight single-family residences and related site improvements. The discretionary application was reviewed and approved by the Planning Commission on August 20, 2003. Please refer to Attachment B (August 20, 2003, Staff Report) for a complete analysis of the project and to Attachment C for a copy of the Minutes of the Planning Commission Public Hearing. The Planning Commission voted 3 – 0 - 2 to approve the one-year time extension. Planning Commission Resolution No. 03-08-20-38, approving the request, is included in this Agenda Report as Attachment D.

A neighboring property owner, Pam R. Tappan, (27265 Calle Anejo) filed an appeal of the Planning Commission approval action on September 3, 2003. The appellant's concerns are contained in the letter of appeal identified as Attachment E of the Supporting Documents.

DISCUSSION:

Dana Point Municipal Code Section 7.05.075(d) provides the basis for a subdivision map extension and states "An extension may be granted only where it will not result in conditions or circumstances contrary to the public health, safety or the general welfare."

The appellant has identified several issues of concern with the Planning Commission action, as outlined in the letter of appeal and summarized below. The focus of the appellant's concerns relates to the following;

- Impact to appellant's property of granting time extension without a CEQA review because of impacts to hydrology.
- The applicant has not restored wetlands destroyed during development.
- The applicant has not complied with various Conditions of Approval, which has caused the appellant's neighborhood "great harm."

STAFF RESPONSE:

Staff has reviewed the bases for the appeal and determined Findings and Conditions of Approval included in the Planning Commission Resolution are justified based on requirements of the Dana Point General Plan and Zoning Code. The parameters for City review, consideration, and action regarding an extension of time for an approved subdivision map are narrowly limited. Under Dana Point Municipal Code Section 7.05.075(d), the City may grant an extension to a tract map only if it will not result in conditions or circumstances contrary to the public health, safety or the general welfare. California courts have interpreted the Subdivision Map Act to prohibit a city from adding additional conditions to a request for the extension of a map (*El Patio v. Permanent Rent Control Board of the City of Santa Monica* [1980] 110 Cal.App.3d 915). The only condition may be the time period of the extension, which is consistent with the inherent rule in the Subdivision Map Act that states a city may only impose conditions that are applicable at the time of the initial application. Therefore, according to the City Attorney's office, the City is legally prohibited from placing additional conditions to the tract map extension. CEQA review was conducted and appropriate conditions were placed on Tentative Tract Map TTM16197 at the time of initial action.

NOTIFICATION: Notice for the appeal Public Hearing was sent to property owners within a five hundred (500) foot radius of the project site. The notice was published in the Orange County Register. In addition, notices were posted at the Dana Point City Hall, Dana Point Post Office, Capistrano Beach Post Office, and Dana Point Library. A copy of the Staff Report was mailed to the Applicant and appellant prior to the Public Hearing.

FISCAL IMPACT: The appellant has paid the cost associated with the request for an appeal per the Schedule of Services Fee Charges adopted by City Council Resolution No. 98-01-13-05.

STRATEGIC PLAN IMPLEMENTATION: In compliance with the Strategic Plan to evaluate land use issues to ensure goals, policies and programs of the General Plan reflect the community vision and mission, the proposed action supports existing Zoning Code regulations.

ALTERNATIVE ACTIONS:

1. The City Council can uphold the Planning Commission decision, which would result in approval of a one-year extension of Tentative Tract Map TTM16197.
2. The City Council can reverse the Planning Commission decision and deny the extension application, and direct Staff to prepare a Resolution for the Consent Calendar of the next regularly scheduled meeting.

ACTION DOCUMENTS:

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SUPPORTING DOCUMENTS:

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D. Planning Commission Resolution No. 03-08-20-38	11
E. Letter of Appeal – Pam R. Tappan	14

EXHIBITS:

1. Tentative Tract Map TTM16197

ACTION DOCUMENT A**RESOLUTION NO. 03-09-24-XX**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, UPHOLDING THE PLANNING COMMISSION DECISION TO APPROVE A ONE YEAR EXTENSION OF TIME FOR TENTATIVE TRACT MAP TTM16197 TO SUBDIVIDE A TWO ACRE SITE INTO EIGHT NUMBERED LOTS AND ONE LETTERED LOT IN ORDER TO CONSTRUCT EIGHT SINGLE-FAMILY RESIDENCES AND RELATED SITE IMPROVEMENTS ON PROPERTY LOCATED ON THE NORTH SIDE OF CAMINO CAPISTRANO, BETWEEN PASEO PINZON AND CALLE ANEJO IN THE CAPISTRANO BEACH AREA OF THE CITY

Applicant: Pioneer Builders, Inc.
FILE NO.: FF#600-30/TTM16197

The City Council for the City of Dana Point does hereby resolve as follows:

WHEREAS, the applicant filed a verified application for certain property, to wit:

Assessor Parcel Numbers 691-181-03 & 04; and

WHEREAS, the Applicant has made an application to extend the expiration date of Tentative Tract Map TTM 16197 for one (1) year; and

WHEREAS, said verified application constitutes a request as provided by Title 9 of the Dana Point Municipal Code; and

WHEREAS, the subject property is governed under provisions of the Dana Point Zoning Code; and

WHEREAS, the Planning Commission did, on the 20th day of August, 2003, hold a duly noticed public hearing as prescribed by law to consider said request; and

WHEREAS, the City Council did, on the 24th day of September, 2003, hold a duly noticed public hearing as prescribed by law to consider said request; and

WHEREAS, the owner of an adjacent property has filed an appeal of the Planning Commission decision to approve the project; and

WHEREAS, at said public hearings, upon hearing and considering all testimony and arguments, if any, of all persons desiring to be heard, said Commission and Council considered all factors relating to Tentative Tract Map TTM16197.

NOW, THEREFORE, BE IT HEREBY RESOLVED by the City Council of the City of Dana Point as follows:

- A) That the above recitations are true and correct.
- B) That based on evidence presented at the public hearing, the City Council adopts the following findings and approves a one year extension for Tentative Tract 16197 for property located between Paseo Pinzon and Calle Anejo in the Capistrano Beach area of the City, subject to the following Findings and Conditions;

Findings:

1. That Tentative Tract Map TTM16197 is consistent with the Dana Point General Plan in that it satisfies the intent of the Land Use Element Goal 1 pertaining to balanced development for the City, which states "Achieve a desirable mixture of land uses to meet the residential, commercial, industrial, recreational, open space, cultural and public service needs of the City residents."
2. That the proposed action complies with all other applicable provisions of the Zoning and Subdivision regulations under which Tentative Tract Map TTM16197 was originally approved.
3. That the proposed action complies with all other applicable requirements of State law and local ordinances.
4. That requirements of the California Environmental Quality Act have been satisfied in that the project qualifies as a Categorical Exemption (Class 32) since it is an in-fill development of less than five (5) acres consistent with applicable general plan designation and all applicable general plan policies as well as with applicable zoning designations and regulations.
5. That the extension of time has been requested and adequately justified by the applicant in that Tentative Tract Map TTM16197 was due to expire on July 18, 2003, at which time the applicant filed his request.
6. That there has been no change in the underlying zoning regulations for the subject site.
7. That the extension will not result in conditions or circumstances contrary to the public health and safety and the general welfare in that Tentative Tract Map TTM16197 is still consistent with the City of Dana Point overall development goals and conditions placed on the original approval to protect the general welfare.

Conditions:

A. General:

1. Approval of this application is for a one year extension of time for Tentative Tract Map 16197, expiring on July 18, 2004.
2. All Conditions of Approval contained in Planning Commission Resolutions Numbers 01-07-18-40 and 03-08-20-38 shall remain in full force and effect.

PASSED, APPROVED, AND ADOPTED at a regular meeting of the City Council of the City of Dana Point, California, held on this 24th day of September, 2003, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

WILLIAM L. OSSENMACHER
Mayor

ATTEST:

CATHY CATLETT
Interim City Clerk

SUPPORTING DOCUMENT B**CITY OF DANA POINT
AGENDA REPORT**

DATE: AUGUST 20, 2003

TO: DANA POINT PLANNING COMMISSION

FROM: COMMUNITY DEVELOPMENT DEPARTMENT

SUBJECT: ONE YEAR EXTENSION OF TENTATIVE TRACT MAP TTM16197 TO SUBDIVIDE A 2-ACRE SITE INTO 8 NUMBERED LOTS AND 1 LETTERED LOT TO ACCOMMODATE DEVELOPMENT OF 8 NEW SINGLE-FAMILY HOMES ON A VACANT SITE IN THE CAPISTRANO BEACH AREA.
(FF# NO. 0600-10/TTM16197/Pioneer Builders [AA])

RECOMMENDATION: That the Planning Commission: adopt the attached Resolution approving a one year extension of Tentative Tract Map 16197 for development of 8 new residential units on a 2 acre site.

APPLICANT/OWNER: Pioneer Builders, Inc./ Monaco Homes

REQUEST: A one year extension of a Tentative Tract Map to subdivide a 2-acre site into 8 numbered lots and 1 lettered lot for the development of 8 new residential units and related site improvements on a vacant site on Camino Capistrano.

LOCATION: On the northern side of Camino Capistrano, between Paseo Pinzon and Calle Anejo. (APN 691-181-03 & 04)

ZONING: RSF-7

PUBLIC NOTICE: Notices for the proposed project were sent and/or posted on/before August 8, 2003.

ENVIRONMENTAL: Pursuant to the provisions of the California Environmental Quality Act (CEQA), this project is categorically exempt (Class 32 - Section 15332 – In-fill Development) from the provisions of the CEQA because it occurs within the City limits on a site less than five acres in size that is substantially surrounded by urban development and the project will not result in any significant effects.

ISSUES:

1. Would extending the time of approval for the proposal be consistent with the Dana Point General Plan?
2. Is the proposal consistent with requirements of applicable subdivision regulations for extending Tentative Tract Maps?

BACKGROUND/DISCUSSION: Tentative Tract Map 16197 was approved by the Planning Commission on July 18, 2001, subject to 11 Findings and 74 Conditions. Approval was granted for a period of 24 months and due to expire July 18, 2003. The applicant submitted a letter (dated June 24, 2003, received by the City June 25, 2003, and attached to this Staff Report) requesting a one year extension of approval of the Tentative Tract Map to allow additional time to record the Map. The Dana Point Municipal Code Section 7.05.075(d) provides the basis for a subdivision map extension and states "An extension may be granted only where it will not result in conditions or circumstances contrary to the public health, safety or the general welfare." The Tentative Tract Map is consistent with City of Dana Point overall development goals and conditions and the design of the subdivision and proposed improvements are not likely to cause serious public health problems in that the improvements have been designed in accordance with all applicable codes.

CONCLUSION:

The request to extend approval of Tentative Tract Map 16197 is completely discretionary. The Commission may approve, conditionally approve or deny the applicant's request. Staff recommends the Planning Commission approve the time extension for Tentative Tract Map 16197.

Albert Armijo
Project Manager/Consultant

Eugenia Garcia , AICP
Acting Director of Community Development

ACTION DOCUMENTS:

1. Draft Resolution No. 01-08-20-XX

SUPPORTING DOCUMENTS:

2. July 18, 2001 Planning Commission Resolution
3. Applicant's Letter Requesting Extension (dated June 24, 2003)

SUPPORTING DOCUMENT C

ITEM 6: One year extension of Tentative Tract Map TTM16197 to subdivide a 2-acre site into 8 numbered lots and 1 lettered lot to accommodate development of 8 new single-family homes on a vacant site in the Capistrano Beach area. (FF# 0600-10/TTM16197/Pioneer Builders) [AA]

Applicant/

Owner: Pioneer Builders, Inc./Monaco Homes

Location: On the northern side of Camino Capistrano, between Paseo Pinzon and Calle Anejo

Request: A one year extension of a Tentative Tract Map to subdivide a 2-acre site into 8 numbered lots and 1 lettered lot for the development of 8 new residential units and related site improvements on a vacant site on Camino Capistrano.

Environmental: Pursuant to the provisions of the California Environmental Quality Act (CEQA), this project is categorically exempt (Class 32 – Section 15332 – In-fill Development) from the provisions of the CEQA because it occurs within the City limits on a site less than five acres in size that is substantially surrounded by urban development and the project will not result in any significant effects.

Recommendation: That the Planning Commission adopt the attached Resolution approving a one year extension of Tentative Tract Map 16197 for development of 8 new residential units on a 2-acre site.

Albert Armijo (Planning Consultant) reviewed the staff report.

Chairman Schoeffel opened the public hearing.

Elaine Zax (Capistrano Beach) felt that the walls were too tall and that the building pads were three to four feet above their pads when they were told that the pads would not exceed two feet.

Barbara Drummond (Capistrano Beach) stated that there was no other development on Camino Capistrano with the same walls and elevations and that they have ruined the character of Camino Capistrano. She felt that the guard gate should be removed. She stated that in granting a one-year extension that the Commission should require that the project elevation be reduced to the elevation of the adjacent communities. She suggested that future projects with compatibility issues should be required to provide a scale model of the project and the adjacent neighborhoods.

Warner Tappan (Capistrano Beach) stated that before a one-year extension is

approved, that an EIR needs to be created. He added that the project was not exempt from CEQA even though it is only two acres. He stated that Pioneer Builders has been required by the San Diego Regional Water Quality Board to restore the wetlands that they had destroyed.

Terry Hirschag (San Clemente – Builder) stated that delays had kept the project from being completed within the two year time limit. He added that they look forward to completion of the project. He felt that the homes would be an attribute to the neighborhood when completed.

Chairman Schoeffel closed the public hearing.

Chairman Schoeffel stated that he was in favor of approving an extension of the tract map.

ACTION: **Motion made (Schoeffel) and seconded (Denton) to adopt Resolution 03-08-20-38 approving a one year extension of Tentative Tract Map TTM 16197. Motion carried 3-0-2. (AYES: Denton, O'Connor, Schoeffel NOES: None ABSENT: Powers, Weinberg ABSTAIN: None)**

SUPPORTING DOCUMENT D**RESOLUTION NO. 03-08-20-38**

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF DANA POINT, CALIFORNIA, APPROVING A ONE YEAR EXTENSION OF TIME FOR TENTATIVE TRACT MAP TTM 16197 TO SUBDIVIDE A 2-ACRE SITE INTO EIGHT NUMBERED LOTS AND ONE LETTERED LOT IN ORDER TO CONSTRUCT EIGHT SINGLE-FAMILY HOMES AND RELATED SITE IMPROVEMENTS ON PROPERTY LOCATED ON THE NORTH SIDE OF CAMINO CAPISTRANO, BETWEEN PASEO PINZON AND CALLE ANEJO

Applicant: Pioneer Builders, Inc.
File No.: FF# 0600-30/TTM16197

The Planning Commission for the City of Dana Point does hereby resolve as follows:

WHEREAS, the applicant filed a verified application for certain property, to wit:

Assessor Parcel Numbers 691-181-03 & 04; and

WHEREAS, the Applicant has made a request to extend the expiration date of Tentative Tract Map Tentative Tract Map 16197 for one (1) year; and

WHEREAS, said verified application constitutes a request as provided by Title 9 of the Dana Point Municipal Code; and

WHEREAS, the Planning Commission did, on the 20th day of August, 2003, consider said request; and

WHEREAS, at said public hearings, upon hearing and considering all testimony and arguments, if any, of all persons desiring to be heard, said Commission considered all factors relating to TTM16197.

NOW, THEREFORE, BE IT HEREBY RESOLVED by the Planning Commission of the City of Dana Point as follows:

- A) The above recitations are true and correct.
- B) That based on the evidence presented at the public hearings, the Planning Commission adopts the following findings and approves a one year extension of Tentative Tract Map TTM16197, subject to the following Findings and Conditions:

Findings:

- 1) That the proposed map is consistent with the Dana Point General Plan in that it

satisfies the intent of the Land Use Element Goal 1 pertaining to balanced development for the City, which states "Achieve a desirable mixture of land uses to meet the residential, commercial, industrial, recreational, open space, cultural and public service needs of the City residents."

- 2) That the proposed project complies with all other applicable provisions of the Zoning and Subdivision regulations under which the Tentative Tract Map was originally approved.
- 3) That the proposed project complies with all other applicable requirements of State law and local ordinances.
- 4) That the requirements of the California Environmental Quality Act have been satisfied in that the project qualifies as a Categorical Exemption (Class 32) since it is an in-fill development of less than 5-acres consistent with applicable general plans designation and all applicable general plan policies as well as with applicable zoning designation and regulations.
- 5) That the extension of time has been requested and adequately justified by the applicant in that the first Tentative Tract Map was due to expire on July 18, 2003, at which time the applicant filed his request.
- 6) That there has been no change in the underlying zoning regulations for the subject site.
- 7) That the extension will not result in conditions or circumstances contrary to the public health and safety and the general welfare in that the Tentative Tract Map is still consistent with the City of Dana Point overall development goals and conditions had been placed on the original approval to protect the general welfare.

Conditions:

A. General:

1. Approval of this application is for a one year extension of time for Tentative Tract Map 16197, expiring on July 18, 2004.
2. All Conditions of Approval contained in Planning Commission Resolution Number 01-07-18-40 shall remain in full force and effect.

PASSED, APPROVED, AND ADOPTED at a regular meeting of the Planning Commission of the City of Dana Point, California, held on this 20th day of August, 2003, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

J. Scott Schoeffel, Chairman
Planning Commission

ATTEST:

Eugenia Garcia, AICP
Acting Director of Community Development

SUPPORTING DOCUMENT E

Pam R. Tappan
27265 Calle Anejo
Capistrano Beach, CA 92624-1829
(949) 240-8061, prtappan@cox.net, (949) 493-7181 Fax

RECEIVED

September 3, 2003

2003 SEP -3 P 1:23

CITY OF DANA POINT

Ms. Susan Ramos
City Clerk
CITY OF DANA POINT
33282 Golden Lantern
Dana Point, CA 92629

RE: Pioneer Builders - Time Extension of Tentative Tract Map TT16197

Dear Ms. Ramos:

In accordance with Title 9: PLANNING AND ZONING, Chapter 9.61 ADMINISTRATION OF ZONING, 9.61.110 Appeal Procedures, I hereby make my request to appeal the decision rendered by the Dana Point Planning Commission on August 20, 2003.

The granting of the time extension to TTM TT16197 without a CEQA review will severely impact my property and the property of my neighbors. The impact of increased hydrology (B: Engineering, 12) is of great concern to us. Considering that Pioneer Builders say they didn't know it was a wetlands, we don't feel confident that they will know how to restore it properly.

Under the resolutions of the original TTM, it states under Condition A. General, #7. "The applicant and applicant's successors in interest shall be fully responsible for knowing and complying with all conditions of approval, including making known the conditions to City staff for future governmental permits or actions on the project site."

The original Tentative Tract Map expired July 18, 2003. Prior to the expiration of the original TTM, Pioneer Builders and the City of Dana Point knew that the Federally Protected Wetlands that was destroyed must be restored. Also, with the expiration of the original TTM, the process for requiring a CEQA review starts anew.

Under CEQA: Authority: Sections 21083 and 21087, Public Resources Code, Reference: Section 21084, Public Resources Code, 15300.2 Exceptions, (c) Significant Effect. It states a categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances. This 15300.2 Exceptions, negates the 5 acre rule. These exceptions apply to ALL property regardless of size or number of acres..

In addition, our neighborhood has suffered great harm by Pioneer Builders by not following the requirements in Resolution No. 01-07-18-40. The following resolutions have been knowingly and willfully ignored. Starting with Conditions: A: General, 1, 2, 3, 5, 6, 7, 10. Also, B: Prior to recordation of Final Map, Engineering, 11, 12, 13.

Continued Appeal of Time Extension of TTM - page 2

We are also very concerned about what is not in the CC & R's regarding the Federally Protected Wetlands. Under Planning: 34. Continuing with Engineering: 39, 40, a, b, c, d, 41, 46, a, b, c, d, e, f, g, i, j, 47, 49, a, b, c, 50, 57, 59, 61, 63, 64, 65, 67, 71, 8 out of 11 have been ignored and finally 73.

All of these violations have been or can be documented. Pioneer Builders has to be held accountable and made to follow the rules. The Time Extension of the Tentative Track Map must not approved until these matters have been addressed and corrected.

Sincerely,

Pam R. Tappan
Calle Anejo Home Owner