

**SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

118B



FROM: TLMA - Planning Department

SUBMITTAL DATE:
October 6, 2005

SUBJECT: APPEAL of EXTENSION OF TIME for TENTATIVE TRACT MAP NO. 30259 - Appellant: Willis Palms Development Co., LLC - Applicant: Willis Palms Development Co., LLC - Fourth Supervisorial District - Thousand Palms Zoning District - Western Coachella Valley Area Plan - Rural: Rural Residential: (R-RR) (5 Acre Minimum) - 15 Gross Acres - 26 Single-Family Residential Lots - Schedule B - Zoning: Controlled Development Areas (W-2) - Location: Southerly of Ramon Road, westerly of Willis Palms Lane - EXTENSION OF TIME TO MAY 7, 2006 - FIRST EXTENSION.

RECOMMENDED MOTION:

THE PLANNING DEPARTMENT RECOMMENDS:

CONSIDERATION of the above referenced appeal of the Planning Commission decision received on October 3, 2005.

THE PLANNING COMMISSION took the following actions on September 15, 2005.

DENIED the requested **FIRST EXTENSION OF TIME** for **TENATIVE TRACT MAP NO. 30259**.

REVIEWED BY EXECUTIVE OFFICE
[Signature]
DATE 10/16/05

Departmental Concurrence

David Mares For
Robert C. Johnson
Planning Director

RCJ:sn

Policy
 Policy

Consent
 Consent

Dep't Recomm.:
Per Exec. Ofc.:

Prev. Agn. Ref.

District: Fourth

Agenda Number:

16.1

COUNTY OF RIVERSIDE

TRANSPORTATION AND LAND MANAGEMENT AGENCY

Planning Department
Robert C. Johnson Planning Director

RECEIVED
SEP 28 2005

APPLICATION FOR APPEAL

DATE SUBMITTED: 9/28/05

RIVERSIDE COUNTY
PLANNING DEPARTMENT
INDIO OFFICE

Appeal of application case No(s): TR 30259, extension of time

RIVERSIDE COUNTY
CLERK OF THE BOARD
OF SUPERVISORS

List any concurrent application case numbers: EA 38460

Applicant's Name: Willis Palms Development Co., LLC

E-Mail: _____

PAID

Mailing Address: 41-800 Washington Street #B105-220

DATE: 10-18-05

Bermuda Dunes, CA 92203

Street

AMOUNT: \$ 964.00 + \$ 19.28 Cash

City

State

REC'D BY: mcgil on 10-20-05
ZIP

Daytime Phone No: (760) 404-1900

Fax No: (760) 343-7297

HEARING BODY WHOSE ACTION IS BEING APPEALED	HEARING BODY TO WHICH APPEAL IS BEING MADE	APPEAL TO BE FILED WITH
Planning Director	<ul style="list-style-type: none"> • Board of Supervisors for: Temporary Outdoor Events and Substantial Conformance Determination for WECS. • Planning Commission for: all other decisions. 	<ul style="list-style-type: none"> • Clerk of The Board for: Appeals before the Board of Supervisors. • Planning Department for: Appeals before the Planning Commission.
Planning Commission	Board of Supervisors	Clerk of the Board of Supervisors
TYPE OF CASES BEING APPEALED		FILING DEADLINE
<ul style="list-style-type: none"> • Change of Zone Denial by the Planning Commission • Commercial WECS Permit • Conditional Use Permit • Hazardous Waste Facility Siting Permit • Public Use Permit • Variance • Specific Plan denied by the Planning Commission • Substantial Conformance Determination for WECS • Surface Mining and Reclamation Permit 		Within 10 days after the notice of decision appears on the Board of Supervisors Agenda.
<ul style="list-style-type: none"> • Land Division (Tract Map or Parcel Map) • Revised Tentative Map • Minor Change to Tentative Map • Extension of Time for Land Division (not vesting map) 		Within 10 days after the notice of decision appears on the Board of Supervisor's Agenda.
<ul style="list-style-type: none"> • Extension of Time Vesting for Tentative Map 		Within 15 days after the notice of decision appears on the Board of Supervisor's agenda.
<ul style="list-style-type: none"> • General Plan or Specific Plan Consistency Determination • Temporary Outdoor Event 		Within 10 days after date of mailing or hand delivery of decision of the Planning Director.
<ul style="list-style-type: none"> • Environmental Impact Report 		Within 10 days of receipt of project sponsor or Planning

APPLICATION FOR APPEAL

THE APPEAL FILING PACKAGE MUST CONSIST OF THE FOLLOWING:

1. One completed and signed application form.
2. Public Hearing Notice Label Requirements mailing address labels for notification of the appeal hearing.
3. All appropriate filing fees (the base fee, plus other fees specifically for the Department of Building and Safety, Fire Department, Flood Control District and/or Transportation Department conditions, if applicable).

PLEASE NOTE: Obtain surrounding property owners label package/instructions (Form 295-1051) from a County Public Information Services Center or download it from the Planning Department web page.

ATTACHMENT (GROUNDS FOR APPEAL)

INTRODUCTION.

Appellant Willis Palms Development, LLC (“Willis Palms”) appeals from the Planning Commission’s denial of Willis Palms’s first application for a one year extension of time of its approved Tentative Map No. 30259, which approved the development of 26 single-family residential units on 15 acres. The Riverside County Board of Supervisors approved Tentative Tract Map No. 30259 on May 7, 2002. At the time of its approval, the County Planning Commission and Board of Supervisors found the proposed Project to be entirely consistent with all applicable County General Plan and County Zoning Code requirements, with respect to 20,000 square foot minimum lot sizes. At that time, the County found that the proposed Project was compatible with the existing small lot residential development adjacent to the 15-acre Project site.

Subsequently, on October 7, 2003, the County of Riverside adopted a new General Plan which changed the land use designation in many unincorporated areas of the County, including the 15-acre Project site, to rural residential with 5-acre lot size minimums (“R.R.”).

During 2004 and 2005, pursuant to the County’s Conditions of Approval imposed upon Tentative Tract Map 30259, Willis Palms completed significant flood control improvements, substantially improving existing conditions for the existing nearby residential development. All of the Conditions of Approval imposed upon the Tentative Tract Map have been completed to County Staff satisfaction, and Willis Palms has been advised by the County surveyor that the proposed Final Map is in substantial conformance with the Tentative Tract Map approved by the County Board of Supervisors in May 2002.

During the entire time period that Appellant Willis Palms proceeded with completion of the Conditions of Approval from 2002 through 2005, including completing extensive flood control improvements that benefit residential developments surrounding the Project site and

improving the overall infrastructure of the area, County Staff never once suggested that this Project could not proceed to Final Map approval because of the County's adoption of a new General Plan provision, nor that the County would not even entertain a General Plan Amendment application, with respect to this 15-acre Project site, given the County's approval of a Tentative Tract Map prior to the adoption of the new General Plan.

On February 25, 2005, long before the Tentative Map was scheduled to expire in May, Appellant timely filed its first application for a one year extension of its Tentative Tract Map. (See attached Exhibit A.) The Staff conceded, in its September 14, 2005 Staff Report, that Appellant timely filed that application for a one year extension. Despite the timely filing of that request, the Planning Commission did not act on the application for seven months. When it did so, the Planning Commission elected to follow Staff's recommendation, and deny Willis Palms' first application for a one year extension on the ground that the Tentative Map is not consistent with the land use designation set forth in the County's 2003 General Plan Amendment. (See attached Exhibit B.)

Appellant has timely filed this application for an appeal of the Planning Commission's decision, based on the grounds stated herein, including that the Planning Commission decision violates the Subdivision Map Act and established California Supreme Court precedent. See *Youngblood v. Board of Supervisors* (1979) 22 Cal.3d 644, 652 (consistency of subdivision map with applicable General Plan must be measured at time of tentative map approval; final map not rendered inconsistent by subsequent change in General Plan); and see *Govt. Code* §§ 66473.5, 66474, and 66474.1. Furthermore, the Staff Report provided inaccurate and misleading information to the Planning Commission in support of Staff's recommendation of denial. Specifically, the Staff Report and proposed Findings of Fact misled the Planning Commission into believing that an extension was inappropriate for this 15-acre site because all land uses adjacent to the site are open space. In striking contrast to the Findings in 2002, Staff's

September 2005 Report/Findings omitted any reference to the fact that this 15-acre site is surrounded on two sides by existing small lot residential development. (See Exhibit C, 2002 Land Use Map, showing adjacent residential development.)

Given the fact that the County approved Tentative Tract Map 30259 more than a year prior to the County's amendment of its General Plan and Zoning Code with respect to the Project site, given the fact that Appellant expended substantial sums in satisfying the Conditions of Approval imposed by the County on the Project site, including but not limited to substantial flood control improvements that are currently benefiting the existing small lot residences around the 15-acre site, and given the fact that the proposed 26-unit development is entirely compatible with the small lot residential development bordering the Project site, the County cannot lawfully deny approval of the requested extension on the basis of the County's 2003 changes to its General Plan. See *Youngblood v. Board of Supervisors, supra*, 22 Cal.3d at 652-656.

GROUND FOR APPEAL.

1. Planning Staff concedes that Appellant timely filed the application for a one year extension of its Tentative Tract Map on February 25, 2005, three months before the Tentative Tract Map was scheduled to expire in May 2005. Nevertheless, the Planning Commission did not act on this application until September 14, 2005, seven months after the application for an extension. This is Appellant's first and only application for an extension of this Tentative Tract Map. It is customary in this County to grant such a one year extension, particularly where it is the first request. To the extent the approved Tentative Tract Map has become inconsistent with the County's updated General Plan designations for the site, i.e., the change to R.R. in 2003, this is not a lawful basis for denying the Tentative Map extension, or for denying approval of a conforming Final Map when it is filed. See *Youngblood v. Board of Supervisors, supra*, 22 Cal.3d at 652-656. Even assuming, *arguendo*, that the County does have the authority to apply the new land use designation in the County's amended General Plan to this approved Tentative

Map, the County should, at a minimum, grant the requested one year extension to afford Appellant the opportunity to process a minor conforming General Plan Amendment to establish consistency between the Project and the General Plan. Such a General Plan Amendment application has merit in this case, because the R.R. designation for this particular site is inappropriate, given the existing small lot residential units bordering the 15-acre Project site.

2. County Staff did not process the extension application in a timely manner, in that seven months passed between the application being filed in February 2005, and the Planning Commission denying the application in September 2005. During that seven month time period, Appellant continued to expend substantial amounts in improving the 15-acre site and in satisfying County Conditions of Approval.

3. Appellants have, in reliance upon County Planning Staff assurances that the Project is in substantial conformance with Tract Map 30259, expended substantial sums on drainage improvements that are currently in place and benefiting the subject property and adjacent properties. (See attached Exhibit C, Land Use diagram, demonstrating the intensity of existing residential development around the 15-acre Project site.) In addition, during the six months following Alpine's application for the one year extension, Alpine continued to pay substantial plan check and other processing fees to the County. It would be a gross injustice for the County to elicit those flood control improvements and collect those processing fees from Appellant for the past three years, only to then refuse to approve the Final Map for Appellant's 26 lot development. Even more egregious, is the Staff's recommendation to deny even one extension of the Tract Map expiration date under these circumstances. The County's entitlement process should not be "a game of gotcha," where property owners proceed to expend substantial sums to satisfy County Conditions of Approval, on an approved Tentative Tract Map, only to have the County renege on its part of the bargain. That is precisely what the California Supreme Court condemned in *Youngblood v. Board of Supervisors, supra*, 22 Cal.3d at 652-656.

4. Given Appellant's reliance on Staff's assurances and approvals over the course of three years, including after the County amended its General Plan in 2003 to re-plan and re-zone the site, and given Appellant's significant expenditures on flood control and other infrastructure improvements that benefit both the Project site and surrounding properties, Tentative Tract Map 30259 should be extended by one year. Examples of the County's ongoing assurances and approvals over the past three years include Building and Safety Department approval of the architectural plans, and Planning Department issuance of building permits (and collection of building permit fees). In reliance on these assurances and approvals, Alpine graded 19 finished (blue topped) lots on the Project site, completed substantial water supply improvements to CVWD's satisfaction, including installation of an 8" water main, 8 fire hydrants, and a 1" water line to provide service to each of the lots, completed the significant drainage improvements described above, and spent substantial additional sums satisfying the conditions of approval on the Tentative Map approved by the County. In addition, the Project will result in the paving of existing dirt roads in the area that are currently subject to extreme erosion, and are thus posing a risk to existing residents in the area. To the extent a conforming General Plan Amendment is subsequently filed for this Project, the County should grant such an amendment to allow completion of the Project consistent with the Planning and Zoning that was in effect in May 2002, when this Tentative Tract Map was approved by the County. The facts here strongly support grandfathering this 15-acre site under the County's prior Planning and Zoning requirements for minimum lots sizes as it existed in May 2002 when the Project was approved.

5. The existing development surrounding this 15-acre site, on two sides, consists of small lot residential development. (See attached Exhibit C, Land Use Exhibit.) There is no legitimate basis for spot zoning Appellant's property with the requirement for 5-acre lots, in light of the surrounding development intensity. With respect to the nearby Coachella Preserve Area, the County's environmental document from 2002 already determined that the Project, as

conditioned, was consistent with the Coachella Preserve Area, and that there will be no significant adverse environmental impacts from the development of 26 residences on the 15-acre site. (See Exhibit D, Finding No. 9, in March 27, 2002 Staff Report.) The County Planning Department re-affirmed that determination on August 30, 2005, in connection with Appellant's application for an extension. (See attached Exhibit E.)

6. Finally, Staff's Findings supporting the denial of the one year extension are clearly misleading, given its Findings in 2002 in support of approving Tentative Tract Map 30259. In its September 14, 2005 Staff Report, recommending denial of the one year extension, Staff included the following Findings in its report:

“1. The Project site and surrounding lands are designated ‘rural residential’ on the Western Coachella Valley Area Plan.

2. The Project site is surrounded by properties, which are designated rural residential to the north, south and west and open space habitat conservation (OS-HC) to the east.”

The above two findings make no reference whatsoever to the fact that the property is surrounded on two sides by existing small lot residential development. Compare the above 2005 Findings to those that were made by Staff in 2002, at the time the County approved Tentative Tract Map 30259:

“6. The Project site is surrounded by property which are designated ‘residential 3A’ and ‘wildlife/vegetation.’ The Project is conditionally compatible with surrounding rural and open space designations in that, for example, the

subdivisions minimum lot size transitions with similar lots to the west and will allow rural land uses, such as horse and other domestic animal keeping

9. The site is currently vacant; the Project is surrounded by properties containing single-family dwellings to the north and west, vacant land to the south, and vacant land, including a Coachella Valley Preserve immediately to the east of the Project site; the Project is conditionally compatible with these uses in that perimeter fencing and/or walls, along with fencing and/or walls for each of the individual 26 residential lots would buffer surrounding land uses.”


(See attached excerpts from Staff’s September 14, 2005 Findings and compare to Staff’s March 27, 2002 Staff Report, Exhibits B and D hereto, with paragraphs marked for ease of reference.)
Also see attached Exhibit C, showing intensive small lot residential development surrounding two sides of the 15-acre Project site.

Because the Planning Commission decision violates the Subdivision Map Act and clear California Supreme Court precedent, and because Planning Staff failed to present an accurate depiction of the existing land use circumstances surrounding the Project site, Appellant Willis Palms Development requests that the Board reverse the Planning Commission’s denial of a one year extension on Tract Map 30259, and that it instruct Staff to timely process Appellant’s conforming Final Map.

Respectfully submitted by counsel for Willis Palms Development, LLC.

STOWELL, ZEILENGA, RUTH,
VAUGHN & TREIGER LLP

By


Richard S. Zeilenga
Counsel for Appellant