



# Board Agenda Item 15

DATE: October 22, 2024

TO: Board of Supervisors

SUBMITTED BY: Steven E. White, Director  
Department of Public Works and Planning

SUBJECT: Appeal of Planning Commission's technical denial of General Plan Amendment Application No. 566, Amended Application No. 3850, Tentative Tract Map No. 6420, Variance Application No. 4140, and Initial Study No. 8307 (Applicant: Elegante Estates, LLC)

RECOMMENDED ACTION(S):

1. Consider the Appeal of the Planning Commission's technical denial to permit the development of a 16-lot rural residential development with an exception for private road width and minimum centerline road curve radius per County Ordinance Code 17.72.333-A in the R-R-Zone District.
2. If the Appeal is granted and the technical denial of the project is overturned:
  - a. Adopt the Mitigated Negative Declaration including the Mitigation Monitoring and Reporting Program based on Initial Study No. 8307 which was prepared for the Project; and
  - b. Adopt a Resolution approving General Plan Amendment No. 566 amending the Land Use Element of the Fresno County General Plan by changing the land use designation of the subject parcels from Agricultural to Rural Residential; and
  - c. Approve an Ordinance pertaining to Amendment Application No. 3850 changing the zoning on the subject parcels from the existing AE-20 (Exclusive Agricultural, 20-acre minimum parcel size) Zone District to the R-R (Rural Residential, two-acre net minimum parcel size) Zone District; and
  - d. Adopt a Resolution approving Tentative Tract Map Application No. 6420 and Variance Application No. 4140 per the recommended findings in the Staff Report for the creation of a 16-lot rural residential development with an exception for private road width and minimum centerline road curve radius per County Ordinance Code 17.72.333-A and to waive the public road frontage requirement and the 4 to 1 lot depth to lot width ratio requirement for the development; and
  - e. Designate County Counsel to prepare a fair and adequate summary of the proposed Ordinance described in the Recommended Actions d. above and direct the Clerk of the Board to post and publish the requirement summary in accordance with Government Code, Section 25124(a).

The subject parcels are located on the southeast corner of Friant Road and Willow Avenue, approximately 1,870 feet north of the City of Fresno boundary (APN: 579-060-37;55) (12760 and 12762 N. Friant Road) (Sup. Dist. 2)

This item comes before your Board on appeal of the Planning Commission's technical denial of the subject applications (4 to 3, two Commissioners absent) at its July 18, 2024, hearing. The technical denial is based on the four approval votes whereas in order to approve this action, votes from a minimum majority of the total Planning Commission (i.e. five Commissioners) are required for the approval of the General Plan

Amendment (GPA) and Rezone, pursuant to Chapter 872.6.040 of the Zoning Ordinance. Staff notes that the Zoning Ordinance requires your Board determine independent from the Planning Commission, whether the GPA application No. 566, Amendment Application (AA) No. 3850, Tentative Tract Map Application (TTM) No. 6420, and Variance Application (VA) No. 4140 should be approved, approved with stated conditions, or disapproved. A copy of the Planning Commission's action is included in Attachment A. This item pertains to a location in District 2.

ALTERNATIVE ACTION(S):

If your Board determines that the proposed GPA No. 566, AA No. 3850, TTM No. 566 and VA No. 4140, are not consist with the General Plan, or that the required findings cannot be made, it would be appropriate to make a motion to deny the appeal citing in its motion the basis of the denial.

FISCAL IMPACT:

There is no Net County Cost associated with the recommended action. Pursuant to the County's Master Schedule of Fees, the Applicant/Owner/Appellant has paid \$32,868.00 in land use processing fees to the County for the processing of the subject land use applications and \$538.94 to appeal the Commission's technical denial.

DISCUSSION:

A GPA and AA are legislative actions requiring final approval by your Board. Final action by your Board is also required for the adoption of the Mitigated Negative Declaration prepared based on the Initial Study No. 8307 and TTM No. 6420 and VA No. 4140 filed concurrently with the GPA. If approved, the GPA and AA would become effective 30 days after adoption.

**Background**

The project site consists of a 15.24-acre parcel and a 21.18-acre parcel located at the junction of Friant Road and Willow Avenue, approximately 1,870 feet north of the City of Fresno boundary. The project area is rural residential in character and mostly developed with single-family homes. The single-family homes are located on the project site and on abutting parcels to the east and south. The northern and western parcels are a mix of undeveloped land, single-family homes, and vineyards.

The purpose of this proposal is to allow a 16-unit single-family residential development on the subject parcels currently zoned AE-20 (Exclusive Agricultural, 20-acre minimum parcel size) Zone District. To allow the proposed development to be consistent with the land use designation, the parcels designation will change from the existing Agricultural to Rural Residential and the zoning will change from the existing AE-20 District to the proposed R-R (Rural Residential, two-acre net minimum parcel size) District.

Pursuant to Section 66474 of the Subdivision Map Act and Title 17, Chapter 17.20.020 of the County Subdivision Ordinance, in order for your Board to approve TTM No. 6420, the following five findings must be made:

1. That the proposed map and the design improvement of the proposed subdivision are consistent with the General Plan and any applicable Specific Plans.
2. That the project site is physically suitable for the type and density of development proposed.
3. That the design of the proposed subdivision or the proposed improvements are not likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat.
4. That the design of the subdivision or types of improvements are not likely to cause serious public

health problems.

5. That the design of the subdivision or types of improvements will not conflict with easements, acquired by the public at large, for access through or use of the property within the proposed subdivision.

Pursuant to Fresno County Zoning Ordinance Section 860.5, in order for your Board to approve VA No. 4140, the following four findings must be made:

1. That the site of the proposed use is adequate in size and shape to accommodate said use and all yards, spaces, walls and fences, parking, loading, landscaping, and other features required by this Division, to adjust said use with land and uses in the neighborhood.
2. That the site for the proposed use relates to streets and highways adequate in width and pavement type to carry the quantity and kind of traffic generated by the proposed use.
3. That the proposed use will have no adverse effect on abutting property and surrounding neighborhood or the permitted use thereof.
4. That the proposed development is consistent with the General Plan.

A single-family residential development is an allowable use in the RR Zone District per Section 810.2 of the Zoning Ordinance. As such, TTM No. 6420 and VA No. 4140 were submitted to allow for the proposed 16-lot residential development.

The Planning Commission considered the applications and made a motion that all the required findings necessary to grant the Tract Map and Variance could be made. However, the motion to approve resulted in denial on the basis of a vote of 4 to 3. A majority of the total Planning Commission' approval is required for a GPA and Rezoning.

### **Planning Commission Hearings**

On April 25, 2024, the Planning Commission considered the project. At that hearing, upon Applicant's request, the Planning Commission voted unanimously (7-0) zero to continue the item to a date uncertain. Also, at that hearing, a member of the public spoke and submitted a letter to the Commission (Attachment C) citing inclusion of outdated General Plan policies in the staff report and requested them to be replaced with current policies.

On July 18, 2024, the Planning Commission reconsidered the proposed applications. At that hearing, two letters in opposition to the proposal (Attachment C) were presented to the Planning Commission. Also, four individuals presented information in opposition to the proposal indicating that the property is affected by erosion, landslides, groundwater shortage, and traffic. Also, they stated the project requires a viewsapes study, a new hydro study, biostudies, resolution on all issues between the developer and property owners, and an Environmental Impact Report. After receiving staff's presentation and considering public testimony in support and in opposition to the project, the Planning Commission voted 4 to 3 (two Commissioners absent) to approve the proposal. However, as stated previously, this vote resulted in a technical denial. The Planning Commission Resolution is included as Attachment A and the Planning Commission staff report dated July 18, 2024, is included as Attachment B.

On July 24, 2024, an appeal was in filed by the Applicant of the Planning Commission's technical denial. A copy of the appeal is included as Attachment D.

### **Conclusion:**

If your Board determines that the proposed AA is consistent with the proposed GPA and the findings for the VA and TTM with Exceptions can be made as described in the Staff Report to the Planning Commission (Attachment B) it would be appropriate to make a motion to approve the recommended actions including the additional recommended condition of Approval, provided below for the Applicant to indemnify the County in case of subsequent litigation. The Mitigation Monitoring Report has been included as Attachment E and the Mitigated Negative Declaration is included as Attachment F.

Staff recommends that should your Board approve the request; the following indemnification condition be included in your motion:

The Applicant shall enter into an agreement indemnifying the County for all legal costs associated with its approval of IS No. 8307, GPA No. 566, AA No. 3850, TTM No. 6420 and VA No. 4170 and provide security in an amount determined by the County for any such legal costs incurred. The agreement and payment of security shall be due unless the litigation period has expired, in which case the requirements for the indemnification agreement and security shall be considered null and void.

If your Board determines to not approve the proposed General Plan Amendment and/or the project is not consistent with the County's General Plan, then denial of General Plan Amendment and Rezone concurrently with Tentative Tract Map and Variance would be appropriate, citing the reasons for denial and the proposal's inconsistency with the General Plan.

ATTACHMENTS INCLUDED AND/OR ON FILE:

Attachments A - F

On file with Clerk - Resolution for GPA 566

Ordinance for AA 3850

On file with Clerk - Resolution for TTM 6420 and VA 4140

On file with Clerk - Ordinance Summary

CAO ANALYST:

Salvador Espino