

**MOORPARK CITY COUNCIL  
AGENDA REPORT**

**TO:** Honorable City Council

**FROM:** David A. Bobardt, Community Development Director  
Prepared By: Joseph Fiss, Principal Planner 

**DATE:** September 18, 2013 (CC Meeting of 10/02/2013)

**SUBJECT:** Consider 1) Report of Annual Development Agreement Review Established in Connection with Moorpark West Studios; and 2) a One-Year Extension for Industrial Planned Development No. 2009-01 and Conditional Use Permit No. 2009-01, Located on 44 Acres on the North Side of Los Angeles Avenue, West of Gabbert Road, on the Application of Los Angeles Avenue LLC, PEGH Investments, LLC, The Kevin Newburg Trust, and The Richard S. Held Enterprises Retirement Trust

**BACKGROUND**

Government Code Section 65864 and City of Moorpark Municipal Code Section 15.40 provide for Development Agreements between the City and property owners in connection with proposed plans of development for specific properties. Development Agreements are designed to strengthen the planning process, to provide developers some certainty in the development process and to assure development in accordance with the terms and conditions of the agreement.

On October 19, 2011, the Moorpark City Council adopted Ordinance No. 409 (effective November 18, 2011), approving a Development Agreement between the City of Moorpark and Los Angeles Avenue LLC, PEGH Investments, LLC, The Kevin Newburg Trust, and The Richard S. Held Enterprises Retirement Trust. The Agreement was approved in connection with The Moorpark West Studios, a proposal to allow a 559,450 square-foot motion picture studio complex with 12 soundstages, three office buildings, 18 studio support buildings, and surface parking on 43.04 acres located on the north side of Los Angeles Avenue, west of Gabbert Road as shown in Attachment 1. The Agreement remains in full force and effect for 10 years from the operative date of the Agreement, November 18, 2011, ending November 18, 2021.

Provisions of the Agreement require an annual review and report to the City Council on the status of completion of all aspects of the Agreement. The developer has submitted the necessary application form, related materials, and fee/deposit for the annual review. The Community Development Director has reviewed the submitted information, including the project status and provides the following report.

**DISCUSSION**

**Current Project Status**

The project status is addressed in the attached narrative (CC Attachment 2).

**Developer Compliance with Terms of Agreement**

The developer’s responsibilities are included in Section 6 of the Development Agreement, and include requirements 6.1 through 6.29, summarized below. Compliance with the terms and conditions of the Development Agreement occurs at various stages of the development process. Action by the developer and other clarifying information has been noted. Where no comment appears, no specific activity has occurred.

No.	Requirement	Status
6.1	Developer shall comply with this Agreement, the Project Approvals, all Subsequent Approvals for which it was the applicant or a successor in interest to the applicant and the MMRP of the MND and any subsequent or supplemental environmental actions.	Developer is in compliance with all requirements at this time.
6.2	All lands and interests in land dedicated to City shall be free and clear of liens and encumbrances other than easements or restrictions that do not preclude or interfere with use of the land or interest for its intended purpose, as reasonably determined by City.	No land has been dedicated to the City at this point in time.
6.3	Payment of “Development Fees” of Forty-Four Thousand Three Hundred Twenty-Five Dollars (\$44,325.00) per gross acre of industrial land.	These fees will be adjusted annually (until paid) using the Consumer Price Index (CPI) in accordance with the Agreement. Fees must be paid prior to issuance of Zoning Clearance for Building Permit. No Building Permits have been issued.
6.4	Payment of “Citywide Traffic Fees” of Twenty-Nine Thousand, Seven-Hundred Dollars (\$29,700.00) per gross acre of industrial land.	These fees will be adjusted annually (until paid) using the State Highway Bid Price Index in accordance with the Agreement. Fees must be paid prior to issuance of Zoning Clearance for Building Permit. No Building Permits have been issued.

No.	Requirement	Status
6.5	Prior to the issuance of the building permit for each building, Developer shall pay an Air Quality Fee of \$0.63 for each square-foot of office building area and \$0.28 for each square foot of building area.	Fees must be paid prior to issuance of Zoning Clearance for Building Permit. No Building Permits have been issued.
6.6	(This section is intentionally left blank.)	
6.7	Prior to the issuance of the building permit for each building within the boundaries of the Property, Developer shall pay a Park Fee of \$0.50 for each square-foot of building area.	Fees must be paid prior to issuance of Zoning Clearance for Building Permit. No Building Permits have been issued.
6.8	(This section is intentionally left blank.)	
6.9	(This section is intentionally left blank.)	
6.10	Agreement to cast affirmative ballots for formation of one or more assessment districts for maintenance of parkway and median landscaping and street lighting, including but not limited to all water and electricity costs. Agreement to form property owner's association(s) to provide landscape, street lighting and park (if necessary) open space land, trails drainage facilities maintenance and compliance with NPDES requirements.	To date no assessment district has been required.
6.11	Agreement to pay any fees and payments pursuant to this Agreement without reservation.	Developer is in compliance with all requirements at this time.
6.12	Payment of Los Angeles Avenue Area of Contribution (AOC) Fee.	Fees must be paid prior to issuance of Zoning Clearance for Building Permit. No Building Permits have been issued.
6.13	Provide for a 50-year life, as determined by the City Engineer, for all public street improvements.	To be part of the Street Improvement Plans to be reviewed and approved by the City Engineer.
6.14	Agreement to pay any fees and payments pursuant to this Agreement without reservation.	Developer is in compliance with all requirements at this time.
6.15	Agreement to comply with requirements for annual review of the Agreement including evaluation of Mitigation Monitoring Program. Deposit \$25,000.00 for the cost of annual reviews for the life of this Agreement.	To date, the applicant has complied with review requests and Mitigation Monitoring Program requirements. Payment of \$25,000.00 deposit has been made.
6.16	(This section is intentionally left blank.)	
6.17	Developer agrees that any election to acquire property by eminent domain shall be at City's sole discretion, and only after compliance with all legally required procedures including but not limited to a hearing on a proposed resolution of necessity.	No request for property to be acquired by eminent domain has been submitted to date.

No.	Requirement	Status
6.18	Prior to recordation of this Agreement, Developer shall pay all outstanding City processing costs related to preparation of this Agreement, Project Approvals, and MND, should the deposit fund for this project have a negative balance.	Developer is in compliance with all requirements at this time. Fund review ongoing.
6.19	In the event any of the "referenced Index" or "CPI" referred to in any portion of Section 6 above, are discontinued or revised, such successor index with which the "CPI" and or "referenced Index" are replaced shall be used in order to obtain substantially the same result as would otherwise have been obtained if either or both the "CPI" and "referenced Index" had not been discontinued or revised.	"Referenced Index" and "CPI" continue in use and have not been replaced with a successor index.
6.20	Developer shall dedicate the full right-of-way for North Hills Parkway along the reach of the Project from Los Angeles Avenue on the south to the railroad on the north. Developer agrees to participate in a community facilities district or other financing mechanism for the construction of North Hills Parkway or be allowed to pay \$2,000,000.00. Commencing on January 1, 2013, and annually thereafter, the contribution amount shall be increased to reflect the change in the Caltrans Highway Bid Price Index for Selected California Construction Items for the twelve (12) month period available on December 31 of the preceding year ("annual indexing").	Dedication and participation in a funding mechanism or payment must be completed prior to issuance of a Zoning Clearance for the first Building Permit. No Building Permits have been issued.
6.21	Developer to pay for all costs of installation and to install traffic signals at the intersection of Los Angeles Avenue and North Hills Parkway and the intersection of the Property entrance and North Hills Parkway.	The developer is currently working with Caltrans to confirm configuration of the dedication area for the LA Avenue widening and improvements.
6.22	If City, within 5 years of the issuance of the first final building permit to allow occupancy of a building on the site, approves a funding mechanism for a minimum 8 foot high soundwall for the residential properties on the south side of Los Angeles Avenue, Developer agrees to pay City \$350,000 toward the soundwall.	No Building Permits have been issued.
6.23	Developer to construct and maintain a private road perpendicular to North Hills Parkway and to connect said road to the existing access easement for the adjacent properties to the west. Developer shall also extend said road approximately 369 feet to the west across the 6.0 acre property immediately to the west to line up with the driveway in the southern parking lot of the property further west.	No Building Permits have been issued.
6.24	Developer to acquire all necessary property and Caltrans and City permits, and construct improvements in Los Angeles Avenue for the project frontage.	The developer is currently working with Caltrans to confirm configuration of the dedication area for the LA Avenue widening and improvements.

No.	Requirement	Status
6.25	Developer agrees to execute a tri-party maintenance agreement with Caltrans and the City of Moorpark to guarantee maintenance of the landscaping along both the north and south sides of Los Angeles Avenue along the property frontage.	The developer is currently working with Caltrans to confirm configuration of the dedication area for the LA Avenue widening and improvements.
6.26	Provide a location and \$25,000.00 for a City Welcome Sign on the Project site prior to occupancy of the first building.	To date, no building permits have been issued.

City Compliance with Terms of Agreement

The City's responsibilities are contained in Section 7 of the agreement and include provisions (a) through (i), summarized below.

No.	Requirement	Status
7.1	Agreement to commit reasonable time and resources on expedited and parallel processing of application for subsequent applications.	To date, City has complied with any such requests.
7.2	If requested, at the developer's cost, proceed to acquire easements or fee title to land in order to allow construction of required public improvements.	To date, no such request has been received.
7.3	Authorization for the City Manager to sign an early grading permit.	To date, no such request has been received.
7.4	Agreement to process concurrently, whenever possible, all land use entitlements for the same property (so long as deemed complete).	To date, City has complied.
7.5	Agreement that Park Fee required per Section 6.7 meets obligation for park land dedication provisions of state law and local codes.	To date, City has complied.
7.6	City agrees that credit will be given toward the Art in Public Places Fee required pursuant to subsection 6.11 by the integration of artwork into the wall required immediately south of the flood control channel along the Los Angeles Avenue frontage, if said artwork is approved by Caltrans and by the City Council.	To date no artwork has been proposed.
7.7	Development fees based on project area shall be calculated using the area for private use after dedication of public rights of way, the private road providing access from North Hills Parkway to the property to the west, and the exclusive easements to the Watershed Protection District for flood control purposes. Unless otherwise specified, development fees based on building floor area shall be calculated using gross floor area as defined by the Zoning Ordinance.	To date, no payment has been made.

No.	Requirement	Status
7.8	Agreement to facilitate reimbursement to developer of any costs incurred that may be subject to partial reimbursement from other developers.	To date, no such request has been received.
7.9	With the acceptance of the \$25,000 City Welcome Sign contribution addressed in Section 6.26 City agrees to be responsible for any costs associated with construction and maintenance of Sign.	To date, no payment has been made.
7.10	City agrees, to facilitate discussions with property owners to the west (regarding participation in a maintenance agreement of the road from North Hills Parkway parallel with Los Angeles Avenue to serve properties to the west required per Section 6.23 of this Agreement. City further agrees to consider accepting said road as a public street should Developer be unable to reach an agreement with neighboring property owners. To the extent provided by law, the City would provide for reimbursement for the extension of said road beyond the western property line.	To date, no such request has been received.
7.11	City agrees to give Developer credit toward the payment of the Los Angeles Avenue Area of Contribution Fee as noted in Section 6.12 for the cost of certain improvements in Los Angeles Avenue and for the signalization improvements at the Los Angeles Avenue/North Hills Parkway intersection. Developer will not receive credit toward the payment of the Los Angeles Area of Contribution fee for the cost of parkway and sidewalk improvements adjacent to the southerly property line.	To date, no payment has been made.

Evaluation of Good Faith Compliance

Based on a review of the Development Agreement Annual Review Application and the status of the project, the Community Development Director has determined, on the basis of substantial evidence that Los Angeles Avenue LLC, PEGH Investments, LLC, The Kevin Newburg Trust, and The Richard S. Held Enterprises Retirement Trust has, to date, complied in good faith with the terms and conditions of the agreement.

**Consider a One-Year Extension for Industrial Planned Development No. 2009-01 and Conditional Use Permit No. 2009-01**

On October 5, 2011, the City Council adopted Resolution 2011-3063 approving Industrial Planned Development No. 2009-01, and Conditional Use Permit No. 2009-01 for the Moorpark West Studios project. These approvals took effect upon the effective

date of the Development Agreement for the project. The Development Agreement, which was approved by Ordinance No. 409 on October 19, 2011, took effect thirty days later on November 18, 2011. The Development Agreement addresses the term of subsequent approvals as follows:

“Term of Subsequent Approvals. The term of any Subsequent Approval, except a tentative subdivision map or subdivision improvement or other agreements relating to the Project, shall be one year; provided that the term may be extended by the decision maker for four (4) additional one (1) year periods upon application of the Developer holding the Subsequent Approval filed with City's Community Development Department prior to the expiration of that Approval. Each such Subsequent Approval shall be deemed inaugurated, and no extension shall be necessary, if a building permit was issued and the foundation received final inspection by City's Building Inspector prior to the expiration of that Approval. The term of any tentative subdivision map, should one be approved by City during the term of this Agreement, shall be as set forth under the Subdivision Map Act, Government Code Section 66410 et seq. and Title 16 Subdivisions, of the Moorpark Municipal Code.” On November 7, 2012, the City Council agreed to extend the Industrial Planned Development Permit an additional year, through November 18, 2013.

In the past year, the developer has obtained the necessary permits from the Watershed Protection District to box the channels for the road crossings and started the work. The crossings are nearly complete. The applicant has prepared a lot line adjustment to acquire 15 feet of the property to the west, as was shown on the approved plans. Additionally, the applicant is continuing to work on obtaining the properties south of Los Angeles Avenue for the street widening. Once these properties are obtained, City staff will prepare an item for Council consideration to annex the property for the road widening.

Although not required by the Development Agreement or project approvals, the applicant is exploring funding through the Federal EB-5 Visa program. The EB-5 visa for Immigrant Investors is a United States visa created by the Immigration Act of 1990. This visa provides a method of obtaining a green card for foreign nationals who invest money in the United States. To obtain the visa, individuals must invest \$1,000,000 (or at least \$500,000 in a "Targeted Employment Area" (TEA)), creating or preserving at least 10 jobs for U.S. workers excluding the investor and their immediate family.

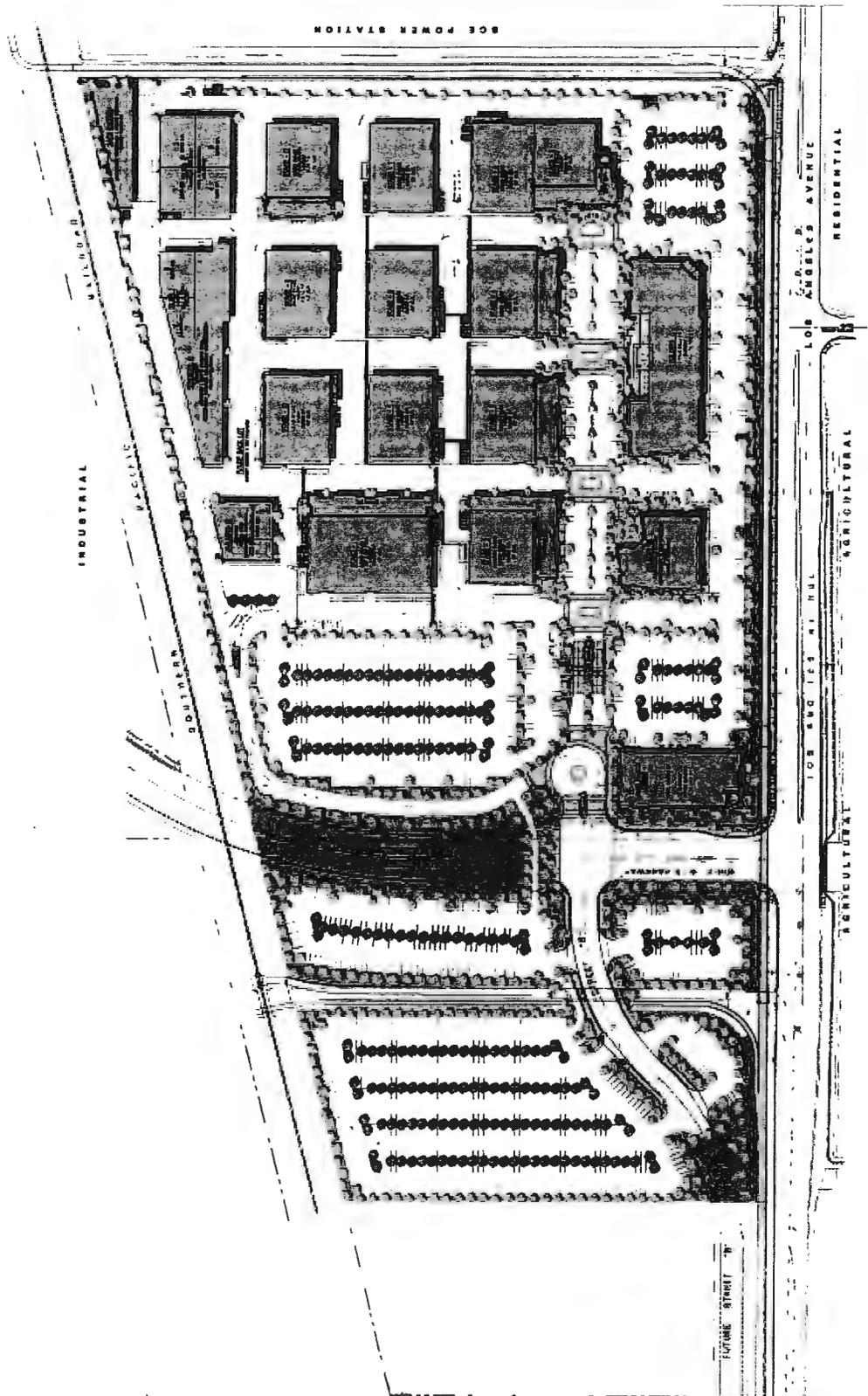
Moorpark West Studios has been designated as a TEA by the State of California. California provides customized TEA certifications for projects that qualify. Eligible TEAs include metropolitan statistical areas (MSAs), counties, cities and census designated places (CDPs). They also include rural areas and individual census tracts with qualifying high unemployment that are not in already-designated metropolitan statistical areas, counties, cities or CDPs.

**STAFF RECOMMENDATION**

1. Accept the Community Development Director's report and recommendation that, on the basis of substantial evidence, Los Angeles Avenue LLC, PEGH Investments, LLC, The Kevin Newburg Trust, and The Richard S. Held Enterprises Retirement Trust have complied in good faith with the terms and conditions of the agreement.
2. Deem the annual review process complete.
3. Direct the Community Development Director to issue a letter granting a one-year extension of Industrial Planned Development No. 2009-01 and Conditional Use Permit No. 2009-01 (Moorpark West Studios), to November 18, 2014.

**ATTACHMENTS:**

1. Site Plan
2. Narrative from Triliad Development, Inc.
3. Extension request from Triliad Development, Inc.



**ATTACHMENT 1**

site plan

**Moorpark West Studios**

A Motion Picture Film and Television Studio Complex  
 11300 WEST LAY AVENUE, ANGELES, CALIFORNIA 90024  
 A Development Project of

**TDI Trilled Development Inc.**

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January 24, 2013

270 Conejo Ridge  
Suite 200  
Thousand Oaks  
California 91361  
T 805.379.9800  
F 805.379.9560

Mr. David Bobardt  
City of Moorpark  
799 Moorpark Ave.  
Moorpark, CA 93021

Re: Moorpark West Studios Annual Review Application

Dear David:

Below is a summary of activities related to the project in 2013.

-Construction of the Bridges began in June 2013 and will be completed in September 2013.

-We are working with CalTrans to confirm configuration of the dedication area for the LA Avenue Street widening and will work with Smith Hoist and Latasa to get the easements signed and recorded as needed for the annexation and dedication to you so you can begin annexation process.

-Lot line adjustment has been approved and recorded so we can complete the swap of lot 16. We should have the lot swap completed by October 2013.

-MWS is exploring financing through the EB5 program. We have hired a consultant who specializes and has completed funding using the EB5 program. We received approval that Moorpark West Studios qualifies as a TEA by the State of California, this approval was received in August 2013 and we are now proceeding to have a consultant prepare the economic report to support the projected jobs.

Sincerely,

A handwritten signature in black ink, appearing to read "Valerie Draeger", is written over a horizontal line. The signature is fluid and cursive.

Valerie Draeger  
Triliad Development, Inc.

**ATTACHMENT 2**

DA No. 2009-02 (Annual Review)



270 Conejo Ridge  
Suite 200  
Thousand Oaks  
California 91361  
T 805.379.9800  
F 805.379.9560

August 27, 2013

Mr. Joe Fiss  
Principal Planner  
City of Moorpark  
700 Moorpark Ave.  
Moorpark, CA 93021

Re: Entitlement Extension Request

Dear Mr. Fiss,

I am requesting a one year extension of our entitlements which are:

Industrial Planned Development 2009-01  
Conditional Use Permit 2009-01  
Development Agreement 2009-02

If you have any questions, please do not hesitate to contact me.

Very truly yours,

Valerie Draeger

A handwritten signature in black ink, appearing to read "Valerie Draeger", is written over a horizontal line. The signature is fluid and cursive, extending across the width of the page.