

**CITY OF SAN ANTONIO
DEVELOPMENT SERVICES DEPARTMENT
CITY COUNCIL AGENDA MEMORANDUM**

TO: Mayor and City Council

FROM: Florencio Peña, Director Development Services

SUBJECT: Vested Rights Permit appeal for VRP # 05-06-099 (Gateway Village Shops at Stone Oak)

DATE: January 5, 2006

SUMMARY AND RECOMMENDATIONS

Consideration of an appeal by Earl & Associates, P.C. on behalf of Mortgage Loan & Agency, Inc., regarding the Planning Commission's action to deny rights under Chapter 245 , Texas Local Government Code for a proposed project on 1.722 acres out of Lot 1, Block 1, NCB 16329 located at 150 Voigt Drive.

The applicant is requesting approval of a vesting date of September 25, 1992. Staff recommends denial of this appeal.

BACKGROUND INFORMATION

On June 27, 2005, Development Services Department received subject Vested Rights Permit application. The applicant was seeking Vested Rights for a site located at the intersection of FM Hwy 1604 and Voigt Drive. The applicant was notified with the information regarding the analysis, conclusion and recommendation for disapproval on July 7, 2005 (Exhibit B). On July 8, 2005, Mr. Paul Bradley, the applicant's representative, picked up the notification from Development Services Department. Development Services Department received a letter from Mr. Habib Erkan (Earl and Associates), on July 20, 2005, appealing the decision to disapprove Vested Rights Permit No. 05-06-099. Mr. Erkan submitted additional information to the Director of Development Services for reconsideration of the denial on September 1, 2005. Mr. Erkan was informed that his supplemental information would cause a delay in the posting of his appeal on the Planning Commission Agenda due to the fact that it came after the 15 days allowed for submittals. On August 14, 2005, the Planning Commission heard the applicant's appeal. Commissioner Romero made a motion to approve the applicant's request for Vested Rights. The motion did not receive the required votes for approval, so the applicant's appeal was denied. Mr. Erkan was notified in writing of the Planning Commission's decision. On September 21, 2005, the City Clerk's Office received an appeal to City Council regarding the decision of the Planning Commission to deny vested rights.

This appeal was scheduled for City Council consideration on December 15, 2005, but continued at the request of the applicant.

POLICY ANALYSIS

The Unified Development Code requires that multi-phase projects be identified as such by the submission of a Master Development Plan (formerly Preliminary Overall Development Plan) as follows:

Section 35-412 Master Development Plan

(a) Applicability

(1) Mandatory Master Development Plan.

A master development Plan shall be required in all instances when a tract of land within the city or its extraterritorial jurisdiction ("ETJ") requests subdivision plat approval in which the entire property will be subdivided in two (2) or more plat phases or units.

The plat application, according to the applicant, bases its request for vesting on one commercial project and did not indicate any phased development. There was never any indication in the application that the original project completed in 1994 was phased development. The original project was completed. Additionally, the plat subsequently became dormant in accordance with the provisions of Chapter 245 of the Texas Local Government Code. Chapter 245 states as follows:

§ 245.005. DORMANT PROJECTS. Notwithstanding any other provision of this chapter, after the first anniversary of the effective date of this chapter, a regulatory agency may enact an ordinance, rule, or regulation that places an expiration date on a permit if as of the first anniversary of the effective date of this chapter: (i) the permit does not have an expiration date; and (ii) no progress has been made towards completion of the project. Any ordinance, rule, or regulation enacted pursuant to this section shall place an expiration date of no earlier than the fifth anniversary of the effective date of this chapter. Progress towards completion of the project shall include any one or more of the following:

(1) an application for a final plat or plan is submitted to a regulatory agency;

(2) a good-faith attempt is made to file with a regulatory agency an application for a permit necessary to begin or continue towards completion of the project;

(3) costs have been incurred for developing the project including, without limitation, costs associated with roadway, utility, and other infrastructure facilities designed to serve, in whole or in part, the project (but exclusive of land acquisition) in the aggregate amount of five percent of the most recent appraised market value of the real property on which the project is located;

(4) fiscal security is posted with a regulatory agency to ensure performance of an obligation required by the regulatory agency; or

(5) utility connection fees or impact fees for the project have been paid to a regulatory agency.

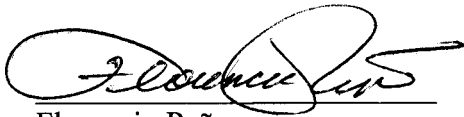
FISCAL IMPACT

There is no fiscal impact to the City with this action. Denial of vested rights may have a fiscal impact on the applicant which would impact the tree mitigation fund.

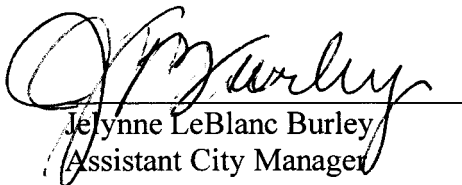
The applicant did not provide any information in the application that demonstrated any progress towards completion for any ongoing project in the time period required to preclude a finding of dormancy by the Director.

COORDINATION

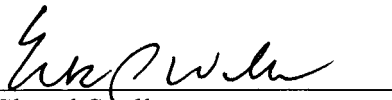
This appeal was coordinated with the City Attorney's Office.



Florencio Peña
Director, Development Services Department



Jelynn LeBlanc Burley
Assistant City Manager


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Sheryl Sculley
City Manager

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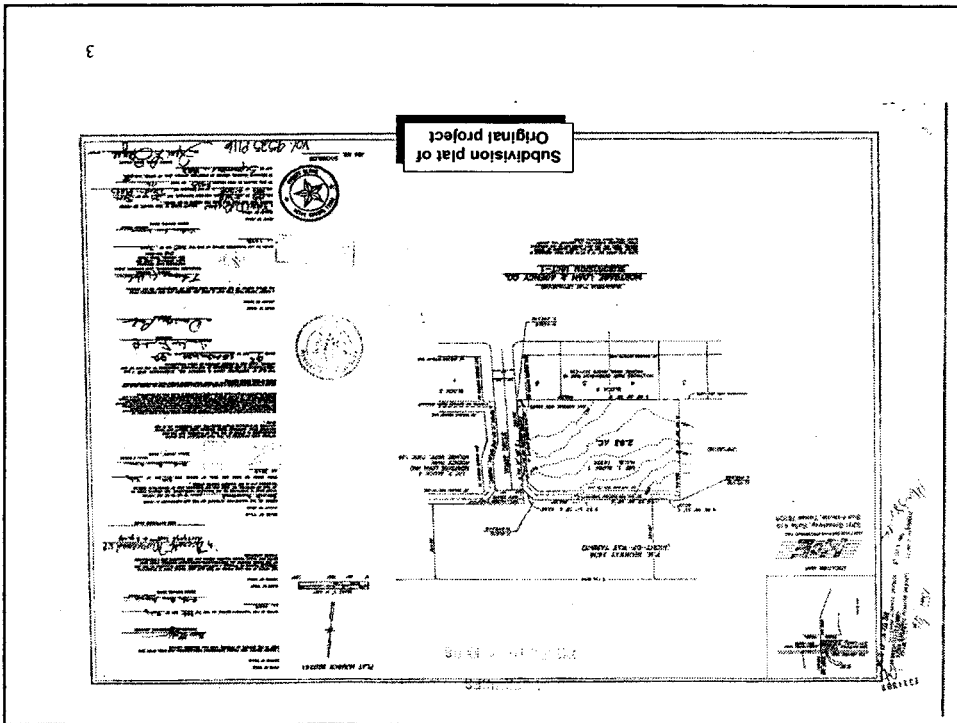
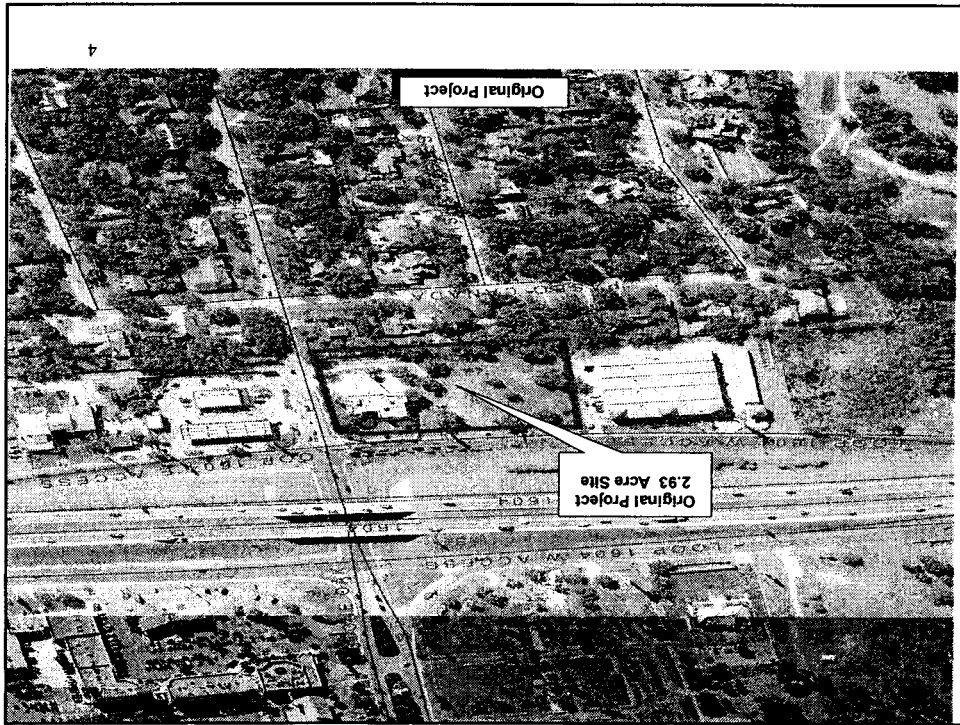
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Background

- Earl & Associates, P.C., Attorneys at Law, applied for Vested Rights on June 14, 2005 for 2.93 acre tract being Lot 1, Block 1, NCB 16329, located at the intersection of Loop 1604 and Voigt Drive, (Council District 9).
- Applicant requested to vest the project to September 25, 1992.
- Staff recommended denial of the September 25, 1992 because the original project is Dormant.
- Planning Commission heard the appeal on September 14, 2005. The appeal did not receive a majority vote to approve the Vested Rights.

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Background(con't)

- Applicant requested and staff agreed to review and reconsider its recommendation based on supplemental information for a project filed with TNRCC on March 30, 1987.
- The new question is whether the TNRCC application process affects the Dormancy determination made on the original vested rights application date of September 23, 1992.

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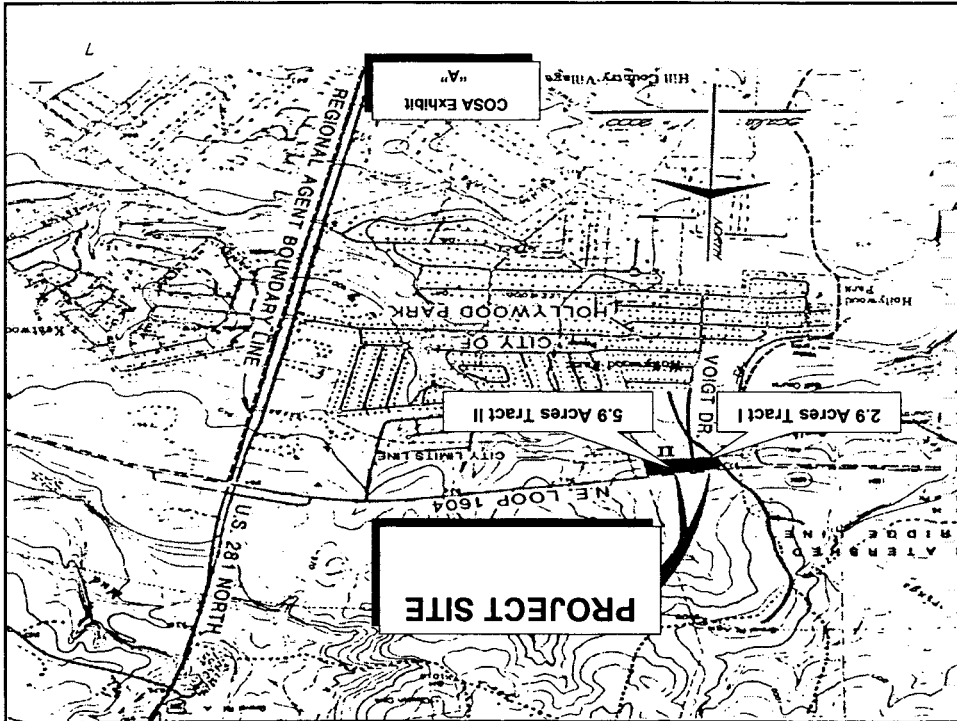
TNRCC Project Summary

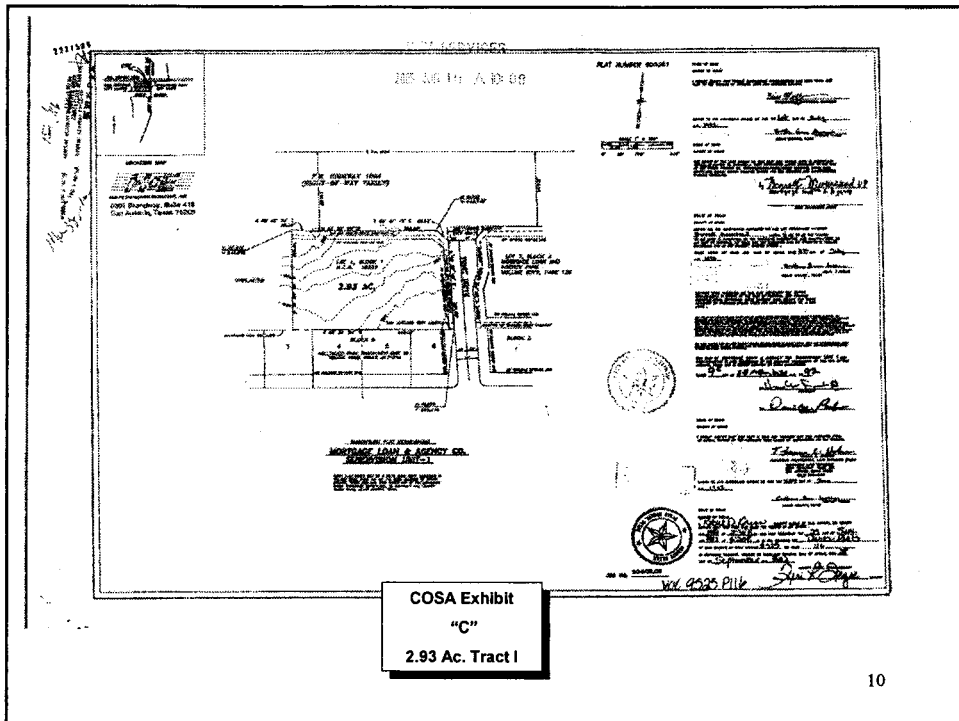
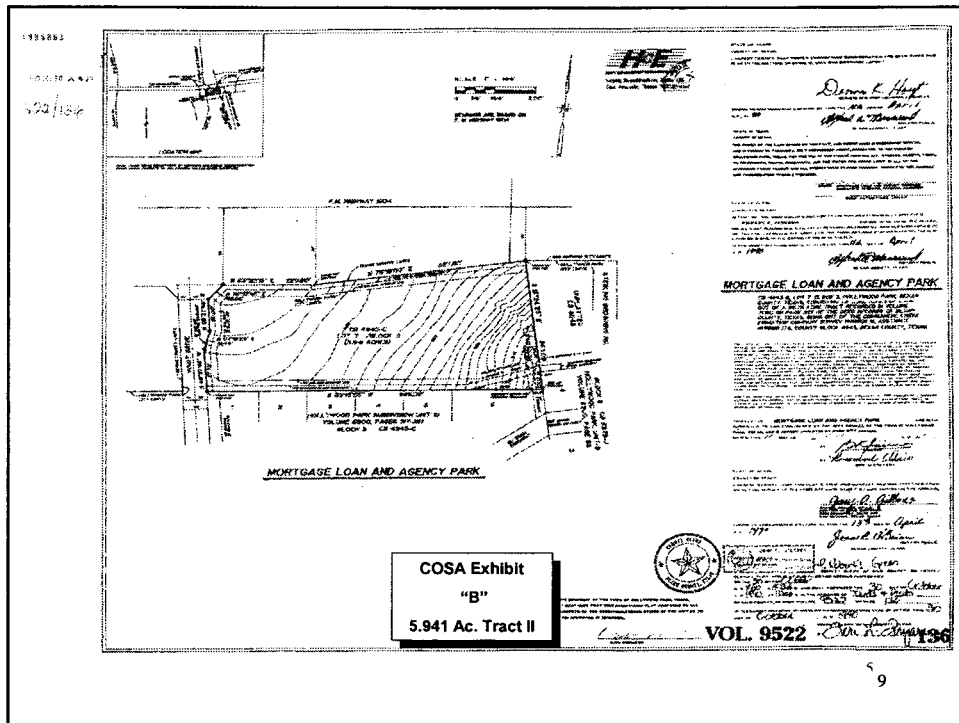
- A project initiated on March 30, 1987 demonstrated by an approval of a WPAP by TNRCC.
- The project consisted of two phases (5.9 acre tract and 2.9 acre tract). (see map Exhibit "A")
- The project was described as a commercial project and the impervious cover approved for the two sites was 90 %.
- On October 10, 1994 the applicant amended the WPAP changing the impervious cover to 75%.

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- Subdivision plat "Mortgage Loan & Agency Park" for one non-single family lot consisting of 5.941 acres was recorded October 30, 1990, Vol. 9522, Pg. 136. (See Exhibit "B")
- Subdivision plat Application (Plat ID # 920261) Mortgage Loan & Agency Co. for one non-single family lot consisting of 2.93 acres was submitted on June 22, 1992 and recorded September 25, 1992, Vol. 9525, Pg. 116. (See Exhibit "C")

Subdivision Plat Summary

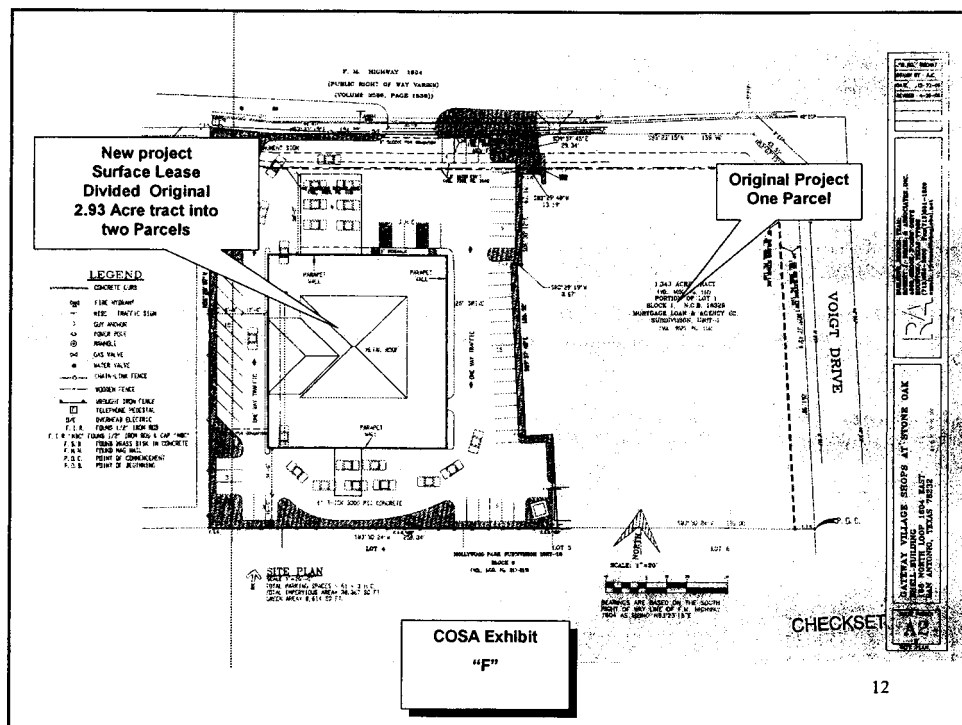


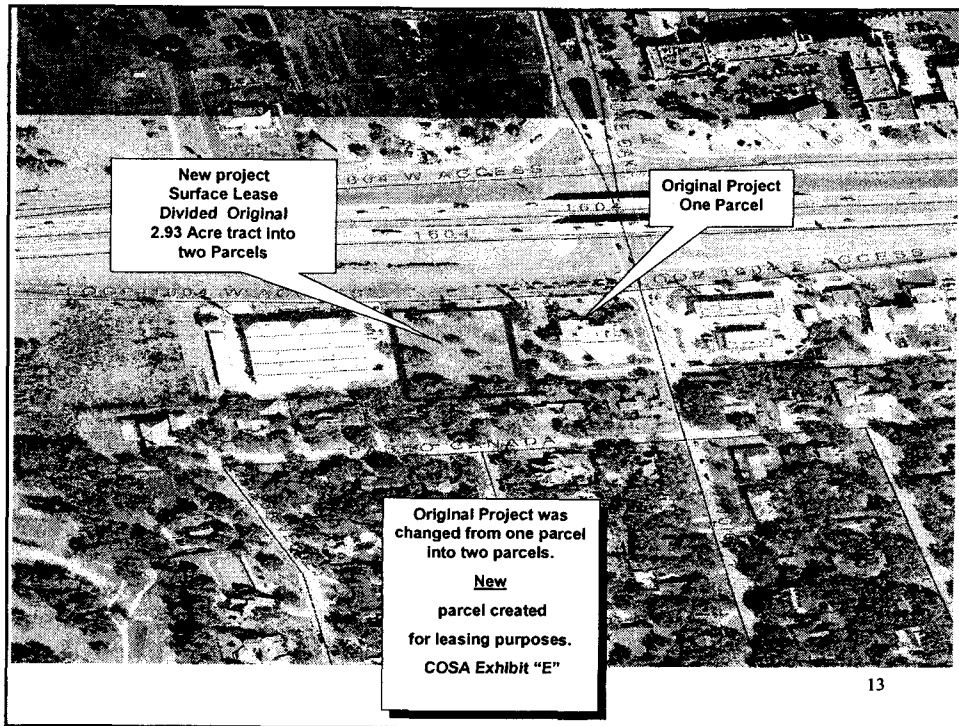


Building Permit Summary

- No Building Permit issued by the City of San Antonio for the 5.941 acre tract because it is located outside the city limits.
- A Building Permit for a two story 14, 700 square foot bank facility with unfinished floor space was filed on a 2.93 acre plat & lot on June 19, 1996.
- A certificate of Occupancy was issued to Clear Lake National Bank on November 26, 1997 for a two story 14,700 square foot bank facility.
- Numerous Certificates of Occupancy applications have been filed since November 1997 to occupy unfinished space.

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Policy Analysis

- The City of San Antonio thru Ordinance # 98697 adopted Texas Local Government Code 245. A (5) five year grace period was given from May 11, 1999 to May 11, 2004 for applicants to comply with Section 245.005 regarding permits without an expiration date.
- Since no building activity or any other demonstration of continued progress towards completion of this project has been provided for the period after November 26, 1997, it is my opinion that the project initiated on March 30, 1987 is dormant.
- The Applicant has not demonstrated progress since November 26, 1997 because none of the following activities have been performed as required by Section 245.005 or Section 35-713 of the UDC.

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Policy Analysis (con't)

Chapter 245.005 and Section 35 – 713 UDC

1. That an application for a final plat or plan has been submitted to a regulatory agency.
2. That a good-faith attempt has been made to file with a regulatory agency an application for a permit necessary to begin or continue towards completion of the project.
3. That cost have been incurred for developing the project including, without limitation, costs associated with roadway, utility, and other infrastructure facilities design to serve in whole or in part, the project in the most recent appraised marked value of the real property on which the project is located.

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Policy Analysis (con't)

Chapter 245.005 and Section 35 – 713 UDC

4. That fiscal security is posted with a regulatory agency to ensure performance of an obligation required by the regulatory agency; or
5. Utility connection or impact fees for the project have been paid to a regulatory agency.

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Recommendation

Staff recommends denial.

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Appeal

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