

New Law Automatically Extends Subdivision Map Approvals (Again)

By Dave Lanferman & Jeffrey Forrest

New legislation to automatically extend the life of currently existing tentative maps, vesting tentative maps and parcel maps for an additional 24 months has been approved. The new law, AB 208 (Fuentes) was signed by Governor Brown on July 15, 2011, and includes urgency provisions so that it goes into effect immediately. This bill adds new Government Code § 66452.23 to the Subdivision Map Act, and establishes an automatic statutory extension to the life of previously-approved tentative maps and parcel maps that had not expired as of July 15, 2011, and which would otherwise have expired prior to January 1, 2014. This new automatic statutory extension is in addition to any other extension provided by the Subdivision Map Act or local ordinance.

This bill reflects the Legislature's recognition that California housing markets remain depressed, and that development activities on hundreds of previously-approved subdivisions have been suspended or have otherwise gone on hiatus. The California Building Industry Association has estimated that such approved-but-inactive subdivisions represent more than 300,000 housing units. This bill is similar to other map-extension legislation approved in recent years as a result of the depressed housing economy, including AB 333 (2009) providing a 2-year extension through January 1, 2012, and SB 1185 (2008) providing a one-year extension, and the Legislature has expressly provided that these statutory map extensions are in addition to prior extensions and are cumulative.

Automatic Extension of Other Project-Related Approvals?

This legislation also includes a two-year automatic extension to all project-related "legislative, administrative and other approvals by any **state** agency." As such, a project that qualifies for the tentative map extension also receives a statutory extension on any project-related coastal development permit, water quality certificate, Bay Conservation and Development Commission permit, or similar approval issued by a State agency. However, it does not expressly extend the life of **local** agency project approvals (other than tentative or parcel map approvals). This may create a potential trap for the unwary, since critical local agency development approvals (such as conditional use permits, site development permits, planned development permits, architectural or design reviews) may be inadvertently allowed to lapse in reliance on the automatic map extension. Many projects may need to seek discretionary extensions of their other local approvals in order to ensure that they receive the full benefit of this map extension.

The Life of Tentative Maps and Map Extensions:

Under existing state law, tentative maps – and the rights to subdivide and develop conferred by such approved tentative maps -- ordinarily have a "life" of two years (three years in some local jurisdictions). Developers must either fulfill the tentative map conditions of approval and file a final map during that period, or obtain an extension before the expiration of the tentative map. Approval of a "vesting tentative map" (VTM) confers a vested legal right to subdivide and develop in substantial conformance with approved project plans and VTM conditions despite subsequent changes in local rules and regulations during the life (or extended life) of the VTM.

Tentative map extensions may be obtained through other statutory provisions (e.g., a moratorium-based extension, or a litigation-based exemption) or may be sought by application for a discretionary extension by the local jurisdiction (now up to six years). Also, if a project has several phases, the life of the VTM can also be automatically extended (three years per phase for a combined total of ten years, including the

original life of the VTM) by timely recording a final map for the phases and making a certain dollar amount of off-site public infrastructure improvements. However, once an approved tentative map or VTM expires, or can no longer be extended, the valuable rights conferred by map approval may be lost, including previously vested rights under a VTM, unless the developer is in position to obtain final map approval and commence construction.

No Automatic Extension of Final Subdivision Maps:

The new legislation does not extend final subdivision maps, which remain subject to statutory expiration and loss of any vested rights protections under the existing provisions of the Subdivision Map Act. Consequently, subdividers holding final map approvals in danger of expiration must consider applying for **discretionary extensions** of such approved final maps, if available in the local jurisdiction, or consult with land use counsel to explore other means of preserving and extending approvals or vested rights achieved through the subdivision process.

Shortening the Period of Final Map "Protection" Against New Conditions:

As in the previous automatic map extension legislation, this bill includes amendments to Government Code § 65961. That statute, the so-called one-bite-of-the-apple law, was enacted to "protect" projects with approved final subdivision maps against the imposition of **new** conditions of building permit issuance for a period of time following final map approval. Normally, the statute provides such protection against the imposition of any new "conditions that the city or county could have lawfully imposed" as conditions of tentative map approval for a period of **five years** following recordation of the final map or parcel map. This bill, however, reduces the period of such protection to **three years** for projects whose tentative subdivision maps are extended by this new legislation, or by the 2009 legislation (§ 66452.22) that provided an automatic 2-year tentative map extension through January 1, 2012.

To avoid confusion as to the true expiration date of approved maps and all applicable project approvals, developers should consider confirming the effect of this legislation on their particular projects with local agencies having jurisdiction over their subdivisions.

A copy of the chaptered legislation is available through our offices, or [click here](#).

Authored by:

David P. Lanferman
(415) 774-2996
dlanferman@sheppardmullin.com

Jeffrey W. Forrest
(619) 338-6502
jforrest@sheppardmullin.com

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