

Commentary

Bad Times, Worse Times: Extending the Life of Your Tentative Map During Market Downturns

by Michael Patrick Durkee and Thomas Tunny

What to do? You hold an already-approved Tentative Map or a Vesting Tentative Map (the following discussion covers both types of Maps). You must satisfy extensive and expensive conditions of approval (attached to the Tentative Map) in order to secure and record the Final Map creating the lots, but after you spend that money, there is no market for the lots or the homes you would build on those created lots. Do you therefore do nothing and let the Tentative Map die and start all over when the market returns? Or is there a way to keep the Tentative Map alive while you weather the difficult economic times?

1. Multiple (Phased) Final Maps

Generally, a subdivider will secure a Tentative Map covering all the property to be subdivided, and then will seek a single Final Map covering the entirety of the area contained in that Tentative Map. However, if the subdivider can satisfy certain Map Act requirements (explained below), the Map Act not only allows the filing of a Final Map on only a portion (a phase) of the total area encompassed by the Tentative Map, but the filing of that "phased" Final Map also extends the life of the remaining portion of the land staying in Tentative Map status (the area not included in the phased Final Map): the filing of each Final Map extends the life of the underlying Tentative Map by *three years* for up to a total of *ten years*. This process is generally referred to as filing "multiple" or "phased" Final Maps.

A subdivider who wishes to use multiple Final Maps for the purpose of extending their Tentative Map must satisfy all of the following:

- Notify the city or county of its intent to use multiple (phased) Final Maps at the time the Tentative Map is filed; if the subdivider notifies the city or county of his or her intent to file multiple Final Maps after the filing of a Tentative Map, the city or county must agree to the filing of multiple Final Maps. Gov't Code § 66456.1. (Solution if city or county fails to agree: Withdraw application and reapply with the notice now provided.)
- Have a project that will expend one hundred seventy-eight thousand dollars (\$178,000) or more to construct, improve or finance the construction of public improvements outside the property boundaries of the Tentative Map (offsite), excluding improvements of public rights-of-way which abut the boundary of the property to be subdivided. "Finance" would include impact fees paid at building permits to fund offsite public improvements.

Again, if both requirements are satisfied, then the filing of each Phased Final Map extends the life of the underlying Tentative Map (for the area not included in the phased Final Map) by three years for up to a total of ten years. Additionally, other Tentative Map extensions are available (see discussion below) beyond that 10-year period.

A city or county may impose reasonable conditions relating to the filing of each such Phased Final Map (those conditions that must be satisfied to file each Phased Final Map). Gov't Code § 66456.1. Subdividers should work with the city and county to determine which conditions should be satisfied with each phase.

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The statutory requirement was \$178,000 as of 2005, and is adjusted each year by the State Allocation Board in accordance with cost-of-living increases/decreases. The current required amount can be obtained from the State Allocation Board.

2. Other Tentative Map Extensions Available Under the Map Act

In addition, several other extensions of the life of a Tentative Map are available under the Map Act, and these extensions are not mutually exclusive; that is, a subdivider may secure multiple extensions of time under the various different extension provisions of the Map Act. *California Country Club Homes Ass'n, Inc. v. City of Los Angeles*, 18 Cal.App.4th 1425 (1993). These other extensions are as follows:

- **Discretionary Extensions** -- Upon application by a subdivider, a city or county may extend the life of a Tentative Map for a period of time not to exceed six years. Gov't Code § 66452.6(e). There is a strong argument that discretionary extensions for a *Vesting* Tentative Map are nearly mandatory and can be denied *only* if the denial is required by state or federal law, or if a failure to deny would place the residents of the subdivision or the immediate community in a condition dangerous to their health and/or safety.
- **Development Moratorium** – the life of a Tentative Map is automatically stayed for up to a maximum of 5 years during a “development moratorium” that is imposed after a Tentative Map is approved. Gov't Code § 66452.6(b). A development moratorium can include moratoria based on infrastructure constraints (e.g., sewer, water), as well as actions by public agencies that regulate land use, development or services to prevent, prohibit, or delay approval of the Final Map.
- **Litigation** – a pending lawsuit involving the approval or conditional approval of a Tentative Map can stay the life of a Tentative Map for up to 5 years. However, unlike a moratorium, the litigation stay must be approved by the city or county that approved the Tentative Map. A good practice tip is to include in the Tentative Map's conditions of approval a condition that the Tentative Map will be extended for up to 5 years if a lawsuit is filed.
- **Legislative Extensions:** The Legislature extended the life of Tentative Maps by 1 year if the map existed in August 2008 and will expire before 1/1/11. Gov't Code § 66452.21.

PROPOSED Legislative extension (AB 333 – 2009) 24-month extension for all Tentative or Vesting Tentative Maps, and parcel maps for which a tentative or vesting Tentative Map has been approved, that have not expired as of bill's effective date and would expire before January 1, 2012.

- **Development Agreement** – a Tentative Map on property subject to a statutory “Development Agreement” may be extended for a period of time specified in the Development Agreement, which specified period cannot exceed the term of the Development Agreement itself. Gov't Code § 66452.6(a)(1).

We trust this is helpful. Please feel free to contact the authors of this article directly; they will be happy to discuss this further with you and provide you with the assistance you need.

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