

Commentary

SB 1185 and AB 2604: Two Critical Bills for Developers and Builders

by Lewis G. Feldman

SB 1185 Extends Dates for Eligible Maps

This past summer, the California Legislature passed Senate Bill 1185 ("SB 1185"), which was signed into law by Governor Schwarzenegger on July 15, 2008. Sponsored by Senator Alan Lowenthal (D-Long Beach), SB 1185 extends the expiration date for specified subdivision maps. The extensions provided for under SB 1185 are not limited to residential or mixed-use projects, but apply to commercial projects as well. Specifically, the bill adds Government Code section 66452.21 to the Subdivision Map Act and amends sections 66452.6 and 66463.5 to:

1) Extend the expiration date by twelve (12) months for any tentative map, vesting tentative map, or parcel map for which a tentative map or tentative vesting map has been approved, and does not expire before January 1, 2011.

2) Increase the time for local discretionary extensions for tentative subdivision maps from five (5) to six (6) years.

3) Provide that the extension period shall not include any period of time during which a development moratorium imposed after approval of the map is in existence (although the length of the moratorium may not exceed five years), nor shall the extension period include any period of time during which a lawsuit involving the approval or conditional approval of the map is pending (provided the stay is approved by the local agency).

SB 1185 contains an urgency clause, which allowed the bill to take effect immediately upon enactment. Accordingly, the expiration dates of all tentative maps and vesting tentative maps that were (a) in effect as of July 15, 2008, and (b) would have expired before January 1, 2011 were automatically extended for twelve (12) months. The twelve (12) month extension is in addition to any extension granted through the local approval process, unless the locally approved extension would already extend the map's life beyond January 1, 2011.

SB 1185 also amended Section 66452.6 to automatically extend the expiration date by thirty-six (36) months for certain approved or conditionally approved tentative maps. This extension applies to projects that require a subdivider to expend \$178,000 (adjusted annually for inflation) or more to construct, improve, or finance certain public improvements outside the property boundaries of the tentative map. The extension may not extend the tentative map more than ten (10) years from its original approval or conditional approval, except pursuant to a development agreement.

In addition to extending the expiration date of tentative maps, vesting maps, and certain parcel maps, SB 1185 automatically extends the life of any state agency approval for a development project having an eligible tentative map for an additional twelve (12) months. This includes approvals from the Department of Fish and Game, Coastal Commission, Air Resources Board, and Regional Water Quality Control Board, provided that such state agency approvals had not expired as of July 15, 2008.

SB 1185 does not affect or extend any local agency approvals, such as building permits or use permits. Nor does the law affect or extend final subdivision maps. To fully enjoy the benefits of SB 1185, developers may need to seek discretionary extensions of their local entitlements and final maps.

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The Benefits of SB 1185 to Developers

The SB 1185 extensions are automatic, in addition to all other extensions allowed by the Subdivision Map Act, and do not impose any new conditions of approval on developers. Although the language of SB 1185 does not expressly cover charter cities, which sometimes are exempt from the Subdivision Map Act, it is unlikely, given the current state of California's economy, that the Legislature intended for more than one hundred (100) of its cities to be exempt from SB 1185. Los Angeles and many other charter cities have already amended their municipal codes to reflect the provisions of SB 1185, and any conflicting local ordinances that impose shorter time limits on maps will likely be preempted by the Subdivision Map Act, as amended by SB 1185.

SB 1185 was fast-tracked through the formal enrollment process to the Governor's desk because of the urgent need to extend vested entitlements. Once a subdivision map expires, builders are often forced to begin the lengthy local government approval process all over again. SB 1185 extends the lives of hundreds of subdivision maps in California that have been approved by cities and counties for one (1) year, giving the industry more time to begin the construction of thousands of homes and apartments. Had these maps expired, developers of the projects would have needed to redo their entitlement work, having lost their vested rights. Many projects would probably have been abandoned completely. Keeping those projects in the pipeline was determined to be critical to California's economic recovery, as developers will be spared the added time and expense of obtaining new maps when they can eventually obtain financing, and their projects make economic sense to build.

AB 2604 Authorizes Deferral of Mitigation Fees

The Legislature also approved a related bill, Assembly Bill 2604 ("AB 2604"), which became effective January 1, 2009. AB 2604 amends Government Code section 66007 of the Mitigation Fee Act to authorize (but not require) a local agency to defer collection of adopted mitigation fees until the close of escrow. Typically mitigation fees are paid after issuance of a building permit or the certificate of occupancy. This requires developers to make a huge cash-outlay up front.

Normally, developers are able to finance mitigation fees. But as the value of real estate has declined, lenders are reticent to provide new financing for construction, and are requiring builders to pay down outstanding loan balances to maintain certain loan-to-value ratios. In the current economy, it is extremely difficult for developers to generate the additional funds needed to pay mitigation fees at the building permit stage. AB 2604 provides some temporary relief to developers struggling with cash flow issues by postponing collection of the fees to the back end once a homeowner is in place.

AB 2604 does not apply to school fees levied pursuant to Education Code section 17620 *et seq.*, and it does not provide any discount on the fees. Also, since escrows generally close relatively soon after the issuance of the certificate of occupancy, the deferral may not actually buy developers that much time. However, in areas with high buyer cancellation rates, builders with unsold units will enjoy some relief in their carrying costs by avoiding payment of mitigation fees until the units are sold and they have the cash in hand to pay.

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