



Lapse and Extension of Discretionary Approvals Associated with Tentative Maps

Background: Due to the extended economic recession, many development projects that were approved in the mid to late 2000s are not yet under construction. By local ordinance and conditions of approval, most discretionary entitlements lapse if not implemented within short time frames, generally one year for design review or conditional use permits, and two years for subdivisions, unless a request for extension is filed before the expiration date. The State legislature has independently extended the expiration of Tentative Maps.¹ However, no corresponding automatic extension exists for local discretionary permits that are associated with those maps.

Questions: How do local discretionary permits, which automatically lapse if not implemented, parallel the State-mandated extensions for subdivision maps? What procedures should be followed for local permit extensions and what fees and other requirements may be imposed on the various local approvals when they are later implemented?

Discussion: Local discretionary approvals (most typically Design Review and/or Conditional Use Permit, referred to herein as “associated permits”) are accompanied by findings and conditions of approval, made and imposed at the time of the original approval based on the existing ordinances, standards, context and information available at the time. If not implemented in a timely manner, these permits lapse (in one year or as otherwise stated in the permit). Expiration of an associated permit may, upon written request, be extended by the original approval body for up to one additional year without a hearing. The one-year lapse and extension provisions are typically stated on the face of the permit and as conditions of approval, and are in any event generally applicable based on the zoning ordinance (WCMC section 10-2.4.407).

The City ostensibly retains discretion to not extend the associated permit expiration, as section 10-2.2.407 provides that the City “may” extend, not “shall” extend upon request. The expiration and renewal procedures, and the lack of early vesting for permits issued but not exercised, normally give the City the opportunity to review and consider changes in circumstances, changes in law, and changes in policy that may affect the findings and conditions that supported the original issuance of the permit. Practically speaking, however, the City has repeatedly extended every associated permit that has come up for review.²

Separately, the Subdivision Map Act has been amended to provide automatic extensions of approved maps for multiple increments of 12 and 24 months, in some cases allowing projects approved in the mid to late 2000s to expire as late as 2015. (The legislature also extended all other State-issued legislative, administrative and other approvals tied to a map for a corresponding length of time.) The map extensions are subject to certain exceptions, allowing local governments to condition building permit

¹ As an apparent concession for repeated extensions, the State has allowed that local agencies may collect revised fees at the time of issuance of building permits. The State has also provided particular guidance for maps related to Planned Developments and for associated State permit approvals.

² The City has only required a new permit application for projects for which changes in design were requested.

issuance on the basis of such considerations as public health and safety, compliance with federal or state law, compliance with zoning, and imposition of new fees at the time (Govt. Code sections 66452.22, 66452.23 and related, and section 65961).³

Analysis: The State has largely pre-empted local government in the area of subdivision map expiration. The City of Walnut Creek has 32 subdivision maps that are currently approved and extended, awaiting implementation. Considering the mandatory extension of map expiration and associated State approvals, and the relative perfunctory nature of conducting local review of extensions in the interim, it would be most efficient to administratively extend all of the associated approvals to correspond to the State-legislated map expiration.⁴

Action: The Planning Department will automatically extend associated permits for each subdivision map that is still valid under State law. We will require substantial conformance to approved plans, require payment of all applicable fees including newly adopted and adjusted fees, and review for conformance with other applicable state and federal laws such as clean water, water efficient landscape, and similar requirements at the time of final map and building permit issuance. Projects also will be reviewed for conformance with the then-effective General Plan designation and/or zoning designation or regulations at the time of building permit issuance, and non-conformance with substantive standards will require map and permit revisions. Minor revisions may be administratively approved; substantive changes (e.g. changes in the building dimensions greater than 2 feet) will require review by the original approving body **as a new application / permit modification**.

A letter will be sent to each applicant and property owner informing them of this policy and its rationale and stating the City's reservation of authority to require compliance with approved plans and conditions of approval, and with other generally applicable laws, regulations, standards and fees at the time of implementation. A copy of this bulletin and a note will be added to each project file in Permits Plus and in the hard copies / scanned copies of the permits. The Secretaries to the Design Review Commission and Planning Commission will inform the Commissions of this approach and request their concurrence with a delegation of authority to implement it.

We anticipate that most new regulations, such as clean water treatment, can be accommodated through modest design changes that would be consistent with the original approval. If modified plans are found not to be in substantial conformance with the original approval, an application for new entitlements would be required. Similarly, if an applicant decides to redesign a project, it would be subject to the normal review process for a new or modified project.

Going forward, approvals will have a stated lapse date that corresponds with any associated subdivision map expiration, including the standard two-year map expiration and any extensions. This will reduce confusion, administrative workload, and the possibility for error or delay in extending the various permits. Consideration will also be given to granting longer lapse periods for other permits of similar nature (larger developments) that do not have an associated subdivision map.

³ Maps tied to a planned unit development are also explicitly extended, and any permit tied to that map is automatically extended unless an earlier expiration date is stated on the face of that other permit (section 65863.9). The City does not have any planned unit developments that expire, as they are legislatively approved.

⁴ While it may seem that this results in disparate treatment of approvals that are tied to a map and those that are not, it is the State legislature that has occupied the field in this matter and the subject policy is intended merely to reduce unnecessary paperwork and administrative workload in achieving logical conformance.

Government Code excerpts related to subdivision map extensions

66452.12. (a) Any permit issued by a local agency in conjunction with a tentative subdivision map for a planned unit development shall expire pursuant to Section 65863.9.

(b) *Conditions or requirements for the issuance of a building permit or equivalent permit may be imposed pursuant to Section 65961.*

65863.9. *Unless an earlier expiration appears on the face of the permit, any permit which is issued by a local agency in conjunction with a tentative subdivision map for a planned unit development shall expire no sooner than the approved tentative map, or any extension thereof, whichever occurs later.*

Local coastal development permits issued by a local agency in conjunction with a tentative subdivision map for a planned unit development shall expire no sooner than the approved tentative map, and any extension of the map shall be in accordance with the applicable local coastal program, if any, which is in effect.

66452.22. (a) The expiration date of any tentative or vesting tentative subdivision map or parcel map for which a tentative or vesting tentative map, as the case may be, has been approved that has not expired on July 15, 2009, and that will expire before January 1, 2012, shall be extended by 24 months.

(b) The extension provided by subdivision (a) shall be in addition to any extension of the expiration date provided for in Section 66452.6, 66452.11, 66452.13, 66452.21, or 66463.5.

(c) Any legislative, administrative, or other approval by any state agency that pertains to a development project included in a map that is extended pursuant to subdivision (a) shall be extended by 24 months if this approval has not expired on July 15, 2009. This extension shall be in addition to any extension provided for in Sections 66452.13 and 66452.21.

(d) (1) For purposes of this section, the determination of whether a tentative subdivision map or parcel map expires before January 1, 2012, shall count only those extensions of time pursuant to subdivision (e) of Section 66452.6 or subdivision (c) of Section 66463.5 approved on or before July 15, 2009, and any additional time in connection with the filing of a final map pursuant to subdivision (a) of Section 66452.6 for a map that was recorded on or before July 15, 2009.

(2) The determination made pursuant to this subdivision shall not include any development moratorium or litigation stay allowed or permitted by Section 66452.6 or 66463.5.

(e) The provisions of Section 65961 relating to conditions that may be imposed upon or after a building permit for a subdivision of single- or multiple-family residential units or a parcel map for a subdivision for which no tentative map was required, are modified as set forth in subdivisions (e) and (f) of Section 65961 for tentative maps extended pursuant to this section.

66452.23. (a) The expiration date of any tentative map, vesting tentative map, or parcel map for which a tentative map or vesting tentative map, as the case may be, has been approved that has not expired on or before the date that the act that added this section became effective, and that will expire before January 1, 2014, shall be extended by 24 months.

(b) The extension provided by subdivision (a) shall be in addition to any extension of the expiration date provided for in Section 66452.6, 66452.11, 66452.13, 66452.21, 66452.22, or 66463.5.

(c) Any legislative, administrative, or other approval by any state agency that pertains to a development project included in a map that is extended pursuant to subdivision (a) shall be extended by 24 months if this approval has not expired on or before the date that the act that added this section became effective. This extension shall be in addition to any extension provided for in Sections 66452.13, 66452.21, and 66452.22.

(d) (1) For purposes of this section, the determination of whether a tentative map or parcel map expires before January 1, 2014, shall count only those extensions of time pursuant to subdivision (e) of Section 66452.6 or subdivision (c) of Section 66463.5 approved on or before the effective date of the act that added this section, and any additional time in connection with the filing of a final map pursuant to subdivision (a) of Section 66452.6 for a map that was recorded on or before the effective date of the act that added this section.

(2) The determination made pursuant to this subdivision shall not include any development moratorium or litigation stay allowed or permitted by Section 66452.6 or 66463.5.

(e) The provisions of Section 65961 relating to conditions that may be imposed upon or after a building permit for a subdivision of single- or multiple-family residential units or a parcel map for a subdivision for which no tentative map was required, are modified as set forth in subdivisions (e) and (f) of Section 65961 for tentative maps extended pursuant to this section.

65961. Notwithstanding any other provision of law, except as provided in subdivisions (e) and (f), upon approval or conditional approval of a tentative map for a subdivision of single- or multiple-family residential units, or upon recordation of a parcel map for such a subdivision for which no tentative map was required, during the five-year period following recordation of the final map or parcel map for the subdivision, a city, county, or city and county shall not require as a condition to the issuance of any building permit or equivalent permit for such single- or multiple-family residential units, conformance with or the performance of any conditions that the city or county could have lawfully imposed as a condition to the previously approved tentative or parcel map. Nor shall a city, county, or city and county withhold or refuse to issue a building permit or equivalent permit for failure to conform with or perform any conditions that the city, county, or city and county could have lawfully imposed as a condition to the previously approved tentative or parcel map. However, the provisions of this section shall not prohibit a city, county, or city and county from doing any of the following:

(a) Imposing conditions or requirements upon the issuance of a building permit or equivalent permit which could have been lawfully imposed as a condition to the approval of a tentative or parcel map if the local agency finds it necessary to impose the condition or requirement for any of the following reasons:

(1) A failure to do so would place the residents of the subdivision or of the immediate community, or both, in a condition perilous to their **health or safety**, or both.

(2) The condition is required in order to comply with **state or federal law**.

(b) Withholding or refusing to issue a building permit or equivalent permit if the local agency finds it is required to do so in order to comply with state or federal law.

(c) Assuring compliance with the applicable zoning ordinance.

(d) This section shall also apply to a city or city and county which incorporates on or after January 1, 1985, and which includes within its boundaries any areas included in the tentative or parcel map described in this section.

When the incorporation includes areas included in the tentative or parcel map described in this section, "a condition that the city could have lawfully imposed as a condition to the previously approved tentative or parcel map," as used in this section, refers to conditions the county could have imposed had there been no incorporation.

(e) **For purposes only of a tentative subdivision map or parcel map that is extended pursuant to Section 66452.22 or 66452.23, the five-year period described in this section shall be three years.**

(f) For purposes only of a tentative subdivision map or parcel map that is extended pursuant to Section 66452.22 or 66452.23, this section does not prohibit a city, county, or city and county from levying a fee or imposing a condition that requires the payment of a fee, including an adopted fee that is not included within

an applicable zoning ordinance, upon the issuance of a building permit, including, but not limited to, a fee defined in Section 66000.

Zoning Ordinance excerpts related to permit lapse and extension