

## WHEN THE RESIDENTIAL MARKET COOLS – YOU BEST BE VESTED

Isn't it ironic that when the red-hot residential development market cools off, the time-delayed local angst against rapid development - - reflected in local anti-development ballot measures - - quickly heats up! This action/reaction phenomenon has existed in California for at least the last three decades. So what do you do when the market cools while the regulatory landscape becomes potentially more hostile? Vest into laws that support your project until the market returns!

Imagine the approval of a 1,500-unit residential subdivision in the Fall of 2007. In the Spring of 2008, while the subdivider is satisfying conditions of approval and perhaps waiting to see if Summer will bring an improved market, local voters approve an anti-residential growth ballot measure that would prohibit or drastically impair the project. The only way the subdivider could avoid this death knell would be to have secured a "vested right" to those local land use regulations in place *before* the new prohibitory regulations became law.

In this article we discuss the Subdivision Map Act or "Map Act" (Gov. Code §§ 66410 *et seq.*), and how vested rights can be secured through Vesting Tentative Maps, Vesting Parcel Maps, and Vesting Final Maps (collectively referred to hereinafter as a "Vesting Map"). (Gov. Code § 66498.1(a).) Under the Map Act, approval of a Vesting Map confers a vested right to proceed with the development in substantial compliance with the ordinances, policies, and standards that were in effect at the time the Vesting Map *application* was completed (Gov. Code §§ 66498.1(b), 66474.2(a)), which is a date much earlier in the process than project *approval*.

The "life" of the vested rights protections secured under the Map Act are limited in duration and can be summarized as three distinct periods of time:

1. The "life" given by the Map Act when the Vesting Map is in "tentative" status (through initial life and extension life); plus
2. The life of the vested rights once the Vesting Map is recorded (as a Final Map or Parcel Map); plus
3. The life of a building permit, if the building permit is issued while the vested rights are alive under #2 above.

Each of these periods of time is described in greater detail below.

### *1. The Life Given the Tentative Vesting Map*

If the Vesting Map is treated as a "tentative map" (either as a tentative map or tentative parcel map), then the life of the vested right is the same as the life of the tentative map itself. Within that life, the tentative map must become a recordable map or both the map and the vested rights lapse (die), and the process starts all over again: a new tentative map application must be submitted, processed and approved. Keeping a tentative map alive is therefore a critical issue. The life can be broken into two categories: "Initial Life" and "Extension Life." The Initial Life is very short – 24 months, which can be extended by local ordinance up to 36 months total. (Gov.

Code § 66452.6(a)(1).) Fortunately, under the Map Act, a subdivider can seek "extensions" to the Initial Life of a tentative map. We call this a tentative map's "Extension Life." These extensions are *not* mutually exclusive; a subdivider may secure multiple extensions of time under the various extension provisions. (Gov. Code § 66452.6(a)(1).) Extensions are available through the terms of a development agreement (which can extend the tentative map's life for the life of the development agreement), the existence of a "development moratorium" (for up to five years), litigation involving the approval of the map, discretionary extensions granted by the City for up to five years (an additional advantage to a Vesting Map over a regular (non-vesting) tentative map is that it is more difficult for a local agency to deny a discretionary extension; *see* Gov. Code § 66498.1.), "special" legislative extensions not applicable here, and, finally, through the use of multiple phased Final Maps.

The use of phased Final Maps is key to extending the life of the tentative map. Generally, a subdivider will secure a tentative Vesting 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, in certain circumstances, the Map Act not only allows the filing of a Final Map on *only a portion* of the area encompassed by the tentative Vesting Map, but the filing of that Final Map also extends the life, and hence the vested rights, of the remaining portion of the Vesting Map still in tentative (not yet recorded) status. This process is generally referred to as filing "multiple" or "phased" Final Maps.

Each filing of a Final Map extends the life and vested rights of the remaining portion of the tentative Vesting Map by 36 months. However, these extensions may not extend the vested rights and life of the tentative Vesting Map more than 10 years total (including the Map's Initial Life). Of course, this extension approach may be done in tandem with other extensions.

## 2. *The Life of the Vested Rights Once the Vesting Map is Recorded.*

The life of the vested rights for the property included in the Final Map itself is very short: a minimum of one year, a maximum of two years, decided by local ordinance, with a single 1-year extension available. (Gov. Code § 66498.5.) Within that time frame, unless extended as described below) a subdivider must secure all permits the development within that Final Map area will need or the vested right will lapse and that development will be subject to the new laws then in place.

Practitioners should note that the vested rights of a Vesting *Parcel* Map normally have a life equal to the life of a Vesting Final Map – 1 to 2 years, with a 1-year extension. However, under Map Act section 66428(c), when a Parcel Map is otherwise required under the Map Act (for example, 4 or fewer parcels are being created), the subdivider can nonetheless apply instead for a tentative map, thereby maximizing the time of the map's vested rights (under #1 above). This is a very effective, but little known, strategy where the subdivider is creating four or fewer parcels but wants to maximize the map's vested rights.

## 3. *The Life of a Building Permit*

Finally, if a building permit for the project is granted before the expiration of the life given the vested rights once the map is recorded (e.g., Final Maps under #2 above), the life of

those vested rights under the Final Map are retained and automatically extended for the life of the building permit itself (and any extensions of the building permit). (Gov. Code § 66452.6(h).)

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Again, the downturn in the housing market can be very difficult on developers and the provision of housing. The use of Vesting Maps is one very effective way of keeping a proposed project alive through such a downturn.