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AB333 Gives New Life to Tentative Subdivision Maps

Law follows 2008 extension with changes that take into account cities', counties' perspectives

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In the wake of continued reductions and deferrals of development impact fees, developers can celebrate one more form of relief.

On the heels of last year's one-year tentative subdivision map extension, Assembly Bill 333's two-year, automatic extension of tentative subdivision maps is indicative of the continued pressure developers face in keeping stalled projects from being completely scrapped.

"I think it's recognition that the problem is worse than maybe people thought it was a year ago," said Todd Williams, principal in the Walnut Creek office of **Morgan Miller Blair**.

AB333 affords developers with tentative subdivision maps that were set to expire on July 15, the day the bill became law, with an extension up through Jan. 1, 2012.

"A lot of maps that would have expired in the near future now have a two-year lease on life," Williams said, "and that provides the opportunity for those potential projects either to go forward when the economy improves, or it maintains some value which might lead to deals later on down the line."

The bill's extension also applies to some approvals from state agencies for subdivisions within an eligible map.

"The legislation does extend certain state discretionary approvals," said Kristina Daniel Lawson, shareholder in **Miller Starr Regalia's** Walnut Creek office. "Depending on the type of development project, there will be various entitlements necessary for example permits from the Water Control Board, Department of Fish and Game or Coastal Commission. This legislation extends those entitlements."

While not unprecedented, AB333 comes one year after the approval of Senate Bill 1185, which granted a one-year extension. However, SB1185 allowed local officials the discretion to grant an additional year's extension.

"While it doesn't make any project happen, [AB333] keeps the potential for projects to go forward for developers who are basically waiting on the economy to change, waiting for the financial markets to improve and waiting for lenders to become more willing to make loans for projects," Williams said. "This bill allows these projects to remain on the drawing board."

The bill does not address final maps nor does it include permits or approvals at the local or county level, factors developers are cautioned to be aware of when it comes to their projects.

"You could have a school mitigation agreement. You could have a development agreement. You could have any number of agreements that may not be covered by this," said Nicki Carlsen, a partner in the Los

Angeles office of **Alston + Bird LLP**. "All of the other deadlines in those agreements need to be considered and may not be covered by the legislation."

Saving Entitlements

For the most part, cities and counties have been relatively flexible when it comes to the extension of agreements and permits at the local level.

"In general, there seems to be a lot greater level of cooperation between cities and the development community in terms of fee issues and other processing issues because, obviously, the cities are affected by the lack of development going forward," Williams said.

Many of the lawyers assisting developers in negotiating the lifespan on development approvals have found local agencies to be easy to work with.

"I think the local agencies understand very well, almost too well given the recent budget issues, how the economic downturn is affecting them and how it's affecting the real estate industry," Carlsen said. "However, how to move forward when they [cities] are faced with their own economic crises is something that will be handled on a case-by-case basis."

Lawson said most of her recent work involves either extending entitlements or modifying the terms to reduce the associated costs of those entitlements.

"Tentative maps normally come with conditional approvals," Lawson said. "There are normally hundreds of conditions, some of which are very expensive. We've been working pretty diligently with a number of cities to modify conditions to reduce the costs associated with those tentative maps. It's a sign of the times."

While development impact fee decreases have dominated the news, some local agencies have gone the other route: increasing fees to compensate for either not having a fee or not increasing fees over the years.

On July 1, the development impact fee increased in Shasta County. The change amounted to a 6.4 percent increase across all development types.

In February, the Desert Hot Springs City Council approved increasing fees motivated largely by the fact that the city had not increased its fees in seven years.

More recently, the Barstow City Council voted July 20 to allow its development fee exemption to expire on Aug. 1 instead of extending it one more year to Aug. 1, 2010.

The exemption applied to development projects with approved construction drawings and a tentative map approved by the city.

Had the council approved the extension, it would have been at a loss of \$4,500 for each residential unit eligible for the exemption. According to city estimates, 1,500 units qualify for the exemption.

While municipalities, for the most part, are deferring or reducing fees, the Barstow, Shasta County and Desert Hot Springs examples stress the importance of keeping up to date on each agencies' deadlines to ensure the life of project approvals.

"Developers should talk to their local agencies and confirm what they think the deadlines are," Carlsen said. "If you think your map has been extended, it would be good to confirm whatever date you think it is and make sure that everybody's on the same page with respect to where their development stands."

"One Bite of the Apple"

Related to the impact fee discussion and more specifically to the nuances of AB333, is existing state code

commonly referred to as the "one-bite-of-the-apple" rule.

AB333 reduces the five-year period specified under this rule during which cities or counties are prohibited from tacking on additional requirements to a building permit. The period is now reduced to three years.

Additionally, under AB333 cities and counties now are allowed to request payment of fees when a permit is issued or after issuance. Whether or not a city or county would choose to take advantage of these new stipulations remains to be seen given that the law is still new and it would run counter to most agencies' actions to save projects.

"It's not an issue of whether I've heard of it happening yet," said David Preiss, a partner in the Oakland office of **Wendel, Rosen, Black & Dean LLP**. "Most cities and counties in California have, in one form or another, been trying to afford some relief to developers of residential subdivisions where a developer is still around, at least."

Lawson said this one-bite-of-the-apple rule does seek to address the implications of the extensions at the city or county level.

"It does attempt to mitigate the extension of conditions," Lawson said of the rule change. "[AB333] actually reduces the period of time after the approval of a map from which a city is prohibited from imposing new conditions, so it does recognize the impact to local government."

However, Preiss said that if a developer has to rely on the AB333 extension at some point, they may not be so worried about the one-bite-of-the-apple change.

Ultimately, Preiss said AB333 should not be viewed in isolation. Where there may be reductions or extensions granted under one law, there may be actions to mitigate the impacts for another involved party under another law.

Whether the issue is developer fees or maps, the impact will continue to boil down to economic considerations from the city or county perspective or the livelihood of a proposed project from a developer perspective.

And looking ahead at when development does resume, Robert Shantz, an associate in the Oakland office of Wendel, Rosen, Black & Dean said map approvals for the traditional single-family housing projects will become less and less of an issue.

"Particularly where you're talking about development or property owners that have map approvals for traditional housing tracts, the evolution in the future is going to be away from those types of projects," Shantz said. "These projects are going to become increasingly rare."

As sustainability and transit-oriented development, relative to greenhouse gas emissions, continue to dominate future trend discussions, the maps people are looking to save today under such legislation as AB333 may become less of an issue.

"It's that kind of concept, particularly with a new emphasis on greenhouse gas emissions and infill development," Preiss said. "It places a premium on preserving entitlements for the traditional suburban tract because they are just going to be more difficult to obtain as the years go by."

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