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## Allen Matkins

## Legal Alert



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### 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.

During an economic downturn such as the current one, the prudent developer must be aware of how to secure vested rights through the Subdivision Map Act ("Map Act") and Vesting Tentative Maps, Vesting Parcel Maps, and Vesting Final Maps (collectively referred to hereinafter as a "Vesting Map"). 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, 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). The length of this life can be over 15 years through the use of extensions and phased (multiple) Final Maps.
2. The life of the vested rights once the Vesting Map is recorded (as a Final Map or Parcel Map). The length of this life is at most three years. 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, 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, and any extensions of the building

<http://www.jdsupra.com/post/documentViewer.aspx?fid=15e44aae-3684-4800-95a9-b4a6e7000be1>  
permit, if the building permit is issued while the vested rights are  
alive under #2 above.

Practitioners should be aware of how all the Vesting Map rules and regulations work in order to maximize the vesting protections of their projects. For a more expansive discussion of these issues, please go to the following link:

 [Detailed analysis of Vesting Map rules and regulations](#)

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