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## NEW LAW AUTOMATICALLY EXTENDS EXISTING TENTATIVE MAPS FOR TWO YEARS, BUT ALSO CREATES NEW PITFALLS, AND REDUCES SOME PROTECTIONS FOR RECORDED MAPS

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On July 15, 2009, the Governor signed new "urgency" legislation to automatically extend the life of existing tentative subdivision maps, vesting tentative maps ("VTMs") and parcel maps for two additional years -- provided that they were still valid and in effect on July 15, and would otherwise expire before January 1, 2012. The new law, AB 333 (Fuentes) (Stats. 2009, ch. 18), included urgency provisions so that it took effect immediately upon signature by the Governor. The urgency of this measure, intended to preserve the many approved projects which were otherwise in danger of map expiration and loss of valuable rights, was apparently recognized so that it was able to receive the Governor's signature notwithstanding the hold on most other new legislation pending resolution of the State budget situation.

This new two-year map extension is in addition to any other extension provided by the Subdivision Map Act or local ordinance. The bill also makes significant changes, however, to the five-year "freeze" on new conditions following recordation of final maps under existing Government Code section 65961 as to tentative maps or parcel maps that may rely on this new automatic extension.

This legislation also extends the life of other existing *state agency* approvals that pertain to a development project included in a map extended by this bill. However, one of the pitfalls for the unwary created by the new law is that it does not extend the life of *other regulatory agency* project approvals (other than tentative or parcel map approvals). Developers, lenders, and others therefore will need to exercise care that such local or other regulatory agency approvals or entitlements do not expire and render moot the benefits of the automatic tentative map extension.

In the current economic cycle, work on many approved subdivisions throughout California has been suspended, and many approved maps have been in danger of expiration, with resultant loss of valuable approvals and investments. The Legislature apparently recognized a need to extend the life of such approved maps and to allow local governments to preserve approved developments that might otherwise expire due to the prevailing adverse economic conditions. Under existing state law, tentative maps ordinarily have a "life" of two years (three years in some local jurisdictions), within which time a developer must either fulfill the tentative map conditions of approval and file a final map, or obtain an extension

through one of several means. In the case of Vesting Tentative Maps (“VTMs”) tentative map approval also confers a vested legal right to subdivide and develop in substantial conformance with the approved project plans and conditions, despite subsequent changes in local rules and regulations, during the life (or extended life) of the VTM. However, if an approved tentative map or VTM expires, or can no longer be extended, the valuable rights conferred by map approval (development “entitlements”) may be lost, unless the subdivider is in position to obtain final map approval. Existing methods of extending tentative maps include (a) discretionary extensions by the local jurisdiction (up to six years); (b) a moratorium-based extension; or (c) a litigation-based exemption. In addition, if a project approval contemplates several phases, map extensions may be secured by timely recording a final map for the phases and by expenditures of certain amounts for off-site public infrastructure improvements - a final map-based extension.

AB 333 provides a new automatic extension of approved tentative maps and VTMs for two years (so long as the map or VTM was valid on July 15, 2009, and the map would otherwise expire before January 1, 2012). The Legislature has enacted similar interim map extensions in the past. This extension is less generous than the two-year automatic extension the Legislature provided during the real estate downturn in 1993 (SB 428), but more generous than the one-year legislative extension provided during the downturn in 1996 (AB 771) and 2008 (SB 1185).

As previously noted, AB 333 includes a two-year automatic extension to all project-related “legislative, administrative and other approvals by any state agency.” As such, a project that qualifies for the tentative map extension should also receive a two-year legislative extension on any project-related coastal development permit, water quality certificate, streambed alteration agreement, Bay Conservation and Development Commission permit, or similar approval issued by a State agency.

Despite the apparent remedial and benign intent of AB 333, there may be traps for the unwary relying upon this automatic extension to protect their existing entitlements. First, AB 333 does not expressly provide automatic extension to project approvals which are not “state agency” approvals (other than VTMs, or tentative maps or parcel maps). Such critical local government and other regulatory approvals may include conditional use permits, site development permits, planned development permits and similar time-limited *local* approvals essential to development of the entire project. Many large-scale development projects require such local approvals in addition to subdivision map or VTM approval, and this two-year extension should not create a false sense of security. Although there may be some applicable exceptions for planned unit developments, many projects may need to seek discretionary extensions of their other local approvals in order to ensure that they receive the full benefit of this map extension. For this reason, some, but not all, local jurisdictions are in the process of amending their regulations to extend their local government approvals.

Second, AB 333 does not extend final subdivision maps, which remain subject to statutory expiration and loss

of entitlements under the existing provisions of the Subdivision Map Act. Consequently, subdividers holding final map approvals in danger of expiration must consider applying for discretionary extensions of such approved final maps, if available in the local jurisdiction, or consult with land use counsel to explore other means of preserving and extending entitlements achieved through the subdivision process.

Third, under the California Planning and Zoning Law (Gov't Code § 65961) recorded final maps and parcel maps are generally protected against the imposition of new conditions that could have been imposed at the time the VTM, tentative map, or parcel map was approved for a period of five (5) years from the date of recordation. This is commonly referred to as the "five year final map filing freeze" rule. For maps that must rely on this two-year extension bill, AB 333 allows some thawing of that freeze. First, it shortens the period of protection against imposition of new conditions on AB 333-reliant projects from five years following the recordation of a final map or parcel map, to just three years. Second, for maps extended under AB 333, the bill states that a city or county is no longer prohibited from levying a new fee (including Mitigation Fee Act fees) or imposing a condition that requires the payment of such fees upon the issuance of a building permit on AB 333-reliant projects (to the extent the local government has independent legal authority to do so.)

Fourth, the method for calculating whether or not the map would have expired before January 1, 2012 (and is thus eligible for the 2 year extension) does not include moratorium-based and litigation-based map extensions, but does include discretionary and final map-based extensions.

Therefore, before celebrating the legislatively mandated "automatic" extension of tentative subdivision maps (or acting in reliance upon the new extension), it remains important to ascertain whether other pitfalls may threaten the expiration or loss of critical entitlements. For example, as to projects which may have recently filed a final map or received a discretionary permit (from a non-state agency), it may be important to ascertain eligibility for extensions. Subdividers may consider contacting land use counsel or make appropriate inquiry of public entities with jurisdiction over their projects to confirm the effect of this legislation on project approvals. Finally, if a moratorium-based extension (perhaps due to an emergency drought), litigation-based extension (perhaps from a CEQA lawsuit), final map-based extension or a discretionary extension is available, some subdividers may not want to rely on AB 333 if they have relied or may seek to rely on the "five year final map filing freeze" protection against new fees or development conditions that did not exist at the time the of tentative map approval.

A copy of the chaptered legislation is available through our offices, or at the following [site](#).

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