



RICHLAND

June 28, 2017

SENT BY ELECTRONIC & U.S. MAIL

Courtney Grossman
Planning Manager
City of Salinas
65 West Alisal Street, Second Floor
Salinas, CA 93901-2639
courtg@ci.salinas.ca.us

RECEIVED
JUL 03 2017
COMMUNITY DEVELOPMENT
DEPARTMENT

Re: Monte Bella Subdivision; Extension of Vesting Tentative Map No. 03-02

Dear Mr. Grossman:

As you know, Strack Farms, LLC and Canadian Pacific Land, LLC, entities owned by Richland, are the owners of the remaining Phases 5B and 6 of the Monte Bella Subdivision. Vesting Tentative Map 03-02 was approved by the City on October 14, 2003 and has been extended over the course of years pursuant to mandatory and legislative extensions. In December 2015, the City Staff determined that the map would expire on July 15, 2017.

The purpose of this letter is twofold: first, to ask that Staff reconsider the expiration date of VTM 03-20 as October 14, 2017; and second, to request a discretionary extension of VTM 03-02 for 36 months from October 14, 2017. The required fee of \$133.00 is enclosed.

1. VTM 03-02 Does Not Expire Until October 14, 2017

Multiple attorneys have looked at the expiration date of VTM 03-02. Back in 2015, Richland reviewed the relevant dates and conservatively determined that the VTM would expire on July 15, 2017. City Staff agreed with this analysis and issued a letter confirming the map's validity until July 15, 2017.

However, during the course of the sale of Phase 5A earlier this year, an attorney from Buchalter Nemer advised her clients in a memorandum shared with Richland that VTM 03-02 is valid until October 14, 2017. A copy of that memorandum, dated February 6, 2017, is attached for your review and consideration.

Richland hired Subdivision Map Act expert William Abbott of Abbott & Kindermann, LLP, to provide his analysis of the true map extension date. Mr. Abbott confirmed that VTM 03-02 is valid until October 14, 2017, and he agrees with the Buchalter Nemer analysis. In short, the correct expiration date of VTM 03-02 is October 14, 2017, not July 15, 2017.

Courtney Grossman
Re: Monte Bella; VTM 03-02
June 28, 2017
Page 2 of 2

2. Request for Discretionary Extension for Three Years Until October 14, 2020

While VTM 03-02 is neither eligible for further mandatory extensions outlined in Government Code section 66452.6(a), nor subject to any additional legislative extensions, it is eligible for one or more of the six years of discretionary extensions outlined in Section 66452.6(e), as no discretionary extensions have been requested to date.

Accordingly, **we request a 36-month extension of VTM 03-02 from the true expiration date of October 14, 2017 to October 14, 2020** pursuant to Government Code section 66452.6(e) and Salinas Municipal Code section 31-313.1. The purpose of the extension is to ensure that the remaining Phases 5B and 6 can be built out as was intended by the City Council when the VTM was approved, and to allow for a completed subdivision. As you know, it has taken a significant amount of time for the economy in Salinas to recover from the economic downturn that started in 2008. While Richland recently sold Phase 5A to Benchmark Communities and they have commenced construction, Phases 5B and 6 will not likely come to market prior to the full buildout of Phase 5A, which is anticipated to be at least one year, depending on market forces. Thus, an additional three years of time is likely necessary to complete the buildout of Monte Bella. To the extent market forces allow for a quicker buildout, the remaining final maps will be filed sooner.

We appreciate your consideration of these requests. If you have any questions, please do not hesitate to contact me.

Very truly yours,



Katherine J. Hart
Land Use Counsel

Encl.

cc: Chris Callihan, City Attorney
Aaron Ross-Swain

MEMORANDUM

**ATTORNEY-CLIENT PRIVILEGED
CONFIDENTIAL**

To: Michael Cady **File No.:** U0501-0007
From: Alicia Guerra
Samantha E. Beatty
Date: February 6, 2017
Re: Expiration Date of the Monte Bella Vesting Tentative Map

I. INTRODUCTION:

The purpose of this memorandum is to analyze the expiration date of the Vesting Tentative Map 03-02 (the “VTM”) which would create 853 single family residential lots, a 21-acre park site, a 9 acre elementary school site, a 2 acre parcel for expansion of an existing elementary school and several parcels for project-related infrastructure, commonly known as the Monte Bella project (the “Project”). The Project is divided into six development phases. UCP, Inc. is the developer for Phases 5 and 6 of the Project, and has asked us to confirm the expiration date of the VTM pursuant to the mandatory, discretionary and legislative extensions under the Subdivision Map Act (GOV’T CODE § 66410 et seq.) (the “Map Act”). We understand that the City of Salinas has confirmed that the term of the VTM expires on July 15, 2017.

The Map Act governs the life of a tentative map. Pursuant to the Map Act, a tentative map is subject to mandatory and discretionary extensions, as well as certain limitations, as further outlined below. Any mandatory extensions granted under the Map Act are in addition to any discretionary extensions permitted under the Map Act, and the extended term may reflect a combination of mandatory and discretionary extensions. Furthermore, the order in which mandatory extensions or discretionary extensions are granted is immaterial. *California Country Club Homes Association v. City of Los Angeles* (1993) 13 Cal. App. 4th 1425. Since the extension periods relate to both the approval date and expiration date of the tentative map, the following timeline summarizes applicable dates for the Monte Bella VTM.

VESTING TENTATIVE MAP 03-02 TIMELINE

Date	Event
October 14, 2003	Vesting Tentative Map 03-02 was approved
July 15, 2004	Phase 1 Final Map filed
July 15, 2004	Phase 2B Final Map filed
May 12, 2005	Phase 2 Final Map filed
October 14, 2005	Vesting Tentative Map 03-02 original expiration date
March 14, 2006 ¹	Phase 4 Final Map approved by City Council of Salinas Resolution No. 18854 (N.C.S.)
May 16, 2006 ²	Phase 3 Final Map approved by City Council of Salinas Resolution No. 18978 (N.C.S.)
July 15, 2008	Legislature passed SB 1185 granting one year extension subject to certain conditions (codified at Gov't Code §66542.21(a))
July 15, 2009	Legislature passed AB 333 granting two year extension subject to certain conditions (codified at Gov't Code §66452.22(a))
July 15, 2011	Legislature passed AB 208 granting two year extension subject to certain conditions (codified at Gov't Code §66452.23(a))
July 15, 2013	Legislature passed AB 116 granting two year extension subject to certain conditions (codified at Gov't Code §66452.24(a))
July 15, 2015	Legislature passed AB 116 granting two year extension subject to certain conditions (codified at Gov't Code §66452.25(c))
July 15, 2017	Expected Expiration Date

II. ANALYSIS:

On October 14, 2003 the City Council of Salinas approved the Vesting Tentative Map 03-02 (the "VTM") for the Monte Bella Subdivision project. Pursuant to California Government Code Section 66452.6(a) and Section 31-401.7 of the City of Salinas Municipal Code, the original term of the VTM was twenty-four (24) months. Therefore, the original expiration date of the VTM was October 14, 2005. Based on our review of the Map Act, the legislative history, and the timeline of the VTM, we have determined an expiration date of the VTM that may extend to October 14, 2017.

A. Mandatory Extensions under the Map Act

Pursuant to Government Code Sections 66452.6 and 66456.1, phased maps are subject to certain mandatory extensions. So long as the sub-divider expends \$261,173.00³ or more to construct, improve or finance the construction or improvement of public improvements outside the property boundaries of the tentative map (excluding improvements of public rights of way which abut the boundary of the property to be subdivided and which are reasonably related to the development), each filing of a final map for a particular phase of the overall project shall extend the expiration of the approved tentative map by thirty-six (36) months from either (i) the date of

¹ This date reflects the date the final map was approved via resolution by the City Council, which is why it differs from the date provided by Mike Lucero in his email dated February 3, 2017. His email contains the date the final map for Phase 4 was filed, which was March 31, 2006.

² This date reflects the date the final map was approved via resolution by the City Council, which is why it differs from the date provided by Mike Lucero in his email dated February 3, 2017. His email contains the date the final map was filed for Phase 3, which was June 13, 2006.

³ This is the 2016 State Allocation Board amount adjusted for inflation as set forth in the statewide cost index for Class B construction.

the map's expiration, or (ii) the date of the previously filed final map, whichever is later.⁴ The extensions, however, shall not extend the tentative map's life to more than ten (10) years from the approval of the map. GOV'T CODE 66452.6(a)(1).

As mentioned above, the Project consists of multiple phases of development. The VTM expressly requires final maps for each phase of development. (Condition of Approval 2 to the VTM). Because the Project VTM provides for phased final maps, the VTM is subject to the mandatory extensions applicable to phased final maps. Therefore, the expiration date of the VTM is extended by thirty-six (36) months each time the City Council approves a Final Map for a particular phase, with a maximum total extension of ten (10) years from the date of approval of the VTM.

In applying these mandatory extensions to the Project, the first mandatory extension applies on July 15, 2004, when the Phase 1 and Phase 2B maps were filed. Since the Original Expiration Date is later in time than July 15, 2004, the extension runs from the Original Extension Date. Therefore, the approval of the phased map for Phase 1 results in a three year extension to a new expiration date of October 14, 2008. The extension process repeats for each phased final map approved to the ten (10) year extension limitation. Therefore, on July 15, 2004 when the Final Map for Phase 2B was approved, the expiration date of the VTM was further extended by another thirty-six (36) months to October 14, 2011. On May 12, 2005, the Final Map for Phase 2 was approved, extending the expiration date for an additional twenty four (24) months to October 14, 2013. The Phase 2 Final Map does not extend the expiration date for thirty-six (36) months, however, because the mandatory extensions for phased maps cap the overall extension time period at ten years from the approval of the VTM under the Map Act. The approvals of the Phase 3 and Phase 4 Final Maps in 2006 do not result in any further extensions to the expiration date because of the ten year limitation. The VTM was approved on October 14, 2003, so the ten year extension cut off is October 14, 2013.

B. Discretionary Extensions under the Map Act

In addition to the mandatory extensions provided for phased maps in Section 66452.6(a), the Map Act allows for discretionary extensions approved by the local agency. Government Code Section 66453.6(e) provides that so long as an application is filed by the sub-divider prior to the expiration of the tentative map, the local agency has the ability to extend the map's life for an additional period or periods not to exceed six (6) years.

We were unable to confirm whether the VTM has received any discretionary extensions pursuant to Section 66453.6(e). It is important to understand whether any discretionary extensions have been granted to the VTM for purposes of determining whether the expiration date of the VTM has been further extended and for purposes of understanding whether there are any additional discretionary extensions available.

C. California Legislative Extensions

⁴ This memo assumes that the project meets the monetary expenditure threshold of construction of public improvements outside of the property boundaries of the tentative map.

Due to the downturn in the economy, the California legislature extended the life of tentative maps several times from 1993 until 2015. There have been five extensions passed by the legislature during the life of the VTM. In addition to extending the life of tentative maps, each statutory extension further provides which other extensions (potential discretionary extensions, litigation stay extensions, and extensions for moratoria) are to be counted in determining whether the particular tentative map was set to expire by a certain date.

The extensions granted in 2008, 2009, and 2011 extended the life of maps that were in effect as of a certain date and were otherwise set to expire by a certain date. In order for the July 15, 2008 extension to apply, the tentative map must (a) not have expired prior to July 15, 2008, and (b) the map would otherwise expire before January 1, 2011. If both conditions are satisfied, then the map's expiration date is extended for one additional year. GOV'T CODE § 66452.21(a). In order for the July 15, 2009 extension to apply, the tentative map must (a) not have expired prior to July 15, 2009, and (b) the map would otherwise expire before January 1, 2012. If both conditions are satisfied, then the map's expiration date is extended for an additional two years. GOV'T CODE § 66452.22(a). In order for the July 13, 2011 extension to apply, the tentative map must (a) not have expired prior to July 13, 2011, and (b) the map would otherwise expire before January 1, 2014. If both conditions are satisfied, then the map's expiration date is extended for an additional two years. GOV'T CODE § 66452.23(a).

The 2013 extension did not limit its application to maps that are otherwise set to expire within a certain time frame. Instead, the 2013 extension applied to all maps that were approved on or after January 1, 2000, and had not expired on or before July 11, 2013. GOV'T CODE § 66452.24(a). If both conditions are satisfied, then the map's expiration date is extended by an additional two years.

In 2015, the legislature enacted another two year extension, but only for maps approved within counties in which: (1) the annual mean household incomes in the county is less than 80% pf the statewide annual mean household income, (2) the annual non-seasonal unemployment rate is at least 2.75% higher than the statewide annual non-seasonal rate, and (3) the population for whom poverty status is determined is at least 4 percent higher than the median statement poverty rate. GOV'T CODE § 66452.25(c).

The above-mentioned legislative extensions are in addition to mandatory extensions granted under Gov't Code Section 66452.6(a) and discretionary extensions granted pursuant to Gov't Code Section 66453.6(e).

III. CUMULATIVE APPLICATION OF EXTENSIONS TO VTM

Discretionary and mandatory extensions are granted separate from one another, which results in tacking of such extensions. We have mapped out the cumulative application of the mandatory extensions and the legislative extensions granted to the VTM:

- VTM is approved by the City on **October 14, 2003**
- VTM to expire in 24 months by local ordinance on **October 14, 2005**
- In 2004, the Final Map for Phase 1 is filed, extending the expiration date of the VTM to **October 14, 2008**

- In 2004, the Final Map for Phase 2B is filed, extending the expiration date of the VTM to **October 14, 2011**
- In 2005, the Final Map for Phase 2 is filed, extending the expiration date of the VTM to **October 14, 2013** (representing the 10 year extension limitation)
- In 2006, the Final Map for Phase 4 is filed, however the expiration date is unaffected due to the 10 year extension limitation and remains **October 14, 2013**
- In 2006, the Final Map for Phase 3 is filed, however the expiration date is unaffected due to the 10 year extension limitation and remains **October 14, 2013**
- The 2008 extension does not apply because the VTM was not going to expire prior to January 1, 2011.
- The 2009 extension does not apply because the VTM was not going to expire prior to January 1, 2012.
- The 2011 extension applies, because the VTM would expire prior to January 1, 2014. Therefore, the VTM is automatically extended to **October 14, 2015**.
- The 2013 extension applies, because the VTM was approved after January 1, 2000 and had not yet expired, so the VTM is automatically extended to **October 14, 2017**.
- The 2015 extension does not apply, because Salinas does not meet the necessary conditions outlined in the statute.

V. CONCLUSION

Based on our review, the VTM appears to have an expiration date of October 14, 2017. There appears to be a difference between a few dates on the phased maps between the date the resolution was passed approving the final map, and the date the map was filed. There also is a difference between the expiration date we've determined and the expiration date determined by the City. According to our review, if UCP were to acquire the Project and is unable to complete Phases 5 and 6 by July 15, 2017, UCP may be able to go back to the City to push for the October expiration date. Alternatively, UCP may default to the City's extension date of July 15, 2017, which appears to rely in part on its authority to allow discretionary extensions.