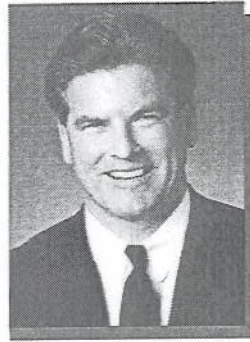


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SMA Expert

Question:

The author asked three questions that can be summarized as follows: What is the controlling law concerning the approval of Tentative and Final Maps when the property being mapped is either annexed into an existing city or is part of the incorporation of a new city.

Answer:

1. Annexation to an Existing City

Where a Tentative Map (or Vesting Tentative Map) application is submitted to a county and the property being mapped is later annexed to a city anytime before the county approves the Final Map, then the county's approval no longer controls and the entire mapping application and approval process begins anew with the city. (Map Act § 66413.) A new application and approval process is required because the city will have different land use regulations than the county, in particular the general plan, with which the map must conform. Therefore, if it looks like the property will be annexed before the county approves the Final Map, it perhaps makes better sense to file an application with the city. California law allows a city to grant "pre-approvals" regarding land to be annexed (with the approval becoming effective upon successful annexation), such as pre-approval of a Tentative Map (Map Act § 66454) and pre-zoning (Gov. Code § 65859). This possibility should be explored with the relevant jurisdiction.

If the Final Map is filed with the county before annexation to the city, then the lots are considered "established" (real) after annexation, but the use of those lots will still be subject to the annexing city's general plan and other land use regulations.

2. Incorporation of a New City

The mapping process is different in the case of the incorporation of a new city. This difference presumably

reflects the fact that under city incorporation law, a newly incorporated city may be subject to the county's general plan for up to 30 months. (Gov. Code § 65360.)

Where the Tentative Map has been approved by the county but a Final Map has not yet been filed with the county, the newly incorporated city is required to approve a legally-complying and timely-filed Final Map (relating to that county-approved Tentative Map) if:

- (1) The application for the Tentative or Vesting Tentative Map is submitted prior to the date that the first signature was affixed to the petition for incorporation pursuant to Government Code section 56704...or the adoption of the resolution pursuant to Government Code section 56800, whichever occurs first; and
- (2) The county approved the Tentative or Vesting Tentative Map prior to the date of the election on the question of incorporation. (Map Act § 66413.5(f).)

Further, in a situation where the new city is otherwise required to approve the Final Map, the new city may condition or deny the Final Map if the failure to do so would place the residents of the subdivision or the immediate community, or both, in a condition dangerous to their health or safety, or both, or if the condition or denial is required in order to comply with state or federal law. (Map Act § 66413.5(c).) In addition, the new city may impose reasonable conditions on subsequent required approvals or permits necessary for the development, and authorized by the ordinances, policies, and standards described in Map Act section 66474.2.

Therefore, if the property being mapped is going to be part of a future city incorporation, applying to the county for a Tentative Map approval may make sense because the city may be required to approve the legally-complying and timely-filed Final Map as a matter of law. ❖