

**REPORT/RECOMMENDATION TO THE BOARD OF SUPERVISORS  
OF THE COUNTY OF SAN BERNARDINO  
AND RECORD OF ACTION**

October 6, 2020

**FROM**

**TERRI RAHHAL, Director, Land Use Services Department**

**SUBJECT**

Rancho Lucerne Master Tract Map 15791 Extension of Time Appeal

**RECOMMENDATION(S)**

1. Conduct a public hearing to consider an appeal of a Planning Commission action to deny an Extension of Time for Master Tract Map 15791 (Project), a 1,375.51-acre subdivision in Lucerne Valley.
  - Appellants: Lucerne Valley, LLC, et al./Michael Duffy
  - Applicants: Lucerne Valley, LLC, et al./Michael Duffy
  - Community: Lucerne Valley
  - Location: Extending from north to south, Sherman Way to Rabbit Springs Road and extending from west to east from Barstow Road to Post Office Road.
2. Deny the appeal and take the following actions for project denial:
  - a. Find that the Project is exempt from the California Environmental Quality Act (CEQA) pursuant to State CEQA Guidelines Section 15270.
  - b. Deny the 12-month Extension of Time based on:
    - i. The lack of authority to grant an additional discretionary extension due to prior extensions having exhausted the maximum aggregate extensions authorized by law; and/or
    - ii. The authority of the Board of Supervisors (Board) to deny a discretionary extension, assuming a final discretionary extension is available.
  - c. Direct the Clerk of the Board to file the Notice of Exemption.
3. Alternatively, if the Board determines that a final discretionary extension is available, the Board may grant the appeal and take the following actions for project approval:
  - a. Find that the Project is exempt from CEQA pursuant to State CEQA Guidelines Section 15162.
  - b. Adopt the Findings for approval of the Extension of Time.
  - c. Approve the 12-month Extension of Time.
  - d. Direct the Clerk of the Board to file the Notice of Exemption.

(Presenter: Heidi Duron, Planning Director, 387-4110)

**COUNTY AND CHIEF EXECUTIVE OFFICER GOALS & OBJECTIVES**

**Create, Maintain and Grow Jobs and Economic Value in the County.**

**Ensure Development of a Well-Planned, Balanced, and Sustainable County.**

**FINANCIAL IMPACT**

Action on this item will not result in the use of additional Discretionary General Funding (Net County Cost). Sufficient appropriation and revenue to complete this action have been included in the Land Use Services (LUS) Planning Division 2020-21 budget. All costs of processing this application are paid by the Applicants.

**BACKGROUND INFORMATION**

This item includes an appeal of a Planning Commission action taken on July 9, 2020, to deny an Extension of Time request for Master Tract Map 15791 (Project). The appeal is filed by Lucerne Valley, LLC, et al.<sup>1</sup>/Michael Duffy (Appellants).

**Legal Background**

The duration of a tentative map and legal authority for granting an extension of time is governed by both State and local law. (Government Code Sections 66410-66499.37 [Map Act]<sup>2</sup>; San Bernardino County Code Sections 87.01.010-87.08.040 [SBCC].) A detailed summary of the maximum total duration of a tentative map as authorized by the Map Act and the SBCC is included in the staff report posted with this Report/Recommendation.

**Project Background**

In July 1996, the San Bernardino County Board of Supervisors (Board) approved a General Plan Amendment and Preliminary Development Plan (PDP) for the 4,257 residential unit Rancho Lucerne Planned Development (Rancho Lucerne Project). The PDP encompassed an area of over 1,367 acres located northwest of the intersection of Rabbit Springs Road and Barstow Road, in the unincorporated community of Lucerne Valley.

Subsequent to the approval of the PDP, the Planning Commission approved a Final Development Plan (FDP) and Master Tentative Tract (MTT) No. 15791 in August of 1997. There were multiple revisions to the FDP and MTT approved, as well as subsequent implementing maps, which include Tentative Tract Map Nos. 16007, 16008, 16010, and 16038. Following the expiration of MTT No. 15791's initial duration (i.e., 36 months), the County approved two extensions totaling five years, extending the expiration date of MTT No. 15791 to August 4, 2005, and exhausting all applicable discretionary extensions as authorized by the Map Act at that time.

Following these approvals, the Applicants sued the County relative to the Rancho Lucerne Project, a lawsuit that was resolved by a settlement agreement on March 1, 2007, which includes clarified conditions of approval (2007 Settlement Agreement). A copy of the 2007 Settlement Agreement is included in the staff report posted with this Report/Recommendation. The 2007 Settlement Agreement reorganized Tentative Tract Maps 15791-2 through 15791-9 as one master tentative tract map identified as Master Tentative Tract Map No. 15791 (Subject Tentative Map). The 2007 Settlement Agreement included language stating that the subdivider had three years from the recordation date of Final Tract Map No. 15791-1 to file and record the final map for the Subject Tentative Map. Following the settlement, Final Tract Map No. 15791-1 was recorded on April 12, 2007, thereby providing the Applicants an additional three years to record the final map for the Subject Tentative Map.

However, beginning in 2008 through 2013, in response to an economic downturn, the State Legislature passed, and the Governor signed into law, a number of legislative extensions of time for tentative tract and parcel maps:

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<sup>1</sup> Club View, LLC; Monaco Treasures, Inc.; Wilshire Road LLC; and Makasa Equity, LLC.

<sup>2</sup> All further statutory reference are to the California Government Code unless indicated otherwise.

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In 2008, Section 66452.21 extended the life of all tentative maps by an additional one year that were in effect on July 15, 2008, and that would otherwise have expired before January 1, 2011.

In 2009, Section 66452.22 provided a further two-year extension for all tentative maps that were in effect on July 15, 2009, and that would otherwise have expired before January 1, 2012.

In 2011, Section 66452.23 further extended by two years all tentative maps that were in effect on July 15, 2011, and that would otherwise have expired before January 1, 2014.

In 2013, Section 66452.24(a) granted an automatic two-year extension to the life of an unexpired tentative map that was approved on or after January 1, 2000. Section 66452.24(b) provided, on application by the subdivider, a two-year extension of the life of unexpired maps that were approved on or before December 31, 1999, if the local agency found the map to be consistent with current zoning and general plan requirements. If the map was not consistent with current zoning and general plan requirements, the local agency may deny or impose conditions on the extension.

On or about January 18, 2015, the Applicants submitted an application for an Extension of Time requesting an additional 24 months to complete the clarified conditions of approval necessary to record the Subject Tentative Map pursuant to Section 66452.24. By letters dated March 18, 2015, and September 14, 2015, LUS advised the Applicants that it agreed that the Subject Tentative Map was extended by the legislative extensions found in Government Code sections 66452.21, 66452.22, 66452.23, and 66452.24. As a result of these extensions, the Subject Tentative Map was valid until April 12, 2017.

Later in 2015, Assembly Bill 1303 was signed into law. This bill is codified in Section 66452.25 but unlike the previous legislative time extensions, this extension of time only applies to tentative maps in counties meeting specific economic criteria. On January 6, 2017, an application for an Extension of Time was submitted by the Applicants, requesting an additional 24 months to complete the clarified conditions of approval necessary to record the Subject Tentative Map. The application cited Section 66452.25 as the basis for the extension request.

Thereafter, LUS concluded that Section 66452.25 did not apply to the County because conditions in the County did not satisfy all of the economic criteria found in subdivisions (c)(1) through (c)(3). On April 27, 2017, LUS scheduled a Zoning Administrator hearing recommending denial of the Applicants' request to extend the Subject Tentative Map. This meeting was continued to June 29, 2017, and then stayed pending ongoing discussions between staff and the Applicants.

Before rendering an official decision on the application, on or about May 3, 2018, the County received a letter from the Applicants' attorney asserting that the Subject Tentative Map was also automatically extended by 36 months pursuant to Section 66452.6(a), by virtue of certain required off-site improvements constructed by the Applicants prior to recordation of Final Tract Map 15791-1. The May 3, 2018, letter included documentation showing an expenditure of \$362,000 in the installation of a 12" offsite water transmission line to serve the Rancho Lucerne Project. The letter did not address the prior 36-month extension previously granted pursuant to the 2007 Settlement Agreement and issued upon the recordation of Final Tract Map No. 15791-1, or whether the previous extension had already exhausted the only applicable mandatory phased map extension as authorized by Section 66452.6(a). Nevertheless, based on this claim the Subject Tentative Map was extended to April 12, 2020.

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Due to the action taken by the Board in response to the COVID-19 emergency that extended certain entitlements and permit approvals until May 31, 2020, as well as the current application to extend the Subject Tentative Map filed by the Applicants on April 9, 2020, the Subject Tentative Map expired on or about June 12, 2020, pending further action on the Extension of Time application.

**Planning Commission Action**

On July 9, 2020, the Project was considered in a public hearing by the Planning Commission with a staff recommendation for denial. As a result of the COVID-19 pandemic, the meeting was conducted in a social distance setting pursuant to the provisions of Governor Newsom's Executive Order N-29-20 dated March 17, 2020. Prior to the hearing, one member of the public submitted a comment in support of staff's recommendation to deny the Extension of Time. Another comment was received by email the day before the hearing and provided to the Planning Commission at the start of the hearing. Michael Duffy, a representative of the Applicants, attended the meeting and addressed the Planning Commission regarding the Extension of Time application, staff report, and July 8, 2020, letter submitted on Applicants behalf by the law firm of Jeffer, Mangels, Butler & Mitchell LLP. By a vote of 5-0, the Planning Commission denied the Extension of Time.

**Appeal of the Planning Commission Action**

On July 20, 2020, Applicants filed an appeal contesting the July 9, 2020, Planning Commission action denying the Extension of Time.

**Lucerne Valley LLC, et al./Michael Duffy Appellants' Arguments and LUS Responses:**

The Applicants as the Appellants submitted a comment letter dated July 20, 2020, as justification for its appeal and which is included in the documents posted with this Report/Recommendation. A summary of the arguments asserted by Appellants and LUS responses are provided below.

1. **Appellant Argument:** The Board has discretion to grant the project a 12-month extension under Section 66452.6. Section 66452.6 provides the County with the express authority to provide a tentative tract map with discretionary extensions of up to six (6) years. As acknowledged in the Planning Commission's July 9, 2020 Staff Report, the Rancho Lucerne Project has only been granted extensions for a total of five (5) years. (See Pg. 7, "the County approved two extensions totaling five years...") Ultimately, this created a lot of confusion for the Commission, which denied the request based on the Staff Report's conclusion that County "exhaust[ed] all applicable discretionary extensions," even though it has not. Accordingly, the Board has the clear legal authority to grant an additional 12-month extension, and the Appellants believe this reasonable extension should be granted here in consideration of all of the circumstances.

**LUS Response:** The number of times discretionary extensions have been granted in the past pursuant to Section 66452.6(e) is not the only determinant of authority to grant another extension of time, because prior extensions have utilized the maximum aggregate mandatory and discretionary extensions for the Subject Tentative Map as authorized by the Map Act.

Excluding legislative extensions and tolling provisions triggered by development moratoria or litigation, the maximum life of the Subject Tentative Map authorized by the Map Act is 12 years. This calculation is determined in accordance with Section 66452.6, which includes

the initial life (3 years; SBCC § 87.02.120(a)), maximum mandatory extension based on a two-phased map subdivision (3 years; Section 66452.6(a)),<sup>3</sup> and maximum discretionary extensions (6 years; Section 66452.6(e)) (3 + 3 + 6 = 12 years).<sup>4</sup>

Granting an additional 12-month extension in this case would extend the aggregate life of the Subject Tentative Map to a total of 15 years, three years beyond the maximum life as authorized by the Map Act. As discussed above, the Subject Tentative Map was approved in 1997 with an initial life of three years. Prior to its expiration date, the Subject Tentative Map was extended by five years (3 + 5 = 8 years), exhausting all applicable discretionary extensions available at the time. Following litigation, the Subject Tentative Map was extended an additional three years upon the recording of Final Tract Map 15791-1 (8 + 3 = 11 years). Having benefited from seven years of legislative extensions, the Subject Tentative Map was extended an additional three years in 2017 (11 + 3 = 14 years).

Just as a local agency cannot limit the maximum duration for extensions of a tentative map to a period less than that permitted by the Map Act, a local agency cannot authorize additional extensions of a tentative map that exceed the period authorized by the Map Act. (*Giffis v. County of Mono* (1985) 163 Cal.App.3d 414.) The Subject Tentative Map has already received (and exceeded) the maximum life as authorized by the Map Act, regardless of whether the prior extensions were characterized as mandatory or discretionary under Section 66452.6.

Assuming for the sake of argument that the Appellants' claim is correct and the Board has the authority to grant a final 12-month extension, the Board may still deny the appeal and uphold the Planning Commission decision because the requested extension, if applicable, is discretionary pursuant to Section 66452.6(e).

2. Appellant Argument: The Board should also clarify the conditions of approval to permit the final maps to be filed in phases as originally approved. In addition to various other delays, this extension is also justified as a result of the LUS demand that the Appellants file and process all eight remaining phases of the Project at one time. This has required the Appellants and the County to process the entire 1,375-acre development all at once, and to bond for all of the associated improvements all at one time. This is obviously a monumental task, which has caused substantial delay. It has also caused the County to delay its review of phased maps simply because it has yet to finish its review of other phases. In response to this, the Appellants ultimately timely filed all final maps for all phases with the County Surveyor, but recordation was put on hold because the County could not complete its review of the maps and the associated conditions of approval quickly enough. Considering the size of this development, the County's insistence on processing all of the maps at one time would appear to be an unnecessary and unproductive burden on all parties, particularly given that the original approval permitted the final map to be submitted in phases. Accordingly, in addition to providing the 12-month extension under Section 66452.6, the Appellants request that the Board clarify the Project's conditions of approval to permit the maps be filed in nine phases as originally approved by the County. This will help both the County and the Appellants process these maps, and permit the required improvements to be constructed in an orderly manner.

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<sup>3</sup> The two maps phases include Tract Map 15791-1 and Tract Map 15791 (which consolidated maps 15791-2 through 15791-9 into one map per the 2007 Settlement Agreement).

<sup>4</sup> The order in which the extensions are granted is immaterial for purposes of calculating the 12 years. (*California Country Club Homes Ass'n, Inc. v. City of Los Angeles* (1993) 18 Cal.App.4th 1425.)

LUS Response: Appellants' arguments of delay and de facto development moratorium are contrary to the objective intent and bargained for terms provided within the 2007 Settlement Agreement. As explained above, the 2007 Settlement Agreement was reached as a result of litigation initiated by Appellants. The terms of the agreement specifically included clarification of the tract maps (Section 1), conditions of approval (Section 2), and indicates that "[a]s a condition precedent to the County's recordation of Final Tract Map No. 15791-1 and Final Master Tract Map No. 15791, unless otherwise waived by the County, [Appellants] shall satisfy all applicable conditions and requirements set forth in the Clarified Conditions of Approval." Contrary to Appellants' claim of delay, LUS is simply holding Appellants to the terms of their agreement.

Appellants' argument is also contrary to law. It is a well-established principle that a landowner cannot challenge a condition imposed upon the granting of a permit or approval after acquiescence in the condition by either specifically agreeing to the condition or failing to challenge its validity, and accepting the benefits afforded by the permit. (*County of Imperial v. McDougal* (1977) 19 Cal.3d 505.) *Pfeiffer v. City of La Mesa* (1977) 69 Cal.App.3d 74, states this rule similarly: "It is fundamental that a landowner who accepts a building permit [or approval] and complies with its conditions waives the right to assert the invalidity of the conditions and sue the issuing public entity for the costs of complying with them... If the conditions imposed by the [public entity] in their permit were invalid, Code of Civil Procedure section 1094.5 provided [the landowner] with the right and procedures to eliminate them." This case is analogous in that Appellants have specifically agreed to the clarified conditions of approval by way of the 2007 Settlement Agreement and accepted the benefit afforded by the clarified conditions, including, but not limited to, being able to record Final Tract Map No. 15791-1 and thereby extending the life of the Subject Tentative Map. If Appellants believed the clarified conditions were invalid after entering into the 2007 Settlement Agreement and before recording Final Tract Map No. 15791-1, they could have challenged the conditions in accordance with the Code of Civil Procedure.

#### **PROCUREMENT**

Not Applicable.

#### **REVIEW BY OTHERS**

This item has been reviewed by (Bart Brizzee, Principal Assistant County Counsel, and Jason Searles, Deputy County Counsel, 387-5455) on August 21, 2020; Finance (Kathleen Gonzalez, Administrative Analyst III, 387-5412) on September 11, 2020; County Finance and Administration (Robert Saldana, Deputy Executive Officer, 387-5423) on September 14, 2020.

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Record of Action of the Board of Supervisors  
County of San Bernardino

Hearing Opened

Public Comment: None


Hearing Closed

**APPROVED REC. NOS. 1 & 3**

Moved: Dawn Rowe Seconded: Curt Hagman

Ayes: Robert A. Lovingood, Janice Rutherford, Dawn Rowe, Curt Hagman, Josie Gonzales

Lynna Monell, CLERK OF THE BOARD

BY   
DATED: October 6, 2020



cc: File-Land Use Services/Planning/Appeals w/attach  
jrh 10/13/2020