

LATE DISTRIBUTION

#49

DATE

7/19/16

BOS 7/19/16

7-19-16 BOS, Agenda Item #49, File #07-1802

Shinn Ranch tentative map extension, public comment by Sue Taylor

1. The tentative map should have been denied since it required a general plan amendment

*The scope of findings that a city or county must make when approving subdivision maps under the California Subdivision Map Act were clarified in a recent California Court of Appeal decision. According to Government Code section 66473.5, for a city or county to approve a subdivision map, it must make a finding that a proposed subdivision is consistent with its general plan. (<http://www.bbklaw.com/?t=40&an=56742>)*

This tentative map is not consistent with the general plan because it required a general plan amendment. It should not have been approved in the first place.

66473.5. No local agency shall approve a tentative map, or a parcel map for which a tentative map was not required, unless the legislative body finds that the proposed subdivision, together with the provisions for its design and improvement, is consistent with the general plan required by Article 5 (commencing with Section 65300) of Chapter 3 of Division 1, or any specific plan adopted pursuant to Article 8 (commencing with Section 65450) of Chapter 3 of Division 1.

A proposed subdivision shall be consistent with a general plan or a specific plan only if the local agency has officially adopted such a plan and the proposed subdivision or land use is compatible with the objectives, policies, general land uses, and programs specified in such a plan.

*Additionally, Section 66474 provides that a city or county shall deny approval of a tentative tract or parcel map if it makes any one of seven specific "negative" findings.*

66474. A legislative body of a city or county shall deny approval of a tentative map, or a parcel map for which a tentative map was not required, if it makes any of the following findings:

(a) That the proposed map is not consistent with applicable general and specific plans as specified in Section 65451.

(b) That the design or improvement of the proposed subdivision is not consistent with applicable general and specific plans.

(c) That the site is not physically suitable for the type of development.

(d) That the site is not physically suitable for the proposed density of development.

(e) That the design of the subdivision or the proposed improvements are likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat.

(f) That the design of the subdivision or type of improvements is likely to cause serious public health problems.

(g) That the design of the subdivision or the type of improvements will conflict with easements, acquired by the public at large, for access through or use of, property within the proposed subdivision. In this connection, the governing body may approve a map if it finds that alternate easements, for access or for use, will be provided, and that these will be substantially equivalent to ones previously acquired by the public. This subsection shall apply only to easements of record or to easements established by judgment of a court of competent jurisdiction and no authority is hereby granted to a legislative body to determine that the public at large has acquired easements for access through or use of property within the proposed subdivision.

This project should be denied because the tentative map violated 66474(a) due to requiring a general plan amendment.

This project violates 66474(b) because it violates general plan policies regarding traffic, drainage, fire, sewer, and drainage.

This project violates 66474(c)(d)(e) because it's not compatible with the surrounding topography and, due to the design, will create the need for massive grading. Also, much of the drainage mitigation is to be determined after approval of the project, which is a violation of CEQA. It should have been required of the applicant to show that adequate drainage can be provided given the amount of homes being proposed to ensure that the neighboring properties will not be impacted by future drainage issues.

The project violates 66474(f) because it causes a fire safety issue for the existing residents by allowing the new development to create a bottle neck on Kingvale Road.

## 2. Project Approval violates County Municipal Code 1997

The code clearly states that a zone change may be processed jointly with the tentative map, but **NOT** a general plan change.

Sec. 120.68.070. - Processing.

- A. A vesting tentative map shall be processed in the same manner as required for tentative maps in Chapter 120.24, or for tentative parcel maps in Chapter 120.48; provided, however, on vesting tentative subdivision maps, the Planning Commission shall only make a recommendation to the Board of Supervisors, and

the map shall then be set for hearing before the Board of Supervisors, jointly with a zone change or development plan when applicable, within 30 days of the Planning Commission action.

The decision on a vesting tentative subdivision map is not final until the Board of Supervisors has acted on the matter as noted herein.

B. A vesting tentative map shall not be approved unless it is found to be consistent with the general plan for the property proposed to be subdivided. A vesting tentative map application which is inconsistent with the then current general plan at the time of its initial submittal shall be deemed incomplete.

C. A vesting tentative map shall not be approved unless it is consistent with the zoning of the property proposed to be subdivided. A vesting tentative map which is inconsistent with the then current zoning at the time of submittal shall be deemed incomplete unless an application for a change in zoning, and any other discretionary approval as may be required except a general plan change, is submitted concurrently with the vesting tentative map. If a change in the zoning, or any other discretionary approval as may be required except a general plan change, is obtained currently with the approval or conditional approval of the vesting tentative map, the approved or conditionally approved vesting tentative maps shall, notwithstanding Section 120.68.100.A, confer the vested right to proceed with the development in substantial compliance with the change so obtained. Vesting tentative maps shall not be approved with a condition that other discretionary approvals be subsequently secured.  
(Code 1997, § 16.68.070; Ord. No. 4216, § 1(part), 1992)

Additional code support that only zoning changes are allowed to be processed jointly with a tentative map:

Sec. 120.48.060. - Approval procedure.

B. Where a tentative parcel map is submitted concurrently with an application for zone change, the Planning Commission shall hold the public hearing together with the hearing on the zone change. At the conclusion of the hearing, the Planning Commission shall take action on the parcel map as enumerated in Subsection A of this section.

(Code 1997, § 16.48.060; Ord. No. 3805, § 20, 1988; Ord. No. 4152, § 4, 1991; Ord. No. 4318, 1993; Ord. No. 4448, 1997)

3. The map extensions are not consistent with the reasonable expectations of the community

When the project was originally approved on December 4, 2007, NONE of the State legislation to extend Tentative Maps existed; therefore, the expectation when this tentative map was approved was that it would expire in 2015, according to El Dorado County Municipal Code 1997:

Sec. 120.74.030. - Extension of time for approved or conditionally approved maps.

- A. Request by subdivider. The subdivider may request up to six one-year extensions of the expiration date of the approved or conditionally approved tentative map, as allowed by Government Code §§ 66452.6(e) and § 66463.5, by written application to the Development Services Division of the Community Development Agency. The subdivider may request more than one time extension at a time, up to the maximum allowed by this subsection or a development agreement applicable to the map for which the extension request is filed, but in no event shall the total time extension requested exceed six years. Each application shall be filed before the approved or conditionally approved tentative map expires and shall state the reasons for requesting the extension. (Code 1997, § 16.74.030; Ord. No. 4448, 1997; Ord. No. 4960, § 1(16.74.030), 5-17-2011)

4. The Staff Report erroneously states, "All original conditions of approval and mitigation measures shall remain applicable."

There are 4 conditions that are different than the original conditions:

- A. Condition #16 is removed
- B. Condition #17 is removed
- C. Condition #40 is removed
- D. Condition #101 is added