



## COUNSELORS AT LAW

David B. Gaw Van  
 Wyman B. Smith III  
 Bruce A. Myers  
 Bruce A. Miroglia  
 S. Scott Reynolds  
 Terese A. Cunningham  
 Robert L. Lande  
 K. Ingersoll  
 Rhonda L. Savick  
 Douglas C. Splinter  
 James P. Lauping  
 Michael A. Manfred  
 Nicholas E. Donovan  
 Betty J. Homer  
 D. Kenneth Brock  
 Conrad Massey  
 Hilary J. De Puy  
 Eugene Y. Peng  
 Lori A. Hunt  
 Kenneth G. English

## FACSIMILE

Nicholas R. Van Male  
 Christine L. Craig  
 Kara Loedelholz

## DESIGNATIONS

† Certified Specialist  
 Estate Planning, Trust & Probate  
 State Bar of California  
 Board of Legal Specialization  
 † Certified Elder Law Attorney  
 National Elder Law Foundation  
 \* Registered Attorney  
 U.S. Patent and Trademark Office  
 Member of LAWFACT  
 International Association of  
 Independent Business Law Firms

## REPLY TO

## FAIRFIELD

1261 Travis Boulevard  
 Suite 350  
 Fairfield, California  
 94533-4825

T/707-425-1250  
 F/ 707-425-1255

bob@gawvanmale.com

NAPA  
 FAIRFIELD  
 VACAVILLE  
 REDLANDS

September 27, 2006

File No.: 9Mil10.1

**Via U. S. Mail and Facsimile No. (707) 253-4176**

Diane Dillon, Chairperson  
 and Members of the  
 Napa County Board of Supervisors  
 1195 Third Street, Suite 310  
 Napa, California 94559

***Re: Appeal of Tom Gamble from Approval of Map Revision No. PO6- 01097-  
 TMREV to approved Tentative Map (95071-SUB) (Assessor Parcel No.  
 019-080-009)***

Dear Chairperson Dillon and Members of the Board of Supervisors:

This firm represents Miller-Sorg Group, Inc., the applicant for the minor modification of the tentative map, the approval of which by the Zoning Administrator is the subject of this appeal. The appeal is based on three arguments: that the tentative map expired on June 24, 2004, that if a development moratorium existed it expired without the project's sponsor having submitted a final map, and that the zoning administrator approved modifications to the tentative map that were not minor.

In analyzing these arguments, a brief review of the recent history of the project is in order. The tentative map was approved with numerous conditions of approval, some of which required actions of other government authorities, including the Regional Water Quality Control Board, US Army Corp of Engineers and the California Department of Fish and Game.

In the first part of 2004, the applicant and the owner of the project site, Nick Petsas, held several meetings with county staff to discuss the preparation of a final map and improvement plans.

In discussions with and correspondence from staff in April of 2004, the applicant was informed that if a final map and improvements plans responsive to the tentative map and its conditions were filed by June 24, 2004 and if a Joint Aquatic Resource Permit Application (JARPA) for the purpose of obtaining the approvals required as conditions of the tentative map were filed before that date, the final map would be deemed timely filed for purposes of the Subdivision Map Act.



Diane A. Dillon  
*Re: Appeal of Tom Gamble*  
September 27, 2006  
Page 2 of 3

---

The timely filing of the final map and related documents was confirmed by a letter from Nathan Galambos of the Department of Public Works by a letter dated July 15, 2004.

With the exception of one matter referred to below, all of the modifications of the project requested by the project sponsor have been solely for the purpose of complying with the conditions of approval of the tentative map, and have further been based on the staff's interpretation of Sections 66452.6 (b) and (f) of the Subdivision Map Act to the effect that the Tentative Map conditions have further extended the life of the map, pending the approvals of other public agencies required by the conditions.

Since April, 2004, the applicant has spent well over \$2,000,000 for the preparation and processing of the final map and improvement plans and related studies and applications.

I. The Tentative Map has not expired. The appellant argues that, although the project sponsor submitted a final map application within on the deadline set by staff, the tentative map has since expired.

Appellant takes issue with staff's position that the filing of the JARPA application extended the life of the tentative map. Section 66452.6 (b) (1) of the Subdivision Map Act states that limits on the life of a tentative map "shall not include any period of time during which a development moratorium, imposed after condition of the tentative map, is in existence." Section 66452.6 (f) states that "for purposes of this section, a development moratorium includes . . . actions of public agencies which regulate land use, development or the provision of services to the land, including the public agency with the authority to approve or conditionally approve a tentative map, which thereafter prevents, prohibits, or delays the approval of a final or parcel map. (emphasis added)

The conditions and approval of the tentative map clearly require the approvals of the other public agencies that are requested by the JARPA applications, which were filed prior to June 24, 2004. The approval requested by one of those applications is still pending.

By including the language "as well as other actions of public agencies which regulate land use" in section 66452.6 (f), the legislature made it clear that there should be a very broad interpretation of the term "development moratorium."

The appellant argues that only the failure of a regulatory agency to act within a "reasonable" period of time should constitute a moratorium within the meaning of Section 66452.6 (f). With this argument, the appellant is asking the board to read vague and subjective language into Section 66452.6 (f) that conflicts with the plain intent of the legislature.

II. Subsequent actions by regulatory agencies have not terminated the tentative map. Appellant contends that subsequent approvals of the JARPA applications have terminated the tentative map. The appellant argues that on September 7, 2005 the last of the required permits was issued by the Regional Water Quality Control Board by its "Order for Technically Conditioned Certification of Section 401 Permit and that the tentative map therefore expired 120 days after that date." That order sets forth the conditions under which the 401 permit will be issued. Appellant makes the circular argument that by the issuance of that order the Regional Water Quality Control Board was, in effect, an



Diane A. Dillon

*Re: Appeal of Tom Gamble*

September 27, 2006

Page 3 of 3

approval of the permit and that the final approval of the 401 permit no longer counted as an action within the meaning of Section 6645.6 (f). The 401 permit is necessary to provide sewer service for the project, so final approval is critical. Appellant's argument is the equivalent of saying that the approval of a tentative map, with the conditions for approval of a final map, is no different than the approval of the final map. Clearly that is not the case.

If the Legislature intends that the time taken to obtain approvals required as conditions of a tentative map extends the life of the tentative map, it should not follow that an order of such an agency defining what is required to obtain such an approval be construed as the approval, itself.

III. The Changes to the Tentative Map approved by the Zoning Administrator are Minor. Appellant contends that the changes to the tentative map approved by the Zoning Administrator are not minor.

As noted, the changes have been made in order to comply with the conditions of approval of the tentative map and, for that reason, it was probably, is not, necessary that applicant seek approval of a minor amendment. Virtually all final subdivision maps are different than their tentative maps because of grading and improvement plans for projects are developed after approval of their tentative maps and compliance with conditions of approval of tentative maps and requirements of other agencies often require deviations.

Appellant argues that the changes were not minor because they resulted in a "change [to] the lot lines of all 100 parcels of the project." In the first place, changing the location of only one corner of the improved portion of a subdivision by even a few inches could have the effect of changing lot lines on all its parcels. More significantly, as staff has previously noted, the changes have not increased the number or size of lots, and have very substantially decreased the amount of grading and disturbance of wetlands required for the project.

Appellant's reference to the use permit for the project does not constitute a change in the project since the use permit merely allows and does not require stick built housing. In any event, the agreement that grade beam construction constitutes a greater "attachment to the land" than concrete pads is simply not defensible.

The project sponsor respectfully requests that your Board uphold the action of the Zoning Administrator approving minor changes to the tentative map.

Very truly yours,

GAW, VANMALE, SMITH  
MYERS & MIROGLIO



ROBERT E. LANDO

cc: Heather McCollister (Fax (707) 253-4336)  
Mike Rice  
Jeff Redding