

AMENDED IN ASSEMBLY APRIL 21, 2008

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1991**

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**Introduced by Assembly Member Mullin**  
**(Coauthor: Assembly Member Ma)**

February 14, 2008

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An act to ~~amend Section 66452.6 of~~ *add Section 66498.10* to the Government Code, relating to land use, ~~and declaring the urgency thereof, to take effect immediately.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 1991, as amended, Mullin. Subdivisions: tentative maps.

(1) The Subdivision Map Act provides that an approved or a conditionally approved tentative map expires after 24 months unless extended by local ordinance not to exceed an additional 12 months. Extensions cannot extend the tentative map more than 10 years from its approval or conditional approval, as specified.

This bill would ~~allow an~~ *declare specified* approved tentative ~~map,~~ whose expiration was due in part to a city-initiated utility-service moratorium and that is the subject of pending litigation, *maps in the City of Half Moon Bay* to be deemed in full force and effect as ~~part of a litigation settlement of January 1, 2009, notwithstanding any lapse of time, changed conditions, or other factors, and to be final and nonappealable.~~

*The bill would provide that the approved tentative maps confer a vested right to the owner and any successor owner of the property that is the subject of the maps to proceed with specified development of the property in compliance with the city's ordinances, policies, and standards.*

The bill would require the city to take all steps that are reasonable and necessary to allow expeditious construction of the specified development, including certain listed actions. Because this requirement would impose additional duties upon the city, the bill would establish a state-mandated local program.

The bill would exempt the specified property and certain development thereof from (a) certain requirements under the California Environmental Quality Act; (b) permit requirements under the California Coastal Act; (c) the Porter-Cologne Water Quality Control Act; (d) certain permit requirements relating to state highways; and (e) certain requirements relating to fish and game.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

~~(2) This bill would declare that it is to take effect immediately as an urgency statute.~~

Vote:  $\frac{2}{3}$ -majority. Appropriation: no. Fiscal committee: ~~no~~-yes. State-mandated local program: ~~no~~-yes.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. The Legislature finds and hereby declares all of
- 2 the following:
- 3 (a) On November 28, 2007, United States District Chief Judge
- 4 Vaughn Walker issued a ruling against the City of Half Moon Bay
- 5 that amounts to damages of forty-one million one hundred thousand
- 6 dollars (\$41,100,000), including attorneys' fees.
- 7 (b) Those damages are based on a finding that the City of Half
- 8 Moon Bay, by undertaking predevelopment drainage and grading
- 9 improvements on the property known as Beachwood, caused
- 10 wetland conditions to develop on that property.
- 11 (c) A vesting tentative map allowing for development of 83
- 12 homes on Beachwood was approved in 1990, prior to the
- 13 development of wetland conditions, and allowed to lapse due to
- 14 ongoing litigation.
- 15 (d) The City of Half Moon Bay, having an annual budget of
- 16 approximately ten million dollars (\$10,000,000), would likely face

1 *bankruptcy if forced to pay a judgment of forty-one million one*  
2 *hundred thousand dollars (\$41,100,000).*

3 *(e) In order to end long and contentious litigation, the City of*  
4 *Half Moon Bay has entered into a settlement agreement with the*  
5 *property's owner that will allow the city to avoid paying the*  
6 *judgment if the owner is allowed to build 83 homes on Beachwood*  
7 *and 46 homes on the adjoining property of Glencree, previously*  
8 *approved under a vesting tentative map in 1990.*

9 *(f) Residential development on the Beachwood and Glencree*  
10 *properties was approved after an environmental review by the city*  
11 *found that the proposed developments would not have a significant*  
12 *effect on the environment.*

13 *(g) The City of Half Moon Bay will be required to pay eighteen*  
14 *million dollars (\$18,000,000) if development of the properties is*  
15 *not approved by June 30, 2009.*

16 *(h) The combination of specific facts of the Beachwood litigation*  
17 *are unique and, as a result, any legislation approving development*  
18 *on Beachwood and Glencree would not set a precedent for any*  
19 *future exceptions to state environmental regulations because of*  
20 *all of the following:*

21 *(1) The wetland conditions on the property are the man-made*  
22 *result of half-completed grading and drainage improvements*  
23 *undertaken by the City of Half Moon Bay.*

24 *(2) Residential development on the property was approved as*  
25 *part of the City of Half Moon Bay's growth plan, and vesting*  
26 *tentative maps were approved in 1990 after an environmental*  
27 *review by the city found no significant effect on the environment,*  
28 *before delays caused wetland conditions to develop.*

29 *(3) The City of Half Moon Bay faced a*  
30 *forty-one-million-one-hundred-thousand dollar (\$41,100,000)*  
31 *judgment that could have bankrupted the city and forced cutbacks*  
32 *in vital city services.*

33 *(i) Accordingly, it is the intent of the Legislature that nothing*  
34 *in this act shall be considered a precedent for future exceptions*  
35 *from state environmental regulations, unless all three of the*  
36 *uniquely present factual circumstances listed in subdivision (h)*  
37 *are present in any request for a future exception.*

38 *SEC. 2. Section 66498.10 is added to the Government Code,*  
39 *to read:*

1 66498.10. (a) For the purposes of this section, the following  
2 terms shall have the following meanings, unless the context clearly  
3 requires otherwise:

4 (1) “Approved development” means development of the lots  
5 within the “property,” as defined in paragraph (6), pursuant to  
6 the “prior city approvals,” as defined in paragraph (5), and the  
7 ordinances, standards, and policies of the City of Half Moon Bay  
8 that are applicable pursuant to Section 66474.2, including, but  
9 not limited to, all of the following matters:

10 (A) Erection of temporary fencing around the perimeter of the  
11 property.

12 (B) Vegetation management, consistent with fire protection and  
13 removal of invasive plant species.

14 (C) Maintenance and improvement of the city-installed drainage  
15 systems on the property.

16 (D) Grading of dwelling pads, construction of 129 single-family  
17 residences, and construction of related infrastructure for those  
18 lots and three open-space lots.

19 (E) Construction of a traffic signal at the intersection of  
20 proposed Bayview Drive and State Highway Route 1, including  
21 necessary signage and pavement markings.

22 (F) Construction of streets, sidewalks, gutters, sewer and water  
23 lines, drainage facilities, fencing, soundwalls, park improvements,  
24 landscaping, or other infrastructure or amenities.

25 (G) Maintenance of undeveloped open space of the areas  
26 designated as undeveloped open space under the prior city  
27 approvals.

28 (2) “City” means the City of Half Moon Bay.

29 (3) “Existing approvals” means the prior city approvals, the  
30 mitigated negative declarations, as defined in paragraph (4), and  
31 the Agreement Regarding Proposed Stream or Lake Alteration,  
32 dated June 13, 1990, and entered into pursuant to Chapter 6  
33 (commencing with Section 1600) of Division 2 of the Fish and  
34 Game Code.

35 (4) “Mitigated negative declarations” means the Mitigated  
36 Negative Declarations adopted by the city under the California  
37 Environmental Quality Act (Division 13 (commencing with Section  
38 21000) of the Public Resources Code), relating to the property.

39 (5) “Prior city approvals” means the vesting tentative map, Sub  
40 06-88, approved by the city on July 3, 1990, for the subdivision

1 and development into 85 lots of the 25-acre parcel designated as  
2 San Mateo County assessor's parcel number 048-280-020  
3 (commonly known as Beachwood), and the vesting tentative map,  
4 sub 08-88, approved by the city on February 6, 1990, for the  
5 subdivision and development into 47 lots of the 12-acre parcel  
6 currently identified by San Mateo County assessor's parcel number  
7 048-280-030 (commonly known as Glencree).

8 (6) "Property" means the parcels of real property in the city  
9 that have been designated as San Mateo County assessor's parcel  
10 numbers 048-280-020 (commonly known as Beachwood) and  
11 048-280-030 (commonly known as Glencree).

12 (b) Notwithstanding any other provision of law, all of the  
13 following shall apply to the property:

14 (1) The existing approvals relating to the property are declared,  
15 as of January 1, 2009, to be in full force and effect, notwithstanding  
16 any lapse of time, changed conditions, or other factors, and to be  
17 final and nonappealable. Any additional permits, government  
18 reviews, authorizations, or entitlements required for the  
19 construction of the approved development shall be final, binding,  
20 and valid when issued, without further administrative or judicial  
21 appeal or other proceedings.

22 (2) In accordance with Section 66498.1, the prior city approvals  
23 shall confer a vested right to the owner and any successor owner  
24 to proceed with the approved development in compliance with the  
25 city's ordinances, policies, and standards applicable pursuant to  
26 Section 66474.2. Rights vested pursuant to this section shall remain  
27 in effect until the completion of construction of the approved  
28 development.

29 (3) The city shall take all steps that are reasonable and  
30 necessary to allow expeditious construction of the approved  
31 development, including, but not limited to, the following actions:

32 (A) Approve and file for recordation in the Official Records of  
33 the County of San Mateo the final subdivision map dated January  
34 1992, for San Mateo County assessor's parcel number  
35 048-280-020, and the final subdivision map dated February 2001,  
36 for San Mateo County assessor's parcel number 048-280-030, in  
37 accordance with Sections 66458 and 66474.1.

38 (B) Reapprove the Beachwood Subdivision Improvement Plans,  
39 dated September 20, 1990, and resubmitted to the city on May 15,  
40 1997.

1 (C) Issue any remaining permits, approvals, or entitlements  
2 required for the development of the property in conformance with  
3 the prior city approvals.

4 (D) Enter into a subdivision improvement agreement if requested  
5 by the owner of the property, pursuant to Sections 66426 and  
6 66426.5, on customary and reasonable terms consistent with this  
7 section.

8 (4) (A) The property shall be excluded from the coastal zone  
9 for the purposes of the California Coastal Act (Division 20  
10 (commencing with Section 30000) of the Public Resources Code).

11 (B) The approved development shall not require a coastal  
12 development permit under the California Coastal Act (Division  
13 20 (commencing with Section 30000) of the Public Resources  
14 Code), or the city’s certified local coastal program.

15 (C) The approved development shall not require any permit,  
16 certification, discharge requirement, or other type of approval,  
17 other than the existing approvals, under any of the following:

18 (i) Chapter 6 (commencing with Section 1600) of Division 2 of  
19 the Fish and Game Code.

20 (ii) Chapter 12 (commencing with Section 1930) of Division 2  
21 of the Fish and Game Code.

22 (iii) Chapter 1.5 (commencing with Section 2050) of Division  
23 3 of the Fish and Game Code.

24 (iv) Article 2 (commencing with Section 670) of Chapter 3 of  
25 Division 1 of the Streets and Highways Code.

26 (v) The Porter-Cologne Water Quality Control Act (Division  
27 7 (commencing with Section 13000) of the Water Code).

28 (5) No action taken by the city or any other governmental  
29 authority to authorize the approved development under this section  
30 shall be considered “governmental action” for the purposes of  
31 the California Environmental Quality Act (Division 13  
32 (commencing with Section 21000) of the Public Resources Code),  
33 or shall otherwise be subject to study, analysis, review, or approval  
34 under that act.

35 SEC. 3. Due to the unique circumstances concerning  
36 development delays and litigation in the City of Half Moon Bay,  
37 the Legislature finds and declares that a general statute cannot  
38 be made applicable within the meaning of Section 16 of Article IV  
39 of the California Constitution. Therefore, this act is necessarily  
40 applicable only to the City of Half Moon Bay.

1     *SEC. 4. No reimbursement is required by this act pursuant to*  
2 *Section 6 of Article XIII B of the California Constitution because*  
3 *the only costs that may be incurred by a local agency or school*  
4 *district are the result of a program for which legislative authority*  
5 *was requested by that local agency or school district, within the*  
6 *meaning of Section 17556 of the Government Code and Section 6*  
7 *of Article XIII B of the California Constitution.*

8     ~~SECTION 1. Section 66452.6 of the Government Code is~~  
9 ~~amended to read:~~

10     ~~66452.6. (a) (1) An approved or conditionally approved~~  
11 ~~tentative map shall expire 24 months after its approval or~~  
12 ~~conditional approval, or after any additional period of time as may~~  
13 ~~be prescribed by local ordinance, not to exceed an additional 12~~  
14 ~~months. However, if the subdivider is required to expend one~~  
15 ~~hundred seventy-eight thousand dollars (\$178,000) or more to~~  
16 ~~construct, improve, or finance the construction or improvement~~  
17 ~~of public improvements outside the property boundaries of the~~  
18 ~~tentative map, excluding improvements of public rights-of-way~~  
19 ~~which abut the boundary of the property to be subdivided and~~  
20 ~~which are reasonably related to the development of that property,~~  
21 ~~each filing of a final map authorized by Section 66456.1 shall~~  
22 ~~extend the expiration of the approved or conditionally approved~~  
23 ~~tentative map by 36 months from the date of its expiration, as~~  
24 ~~provided in this section, or the date of the previously filed final~~  
25 ~~map, whichever is later. The extensions shall not extend the~~  
26 ~~tentative map more than 10 years from its approval or conditional~~  
27 ~~approval. However, a tentative map on property subject to a~~  
28 ~~development agreement authorized by Article 2.5 (commencing~~  
29 ~~with Section 65864) of Chapter 4 of Division 1 may be extended~~  
30 ~~for the period of time provided for in the agreement, but not beyond~~  
31 ~~the duration of the agreement. The number of phased final maps~~  
32 ~~that may be filed shall be determined by the advisory agency at~~  
33 ~~the time of the approval or conditional approval of the tentative~~  
34 ~~map.~~

35     ~~(2) Commencing January 1, 2005, and each calendar year~~  
36 ~~thereafter, the amount of one hundred seventy-eight thousand~~  
37 ~~dollars (\$178,000) shall be annually increased by operation of law~~  
38 ~~according to the adjustment for inflation set forth in the statewide~~  
39 ~~cost index for class B construction, as determined by the State~~  
40 ~~Allocation Board at its January meeting. The effective date of each~~

1 annual adjustment shall be March 1. The adjusted amount shall  
2 apply to tentative and vesting tentative maps whose applications  
3 were received after the effective date of the adjustment.

4 (3) "Public improvements," as used in this subdivision, include  
5 traffic controls, streets, roads, highways, freeways, bridges,  
6 overcrossings, street interchanges, flood control or storm drain  
7 facilities, sewer facilities, water facilities, and lighting facilities.

8 (b) (1) The period of time specified in subdivision (a), including  
9 any extension thereof granted pursuant to subdivision (c), shall  
10 not include any period of time during which a development  
11 moratorium, imposed after approval of the tentative map, is in  
12 existence. However, the length of the moratorium shall not exceed  
13 five years.

14 (2) The length of time specified in paragraph (1) shall be  
15 extended for up to three years, but in no event beyond January 1,  
16 1992, during the pendency of any lawsuit in which the subdivider  
17 asserts, and the local agency which approved or conditionally  
18 approved the tentative map denies, the existence or application of  
19 a development moratorium to the tentative map.

20 (3) Once a development moratorium is terminated, the map  
21 shall be valid for the same period of time as was left to run on the  
22 map at the time that the moratorium was imposed. However, if the  
23 remaining time is less than 120 days, the map shall be valid for  
24 120 days following the termination of the moratorium.

25 (e) The period of time specified in subdivision (a), including  
26 any extension thereof granted pursuant to subdivision (c), shall  
27 not include the period of time during which a lawsuit involving  
28 the approval or conditional approval of the tentative map is or was  
29 pending in a court of competent jurisdiction, if the stay of the time  
30 period is approved by the local agency pursuant to this section.  
31 After service of the initial petition or complaint in the lawsuit upon  
32 the local agency, the subdivider may apply to the local agency for  
33 a stay pursuant to the local agency's adopted procedures. Within  
34 40 days after receiving the application, the local agency shall either  
35 stay the time period for up to five years or deny the requested stay.  
36 The local agency may, by ordinance, establish procedures for  
37 reviewing the requests, including, but not limited to, notice and  
38 hearing requirements, appeal procedures, and other administrative  
39 requirements.

1 ~~(d) The expiration of the approved or conditionally approved~~  
2 ~~tentative map shall terminate all proceedings and no final map or~~  
3 ~~parcel map of all or any portion of the real property included within~~  
4 ~~the tentative map shall be filed with the legislative body without~~  
5 ~~first processing a new tentative map. Once a timely filing is made,~~  
6 ~~subsequent actions of the local agency, including, but not limited~~  
7 ~~to, processing, approving, and recording, may lawfully occur after~~  
8 ~~the date of expiration of the tentative map. Delivery to the county~~  
9 ~~surveyor or city engineer shall be deemed a timely filing for~~  
10 ~~purposes of this section.~~

11 ~~(e) Upon application of the subdivider filed prior to the~~  
12 ~~expiration of the approved or conditionally approved tentative~~  
13 ~~map, the time at which the map expires pursuant to subdivision~~  
14 ~~(a) may be extended by the legislative body or by an advisory~~  
15 ~~agency authorized to approve or conditionally approve tentative~~  
16 ~~maps for a period or periods not exceeding a total of five years.~~  
17 ~~The period of extension specified in this subdivision shall be in~~  
18 ~~addition to the period of time provided by subdivision (a). Prior~~  
19 ~~to the expiration of an approved or conditionally approved tentative~~  
20 ~~map, upon an application by the subdivider to extend that map,~~  
21 ~~the map shall automatically be extended for 60 days or until the~~  
22 ~~application for the extension is approved, conditionally approved,~~  
23 ~~or denied, whichever occurs first. If the advisory agency denies a~~  
24 ~~subdivider's application for an extension, the subdivider may~~  
25 ~~appeal to the legislative body within 15 days after the advisory~~  
26 ~~agency has denied the extension.~~

27 ~~(f) For purposes of this section, a development moratorium~~  
28 ~~includes a water or sewer moratorium, or a water and sewer~~  
29 ~~moratorium, as well as other actions of public agencies which~~  
30 ~~regulate land use, development, or the provision of services to the~~  
31 ~~land, including the public agency with the authority to approve or~~  
32 ~~conditionally approve the tentative map, which thereafter prevents,~~  
33 ~~prohibits, or delays the approval of a final or parcel map. A~~  
34 ~~development moratorium shall also be deemed to exist for purposes~~  
35 ~~of this section for any period of time during which a condition~~  
36 ~~imposed by the city or county could not be satisfied because of~~  
37 ~~either of the following:~~

38 ~~(1) The condition was one that, by its nature, necessitated action~~  
39 ~~by the city or county, and the city or county either did not take the~~  
40 ~~necessary action or by its own action or inaction was prevented or~~

1 delayed in taking the necessary action prior to expiration of the  
2 tentative map.

3 (2) ~~The condition necessitates acquisition of real property or  
4 any interest in real property from a public agency, other than the  
5 city or county that approved or conditionally approved the tentative  
6 map, and that other public agency fails or refuses to convey the  
7 property interest necessary to satisfy the condition. However,  
8 nothing in this subdivision shall be construed to require any public  
9 agency to convey any interest in real property owned by it. A  
10 development moratorium specified in this paragraph shall be  
11 deemed to have been imposed either on the date of approval or  
12 conditional approval of the tentative map, if evidence was included  
13 in the public record that the public agency which owns or controls  
14 the real property or any interest therein may refuse to convey that  
15 property or interest, or on the date that the public agency which  
16 owns or controls the real property or any interest therein receives  
17 an offer by the subdivider to purchase that property or interest for  
18 fair market value, whichever is later. A development moratorium  
19 specified in this paragraph shall extend the tentative map up to the  
20 maximum period as set forth in subdivision (b), but not later than  
21 January 1, 1992, so long as the public agency which owns or  
22 controls the real property or any interest therein fails or refuses to  
23 convey the necessary property interest, regardless of the reason  
24 for the failure or refusal, except that the development moratorium  
25 shall be deemed to terminate 60 days after the public agency has  
26 officially made, and communicated to the subdivider, a written  
27 offer or commitment binding on the agency to convey the necessary  
28 property interest for a fair market value, paid in a reasonable time  
29 and manner.~~

30 (3) ~~Notwithstanding any other provision of law, an approved  
31 tentative map, whose expiration was due in part to a city-initiated  
32 utility-service moratorium and that is the subject of pending  
33 litigation, may be deemed to be in full force and effect as part of  
34 a litigation settlement.~~

35 SEC. 2. ~~This act is an urgency statute necessary for the  
36 immediate preservation of the public peace, health, or safety within  
37 the meaning of Article IV of the Constitution and shall go into  
38 immediate effect. The facts constituting the necessity are:~~

1 In order for the settlement of protracted and expensive litigation  
2 and avoidance of possible municipal insolvency, it is necessary  
3 that this act take effect immediately.

O