



**COUNTY OF NEVADA
COMMUNITY DEVELOPMENT AGENCY
PLANNING DEPARTMENT**
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**NEVADA COUNTY BOARD OF SUPERVISORS
Board Agenda Memorandum**

MEETING DATE: November 7, 2023

TO: Board of Supervisors

FROM: **Brian Foss, Planning Director**

SUBJECT: Public hearing to consider the appeal of Mr. Glenn Christ (“Appellant”), regarding the information provided by the Planning Department in response to the Appellant’s request to have the County retroactively apply an automatic state extension of time to the Appellant’s approved tentative final map (FM07-010; EIS08-053).

RECOMMENDATION:

- I. Project Action: Deny the appeal, based on factual evidence that the map (FM07-010) is not eligible for the referenced state automatic extension of time (AB1561) as a requirement of the law.

FUNDING:

No budget amendments are required.

ATTACHMENTS:

1. Resolution to Deny the Appeal
2. Extension of Time (EXT20-0007) Planning Commission Staff Report, July 22, 2020
3. AB1561/Government Code Section 65914.5.
4. Christ Application for State Extension of Time, September 7, 2023
5. Planning Department Informational Letter to Mr. Christ, September 15, 2023
 - a. Extension of Time Approval Letter, September 24, 2020
6. Christ Appeal Form, September 25, 2023
7. Correspondence between Mr. Christ and Planning Staff, March 31, 2020

BACKGROUND:

On August 28, 2008, the Nevada County Planning Commission approved a Tentative Final Map (FM07-010) proposing to divide a 34.75-acre parcel owned by Mr. Glenn Christ into nine (9) residential lots ranging from 1.06 to 6.73 acres with a 7.4-acre community owned Open Space parcel (Lot A) and a 14.3-acre remainder, on property located at 16210 American Hill Road in Nevada City. The original approval of the project was valid for 36-months from the end of the appeal period (September 8, 2008) and it was set to expire on September 8, 2011. Following this approval, the State of California passed several legislative actions that automatically extended the expiration dates for approved maps. The project took advantage of several of these State actions, including Assembly Bill 333 (two additional years), Assembly Bill 208 (two additional years) and Assembly Bill 116 (two additional years). These automatic extensions passed by the State extended the expiration date of the project to September 8, 2017.

On June 22, 2017, the Planning Commission approved the first available County authorized extension of time (EXT17-0007) for the Tentative Final Map extending the project approval to September 8, 2020. On July 15, 2020, Mr. Christ filed a timely application for a final 3-year County extension of time (EXT20-0007). Pursuant to the California Subdivision Map Act Section 66452.6(e), the map was automatically extended for “60-days or until the application for the extension is approved, conditionally approved, or denied, whichever occurs first.” Mr. Christ final County extension of time was considered and approved by the Nevada County Planning Commission on September 24, 2020, the first available meeting following the submittal of the application. This action provided an additional and final 3-years to meet the original project conditions of approval and record the map, with a final expiration date of September 8, 2023 (*Attachment 2*). The County’s Code provide a total of 9-years with extensions for an applicant to meet their conditions of approval and get a tentative map recorded. Mr. Christ’s tentative final map has taken advantage of that time and has been afforded an additional 6-years due to the applicability of several State automatic extension of times, provided a total of 15-years to complete any improvements and file a final map check for recordation. A quick timeline of the map and summary of the information above is provided below:

- August 28, 2008- Planning Commission Approves FM07-010
 - 9-residential lots 1.06-6.73-acres in size.
- Project Timeline (Extensions)
 - Original Expiration
 - (3 years)- September 8, 2011
 - State Automatic Extensions
 - AB 333 (2 years)
 - AB 208 (2 years)
 - AB 116 (2 years)

- Local Government Extensions
 - June 22, 2017- Planning Commission (3 years)-expiration date September 8, 2020.
 - September 24, 2020- Planning Commission (3 years)- expiration date September 8, 2023

On August 7, 2023, Mr. Christ inquired with the Nevada County Planning Department via email into the potential eligibility for his tentative final map to be further extended because of California Assembly Bill AB 1561 (Garcia), which was approved by the Governor on September 28, 2020 and took effect on January 1, 2021 (*Attachment 3*), and due to a perceived four-month moratorium because of a delay in the review of the road improvement plans required for the map to record. Through a series of email responses, after reviewing the applicable law and researching the timing associated with the review of his improvement plans in 2020, the Planning Department provided information to Mr. Christ stating that the map did not qualify for the automatic extension provided by AB1561, citing the law. Staff also communicated that the amount of time that it took to review the road improvement plans did not constitute a government-imposed moratorium, and that he had ample time through both state and local extensions of time to complete the conditions of approval and record the map. Mr. Christ did not agree with this information and continued to send emails to the Planning Department providing the same information and justification for why his tentative final map qualified to be extended.

On September 7, 2023, Mr. Christ emailed an application to the Planning Department requesting a 22-month extension for his map citing that the applicable hearing body as “both extensions are state granted (*Attachment 4*).” As a result, the Planning Department prepared a formal written response to Mr. Christ’s extension request that was sent on September 15, 2023 (*Attachment 5*), which Mr. Christ has appealed (*Attachment 6*).

STAFF COMMENT:

The Appeal:

Mr. Glenn Christ, herein referred to as “the Appellant” has a submitted an appeal of the information provided to him from the Planning Department regarding his request and eligibility to have the County apply a State of California automatic 18-month extension of time to his approved tentative map authorized by Assembly Bill.

Assembly Bill 1561: State of California 18-month Automatic Extension:

Following the housing market bubble burst in 2008, the State of California through a series of legislative actions, provided automatic extensions of time to certain land use entitlements including approved tentative parcel and final maps that met certain criteria outlined in each applicable bill. If a project met the specific criteria, then the automatic extension was applied to the project without the requirement for an applicant to submit an

application or take any other action to invoke the extension. As documented above, the tentative final map related to this appeal (FM07-010), was provided an additional six years through three specific state automatic extensions.

The County made a similar action in 2006 in passing County Ordinance 2228, which added an additional year to the initial expiration date for approved tentative maps going from 24-months to 36-months, and applying the extra year to approved maps for which the initial 24-month period had not expired prior to January 11, 2007 (the effective date of the ORD 2228 based by the Board of supervisor on December 12, 2006).

As documented within the Appellant's appeal paperwork and discussed above, the Appellant's map was set to expire on September 8, 2020. He began inquiring with the Planning Department regarding this impending expiration around March of 2020. Through these inquiries, he was informed that he would be eligible for one additional 3-year extension of time so long as his application was submitted prior to the expiration date and approved by the Planning Commission. It was also reiterated that this was his last available extension, for which the Appellant acknowledged (*Attachment 6*). Further, the Appellant also inquired about any potential county or state extensions that were being considered due to the Covid-19 pandemic. Staff was unaware of any at that time and provided this information in an email dated August 5, 2020.

On July 15, 2020, the Appellant submitted a timely request for an extension of time. As shown in *Attachment 2*, Planning staff completed the Planning Commission extension of time memo on July 22, 2020, and waited for the first available Planning Commission meeting. On September 24, 2020, the Nevada County Planning Commission after pulling the proposed extension from the consent calendar, voted 4-1 to approve the proposed extension of time for an additional and final 3-years to complete all project conditions of approval and submit a final map for map check to allow for the recordation of the final map. In the almost 3-years following the Planning Commission's approval, there was no formal documented action taken by the applicant regarding meeting the map conditions of approval (i.e. performing the required road improvements and meeting other required conditions) nor did the applicant submit a final map for map check to be reviewed and approved by applicable departments and agencies to ensure his map could record.

Due to the uncertainty associated with the ongoing Covid-19 pandemic, the State of California enacted Assembly Bill 1561, signed into law by the Governor of California on September 28, 2020, which took effect January 1, 2021 and is codified as Government Code Section 65914.5. While the bill provided several extensions, including to tribal consultation timelines, completion times for housing elements and an 18-month extension to qualifying housing entitlements including tentative maps that met certain criteria and that would expire prior to December 31, 2021. Specifically, the law stated the following in relation to housing entitlements/ tentative maps, the area in bold is highlighted as it applies to the Appellant's map:

*This bill would extend by 18 months the period for the expiration, effectuation, or utilization of a housing entitlement, as defined, that was issued before, and was in effect on, March 4, 2020, and that will expire before December 31, 2021, except as specified. **The bill would also provide that if the state or a local agency extends, on or after March 4, 2020, but before the effective date of the bill, the otherwise applicable time for the expiration, effectuation, or utilization of a housing entitlement for not less than 18 months and pursuant to the same conditions provided by this bill, that housing entitlement shall not be extended an additional 18 months pursuant to this bill.** This bill clarifies that nothing in these provisions is intended to preclude a local government from exercising its existing authority to provide an extension to an entitlement. By adding to the duties of local officials with respect to housing entitlements, this bill would impose a state-mandated local program.*

Because the tentative final map was extended by the local agency after March 4, 2020, and before the effective date of the bill January 1, 2021, for a period of 3-years (ie. not less than 18 months), the map in question is not eligible to receive this automatic extension. This is further supported by Section 65914.5 (d)(2)(B) shown below:

(2) For the purposes of this section, a housing entitlement does not include any of the following:

(A) A development agreement issued pursuant to Article 2.5 (commencing with Section 65864) of Chapter 4.

(B) An approved or conditionally approved tentative map that is extended for a minimum of 18 months pursuant to Section 66452.6 on or after March 4, 2020.

(C) A preliminary application as defined in Section 65941.1.

(D) An application for development approved pursuant to Section 65913.4 and any subsequent permit as described in paragraph (2) of subdivision (f) of Section 65913.4.

The Appellant claims that if he was aware of this Assembly Bill, he would have requested it instead of going through the local agency/County's extension of time process. As expressed above, Planning was not aware of this process occurring in the state legislature and if it had applied, it would not have required an application to the Planning Department because it would apply automatically. The County was under no obligation to provide the Appellant with legal advice regarding the availability of new a legislative extension that would possibly be available after the Planning Commission hearing. Moreover, the availability of the AB1561 extension was speculative at the time the Planning Commission extended his map on September 24, 2020. The governor had not yet signed the bill into law and could have vetoed it rather than approve it.

Subdivision Time Limits/Expiration:

The Nevada County Subdivision Ordinance, Land Use and Development Code Chapter IV and the Subdivision Map Act of California provides standards and processes for the approval of tentative maps as well as the recordation of these maps when all conditions of approval have been met. This process allows for the subdivision of large tracts of lands into smaller parcels for sale or development, when consistent with a local general plan and zoning regulations. In addition, these laws place time limits on tentative maps and detail specific requirements regarding the expiration of a tentative map. The Subdivision Map Act provides expiration timelines, including "...24-months after its approval or conditional approval, or after any additional period of time as may be prescribed by local ordinance...(Government Code Section 66452.6(a)(1))" and allows for extensions of time "...not to exceed a total of six years... (Government Code Section 66452(c))".

As extended by Nevada County Ordinance 2228, Nevada County's Subdivision Ordinance allows 36 months or 3 years after the approval or conditional approval of a map, with the option of two 3-year extensions of time, effectively 9-years total. The Appellant's map has taken advantage of time and has benefited from three additional state automatic extensions of times providing a total of 15-years to meet the conditions of approval, including performing any improvements necessary to meet County standards for the map to record. The County's Subdivision Ordinance is crafted after and consistent with State law as it applies to the expiration of maps. Both the Subdivision Map Act Specifically Government Code Section 66452(d) and Nevada County Subdivision Chapter IV Section L-IV 2.12.C state the following: "[t]he expiration of the approved or conditionally approved tentative map shall terminate all proceedings and no final map or parcel map of all or any portion of the real property included within such tentative map shall be filed after the expiration date without first processing a new tentative map."

Conclusion:

In conclusion, while the Appellant submitted an application on September 7, 2023, prior to the September 8, 2023 map expiration date, which requested a state automatic extension of time for a period of 18-months pursuant to AB1561, it is not considered a valid application as the County has no authority to approve or deny this request because it applies automatically when the entitlement meets the criteria outlined in the law. As clearly defined by the law (Government Code Section 65914.5), FM07-010 did not qualify for the extension of time provided by AB1561, and subsequently it is recommended that the Board deny the appeal based on the requirements of the law.

SUMMARY:

The Christ Tentative Final Map (FM07-010) is not eligible to be extended pursuant to AB1561, as a matter of the law and has exhausted all possible extensions available to map. The Appellant has had ample time over the 15-year lifespan of the map to complete the associated improvements and meet all conditions of approval for the map to record. Therefore, it is recommended that the Board of Supervisors deny the appeal.

RECOMMENDATION: Staff recommend that the Board of Supervisors take the following actions:

- I. Deny the appeal, based on factual evidence that the map (FM07-010) is not eligible for the referenced state automatic extension of time (AB1561) as a requirement of the law.

Item Initiated by: Tyler Barrington, Principal Planner

Approved by: Brian Foss, Planning Director