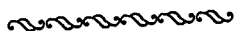


West's
ANNOTATED
CALIFORNIA CODES



GOVERNMENT CODE
Sections 65800 to 66629

*Official
California Government Code
Classification*

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PREFACE

This volume covers legislation relating to §§ 65800 to 66629 of the Government Code as supplemented through the 1995–1996 Regular and First through Fourth Extraordinary Sessions, and the November 5, 1996, election.

The enactments, pertinent judicial constructions and other annotative materials that have accumulated in recent years have been integrated with existing provisions to simplify and facilitate the use of this volume.

All standard practice features of West's Annotated California Codes are continually updated for maximum utility. These valuable research features include:

- Notes of Decisions—Court constructions setting forth the facts and the law.
- Cross References—State laws of related subject matter, qualification or limitation are noted and listed.
- Historical and Statutory Notes—Showing the source and tracing the development of the law.
- California Code Forms—Time-saving references to these valuable code forms volumes.
- Law Reviews—References to pertinent articles and commentaries.
- Library References to:
 - Key Number Digests.
 - Corpus Juris Secundum.
 - WESTLAW Topic Numbers.
 - Miscellaneous Digests, Books and Reports.
- Law Revision Commission and other Comments.
- United States Code Annotated—References to federal laws of related or qualifying matter.
- Constitutional Provisions—References to related text of the state constitution.
- Code of Regulations References.
- Opinions of the Attorney General.

This volume contains those features appropriate to its contents.

An index, comprehensive and detailed, covering the complete text of the Government Code, appears as the last volume of the Code.

Library References

Highways ⇄90.
WESTLAW Topic No. 200.
C.J.S. Highways § 144 et seq.

§ 66403. Land use plan; zoning; state interest

Each local jurisdiction shall prepare for each such highway interchange district a general land use plan and appropriate zoning ordinances by January 1, 1964. It shall be recognized that the State has a continuing interest in adequate enforcement of such plans and ordinances due to construction by the State of the Westside Freeway.

(Added by Stats.1963, c. 1758, p. 3511, § 4.)

Cross References

Adoption of general plan, see Government Code § 65350 et seq.
Zoning regulations, see Government Code § 65800 et seq.

Chapter 7

For Chapter 7, Fees for Specific Purposes, see Government Code § 66012 et seq.

Chapter 8

For Chapter 8, Procedures for Adopting Various Fees, see Government Code § 66016 et seq.

Chapter 9

For Chapter 9, Protests, Legal Actions, and Audits, see Government Code § 66020 et seq.

Chapter 9.3

For Chapter 9.3, Mediation and Resolution of Land Use Disputes, see Government Code § 66030 et seq.

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| 5. | Improvement Security | 66499 |
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Division 2 was added by Stats.1974, c. 1536, p. 3464, § 4, operative March 1, 1975.

Law Review and Journal Commentaries

Land development and the environment:
Subdivision Map Act. 5 Pac.L.J. 55 (1974).

Chapter 1

GENERAL PROVISIONS AND DEFINITIONS

Article

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|----|--------------------------|-------|
| 1. | General Provisions | 66410 |
| 2. | Definitions | 66414 |

Chapter 1 was added by Stats.1974, c. 1536, p. 3464, § 4, operative March 1, 1975.

Historical and Statutory Notes

Section 30 of Stats.1975, c. 24, p. 45, provided:

"The provisions of Chapter 1536 of the 1974 Statutes shall not apply to any map which was approved prior to March 1, 1975, nor shall they

apply to any final map the tentative map of which was approved prior to March 1, 1975, and such maps shall be processed under the law which applied to the approved tentative map."

Article 1

GENERAL PROVISIONS

Section

- 66410. Short title.
- 66411. Local control of common interest developments and subdivision design and improvement; short term leases.
- 66411.1. Improvements for divisions not subdivisions of five or more lots; construction requirements.
- 66411.5. Partition of real property subject to a contract under § 51240 et seq.; parcel map or final map; approval; filing; deferral of payment of exactions and acceptance of offers of dedication; requirements.
- 66412. Application of division; exclusions.
- 66412.1. Inapplicability of division to financing or leasing of parcel of land for construction of or of existing separate commercial or industrial buildings.
- 66412.2. Application of division; construction, financing or leasing of certain dwelling units or second units.
- 66412.3. Housing needs of region; effect of ordinances; consideration.
- 66412.5. Applicability of division; exclusion.
- 66412.6. Presumption of lawful creation of certain parcels.
- 66412.7. Time of establishment of subdivision.
- 66412.8. Repealed.

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66413. Annexation of subdivided area to city; final map as governing; annexation before map final.
- 66413.5. Repealed.
- 66413.7. Written notices of proposed public school site within development; investigation and report; conditions for acquisition.

Article 1 was added by Stats.1974, c. 1536, p. 3464, § 4, operative March 1, 1975.

Cross References

- Earthquake fault zoning, see Public Resources Code § 2621 et seq.
- Exclusions, subdivisions, see Government Code § 66499.21 et seq.
- Official maps, see Government Code § 66499.50 et seq.
- Public officers and employees, subdivision of own land, see Government Code § 1091.1.
- Statement of compliance with this act, real property sales contracts, see Civil Code § 2985.51.
- Transactions in subdivided lands, regulations, see Business and Professions Code § 11000 et seq.

Law Review and Journal Commentaries

- Building and Bargaining in California. William Fulton, 4 Cal.Law. 12 (1984).
- Conversion of apartments to condominiums: Social and economic regulations under California Subdivision Map Act. 16 Cal.W.L.Rev. 466 (1980).
- Growth control in California. Thomas P. Clark, Jr. and Roger A. Grable, 5 Pac.L.J. 570 (1974).
- Legal limits of government land use regulation: Land use planning and control symposium. Roger A. Grable, 2 Pepp.L.Rev. 27 (1974).
- Los Altos School District and the "public and community facilities" zone. 16 Santa Clara L.Rev. 602 (1976).
- Misdirected quest for park and recreation space. 8 Cal.W.L.Rev. 254 (1972).
- Pines v. City of Santa Monica: Redefining the focus of California's Subdivision Map Act. 16 Loy.L.A.L.Rev. 61 (1983).
- Subdivision regulation: Land use planning and control symposium. James E. Erickson, 2 Pepp.L.Rev. 48 (1974).
- Validity of local taxation powers within a state regulated field: Pines v. City of Santa Monica. 9 Pepp.L.Rev. 734 (1982).

§ 66410. Short title

This division may be cited as the Subdivision Map Act.
(Added by Stats.1974, c. 1536, p. 3464, § 4, operative March 1, 1975.)

Historical and Statutory Notes

Derivation: Bus & Prof.C. former § 11500, added by Stats.1943, c. 128, p. 865, § 1.
Stats.1937, c. 670, p. 1874, § 31.

Forms

See West's California Code Forms, Government.

Cross References

Conversion of mobilehome park to another use, see Government Code § 65863.7.

Law Review and Journal Commentaries

- Doctrine of implied dedication and its application to California beaches. 44 S.Cal.L.Rev. 1092 (1971).
- The legality of California development fees. 13 Pepp.L.Rev. 759 (1986).
- Equitable servitudes: Rule of property in need of rule of reason. 10 Pac.L.J. 905 (1979).

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Lucas and endangered species protection: When "take" and "takings" collide. 27 U.C.Davis L.Rev. 185 (1993).

Open spaces in subdivisions. Richard S. Volpert, 12 UCLA L. Rev. 830 (1965).

Provision for parks in municipalities. 12 UCLA L.Rev. 917 (1965).

Subdivision trusts: A proposed standard form. Leon J. Alexander, 5 Loy.L.A.L.Rev. 487 (1972).

Subdivisions: Conditions imposed by local government. John Paul Hanna, 6 Santa Clara L.Rev. 172 (1966).

Library References

Zoning and Planning §11.5.

WESTLAW Topic No.

C.J.S. Zoning and Land Planning § 48.

California Practice Guide:

Landlord-Tenant, Friedman, Garcia & Harty, see Guide's Table of Statutes for

chapter paragraph number references to paragraphs discussing this section.

Real Property Transactions, Greenwald & Asimow, see Guide's Table of Statutes for chapter paragraph number references to paragraphs discussing this section.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the Preface.

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lic purpose improvements such as streets and sewers, and donate land or money for public uses such as parks and schools; purpose of the act is to coordinate planning with the community pattern laid out by local authorities and to assure proper improvements are made so the area does not become an undue burden on the taxpayer. 64 Ops.Atty.Gen. 762 (1981).

Subdivision Map Act (§ 66410 et seq.) requires, with certain exceptions, that a subdivider of property design the subdivision in conformity with applicable general and specific plans, construct public purpose improvements such as streets and sewers, and donate land or money for public uses such as parks and schools; the act establishes general statewide criteria for land development planning, but delegates to cities and counties the authority to regulate the details of proposed subdivisions; and requirements of act and local ordinances enacted thereunder are enforced by criminal sanctions in connection with a procedure involving the filing of required subdivision maps, and the filing of a tentative map and a final map is mandatory for divisions into five parcels or more, but the filing of a parcel map is required for divisions into four or fewer parcels; and a subdivider must obtain the local government approval of the appropriate map before the subdivided parcels may be offered for sale or lease. 63 Ops.Atty.Gen. 601 (1980).

Section 66410 et seq. provides for a rational and orderly means by which land can be divided, developed, and improved and accomplishes this purpose by requiring, with few exceptions, that any division of land be shown on a map approved by the local agency; if the division and proposed development create the need for access, drainage, utilities, and other services, local agency may condition approval of division

1. Due process

Land use decisions that affect property rights of adjacent landowners require procedural due process for the adjacent landowners as well as for the applicants. *Cohan v. City of Thousand Oaks* (App. 2 Dist. 1994) 35 Cal.Rptr.2d 782, 30 Cal.App.4th 547, modified on denial of rehearing, review denied.

Under Subdivision Map Act, landowners are entitled to reasonable notice and opportunity to be heard whenever approval of a tentative subdivision map will constitute a substantial or significant deprivation of their property rights. *Cohan v. City of Thousand Oaks* (App. 2 Dist. 1994) 35 Cal.Rptr.2d 782, 30 Cal.App.4th 547, modified on denial of rehearing, review denied.

2. Construction and application

Subdivision Map Act (§ 66410 et seq.) is the primary regulatory control governing the division of property in California and requires, with certain exceptions, that a subdivider of property design the subdivision in conformity with applicable general and specific plans, construct pub-

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upon such improvements being made. 62 Ops. Atty.Gen. 175 (1979).

Subdivision Map Act (§ 66410 et seq.) requires, with certain exceptions, that a subdivider of property design the subdivision in conformity with applicable general and specific plans, construct public purpose improvements such as streets and sewers, and donate land or money for public uses such as parks and schools, and, while the act establishes a general statewide criteria for land development planning, it delegates to local agencies the authority to regulate the details of proposed subdivisions. 64 Ops.Atty.Gen. 328; 53 Ops.Atty.Gen. 549 (1970).

3. Construction with other laws

Local restriction on removal from rental housing market through condominium conversion, with its evident, independent police power source and purpose, was not preempted by Subdivision Map Act. *Santa Monica Pines, Ltd. v. Rent Control Bd. of City of Santa Monica* (1984) 201 Cal.Rptr. 593, 35 Cal.3d 858, 679 P.2d 27.

Subdivision Map Act (§ 66410 et seq.) occupies the field as to subdivisions of property, and, therefore, even though the act requires each city and county to adopt a local ordinance to supplement the act within its jurisdiction, and though a city or county may reject a tentative or final subdivision map which does not comply with that ordinance, an implementing ordinance which is inconsistent with the language or intent of the act is invalid, and this rule applies to charter cities, even though land use regulation has traditionally been considered a municipal affair. 63 Ops.Atty.Gen. 64 (1980).

4. Purpose of law

Among Subdivision Map Act's purposes are to encourage and facilitate orderly community development, coordinate planning with community pattern established by local authorities, and ensure that proper improvements are made, so that area does not become undue burden on taxpayers. *Gomes v. County of Mendocino* (App. 1 Dist. 1995) 44 Cal.Rptr.2d 93, 37 Cal.App.4th 977.

Literal terms of Subdivision Map Act regulate division of land into parcels only for purposes of sale, leasing, or financing; overall purpose of the act is to regulate subdivisions. *Morehart v. County of Santa Barbara* (1994) 29 Cal.Rptr.2d 804, 7 Cal.4th 725, 872 P.2d 143, as modified.

One of main purposes of Subdivision Map Act is to require developers to put streets in proper condition prior to city taking over their maintenance. *Copeland v. City of Oakland* (App. 1 Dist. 1993) 23 Cal.Rptr.2d 719, 19 Cal.App.4th 717.

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Legislative purpose in enacting Subdivision Map Act (§ 66410 et seq.) was to protect individual transferees as well as the public at large. *Bright v. Board of Sup'rs of San Diego County* (App. 4 Dist. 1977) 135 Cal.Rptr. 758, 66 Cal.App.3d 191.

Purpose of Subdivision Map Act (§ 66410 et seq.) is to coordinate planning with the community pattern laid out by local authorities and to assure proper improvements are made so the area does not become an undue burden on the taxpayers. *Bright v. Board of Sup'rs of San Diego County* (App. 4 Dist. 1977) 135 Cal.Rptr. 758, 66 Cal.App.3d 191.

Purpose of subdivision control was to provide for general welfare of purchasers of divided lands and community in general. *City of Tiburon v. Northwestern Pac. R. Co.* (App. 1 Dist. 1970) 84 Cal.Rptr. 469, 4 Cal.App.3d 160.

Purpose and intent of Subdivision Map Act, Bus. & Prof.C. § 11500 et seq. was to provide for regulation and control of design and improvement of subdivision with proper consideration of its relation to adjoining areas, not to provide funds for benefit of entire city. *Santa Clara County Contractors & Homebuilders Ass'n v. City of Santa Clara* (App. 1 Dist. 1965) 43 Cal.Rptr. 86, 232 Cal.App.2d 564.

Subdivision Map Act, Bus. & Prof.C. § 11500 et seq. and ordinances passed in conformity with it had several salutary purposes, such as regulating and controlling design and improvement of subdivisions with proper consideration for their relation to adjoining areas, requiring subdivider to install streets and drains, preventing fraud and exploitation, and protecting public and purchaser. *Pratt v. Adams* (App. 1 Dist. 1964) 40 Cal.Rptr. 505, 229 Cal.App.2d 602.

Subdivision Map Act (§ 66410 et seq.) requires that, before property is subdivided for sale, lease, or financing, a subdivision map be prepared by the subdivider and approved by the governing body of the city or county in which the land is located; purposes of the act are to the land is located; purposes of the act are to promote orderly community development, ensure proper improvement, within the subdivision, of areas which are dedicated for public purposes by the subdivider, and prevent fraud and exploitation by the subdivider. 64 Ops. Atty.Gen. 814 (1981).

Subdivision Map Act (§ 66410 et seq.) requires a subdivider of real property to file with, obtain approval of, and record a subdivision map with the governing local entity; the fundamental purpose of the act is to facilitate orderly community development and protect buying public from exploitation; while the act establishes a general statewide criteria for land development planning, it delegates to cities and counties the authority to regulate the details of

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proposed subdivisions. 63 Ops.Atty.Gen. 844 (1980).

5. Agricultural associations

The 51st district agricultural association was subject to the provisions of the Subdivision Map Act (§ 66410 et seq.), providing for preparation of a subdivision map by the subdivider and approval of that map by the city or county governing board, and the Subdivided Lands Act, providing for submission of information to the California department of real estate by the subdivider and the issuance of a public report by the real estate commissioner before subdivided parcels can be sold or leased when it planned to subdivide approximately 7 acres of its real estate into parcels for sale. 62 Ops.Atty.Gen. 136, 3-30-79.

6. Universities

University is not bound by provisions of Subdivision Map Act, Gov. Code, §§ 66410-66599.37, when it constructs for-sale on-campus homes as part of program to provide faculty housing. 75 Ops.Atty.Gen. 98, 6-4-92.

7. Condominiums, generally

Real estate developers who had secured all of discretionary approvals necessary for condominium conversion did not have to obtain either a vesting tentative map or development agreement in order to proceed with conversion free of subsequent local regulation. *City of West Hollywood v. Beverly Towers, Inc.* (1991) 278 Cal.Rptr. 375, 52 Cal.3d 1184, 805 P.2d 329, rehearing denied.

Municipality could not enforce condominium conversion regulations enacted after real estate developer had secured final subdivision map approval and permission from Department of Real Estate to sell individual apartments and condominium units, in order to impose additional limitations on developer's ability to engage in sales, though developer had not yet sold even a single condominium unit before condominium conversion regulations went into effect. *City of West Hollywood v. Beverly Towers, Inc.* (1991) 278 Cal.Rptr. 375, 52 Cal.3d 1184, 805 P.2d 329, rehearing denied.

City's condominium tax ordinance imposing a one-time charge of \$1,000 per salable unit, which charge applied to each new condominium or condominium conversion unit but not to previously sold units, imposed a revenue tax that did not conflict with state scheme for regulating subdivisions, as set forth in this section and following sections. *Pines v. City of Santa Monica* (1981) 175 Cal.Rptr. 336, 29 Cal.3d 656, 630 P.2d 521.

8. Exemptions, generally

Property owner was entitled to certificates of compliance with Subdivision Map Act (SMA), with regard to three parcels of land, as matter of law; three parcels were lawfully created prior to enactment of any laws governing subdivision of land and parcels did not subsequently merge with other contiguous land, and thus parcels were exempt from requirements of SMA. *Lakeview Meadows Ranch v. County of Santa Clara* (App. 6 Dist. 1994) 32 Cal.Rptr.2d 615, 27 Cal.App.4th 593.

Alleged filing of subdivision map, and sale of some subdivided lots by metes and bounds description, prior to adoption of 1929 version of this division, did not exempt subsequent grantee of portion of subdivided property from compliance with this division. *Hays v. Vanek* (App. 4 Dist. 1989) 266 Cal.Rptr. 856, 217 Cal.App.3d 271.

Where binding land contracts have been entered into resulting in, or as a result of, a division of land into four or less parcels which division is in full compliance with applicable law prior to the effective date of Stats.1971, c. 1446 or prior to the effective dates of subsequent legislation relating to land splits, that chapter or subsequent legislation has no effect on the contracts. 58 Ops.Atty.Gen. 393, 6-3-75.

9. Subsequent purchasers

Subdivision Map Act, Bus. & Prof.C. § 11500 et seq. which required subdivider of land divided into five or more parcels for purpose of sale or lease to file, secure approval of, and record subdivision map, was designed to restrict activities of subdivider and applied only to affirmative act of selling or offering for sale, not to purchase, and did not require innocent purchaser to suffer for violation by his grantor of which he had neither knowledge nor means of discovery. *Keizer v. Adams* (1970) 88 Cal.Rptr. 183, 2 Cal.3d 976, 471 P.2d 983.

10. Local regulation, generally

Ability of city to enact zoning ordinances or to set standards by way of required building permits is not precluded by Subdivision Map Act, even when those ordinances or standards originate after final subdivision map approval and serve ultimately to deny what that approval partially granted. *McMullan v. Santa Monica Rent Control Bd.* (Gealer) (App. 2 Dist. 1985) 214 Cal.Rptr. 617, 168 Cal.App.3d 960.

11. Zoning

Ordinance requiring zoning approval prior to filing of tentative map by developer was not inconsistent with the Subdivision Map Act (§ 66410 et seq.). *Benny v. City of Alameda*

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(App. 1 Dist. 1980) 164 Cal.Rptr. 776, 105 Cal. App.3d 1006.

Where no expenditure of funds or improvement of subdivision properties had occurred and property had been used and was being used for agricultural purposes, prior recordation of subdivision plat authorizing 2½-acre parcels did not give owners any vested right for which they were entitled to compensation when zoning ordinance creating exclusive agricultural zoning with minimum 18-acre parcel size was enacted. *Gisler v. Madera County* (App. 5 Dist. 1974) 112 Cal.Rptr. 919, 38 Cal.App.3d 303.

Neither a record of a survey nor a final subdivision map filed prior to enactment of a zoning ordinance creates lots which must be permitted to be used as building sites if such lots contained less acreage than required by the current zoning ordinance, where the lots were not in use as building sites as of date of enactment of the current zoning ordinance, and the owner of the lots owned or thereafter acquired contiguous land which could have been used to make such lots conform with the current zoning standards. 43 Ops.Atty.Gen. 144, 4-7-64.

12. Fees

Although power of city to adopt regulations in connection with matters covered by Subdivision Map Act, Bus. & Prof.C. § 11500 et seq. might well be implied, even though not expressly stated, power to require payment of large fees or contributions for general city benefits as condition of approval of map might not be reasonably implied, since it was entirely inconsistent with language and apparent intent of Act. *Santa Clara County Contractors & Homebuilders Ass'n v. City of Santa Clara* (App. 1 Dist. 1965) 43 Cal.Rptr. 86, 232 Cal.App.2d 564.

Provisions of city ordinance requiring subdividers desiring approval of map or building permit to deposit fees in capital outlay recreational fund for city's future needs for recreation purposes were invalid as conflicting with provisions of former Subdivision Map Act.

§ 66411. Local control of common interest developments and subdivision design and improvement; short term leases

Regulation and control of the design and improvement of subdivisions are vested in the legislative bodies of local agencies. Each local agency shall, by ordinance, regulate and control the initial design and improvement of common interest developments as defined in Section 1351 of the Civil Code and subdivisions for which this division requires a tentative and final or parcel map. In the development, adoption, revision, and application of such ordinance, the local agency shall comply with the provisions of Section 65913.2. The ordinance shall specifically provide for proper grading and erosion control, including the prevention of sedimentation or damage to offsite property. Each local

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Santa Clara County Contractors & Homebuilders Ass'n v. City of Santa Clara (App. 1 Dist. 1965) 43 Cal.Rptr. 86, 232 Cal.App.2d 564.

13. Rent controls

Ability of city to enact rent controls is not precluded by Subdivision Map Act, even if, and implementing those controls, restrictions are placed on ability of owner to convey property. *McMullan v. Santa Monica Rent Control Bd.* (Gealer) (App. 2 Dist. 1985) 214 Cal.Rptr. 617, 168 Cal.App.3d 960.

14. Attorney fees

Despite contentions that attorney fees were not supported by adequate time records and reflected duplication of services, records reflected that vast majority of hours devoted by counsel was substantiated by contemporaneous time records, trial court's acceptance of total hours spent was clearly supported by the record, and nothing indicated that award of \$300,000 attorney fees to public interest law firm which successfully prosecuted action alleging violations of Subdivision Map Act, § 66410 et seq., by county regional planning department constituted abuse of discretion. *Margolin v. Regional Planning Com'n of Los Angeles County* (App. 2 Dist. 1982) 185 Cal.Rptr. 145, 134 Cal.App.3d 999.

15. Review

Trial court erred in applying independent-judgment test to review decision of county board of supervisors refusing to order issuance of a certificate of compliance for parcels created by grantors' gift deed conveyances to their children upon ground that grantors violated Subdivision Map Act (this section et seq.) and county ordinances in making the conveyances; rather, trial court should have upheld board's determination if it was supported by substantial evidence in light of the whole record. *Pescosolido v. Smith* (App. 5 Dist. 1983) 191 Cal.Rptr. 415, 142 Cal.App.3d 964.

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agency may by ordinance regulate and control other subdivisions, provided that the regulations are not more restrictive than the regulations for those subdivisions for which a tentative and final or parcel map are required by this division, and provided further that the regulations shall not be applied to short-term leases (terminable by either party on not more than 30 days' notice in writing) of a portion of the operating right-of-way of a railroad corporation as defined by Section 230 of the Public Utilities Code unless a showing is made in individual cases, under substantial evidence, that public policy necessitates the application of the regulations to those short-term leases in individual cases.

(Added by Stats.1974, c. 1536, p. 3464, § 4, operative March 1, 1975. Amended by Stats.1976, c. 928, p. 2119, § 1; Stats.1980, c. 1152, p. 3798, § 10.5; Stats.1988, c. 1388, § 3.)

Historical and Statutory Notes

The 1976 amendment deleted the former last sentence, which read: "Whenever a local ordinance requires improvements for a division of land which is not a subdivision of five or more lots, such regulations shall be limited to the dedication of right-of-way, easements, and the construction of reasonable offsite and onsite improvements for the parcels being created."

The 1980 amendment inserted the third sentence.

The 1988 amendment included common interest developments in the provisions of the section.

Derivation: Bus. & Prof.C. former § 11525, added by Stats.1943, c. 128, p. 866, § 1, amended by Stats.1953, c. 1566, p. 3245, § 1.

Bus. & Prof.C. former § 11535, added by Stats.1943, c. 128, p. 861, § 1, amended by

Stats.1943, c. 668, p. 2423, § 1; Stats.1947, c. 259, p. 822, § 1; Stats.1955, c. 1013, p. 1924, § 3; Stats.1957, c. 1039, p. 2273, § 1; Stats. 1959, c. 306, p. 2215, § 2; Stats.1961, c. 2060, p. 4287, § 1; Stats.1963, c. 1551, p. 3136, § 1; Stats.1965, c. 1180, p. 2981, § 7; Stats.1967, c. 727, p. 2098, § 3; Stats.1967, c. 856, p. 2293, § 1; Stats.1968, c. 269, p. 601, § 2; Stats.1968, c. 331, p. 714, § 4; Stats.1968, c. 550, p. 1164, § 4; Stats.1970, c. 500, p. 983, § 1; Stats.1971, c. 358, p. 716, § 1; Stats.1971, c. 1446, p. 2854, § 5; Stats.1972, c. 706, p. 1287, § 2.

Bus. & Prof.C. former § 11540.2, added by Stats.1971, c. 1635, p. 3531, § 2.

Stats.1941, c. 537, p. 1857, § 1.

Stats.1937, c. 670, p. 1864, § 2.

Forms

See West's California Code Forms, Government.

Cross References

Subdivision, defined, regulation of transactions in subdivided lands, see Business and Professions Code § 11000.

Law Review and Journal Commentaries

Birth control for premature subdivisions—a legislative pill. 12 Santa Clara L.Rev. 523 (1972).

Common law and statutory dedication in California. 53 Cal.L.Rev. 559 (1965).

Forced dedications as a condition to subdivision approval. 9 San Diego L.Rev. 112 (1971).

Land development and the environment: Subdivision Map Act. 5 Pac.L.J. 55 (1974).

Pines v. City of Santa Monica: Redefining the focus of California's Subdivision Map Act. 16 Loy.L.A.L.Rev. 61 (1983).

Subdivisions: Conditions imposed by local government. John Paul Hanna, 6 Santa Clara L.Rev. 172 (1966).

Library References

Municipal Corporations ⇨43.
Zoning and Planning ⇨353.
WESTLAW Topic Nos. 268, 414.

C.J.S. Municipal Corporations §§ 83, 84.
C.J.S. Zoning and Land Planning §§ 10, 178, 179, 183.

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See WESTLAW Electronic Research Guide following the Preface.

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1. In general

Power to adopt supplemental ordinances or regulations in connection with matters covered by the Subdivision Map Act, Bus. & Prof.C. § 11500 et seq. though not expressly granted, could also be implied provided they bore a reasonable relation to purposes and requirements of the Act and were not inconsistent with language and apparent intent of act would be invalid. *Friends of Lake Arrowhead v. San Bernardino County Bd. of Sup'rs* (App. 4 Dist. 1974) 113 Cal.Rptr. 539, 38 Cal.App.3d 497.

Local authority could regulate division of land not covered by Subdivision Map Act, Bus. & Prof.C. § 11500 et seq. be it for less than five parcels or for more than five parcels for purpose not yet contemplated by legislature; however, local authority could not impose conditions or requirements with respect to design and improvements more onerous than those imposed on landowners whose division of property fell within definition of the act. *City of Tiburon v. Northwestern Pac. R. Co.* (App. 1 Dist. 1970) 84 Cal.Rptr. 469, 4 Cal.App.3d 160.

Local agencies have authority to regulate the details of proposed subdivisions, even though the Subdivision Map Act (§ 66410 et seq.) establishes a general statewide criteria for land development planning. 64 Ops.Atty.Gen. 549 (1981).

Subdivision Map Act (§ 66410 et seq.) establishes general statewide criteria for land development planning but delegates to cities and

counties the authority to regulate the details of proposed subdivisions. 63 Ops.Atty.Gen. 601 (1980).

Implementing ordinance must be consistent with the Subdivision Map Act (§ 66410 et seq.). 63 Ops.Atty.Gen. 64 (1980).

Legislative bodies of local agencies can promulgate ordinances in compliance with § 66410 et seq. to regulate and control design and improvement of subdivisions and, in so doing, condition map approval on the satisfaction of conditions imposed by ordinances in consonance with § 66410 et seq. 59 Ops.Atty.Gen. 129 (1976).

To a greater degree than before, cities and counties may utilize the amendments and additions to the Subdivision Map Act, § 66410 et seq., and provisions of § 65300 et seq., relating to authority for, and scope of, general plans, to condition and reject the subdivision of land for residential purposes or otherwise by, inter alia, requiring that the environment will not be substantially damaged and that the subdivision is consistent with applicable general or specific plans and authorizing ordinances which would prescribe greatly expanded design and improvement standards as a condition of subdivision map approval. 59 Ops.Atty.Gen. 129, 3-16-76.

2. Design and improvement, generally

Where subdivision map did not on its face comply with ordinance designating standard specifications applicable to all proposed subdivisions, board of supervisors properly rejected map. *Metro Realty v. El Dorado County* (App. 3 Dist. 1963) 35 Cal.Rptr. 480, 222 Cal.App.2d 508.

Legislative bodies of local agencies can promulgate ordinances in compliance with § 66410 et seq. to regulate and control design and improvement of subdivisions and, in so doing, condition map approval on the satisfaction of conditions imposed by ordinances in consonance with § 66410 et seq. 59 Ops.Atty.Gen. 129 (1976).

3. Fees, generally

Redevelopment agency had no authority to impose development fee upon subsequent developer to enable agency to reimburse prior developer; development fee was not authorized by this division and did not bear reasonable relationship to regulation and control of design and improvement of subdivision and agency had no power to adopt ordinance or resolution permitting such reimbursement. Price Development

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Co. v. Redevelopment Agency of City of Chino, Cal., C.A.9 (Cal.)1988, 852 F.2d 1123.

Provisions of city ordinance requiring fee from subdividers desiring approval of map or building permit, such fees to be deposited in capital outlay recreational fund for city's future needs for recreation purposes, were invalid as conflicting with provisions of Subdivision Map Act, Bus. & Prof.C. § 11500 et seq. Santa Clara County Contractors & Homebuilders Ass'n v. City of Santa Clara (App. 1 Dist. 1965) 43 Cal. Rptr. 86, 232 Cal.App.2d 564.

This section and §§ 66418, 66419 do not authorize the imposition of a general fee, as a condition of approving subdivision maps, for the installation of traffic lights off the land to be subdivided. 63 Ops.Atty.Gen. 64 (1980).

4. Common plan

Just as there is no requirement in Subdivision Map Act, § 66410 et seq., to show that subdivision of a parcel will not become a tax burden there also is no requirement that there must be a common plan of development for adjacent tracts; hence, in determining whether proposed division of one tract was subject to the act, the board of supervisors was not required to consider whether such parcel was going to be developed together with adjacent parcels owned by the same individual. Bright v. Board of Sup'rs of San Diego County (App. 4 Dist. 1977) 135 Cal.Rptr. 758, 66 Cal.App.3d 191.

5. Maps

The local governing body had to require that a parcel map be filed after division of land results in parcels each of forty acres or more, or each a quarter-quarter section or larger, or pick other amount as specified by local ordinance; if this requirement was waived, the findings required by Bus. & Prof.C. § 11535, would have to be made. 57 Ops.Atty.Gen. 388, 8-6-74.

6. Density

Subdivision Map Act, Bus. & Prof.C. § 11500 et seq. did not restrict a local planning commission or city council from limiting the density of a proposed subdivision, so long as such limitation was in conformity with local ordinances, but, to the contrary, the Act compelled such limitation of density. 56 Ops.Atty.Gen. 274, 6-15-73.

7. Heating or cooling

Local design ordinances enacted under this section must contain design requirements for passive or natural heating or cooling opportunities; each city and county would have to enact ordinance requirements tailored to its own conditions and needs. 64 Ops.Atty.Gen. 328 (1981).

8. Streets

A requirement by city council as condition of approval of a proposed subdivision to have curved streets could not be based solely upon aesthetic considerations. 43 Ops.Atty.Gen. 89, 2-25-64.

Under Bus. & Prof.C. § 11525, vesting control of the design of subdivisions in the governing bodies of cities and counties, a requirement by city of curved streets as opposed to straight streets as a condition of approval of a proposed subdivision could in most cases be upheld as valid exercise of police power either upon considerations of safety, the general welfare, or both. 43 Ops.Atty.Gen. 89, 2-25-64.

9. Grading and erosion control

Adoption of Chapter 70 of the Uniform Building Code of the international conference of building officials relating to the excavating and grading of sites for new buildings was sufficient to meet the requirements of this section as to grading and erosion control. 63 Ops.Atty.Gen. 566, 7-3-80.

10. Contract terms

When approving the subdivision of land subject to a Williamson Act contract, a county may require, either pursuant to a term of the original contract or pursuant to a duly enacted subdivision ordinance, new contracts for each parcel of the subdivision, and may unilaterally impose new contract terms for the resulting parcels, including the waiver of a previous notice of nonrenewal filed for all of the property to be subdivided, either pursuant to a term of the original contract or pursuant to a duly enacted subdivision ordinance. 75 Ops.Atty.Gen. 278, 12-2-92.

11. Fire safety standards

The fire safety standards adopted by the Board of Forestry for development on state responsibility area lands apply to the perimeters and access to buildings constructed after January 1, 1991, on parcels created by parcel or tentative maps approved prior to January 1, 1991, to the extent that conditions relating to the perimeters and access to the buildings were not imposed as part of the approval of the parcel or tentative maps. 76 Ops.Atty.Gen. 19, 3-17-93.

12. Condominiums

Approval of tentative tract maps for condominium conversion did not lead to a vested rights exemption from city rent control charter amendment mandating that no controlled rental units may be removed, converted or demolished without a permit, notwithstanding ordinance which created a presumption of a vested right to convert based on tentative tract map approv-

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al and satisfactory evidence of good-faith reliance thereon. *Blue Chip Properties v. Permanent Rent Control Bd. of City of Santa Monica* (App. 2 Dist. 1985) 216 Cal.Rptr. 492, 170 Cal.App.3d 648.

City zoning ordinance governing conversion of apartment complexes to condominiums did not authorize consideration of vacancy factor in area of conversion in determining relocation plan reasonableness on basis that ordinance required owner to provide information to tenants regarding comparable availability; ordinance merely required that report regarding comparable housing availability be included in relocation plan and did not state that a low-vacancy factor could furnish basis for finding plan unreasonable where provision was made for tenants pending availability of housing, regardless of time that it may have taken to obtain such housing. *Krater v. City of Los Angeles* (App. 2 Dist. 1982) 181 Cal.Rptr. 923, 130 Cal.App.3d 839.

City's condominium tax ordinance imposing a one-time charge of \$1,000 per salable unit, which charge applied to each new condominium or condominium conversion unit but not to previously sold units, imposed a revenue tax that did not conflict with state scheme for regulating subdivisions, as set forth in Subdivision Map Act (§ 66410 et seq.). *Pines v. City of Santa Monica* (1981) 175 Cal.Rptr. 336, 29 Cal.3d 656, 630 P.2d 521.

13. Subsequent purchasers

Requirement on subdivision map that lots not be split until such time as public sewers were available was enforceable against subsequent purchasers of subdivision lot even though restriction had not been inserted in their deed. *Scrogings v. Kovatch* (App. 1 Dist. 1976) 134 Cal.Rptr. 217, 64 Cal.App.3d 54.

14. Partition

Where a court orders the physical division of real property in a partition action, the division must comply with the requirements of the Subdivision Map Act (§ 66410 et seq.), local ordinances adopted thereunder, zoning ordinances, and the general plan for the area in which the property is located. 64 Ops.Atty.Gen. 762, 10-8-81.

Provisions of Subdivision Map Act (§ 66410 et seq.) and of local subdivision ordinances enacted under the act are applicable to physical divisions of real property caused by the mainte-

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nance of a partition action. 64 Ops.Atty.Gen. 762 (1981).

15. Hearings

County subdivision ordinance which required property owner to submit proposed division of property into four or less parcels to county planning director and which gave right of appeal to planning commission, which could not refuse application if it appeared from satisfactory evidence that proposed division conformed to requirements of subdivision ordinance, did not contemplate a judicial or quasi-judicial type of determination by commission and afforded property owners a hearing which met requirements of procedural due process. *San Mateo County v. Palomar Holding Co.* (App. 1 Dist. 1962) 24 Cal.Rptr. 905, 208 Cal.App.2d 194.

16. Declaratory judgments

Status of lands under subdivision map act and local ordinances was determinable in declaratory judgment action wherein plaintiff city alleged that property had been illegally divided. *City of Tiburon v. Northwestern Pac. R. Co.* (App. 1 Dist. 1970) 84 Cal.Rptr. 469, 4 Cal.App.3d 160.

17. Mandamus

Where one property owner initiated partition action against the eleven other owners, and all owners, represented by same counsel, obtained judicial approval of referee's report recommending creation of twelve parcels, and subsequently divided the twelve parcels into 38 parcels with no one owner splitting land into more than four parcels, all owners had violated state and local subdivision laws, and, therefore, mandamus was not available to compel issuance of permit to one owner to build residence. *Pratt v. Adams* (App. 1 Dist. 1964) 40 Cal.Rptr. 505, 229 Cal.App.2d 602.

18. Estoppel

Although developer could reasonably have relied that State Department of Transportation had made final decision and desired no highway widening as condition to connection of new street to highway, he could not reasonably rely upon assumption that city council controlled conditions surrounding encroachment on highway when, as a matter of law, that power remained in State Department of Transportation. *La Canada Flintridge Development Corp. v. Department of Transp.* (App. 2 Dist. 1985) 212 Cal.Rptr. 334, 166 Cal.App.3d 206, review denied.

§ 66411.1. Improvements for divisions not subdivisions of five or more lots; construction requirements

(a) Notwithstanding Section 66428, whenever a local ordinance requires improvements for a division of land which is not a subdivision of five or more

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lots, the regulations shall be limited to the dedication of rights-of-way, easements, and the construction of reasonable offsite and onsite improvements for the parcels being created. Requirements for the construction of offsite and onsite improvements shall be noticed by a statement on the parcel map, on the instrument evidencing the waiver of the parcel map, or by a separate instrument and shall be recorded on, concurrently with, or prior to the parcel map or instrument of waiver of a parcel map being filed for record.

(b) Notwithstanding Section 66428, fulfillment of the construction requirements shall not be required until the time a permit or other grant of approval for development of the parcel is issued by the local agency or, where provided by local ordinances, until the time the construction of the improvements is required pursuant to an agreement between the subdivider and the local agency, except that in the absence of an agreement, a local agency may require fulfillment of the construction requirements within a reasonable time following approval of the parcel map and prior to the issuance of a permit or other grant of approval for the development of a parcel upon a finding by the local agency that fulfillment of the construction requirements is necessary for either of the following reasons:

(1) The public health and safety.

(2) The required construction is a necessary prerequisite to the orderly development of the surrounding area.

(Added by Stats.1976, c. 928, p. 2119, § 2. Amended by Stats.1977, c. 234, p. 1033, § 1, eff. July 7, 1977; Stats.1987, c. 982, § 1; Stats.1994, c. 655 (A.B.3353), § 1.)

Historical and Statutory Notes

The 1977 amendment deleted, from the first paragraph, the former last sentence, which had read: "The construction of such improvements shall be required prior to subsequent issuance of a permit or other grant of approval for the development of such parcel by the local agency."; and substituted "local agency or, where provided by local ordinances, until such time as the construction of such improvements is required pursuant to an agreement between the subdivider and the local agency, except that in the absence of such an agreement, a local agency may require fulfillment" for "local agency, except that a local agency may require fulfillment" in the introductory clause of the second paragraph.

The 1987 amendment designated the existing text as subs. (a) and (b); in subd. (a), substituted "a statement" for "certificate"; in subd. (b), substituted "either of the following reasons" for "reasons of"; and made nonsubstantive changes throughout.

The 1994 amendment, at the beginning of subs. (a) and (b), added "Notwithstanding Section 66428".

Section 3 of Stats.1994, c. 655 (A.B.3353), provides:

"This act is not intended to either enlarge or diminish the regulatory authority of a local agency, nor is this act intended to support or overrule the holding of the California Supreme Court in *Morehart v. County of Santa Barbara*, 7 Cal. 4th 725 (1994)."

Library References

Municipal Corporations ☞43.
Zoning and Planning ☞29.5.
WESTLAW Topic Nos. 268, 414.

C.J.S. Municipal Corporations §§ 83, 84.
C.J.S. Zoning and Land Planning § 21.

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1. Conditions for approval

When a local agency requires the filing of a tentative map in addition to a parcel map with respect to the subdivision of property, the agency may not impose, as a condition of tentative map approval, the installation of irrigation facilities prior to approval of the parcel map or that an agreement be reached between the subdivider and an irrigation district regarding the timing of the installation of irrigation facilities. 78 Ops.Atty.Gen. 158, May 18, 1995.

Where the construction of offsite and onsite improvements under the provisions of this section is not secured and the subdivider is no

longer the owner of the parcels, a local agency may deny approval for development of the parcels by their owners until the construction requirements have been fulfilled. 62 Ops.Atty.Gen. 175, 4-11-79.

A local agency may not require that the construction of offsite and onsite improvements under the provisions of this section be completed prior to the recordation of a parcel map. 62 Ops.Atty.Gen. 175, 4-11-79.

2. Security

A local agency may require that the construction of offsite and onsite improvements under the provisions of this section be secured pursuant to the provisions of §§ 66499 to 66499.10. 62 Ops.Atty.Gen. 175, 4-11-79.

§ 66411.5. Partition of real property subject to a contract under § 51240 et seq.; parcel map or final map; approval; filing; deferral of payment of exactions and acceptance of offers of dedication; requirements

(a) Notwithstanding any other provision of this division, whenever a parcel map or final map is required to effectuate a judicial partition of property pursuant to subdivision (b) and pursuant to Section 872.040 of the Code of Civil Procedure, the local agency approving the parcel map or final map may establish the amount of any monetary exaction or any dedication or improvement requirement authorized by law as a condition of approving the parcel map or final map, but shall not require payment of the exaction, the undertaking of the improvement, or posting of security for future performance thereof and shall not accept any required offer of dedication until the time specified in subdivision (b).

(b) This section applies to judicial partition of real property which is subject to a contract under Article 3 (commencing with Section 51240) of Chapter 7 of Part 1 of Division 1 of Title 5 and which will remain subject to that contract subsequent to the filing of the parcel map or final map. With respect to any parcel created by a parcel map or final map subject to this section, payment of exactions and acceptance of offers of dedication under this section shall be deferred by the local agency until the contract terminates or is canceled as to that parcel, except that no deferral is required under this subdivision as to fees and assessments that are due and payable for governmental services provided to the parcel prior to termination or cancellation of the contract. The applicants for a parcel map or final map subject to this section shall be personally liable for performance of obligations deferred under this section at the time they become due.

(Added by Stats.1988, c. 494, § 1.)

§ 66412. Application of division; exclusions

This division shall be inapplicable to:

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(a) The financing or leasing of apartments, offices, stores, or similar space within apartment buildings, industrial buildings, commercial buildings, mobile-home parks, or trailer parks.

(b) Mineral, oil, or gas leases.

(c) Land dedicated for cemetery purposes under the Health and Safety Code.

(d) A lot line adjustment between two or more existing adjacent parcels, where the land taken from one parcel is added to an adjacent parcel, and where a greater number of parcels than originally existed is not thereby created, provided the lot line adjustment is approved by the local agency, or advisory agency. A local agency or advisory agency shall limit its review and approval to a determination of whether or not the parcels resulting from the lot line adjustment will conform to local zoning and building ordinances. An advisory agency or local agency shall not impose conditions or exactions on its approval of a lot line adjustment except to conform to local zoning and building ordinances, to require the prepayment of real property taxes prior to the approval of the lot line adjustment, or to facilitate the relocation of existing utilities, infrastructure, or easements. No tentative map, parcel map, or final map shall be required as a condition to the approval of a lot line adjustment. The lot line adjustment shall be reflected in a deed, which shall be recorded. No record of survey shall be required for a lot line adjustment unless required by Section 8762 of the Business and Professions Code.

(e) Boundary line or exchange agreements to which the State Lands Commission or a local agency holding a trust grant of tide and submerged lands is a party.

(f) Any separate assessment under Section 2188.7 of the Revenue and Taxation Code.

(g) Unless a parcel or final map was approved by the legislative body of a local agency, the conversion of a community apartment project, as defined in Section 11004 of the Business and Professions Code, to a condominium, as defined in Section 783 of the Civil Code, but only if all of the following requirements are met:

(1) At least 75 percent of the units in the project were occupied by record owners of the project on March 31, 1982.

(2) A final or parcel map of the project was properly recorded, if the property was subdivided, as defined in Section 66424, after January 1, 1964, with all of the conditions of that map remaining in effect after the conversion.

(3) The local agency certifies that the above requirements were satisfied if the local agency, by ordinance, provides for that certification.

(h) Unless a parcel or final map was approved by the legislative body of a local agency, the conversion of a stock cooperative, as defined in Section 11003.2 of the Business and Professions Code, to a condominium, as defined in Section 783 of the Civil Code, but only if all of the following requirements are met:

(1) At least 51 percent of the units in the cooperative were occupied by stockholders of the cooperative on January 1, 1981, or individually owned by

stockholders of the cooperative on January 1, 1981. As used in this paragraph, a cooperative unit is "individually owned" if and only if the stockholder of that unit owns or partially owns an interest in no more than one unit in the cooperative.

(2) No more than 25 percent of the shares of the cooperative were owned by any one person, as defined in Section 17, including an incorporator or director of the cooperative, on January 1, 1981.

(3) A person renting a unit in a cooperative shall be entitled at the time of conversion to all tenant rights in state or local law, including, but not limited to, rights respecting first refusal, notice, and displacement and relocation benefits.

(4) The local agency certifies that the above requirements were satisfied if the local agency, by ordinance, provides for that certification.

(i) The leasing of, or the granting of an easement to, a parcel of land, or any portion or portions thereof, in conjunction with the financing, erection, and sale or lease of a windpowered electrical generation device on the land, if the project is subject to discretionary action by the advisory agency or legislative body.

(j) The leasing or licensing of a portion of a parcel, or the granting of an easement, use permit, or similar right on a portion of a parcel, to a telephone corporation as defined in Section 234 of the Public Utilities Code, exclusively for the placement and operation of cellular radio transmission facilities, including, but not limited to, antennae support structures, microwave dishes, structures to house cellular communications transmission equipment, power sources, and other equipment incidental to the transmission of cellular communications, if the project is subject to discretionary action by the advisory agency or legislative body.

(k) Leases of agricultural land for agricultural purposes. As used in this subdivision, "agricultural purposes" means the cultivation of food or fiber, or the grazing or pasturing of livestock.

(Added by Stats.1974, c. 1536, p. 3465, § 4, operative March 1, 1975. Amended by Stats.1976, c. 92, p. 150, § 1; Stats.1977, c. 234, p. 1033, § 2, eff. July 7, 1977; Stats.1980, c. 767, p. 2283, § 1; Stats.1980, c. 774, p. 2294, § 1; Stats.1982, c. 1426, § 2; Stats.1983, c. 101, § 87; Stats.1983, c. 1288, § 3, eff. Sept. 30, 1983; Stats.1984, c. 306, § 1; Stats.1985, c. 1504, § 1; Stats.1989, c. 847, § 4; Stats.1990, c. 1001 (A.B.3107), § 1; Stats.1992, c. 523 (S.B.1683), § 5.5; Stats.1992, c. 1003 (A.B.3100), § 2; Stats.1994, c. 458 (A.B.1414), § 2.)

Historical and Statutory Notes

The 1976 amendment added subd. (d).

The 1977 amendment inserted "existing" preceding "adjacent parcels" in subd. (d); and added subd. (e).

The 1980 amendment added subd. (f).

Amendment of this section by § 1.3 of Stats. 1980, c. 774, p. 2294, failed to become operative under the provisions of § 3 of that Act.

Section 4 of Stats.1980, c. 774, p. 2294, provides:

"This act shall become operative for assessments made on the lien date for the 1981-82 fiscal year and thereafter. However, a county board of supervisors may elect to postpone the operative date of this act for that county to the lien date for the 1982-83 fiscal year."

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Section affected by two or more acts at the same session of the legislature, see Government Code § 9605.

The 1982 amendment added subds. (g) and (h).

The 1983 amendment, in subd. (h), three times substituted "January 1, 1981" for "January 1, 1980".

Subordination of legislation by Stats.1983, c. 101 to other 1983 legislation, see Historical and Statutory Notes under Business and Professions Code § 2343.

Section affected by two or more acts at the same session of the legislature, see Government Code § 9605.

The 1984 amendment added subd. (i) relating to windpowered electrical generation devices.

The 1985 amendment rewrote subd. (d) and made nonsubstantive changes. Prior to amendment, subd. (d) read:

"A lot line adjustment between two or more existing adjacent parcels, where the land taken from one parcel is added to an adjacent parcel, and where a greater number of parcels than originally existed is not thereby created, provided the lot line adjustment is approved by the local agency, or advisory agency."

The 1989 amendment, in subd. (d), rewrote the last line which had read, "The lot line adjustment shall be reflected in a deed or record of survey which shall be recorded."

The 1990 amendment, in subd. (d), inserted ", which shall be recorded" following "reflected in a deed".

The 1992 amendment permitted an advisory agency or local agency to require the prepayment of real property taxes prior to the approval of the lot line adjustment in the third sentence of subd. (d); also, in that sentence, preceding "to facilitate the relocation of existing utilities" deleted "except"; and added subd. (j).

Section affected by two or more acts at the same session of the legislature, see Government Code § 9605.

The 1994 amendment added subd. (k) relating to leases of agricultural land for agricultural purposes.

Derivation: Bus. & Prof.C. former § 11535, added by Stats.1943, c. 128, p. 867, § 1, amended by Stats.1943, c. 668, p. 2423, § 1; Stats. 1947, c. 259, p. 822, § 1; Stats.1955, c. 1013, p. 1924, § 3; Stats.1957, c. 1039, p. 2273, § 1; Stats.1959, c. 306, p. 2215, § 2; Stats.1961, c. 2060, p. 4287, § 1; Stats.1963, c. 1551, p. 3136, § 1; Stats.1965, c. 1180, p. 2981, § 7; Stats. 1967, c. 727, p. 2098, § 3; Stats.1967, c. 856, p. 2293, § 1; Stats.1968, c. 269, p. 601, § 2; Stats.1968, c. 331, p. 718, § 4; Stats.1968, c. 520, p. 1164, § 4; Stats.1970, c. 500, p. 983, § 1; Stats.1971, c. 358, p. 716, § 1; Stats.1971, c. 1446, p. 2854, § 5; Stats.1972, c. 706, p. 1287, § 2.

Stats.1941, c. 537, p. 1857, § 1.

Stats.1937, c. 670, p. 1864, § 2.

Cross References

Applications for exceptions pursuant to this section, time for agency action, see Government Code § 66451.7.

Cemeteries,

Generally, see Health and Safety Code § 8100 et seq.

Dedication, see Health and Safety Code § 8550 et seq.

State lands commission, see Government Code § 12805; Public Resources Code § 6101 et seq.

Notes of Decisions

Lot line adjustments 1

1. Lot line adjustments

Subdivision Map Act (SMA) did not apply to proposed lot line adjustment so as to require owner to file tentative and final maps as condition of city's approval of adjustment, where adjustment did not create greater number of parcels than originally existed, adjustment involved nine parcels, and adjustment involved existing adjacent parcels. *San Dieguito Partnership, L.P. v. City of San Diego* (App. 4 Dist. 1992) 9 Cal.Rptr.2d 440, 7 Cal.App.4th 748.

"Created," in lot line adjustment statute, connoted division resulting in more parcels than originally existed resulting in application of

Subdivision Map Act (SMA) to that division; however, if greater number of parcels is not created by lot line adjustment, there is no division of real property and SMA is inapplicable. *San Dieguito Partnership, L.P. v. City of San Diego* (App. 4 Dist. 1992) 9 Cal.Rptr.2d 440, 7 Cal.App.4th 748.

"Adjacent parcel," within meaning of lot line adjustments statute, meant near or close to, rather than adjoining, touching or contiguous; thus, "adjacent parcel," in context of statute, referred to any one or more of adjacent parcels with respect to which lot line adjustment was sought and did not restrict lot line adjustments to those involving one existing parcel adjusting its lot line so as to result in only one adjacent parcel having different lot lines with land added

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only from first parcel. *San Dieguito Partnership, L.P. v. City of San Diego* (App. 4 Dist. 1992) 9 Cal.Rptr.2d 440, 7 Cal.App.4th 748.

Whether particular land is environmentally sensitive plays no role in determining applicability of Subdivision Map Act in petition for lot line adjustment. *San Dieguito Partnership, L.P. v. City of San Diego* (App. 4 Dist. 1992) 9 Cal.Rptr.2d 440, 7 Cal.App.4th 748.

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A city or county may not require a field survey to be performed or a record of survey to be filed for a lot line adjustment which involves the creation of new points or lines not shown on any subdivision map, official map, or record of survey, the position of which are not ascertainable from an inspection of the subdivision map, official map, or record of survey without trigonometric calculations. 77 Ops.Atty.Gen. 231, Nov. 18, 1994.

§ 66412.1. Inapplicability of division to financing or leasing of parcel of land for construction of or of existing separate commercial or industrial buildings

This division shall also be inapplicable to:

(a) The financing or leasing of any parcel of land, or any portion thereof, in conjunction with the construction of commercial or industrial buildings on a single parcel, unless the project is not subject to review under other local agency ordinances regulating design and improvement.

(b) The financing or leasing of existing separate commercial or industrial buildings on a single parcel.

(Added by Stats.1980, c. 1217, p. 4127, § 1, eff. Sept. 29, 1980. Amended by Stats.1982, c. 87, § 4, eff. March 1, 1982.)

Historical and Statutory Notes

The 1982 amendment substituted "project" for "financing or leasing" in subd. (a).

Library References

Municipal Corporations ⇨43.
Zoning and Planning ⇨11.5.
WESTLAW Topic Nos. 268, 414.

C.J.S. Municipal Corporations §§ 83, 84.
C.J.S. Zoning and Land Planning § 48.

§ 66412.2. Application of division; construction, financing or leasing of certain dwelling units or second units

This division shall not apply to the construction, financing, or leasing of dwelling units pursuant to Section 65852.1 or second units pursuant to Section 65852.2, but this division shall be applicable to the sale or transfer, but not leasing, of those units.

(Added by Stats.1983, c. 1013, § 1.5, eff. Sept. 22, 1983.)

Historical and Statutory Notes

Former § 66412.2, added by Stats.1979, c. 947, p. 3270, § 2, was renumbered § 66412.3 and amended by Stats.1983, c. 1013, § 1.

§ 66412.3. Housing needs of region; effect of ordinances; consideration

In carrying out the provisions of this division, each local agency shall consider the effect of ordinances and actions adopted pursuant to this division on the housing needs of the region in which the local jurisdiction is situated

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and balance these needs against the public service needs of its residents and available fiscal and environmental resources.

(Formerly § 66412.2, added by Stats.1979, c. 947, p. 3270, § 2. Renumbered § 66412.3 and amended by Stats.1983, c. 1013, § 1, eff. Sept. 22, 1983.)

Historical and Statutory Notes

The 1983 amendment renumbered the section without change to the text.

§ 66412.5. Applicability of division; exclusion

When so provided by local ordinance, this division shall be inapplicable to subdivisions of four parcels or less for construction of removable commercial buildings having a floor area of less than 100 square feet.

(Added by Stats.1977, c. 412, p. 1425, § 1.)

Historical and Statutory Notes

The addition of § 66412.5 by Stats.1972, c. 942, p. 1699, § 2, failed to become operative under the provisions of § 3 of that act.

Library References

Municipal Corporations ⇨43.
Zoning and Planning ⇨11.5.
WESTLAW Topic Nos. 268, 414.

C.J.S. Municipal Corporations §§ 83, 84.
C.J.S. Zoning and Land Planning § 48.

§ 66412.6. Presumption of lawful creation of certain parcels

(a) For purposes of this division or of a local ordinance enacted pursuant thereto, any parcel created prior to March 4, 1972, shall be conclusively presumed to have been lawfully created if the parcel resulted from a division of land in which fewer than five parcels were created and if at the time of the creation of the parcel, there was no local ordinance in effect which regulated divisions of land creating fewer than five parcels.

(b) For purposes of this division or of a local ordinance enacted pursuant thereto, any parcel created prior to March 4, 1972, shall be conclusively presumed to have been lawfully created if any subsequent purchaser acquired that parcel for valuable consideration without actual or constructive knowledge of a violation of this division or the local ordinance. Owners of parcels or units of land affected by the provisions of this subdivision shall be required to obtain a certificate of compliance or a conditional certificate of compliance pursuant to Section 66499.35 prior to obtaining a permit or other grant of approval for development of the parcel or unit of land. For purposes of determining whether the parcel or unit of land complies with the provisions of this division and of local ordinances enacted pursuant thereto, as required pursuant to subdivision (a) of Section 66499.35, the presumption declared in this subdivision shall not be operative.

(c) This section shall become operative January 1, 1995.

(Added by Stats.1988, c. 1041, § 2, operative Jan. 1, 1994. Amended by Stats.1993, c. 500 (S.B.121), § 2, operative Jan. 1, 1995.)

§ 66412.6

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Historical and Statutory Notes

The 1993 amendment, in subd. (c), changed the deferred operative date of the section from Jan. 1, 1994, to Jan. 1, 1995.

Former § 66412.6, added by Stats.1980, c. 403, § 1, amended by Stats.1981, c. 1184, § 1;

Stats.1988, c. 1041, § 1; Stats.1993, c. 500 (S.B.121), § 1, providing a presumption of the lawful creation of certain parcels, was repealed by its own terms on Jan. 1, 1995.

Library References

Zoning and Planning ⇨21.
WESTLAW Topic No. 414.

C.J.S. Zoning and Land Planning §§ 18, 19, 37.

Notes of Decisions

Construction and application 1

1. Construction and application

County was required to issue certificates of compliance for 15 lots that were described on map properly recorded under predecessor stat-

ute to Subdivision Map Act, as well as local ordinance enacted thereunder, and certificates of compliance or conditional certificates of compliance for fractions of 17 other lots described on map, which fractions were subsequently created by metes and bound conveyances in which none of lots were identified or recognized. 74 Ops.Atty.Gen. 149, 8-13-91.

§ 66412.7. Time of establishment of subdivision

A subdivision shall be deemed established for purposes of subdivision (d) of Section 66499.30 and any other provision of this division on the date of recordation of the final map or parcel map, except that in the case of (1) maps filed for approval prior to March 4, 1972, and subsequently approved by the local agency or (2) subdivisions exempted from map requirements by a certificate of exception (or the equivalent) applied for prior to such date and subsequently issued by the local agency pursuant to local ordinance, the subdivision shall be deemed established on the date the map or application for a certificate of exception (or the equivalent) was filed with the local agency. (Added by Stats.1980, c. 479, p. 993, § 1.)

Library References

Zoning and Planning ⇨372.1.
WESTLAW Topic No. 414.
C.J.S. Zoning and Land Planning § 191.

Notes of Decisions

Construction and application 1

1. Construction and application

Lots 1, 2 and 3 did not constitute separate and distinct parcels of land legally subdivided within meaning of the state map act by prior United States Survey Map, and were not there-

fore exempt from regulation under the map act and local ordinances, and because the lots were not legal subdivisions prior to the map act, no merger issue was raised by common ownership of entire parcel. John Taft Corp. v. Advisory Agency For Ventura County (Ventura County) (App. 2 Dist. 1984) 207 Cal.Rptr. 840, 161 Cal. App.3d 749.

§ 66412.8. Repealed by Stats.1984, c. 1201, § 1, eff. Jan. 1, 1990

Historical and Statutory Notes

The repealed section, relating to parcels created prior to March 4, 1972, was added by Stats.1984, c. 1201, § 1.

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§ 66413. Annexation of subdivided area to city; final map as governing; annexation before map final

(a) When any area in a subdivision as to which a final map has been finally approved by a board of supervisors and filed for record pursuant to this division is thereafter annexed to a city, the final map and any agreements relating to the subdivision shall continue to govern the subdivision.

(b) When any area in a subdivision or proposed subdivision as to which a tentative map or vesting tentative map has been filed but a final map has not been finally approved, or as to which a parcel map is required by this division or local ordinance but the final act required to make the parcel map effective has not been taken, is annexed to a city, all procedures and regulations required by this division or by local ordinance of the annexing city shall be deemed to commence as of the effective date of the annexation and the map shall comply with the requirements of any applicable ordinance of the city to which the area is annexed.

(Added by Stats.1974, c. 1536, p. 3465, § 4, operative March 1, 1975. Amended by Stats.1986, c. 613, § 1.)

Historical and Statutory Notes

The 1986 amendment, in subd. (b), inserted "or vesting tentative map"; and made nonsubstantive changes.

Derivation: Bus. & Prof.C. former § 11619, added by Stats.1959, c. 2044, p. 4724, § 1.

§ 66413.5. Repealed by Stats.1991, c. 354 (A.B.749), § 1, operative Jan. 1, 1995

Historical and Statutory Notes

The repealed section, added by Stats.1988, c. 1330, § 1, amended by Stats.1991, c. 354 (A.B. 749), § 1, relating to approval of final maps for

subdivisions in newly incorporated cities, was repealed by its own terms.

§ 66413.7. Written notices of proposed public school site within development; investigation and report; conditions for acquisition

Whenever there is consideration of an area within a development for a public school site, the advisory agency shall give the State Department of Education written notice of the proposed site. If the site is within the distance of an airport runway as described in Section 39005 of the Education Code, the department shall notify the State Department of Transportation as required by the section. The State Department of Education shall investigate the proposed site and, within 35 days after receipt of the notice, shall submit to the advisory agency and school district a written report and its recommendations concerning the site.

The governing board of the school district shall not acquire title to the property until the report of the State Department of Education has been received. If the report does not favor the acquisition of the property for a schoolsite, the governing board shall not acquire title to the property until 30 days after the department's report has been read at a public hearing duly called after 10 days' notice published once in a newspaper of general circulation

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within the school district or, if there is no newspaper of this type, in a newspaper of general circulation within the county in which the property is located.

(Added by Stats.1989, c. 1209, § 29, eff. Oct. 1, 1989.)

Article 2

DEFINITIONS

Section

- 66414. Application of definitions.
- 66415. Advisory agency.
- 66416. Appeal board.
- 66416.5. City engineer.
- 66417. County surveyor.
- 66418. Design.
- 66418.1. Development.
- 66418.2. Environmental subdivision; approval or conditional approval; conditions; abandonment; application of section.
- 66419. Improvement.
- 66420. Local agency.
- 66421. Local ordinance.
- 66422. Certificate of exception.
- 66423. Subdivider.
- 66424. Subdivision.
- 66424.1. Subdivision where equalized county assessment roll not prepared; consecutive subdivision.
- 66424.2. Repealed.
- 66424.5. Tentative map; vesting tentative map.
- 66424.6. Designated remainder or omitted parcel; requirements; election.

Article 2 was added by Stats.1974, c. 1536, p. 3456, § 4, operative March 1, 1975.

Cross References

Statement in real property sales contract of compliance with this division, see Civil Code § 2985.51.

§ 66414. Application of definitions

The definitions in this article apply to the provisions of this division only and do not affect any other provisions of law.

(Added by Stats.1974, c. 1536, p. 3465, § 4, operative March 1, 1975.)

Historical and Statutory Notes

Derivation: Bus. & Prof.C. former § 11501, Stats.1937, c. 670, p. 1864, § 2.
added by Stats.1943, c. 128, p. 865, § 1.
Stats.1941, c. 537, p. 1857, § 1.

Library References

Municipal Corporations ¶43.
Zoning and Planning ¶9.
WESTLAW Topic Nos. 268, 414.

C.J.S. Municipal Corporations §§ 83, 84.
C.J.S. Zoning and Land Planning § 8.

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§ 66415. Advisory agency

“Advisory agency” means a designated official or an official body charged with the duty of making investigations and reports on the design and improvement of proposed divisions of real property, the imposing of requirements or conditions thereon, or having the authority by local ordinance to approve, conditionally approve or disapprove maps.

(Added by Stats.1974, c. 1536, p. 3465, § 4, operative March 1, 1975.)

Historical and Statutory Notes

Derivation: Bus. & Prof.C. former § 11509, Stats.1937, c. 670, p. 1864, § 2.
added by Stats.1943, c. 128, p. 866, § 1.
Stats.1941, c. 537, p. 1857, § 1.

§ 66416. Appeal board

“Appeal board” means a designated board or other official body charged with the duty of hearing and making determinations upon appeals with respect to divisions of real property, the imposition of requirements or conditions thereon, or the kinds, nature and extent of the design or improvements, or both, recommended or decided by the advisory agency to be required.

(Added by Stats.1974, c. 1536, p. 3466, § 4, operative March 1, 1975.)

Historical and Statutory Notes

Derivation: Bus. & Prof.C. former § 11512,
added by Stats.1961, c. 194, p. 1200, § 1,
amended by Stats.1965, c. 1180, p. 2980, § 3.

§ 66416.5. City engineer

(a) “City engineer” means the person authorized to perform the functions of a city engineer. The land surveying functions of a city engineer may be performed by a city surveyor, if that position has been created by the local agency.

(b) A city engineer registered as a civil engineer after January 1, 1982, shall not be authorized to prepare, examine, or approve the surveying maps and documents. The examinations, certifications, and approvals of the surveying maps and documents shall only be performed by a person authorized to practice land surveying pursuant to the Professional Land Surveyors Act (Chapter 15 (commencing with Section 8700) of Division 3 of the Business and Professions Code) or a person registered as a civil engineer prior to January 1, 1982, pursuant to the Professional Engineers Act (Chapter 7 (commencing with Section 6700) of Division 3 of the Business and Professions Code).

(c) Nothing contained in this provision shall prevent a city engineer from delegating the land surveying functions to a person authorized to practice land surveying. Where there is no person authorized to practice land surveying within the city or agency, nothing shall prevent the city engineer from contracting with a person who is authorized to practice land surveying to perform the land surveying functions.

(Added by Stats.1988, c. 100, § 1. Amended by Stats.1996, c. 872 (A.B.3472), § 63.)

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Historical and Statutory Notes

The 1996 amendment designated the existing section as subd. (a) and added subds. (b) and (c).

Short title, legislative findings, and intent of Stats.1996, c. 872 (A.B.3472), see Historical and Statutory Notes under Business and Professions Code § 8762.

Subordination of legislation by Stats.1996, c. 872 (A.B.3472), to other 1996 legislation, see Historical and Statutory Notes under Business and Professions Code § 8762.

§ 66417. County surveyor

(a) "County surveyor" includes county engineer, if there is no county surveyor.

(b) A county engineer registered as a civil engineer after January 1, 1982, shall not be authorized to prepare, examine, or approve the surveying maps and documents. The examinations, certifications, and approvals of the surveying maps and documents shall only be performed by a person authorized to practice land surveying pursuant to the Professional Land Surveyors Act (Chapter 15 (commencing with Section 8700) of Division 3 of the Business and Professions Code) or a person registered as a civil engineer prior to January 1, 1982, pursuant to the Professional Engineers Act (Chapter 7 (commencing with Section 6700) of Division 3 of the Business and Professions Code).

(Added by Stats.1974, c. 1536, p. 3464, § 4, operative March 1, 1975. Amended by Stats.1996, c. 872 (A.B.3472), § 64.)

Historical and Statutory Notes

The 1996 amendment designated the existing text as subd. (a) and added subd. (b).

Short title, legislative findings, and intent of Stats.1996, c. 872 (A.B.3472), see Historical and Statutory Notes under Business and Professions Code § 8762.

Subordination of legislation by Stats.1996, c. 872 (A.B.3472), to other 1996 legislation, see

Historical and Statutory Notes under Business and Professions Code § 8762.

Derivation: Bus. & Prof.C. former § 11502, added by Stats.1943, c. 128, p. 865, § 1.

Stats.1941, c. 537, p. 1857, § 1.

Stats.1937, c. 670, p. 1864, § 2.

§ 66418. Design

"Design" means: (1) street alignments, grades and widths; (2) drainage and sanitary facilities and utilities, including alignments and grades thereof; (3) location and size of all required easements and rights-of-way; (4) fire roads and firebreaks; (5) lot size and configuration; (6) traffic access; (7) grading; (8) land to be dedicated for park or recreational purposes; and (9) such other specific physical requirements in the plan and configuration of the entire subdivision as may be necessary to ensure consistency with, or implementation of, the general plan or any applicable specific plan.

(Added by Stats.1974, c. 1536, p. 3466, § 4, operative March 1, 1975. Amended by Stats.1984, c. 1187, § 1.)

Historical and Statutory Notes

The 1984 amendment inserted "physical" following "such other specific", deleted "or convenient" following "necessary", substituted "con-

sistency with," for "conformity to", substituted "or any applicable specific plan" for "required by Article 5 (commencing with Section 65300)

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of Chapter 3 of Division 1 of this title, or any specific plan adopted pursuant to Article 8 (commencing with Section 65450) of Chapter 3 of Division 1 of this title," and made a nonsubstantive change.

Derivation: Bus. & Prof.C. former § 11510, added by Stats.1943, c. 128, p. 866, § 1, amended by Stats.1965, c. 1809, p. 4183, § 1; Stats. 1971, c. 1446, p. 2853, § 1.

Cross References

Limitations on criteria for design rendering infeasible development of housing, see Government Code § 65913.2.

Law Review and Journal Commentaries

Land development and the environment:
Subdivision Map Act. 5 Pac.L.J. 55 (1974).

Library References

Background and general effect of 1965 amendment to Bus. & Prof.C. § 11510. Rev. of 1965 Code Leg. (Cont.Educ. of Bar, 1965) page 17.
Neighborhood parks in new subdivisions. Report of Assembly Interim Committee on

Municipal and County Government, 1963, to 1965, vol. 6, No. 21, p. 31. Vol. 1 of Appendix to Journal of Assembly, Reg.Sess., 1965.

Notes of Decisions

- Grading 1
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- Traffic lights 3

subdivision plan approved could not exceed limitations imposed by applicable general or specific plans, and the plans would have to provide for existing and proposed major thoroughfares. 56 Ops.Atty.Gen. 274 (1973).

1. Grading

Provision of this section including grading within definition of "design" indicates a legislative intention that grading be considered both as an individual design activity and an integral component of given multiphase design activities, in view of fact that repealed predecessor statute, Bus. & Prof.C. § 11510 did not include grading within the definition of "design" but did include grading for streets within the definition of "design". 58 Ops.Atty.Gen. 430 (1975).

Local governing bodies could require that all roads created pursuant to a subdivision or land project determine lot boundary lines. 56 Ops. Atty.Gen. 105 (1973).

Under Bus. & Prof.C. § 11525, vesting control of the design of subdivisions in the governing bodies of cities and counties, a requirement by city of curved streets as opposed to straight streets as a condition of approval of a proposed subdivision could in most cases be upheld as valid exercise of police power either upon considerations of safety, the general welfare, or both. 43 Ops.Atty.Gen. 89, 2-25-64.

2. Streets and roads

Although developer could reasonably have relied that State Department of Transportation had made final decision and desired no highway widening as condition to connection of new street to highway, he could not reasonably rely upon assumption that city council controlled conditions surrounding encroachment on highway when, as a matter of law, that power remained in State Department of Transportation. *La Canada Flintridge Development Corp. v. Department of Transp.* (App. 2 Dist. 1985) 212 Cal.Rptr. 334, 166 Cal.App.3d 206, review denied.

Agency of local government could consider reasonable conditions of street widening, dedication of right-of-way, and required installation of street improvements as an alternative to disapproval of a proposed subdivision map, but the

3. Traffic lights

This section and §§ 66411, 66419 do not authorize the imposition of a general fee, as a condition of approving subdivision maps, for the installation of traffic lights off the land to be subdivided. 63 Ops.Atty.Gen. 64 (1980).

4. Smoke detectors

Nothing in Subdivision Map Act (§ 66410 et seq.) forbids imposition of conditions for approval of tentative subdivision map for each of four condominium conversion projects that repairs and improvements in comprehensive building condition report be completed and that approved smoke detectors be installed in each unit. *Soderling v. City of Santa Monica* (App. 2 Dist. 1983) 191 Cal.Rptr. 140, 142 Cal.App.3d 501.

§ 66418.1. Development

“Development” means the uses to which the land which is the subject of a map shall be put, the buildings to be constructed on it, and all alterations of the land and construction incident thereto.

(Added by Stats.1984, c. 1113, § 2, operative Jan. 1, 1986.)

Historical and Statutory Notes

Section 10 of Stats.1984, c. 1113, provides: Legislative intent of Stats.1984, c. 1113, see
“Sections 1 to 9, inclusive, of this act shall become operative January 1, 1986, except Section 66498.8 of the Government Code, which shall become operative January 1, 1985.” Historical and Statutory Notes under Government Code § 66498.1.

Library References

Health and Environment ☞25.5(4). C.J.S. Health and Environment §§ 91 et seq.,
Statutes ☞179. 130, 132.
WESTLAW Topic Nos. 199, 361. C.J.S. Statutes § 315.

§ 66418.2. Environmental subdivision; approval or conditional approval; conditions; abandonment; application of section

(a) “Environmental subdivision” means a subdivision of land pursuant to this division for biotic and wildlife purposes that meets all of the conditions specified in subdivision (b).

(b) Prior to approving or conditionally approving an environmental subdivision, the local agency shall find each of the following:

(1) That factual biotic or wildlife data, or both, are or will be available to the local agency approving the environmental subdivision to support the application for approval.

(2) That provisions have been made for the perpetual maintenance of the property as a biotic or wildlife habitat, or both, in accordance with the conditions specified by any local, state, or federal agency requiring mitigation.

(3) That an easement has been recorded in the county in which the land is located to ensure compliance with the conditions specified by any local, state, or federal agency requiring the mitigation. The easement shall contain a covenant with a county, city, or nonprofit organization running with the land in perpetuity, that the landowner shall not construct or permit the construction of improvements except those for which the right is expressly reserved in the instrument. This reservation shall be not inconsistent with the purposes of this section and shall not be incompatible with maintaining and preserving the biotic or wildlife character, or both, of the land.

(4) The real property is at least 20 acres in size, or it is less than 20 acres in size, but is contiguous to other land that would also qualify as an environmental subdivision and the total combined acreage would be 20 acres or more.

(c) Notwithstanding subdivision (a) of Section 66411.1, any improvement, dedication, or design required by the local agency as a condition of approval of an environmental subdivision shall be solely for the purposes of ensuring

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compliance with the conditions required by the local, state, or federal agency requiring the mitigation.

(d) After recordation of an environmental subdivision, a subdivider may only abandon an environmental subdivision by reversion to acreage pursuant to Chapter 6 (commencing with Section 66499.11) if the local agency finds that all of the following conditions exist:

(1) None of the parcels created by the environmental subdivision has been sold or exchanged.

(2) None of the parcels is being used, set aside, or required for mitigation purposes pursuant to this section.

(3) Upon abandonment and reversion to acreage pursuant to this subdivision, the easement for biotic and wildlife purposes is extinguished.

(e) If the environmental subdivision is abandoned and reverts to acreage pursuant to subdivision (d), all local, state, and federal requirements shall apply.

(f) This section shall apply only upon the written request of the landowner at the time the land is divided. This section is not intended to limit or preclude subdivision by other lawful means for the mitigation of impacts to the environment, or of the land devoted to these purposes, or to require the division of land for these purposes.

(g) Notwithstanding any other provision of law, no legislative body shall approve or conditionally approve a subdivision pursuant to this section on or after January 1, 2003.

(Added by Stats.1995, c. 955 (A.B.1287), § 1.)

Law Review and Journal Commentaries

Review of selected 1995 California legislation.
27 Pac.L.J. 349 (1996).

§ 66419. Improvement

(a) "Improvement" refers to any street work and utilities to be installed, or agreed to be installed, by the subdivider on the land to be used for public or private streets, highways, ways, and easements, as are necessary for the general use of the lot owners in the subdivision and local neighborhood traffic and drainage needs as a condition precedent to the approval and acceptance of the final map thereof.

(b) "Improvement" also refers to any other specific improvements or types of improvements, the installation of which, either by the subdivider, by public agencies, by private utilities, by any other entity approved by the local agency, or by a combination thereof, is necessary to ensure consistency with, or implementation of, the general plan or any applicable specific plan.

(Added by Stats.1974, c. 1536, p. 3466, § 4, operative March 1, 1975. Amended by Stats.1984, c. 1187, § 2.)

Historical and Statutory Notes

The 1984 amendment, in subd. (a), substituted "refers to any" for "refers to such"; and rewrote subd. (b), which had read:

"'Improvement' also refers to such other specific improvements or types of improvements, the installation of which, either by the subdivider, by public agencies, by private utilities, by any other entity approved by the local agency or by a combination thereof, is necessary or convenient to insure conformity to or implementation of the general plan required by Article 5 (commencing with Section 65300) of Chapter 3 of

Division 1 of this title, or any specific plan adopted pursuant to Article 8 (commencing with Section 65450) of Chapter 3 of Division 1 of this title."

Derivation: Bus. & Prof.C. former § 11511, added by Stats.1943, c. 128, p. 866, § 1, amended by Stats.1953, c. 1094, p. 2582, § 1; Stats. 1955, c. 1593, p. 2888, § 2; Stats.1971, c. 1446, p. 2853, § 2.

Stats.1941, c. 537, p. 1857, § 1.

Stats.1937, c. 670, p. 1864, § 2.

Cross References

Final maps, filing for approval, see Government Code § 66457.

Limitations on criteria for improvements rendering infeasible development of housing, see Government Code § 65913.2.

Law Review and Journal Commentaries

Land development and the environment: Subdivision Map Act. 5 Pac.L.J. 55 (1974).

Provision for parks in municipalities. 12 UCLA L.Rev. 917 (1965).

Subdivisions: Conditions imposed by local government. John Paul Hanna, 6 Santa Clara L.Rev. 172 (1966).

Notes of Decisions

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- Purpose** 2
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3. Ordinances

Legislative bodies of local agencies can promulgate ordinances in compliance with § 66410 et seq. to regulate and control design and improvement of subdivisions and, in so doing, condition map approval on the satisfaction of conditions imposed by ordinances in consonance with § 66410 et seq. 59 Ops.Atty.Gen. 129 (1976).

4. Fixed works

Within proposed subdivision for residential use, improvements for drainage, water supply, flood control, municipal improvements, highways, and sewage, as well as improvements of a permanent and firm nature, are considered as fixed works under Professional Engineers Act, Bus. & Prof.C. § 6731. 58 Ops.Atty.Gen. 430, 6-18-75.

A grading plan is also a fixed work if it is executed in connection with an improvement which is a fixed work or, if, standing alone, it is of a permanent and firm nature. 58 Ops.Atty. Gen. 430, 6-18-75.

5. Streets

Although developer could reasonably have relied that State Department of Transportation had made final decision and desired no highway widening as condition to connection of new street to highway, he could not reasonably rely upon assumption that city council controlled conditions surrounding encroachment on highway when, as a matter of law, that power re-

1. Construction and application

Two categories of improvements are established by this section: subd. (a) relates to improvements with a clear engineering nexus ("street work and utilities to be installed on the land to be used for streets, highways, ways and easements") necessary for use of those in the subdivision and local traffic and drainage needs, and subd. (b) relating to improvements necessary or convenient to insure conformity to or implementation of the general plan which cities and counties are required to adopt for comprehensive long term planning of their physical development. 58 Ops.Atty.Gen. 430, 6-18-75.

2. Purpose

Purpose of Subdivision Map Act (§ 66410 et seq.) is to coordinate planning with the community pattern laid out by local authorities and to assure proper improvements are made so the area does not become an undue burden on the taxpayers. *Bright v. Board of Sup'rs of San Diego County* (App. 4 Dist. 1977) 135 Cal.Rptr. 758, 66 Cal.App.3d 191.

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mained in State Department of Transportation. *La Canada Flintridge Development Corp. v. Department of Transp.* (App. 2 Dist. 1985) 212 Cal.Rptr. 334, 166 Cal.App.3d 206, review denied.

Dist. 1972) 104 Cal.Rptr. 633, 28 Cal.App.3d 450.

Fact that plaintiff was obligated to construct road across its property to boundary of defendant's property by reason of filing tentative tract map did not render unenforceable for want of sufficient consideration contract whereby defendant was to pay for construction of such road, where plaintiff's obligation to construct the improvement would arise only when the final subdivision map was filed and where, by its contract with defendant, plaintiff committed itself to constructing the improvement within a definite time period to be designated by defendant. *Potrero Homes v. Western Orbis Co.* (App. 2

Board of supervisors could, as a condition of approving a subdivision map, require improvement of road right-of-way previously dedicated but not improved or require fencing of an existing ditch but could not require dedication of property for school purposes or dedication and maintenance of park or planting strip. 29 Ops. Atty.Gen. 49 (1957).

6. Traffic lights

This section and §§ 66411, 66418 do not authorize the imposition of a general fee, as a condition of approving subdivision maps, for the installation of traffic lights off the land to be subdivided. 63 Ops.Atty.Gen. 64 (1980).

§ 66420. Local agency

"Local agency" means a city, county or city and county.

(Added by Stats.1974, c. 1536, p. 3466, § 4, operative March 1, 1975.)

§ 66421. Local ordinance

"Local ordinance" refers to a local ordinance regulating the design and improvement of subdivisions, enacted by the legislative body of any local agency under the provisions of this division or any prior statute, regulating the design and improvements of subdivisions, insofar as the provisions of the ordinance are consistent with and not in conflict with the provisions of this division.

(Added by Stats.1974, c. 1536, p. 3466, § 4, operative March 1, 1975.)

Historical and Statutory Notes

Derivation: Bus. & Prof.C. former § 11506, added by Stats.1943, c. 128, p. 865, § 1.

Stats.1937, c. 670, pp. 1864, 1873, §§ 2, 27.

Stats.1941, c. 537, p. 1857, § 1.

Law Review and Journal Commentaries

Common law and statutory dedication in California. 53 Cal.L.Rev. 559 (1965).

Police power, planning and aesthetics. Theodore M. Norton, 7 Santa Clara L.Rev. 171 (1967).

Notes of Decisions

Authority to adopt 2 Construction and application 1

1. Construction and application

Subdivision Map Act, Bus. & Prof.C. § 11500 et seq. authorized local ordinances relating to matters covered by the act. *Longridge Estates v. City of Los Angeles* (App. 2 Dist. 1960) 6 Cal.Rptr. 900, 183 Cal.App.2d 533.

The phrase "local ordinance", as used in Subdivision Map Act, Bus. & Prof.C. § 11506 providing that governing body shall approve subdivision map if it conforms to all requirements of the act and of any local ordinance which is applicable, refers to an ordinance regulating design and improvement of subdivision insofar as such regulations are consistent with and not in conflict with the act. *Kelber v. City of Up-land* (App. 1957) 155 Cal.App.2d 631, 318 P.2d 561.

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Note 2

2. Authority to adopt

Power to adopt supplemental ordinances or regulations in connection with matters covered by the Subdivision Map Act, Bus. & Prof.C. § 11500 et seq., though not expressly granted, could also be implied provided they bore a reasonable relation to purposes and requirements of the act and were not inconsistent with it, but local ordinances inconsistent with language and apparent intent of act would be invalid. *Friends of Lake Arrowhead v. San Ber-*

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nardino County Bd. of Sup'rs (App. 4 Dist. 1974) 113 Cal.Rptr. 539, 38 Cal.App.3d 497.

Legislative bodies of local agencies can promulgate ordinances in compliance with § 66410 et seq. to regulate and control design and improvement of subdivisions and, in so doing, condition map approval on the satisfaction of conditions imposed by ordinances in consonance with § 66410 et seq. 59 Ops.Atty.Gen. 129 (1976).

§ 66422. Certificate of exception

"Certificate of exception" means a valid authorization to subdivide land, issued by the County of Los Angeles pursuant to an ordinance thereof, adopted between September 22, 1967, and March 4, 1972, and which at the time of issuance did not conflict with this division or any statutory predecessor thereof.

(Added by Stats.1988, c. 1041, § 3.)

Historical and Statutory Notes

Former § 66422, added by Stats.1974, c. 1536, § 4, defining "streets", was repealed by Stats.1985, c. 114, § 8.

§ 66423. Subdivider

"Subdivider" means a person, firm, corporation, partnership or association who proposes to divide, divides or causes to be divided real property into a subdivision for himself or for others except that employees and consultants of such persons or entities, acting in such capacity, are not "subdividers."

(Added by Stats.1974, c. 1536, p. 3466, § 4, operative March 1, 1975. Amended by Stats.1976, c. 660, p. 1629, § 1.)

Historical and Statutory Notes

The 1976 amendment added "except that employees and consultants of such persons or entities, acting in such capacity, are not 'subdividers'".

Stats.1941, c. 537, p. 1857, § 1.

Stats.1937, c. 670, p. 1864, § 2.

Derivation: Bus. & Prof.C. former § 11508, added by Stats.1943, c. 128, p. 866, § 1.

Law Review and Journal Commentaries

Land development and the environment:
Subdivision Map Act. 5 Pac.L.J. 55 (1974).

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1. Landowners, generally

Despite landowners' contention that their land was already two legal parcels, county

board of supervisors properly concluded that landowners seeking to set aside southerly 12 acres of their property as separate legal parcel were "subdividers" within meaning of this section, and thus, board had authority to deny landowners certificate of compliance pursuant to Subdivision Map Act (§ 66410 et seq.). *Kirk v. San Luis Obispo County* (App. 2 Dist. 1984) 202 Cal.Rptr. 606, 156 Cal.App.3d 453.

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Husband who acquired one parcel as his separate property and acquired adjacent parcel with his wife as joint tenant, transferred his interest in a portion of the joint tenancy parcel to his wife as separate property, and subsequently proposed to divide into four lots the parcel acquired as his separate property was a "subdivider" within Subdivision Map Act, Bus. & Prof.C. § 11508. *Bright v. Board of Sup'rs of San Diego County* (App. 4 Dist. 1977) 135 Cal. Rptr. 758, 66 Cal.App.3d 191.

2. Public agencies

University is not bound by provisions of Subdivision Map Act, Gov. Code, §§ 66410-66599.37, when it constructs for-sale on-campus homes as part of program to provide faculty housing. 75 Ops.Atty.Gen. 98, 6-4-92.

3. Partition action

Twelve property owners who did not disclose to court in partition action commenced by one

owner against the other eleven that purpose of the action was to circumvent subdivision laws and who were all represented by the same counsel and had obtained judicial approval of referee's report recommending creation of twelve parcels "caused" dividing of the land within definition of subdivider in Bus. & Prof.C. § 11508 as one who caused land to be divided into subdivision. *Pratt v. Adams* (App. 1 Dist. 1964) 40 Cal.Rptr. 505, 229 Cal.App.2d 602.

4. Tax sales

Subdivision Map Act (§ 66410 et seq.) and subdivision ordinances enacted pursuant to the act do not apply to a tax collector's sale of a portion of a tax-deeded parcel pursuant to Revenue and Taxation Code § 3691. 64 Ops.Atty.Gen. 814 (1981).

§ 66424. Subdivision

"Subdivision" means the division, by any subdivider, of any unit or units of improved or unimproved land, or any portion thereof, shown on the latest equalized county assessment roll as a unit or as contiguous units, for the purpose of sale, lease or financing, whether immediate or future. Property shall be considered as contiguous units, even if it is separated by roads, streets, utility easement or railroad rights-of-way. "Subdivision" includes a condominium project, as defined in subdivision (f) of Section 1351 of the Civil Code, a community apartment project, as defined in subdivision (d) of Section 1351 of the Civil Code, or the conversion of five or more existing dwelling units to a stock cooperative, as defined in subdivision (m) of Section 1351 of the Civil Code.

(Added by Stats.1974, c. 1536, p. 3467, § 4, operative March 1, 1975. Amended by Stats.1976, c. 204, p. 386, § 1; Stats.1976, c. 1263, p. 5596, § 1; Stats.1977, c. 234, p. 1033, § 3, eff. July 7, 1977; Stats.1979, c. 1192, p. 4691, § 1; Stats.1982, c. 87, § 5, eff. March 1, 1982; Stats.1992, c. 400 (S.B.1519), § 1; Stats.1994, c. 458 (A.B.1414), § 3.)

Historical and Statutory Notes

The 1976 amendments added "except for leases of agricultural land for agricultural purposes" to the first sentence; substituted "for any purpose" for "for purposes of computing the number of parcels" in the fourth sentence; and added a fifth sentence.

Section affected by two or more acts at the same session of the legislature, see Government Code § 9605.

The 1977 amendment inserted ", by any subdivider, of any units" and ", or any portion thereof," in the first sentence; and substituted "for purposes of computing the number of parcels" for "for any purpose" in the former fourth sentence.

Section 17 of Stats.1977, c. 234, p. 1041, provided:

"The Legislature finds and declares that the addition of the phrase "by any subdivider" in § 66424 of the Government Code, as amended by this act, is declaratory of existing law."

The 1979 amendment added ", or the conversion of five or more existing dwelling units to stock cooperative, is defined in Section 11003.2 of the Business and Professions Code" to the third sentence.

Section 8 of Stats.1979, c. 1192, p. 4695, as amended by Stats.1980, c. 512, p. 1434, § 7; Stats.1980, c. 1048, p. 3354, § 1.5; Stats.1983, c. 976, § 1, provides:

"Section 8 of Chapter 1192 of the Statutes of 1979 is amended to read:

"Sec. 8. (a) Except as provided in subdivision (b):

"(1) Any sales made pursuant to a subdivision public report hereafter issued by the Department of Real Estate for a stock cooperative conversion shall not be deemed invalid under the provisions of this act, if the application for that public report, including payment of an appropriate fee, was made prior to January 1, 1980; provided that the stock cooperative conversion occurred in the jurisdiction of governmental agencies which did not regulate such conversions by legislative action.

"(2) Paragraph (1) shall not apply to stock cooperative conversions which occur in the jurisdiction of governmental agencies which by legislative action regulated such conversions under the provisions of the Subdivision Map Act prior to January 1, 1980. Governmental agency regulation of such conversions under the provisions of the Subdivision Map Act, which was exercised pursuant to a legislative enactment prior to January 1, 1980, shall not be invalidated by this section; provided, that no such regulation enacted after July 1, 1979, shall affect a stock cooperative conversion if the application for that conversion's public report, including payment of an appropriate fee, was made prior to July 1, 1979.

"(b) If the application for a subdivision public report for a stock cooperative conversion in a general law city, including payment of an appropriate fee, was made prior to September 30, 1979, and the general law city did not by legislative action regulate the conversion under the provisions of the Subdivision Map Act prior to the application for the subdivision public report, including payment of an appropriate fee, the provisions of this act shall not affect the stock cooperative conversion and the Real Estate Commissioner shall, if the conversion meets all applicable requirements of Chapter 1 (commencing with Section 11000) of Part 2 of Division 4 of the Business and Professions Code, issue the public report for the conversion.

"However, a stock cooperative conversion described in this subdivision shall, as a condition of the issuance of the public report, meet the requirements of the provisions of Section 66427.1 of the Government Code without the requirement of obtaining a final map approval of the stock cooperative conversion.

"This section shall become inoperative on June 30, 1984, and as of January 1, 1985, is repealed, unless a later enacted statute, which becomes effective on or before June 30, 1984, deletes or extends the date on which it becomes inoperative and is repealed."

The 1982 amendment deleted the fourth sentence, which read "Any conveyance of land to a governmental agency, public entity or public utility shall not be considered a division of land for purposes of computing the number of parcels."

The 1992 amendment substituted "subdivision (f) of Section 1351 of the Civil Code" for "Section 1350 of the Civil Code", substituted "subdivision (d) of Section 1351 of the Civil Code" for "Section 11004 of the Business and Professions Code", and substituted "subdivision (m) of Section 1351 of the Civil Code" for "Section 11003.2 of the Business and Professions Code".

The 1994 amendment in the first sentence defining subdivision deleted the exception relating to leases of agricultural land for agricultural purposes from the end of the sentence; and deleted the last sentence of the section which had read:

"As used in this section, 'agricultural purposes' means the cultivation of food or fiber or the grazing or pasturing of livestock."

Derivation: Bus. & Prof.C. former § 11507, added by Stats.1943, c. 128, p. 866, § 1, amended by Stats.1957, c. 39, p. 598, § 4.

Bus. & Prof.C. former § 11535, added by Stats.1943, c. 128, p. 867, § 1, amended by Stats.1943, c. 668, p. 2423, § 1; Stats.1947, c. 259, p. 822, § 1; Stats.1955, c. 1013, p. 1924, § 3; Stats.1957, c. 1039, p. 2273, § 1; Stats. 1959, c. 306, p. 2215, § 2; Stats.1961, c. 2060, p. 4287, § 1; Stats.1963, c. 1551, p. 3136, § 1; Stats.1965, c. 1180, p. 2981, § 7; Stats.1967, c. 727, p. 2098, § 3; Stats.1967, c. 856, p. 2793, § 1; Stats.1968, c. 269, p. 601, § 2; Stats.1968, c. 331, p. 718, § 4; Stats.1968, c. 520, p. 1164, § 4; Stats.1970, c. 500, p. 983, § 1; Stats.1971, c. 358, p. 716, § 1; Stats.1971, c. 1446, p. 2854, § 5; Stats.1972, c. 706, p. 1287, § 2.

Bus. & Prof.C. former § 11535.1, added by Stats.1963, c. 860, p. 2096, § 4.

Stats.1941, c. 537, p. 1857, § 1.

Stats.1937, c. 670, p. 1864, § 2.

Cross References

Conveyance of land to governmental agency, public entity or public utility, division of land, see Government Code § 66426.5.

Subdivision, defined, regulation of transactions in subdivided lands, see Business and Professions Code § 11000.

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Community planning, condominium development. 37 S.Cal.L.Rev. 106 (1964).

Condominiums, cooperatives and planned developments: Real estate developers' liability. Zad Leavy and Alan D. Ross, 41 Cal.St.B.J. 318 (1966).

Cooperative apartment transfers: Evaluation of project offerings and representation of purchasers. Patrick J. Rohan, 19 Stan.L.Rev. 978 (1967).

Cooperative housing: Treatment of casualty losses, insurance and project termination. Patrick J. Rohan 2 Cal.W.L.Rev. 70 (1966).

Fee in condominium. 37 S.Cal.L.Rev. 82 (1964).

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Municipal regulation of condominium conversions. 53 S.Cal.L.Rev. 225 (1979).

Overview of California condominium law. Burton Merrill, Edward J. Cooper, Ronald M. Papell 6 Sw.U.L.Rev. 487 (1974).

Regulating vacation timesharing: A more effective approach. 29 UCLA L.Rev. 907 (1982).

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the Preface.

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2. Construction with other law

The applicability of other state law to planned subdivision construction would depend upon the specific factual situation. 56 Ops.Atty.Gen. 496, 11-28-73.

A county ordinance which provides that two contiguous parcels of land, created and maintained years prior to the passage of any local or state legislation regarding land subdivisions, remaining in separate ownership until 1970 would not be treated as "merged" when acquired by the same owner would be void as in conflict with Bus. & Prof.C. § 11535 which requires the filing of a parcel map. 56 Ops.Atty.Gen. 509, 11-29-73.

The applicability of other state law to planned subdivision construction would depend upon the specific factual situation. 56 Ops.Atty.Gen. 496, 11-28-73.

3. Latest equalized county assessment roll

The "latest equalized county assessment roll" for the purposes of the former Subdivision Map Act, Bus. & Prof.C. § 11500 et seq. was the roll in existence on the first Tuesday after the third Monday in August and remained as such roll until the last equalized roll was in existence on the same day in August on the following year. 55 Ops.Atty.Gen. 414, 11-22-72.

A county road easement would not make a unit of land in the same ownership noncontiguous and neither should the phrase "shown on the latest adopted county tax roll" be interpreted as meaning that a property owner could make four splits each time a new tax roll was adopted. 54 Ops.Atty.Gen. 213, 11-2-71.

4. Assessment parcels

Where real property had been assigned two parcel numbers on the county assessment roll

1. In general

Stats.1917, c. 1446 and subsequent legislation regarding land splits in part require that a property owner who divides his land into four or less parcels must submit a parcel map to, or seek an exemption from, the appropriate local governing body or advisory agency. 58 Ops.Atty.Gen. 393, 6-3-75.

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by the county assessor for purposes of administrative convenience, the owner for purposes of the Subdivision Map Act (Gov.C. § 66410 et seq.) could not rely upon such administrative action in the proposed sale of one of the areas. 62 Ops.Atty.Gen. 147, 3-30-79.

Where a unit of land has been subdivided in compliance with the Subdivision Map Act and three contiguous lots of that subdivision, each improved with a single family dwelling, are retained by the subdivider, the fact that the three lots have been combined as one assessment parcel by the county assessor does not require that a new parcel map be processed before any of the lots can be conveyed. 59 Ops.Atty.Gen. 581, 10-7-76.

Where the owner of a unit of real property as shown on the latest equalized county assessment roll, in a single year while his property was shown as a unit on roll, divided the unit into more than four parcels for the purpose of sale, lease, or financing, whether by successive divisions or not, a subdivision was created, subject to the Subdivision Map Act, Bus & Prof.C. § 11500 et seq. but if the unit owner divided the unit into four smaller parcels and sold one or more of the parcels and his grantees, acting independently, further divide them during the year, a subdivision was not created. 55 Ops. Atty.Gen. 414, 11-22-72.

5. Contiguous units—In general

Contiguous parcels held by the same owner "merge" for purposes of the Subdivision Map Act § 66410 et seq. if (1) a local ordinance has been adopted and the parcels come within the minimum size and development criteria, (2) the "reversion to acreage" provisions are followed, or (3) the general requirements of § 66426 et seq. for subdividing (resubdividing) property are satisfied. 64 Ops.Atty.Gen. 549, 7-3-81.

For purposes of determining whether units of land are contiguous with possible importance to the distinction between those subdivisions dividing property into five or more parcels, involving stricter requirements and more extensive procedures for approval, and those creating four or less new parcels, units of land may be separated by facilities other than roads, streets, utility easements and railroad rights-of-way and still be contiguous if the property reasonably can be developed as one subdivision. 61 Ops.Atty.Gen. 299, 6-20-78.

Certain acquisitions of contiguous parcels could be excepted from the parcel map requirements of Bus. & Prof.C. § 11535 by adoption of an ordinance waiving the parcel map requirements of this section. 56 Ops.Atty.Gen. 509, 11-29-73.

Bus. & Prof.C. § 11535 required the filing of an approved final parcel map although previous

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different owners of land separately and independently created parcels which constituted lawful building sites and separately conveyed the two contiguous parcels to the present owner. 56 Ops.Atty.Gen. 509, 11-29-73.

A commonly-owned parcel of land divided by a road was considered a contiguous unit, the division of which into five or more parcels for the purpose of sale, lease or financing would be referred to as a subdivision by Bus. & Prof.C. § 11535. 56 Ops.Atty.Gen. 105, 2-27-73.

6. — Successive divisions, contiguous units

The successive division of contiguous parcels by the same subdivider must be considered together in determining the applicable standards to be applied under the Subdivision Map Act, § 66410 et seq., regardless of whether the contiguous parcels were created by a third party in compliance with applicable law, or that a part of an earlier division had been transferred by sale or otherwise, or whether or not the parcels are created all at the same time or over a period of time, and the fact that some of the earlier parcels have been sold should not detract from the determination that a particular number of parcels have been created overall. 61 Ops.Atty. Gen. 114, 3-15-78.

A subdivision of five or more parcels is created, subject to this section and § 66426, where the owner of a unit of property as shown on the latest equalized county assessment roll divides the unit into four parcels for the purpose of sale, lease, or financing, and one parcel thereof is further subdivided during the same year by a purchaser acting independently of the owner. 59 Ops.Atty.Gen. 493, 8-20-76.

Person who files a subdivision map covering division of a portion of his contiguous real property, pursuant to the Subdivision Map Act, Bus. & Prof.C. § 11500 et seq., and who, later, decides to sell, lease, or finance the remaining portion of his property or divide it into less than five parcels for the same purpose, need not file a map covering the second disposition or division if at the time of the first division he does not have a present intent to sell, lease, or finance or divide for such purposes, either immediately or in the future, the property retained by him after the first division. 52 Ops.Atty.Gen. 79, 5-27-69.

7. — Subsequent purchasers, contiguous units

Where a unit of land had been subdivided in compliance with the Subdivision Map Act, Bus. & Prof.C. § 11500 et seq., as it read prior to March 1975, and six contiguous unimproved lots of that subdivision were purchased by an individual who was not the original subdivider, the construction of a single family residence for sale, lease, or financing on one of the lots or a

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sale of one of the lots did not constitute a division of land under this section and did not require a parcel map to be filed under the Subdivision Map Act (§ 66410 et seq.). 59 Ops. Atty.Gen. 239, 3-24-76.

1979, and application fee paid, the ordinance was inapplicable to the project under the Act's grandfather clause. Shelter Creek Development Corp. v. City of Oxnard (1983) 195 Cal. Rptr. 361, 34 Cal.3d 733, 669 P.2d 948.

8. — Multiple buildings, contiguous units

Where the owner of one parcel of land improved with a building proposed to construct a second building on a later acquired contiguous parcel, Bus. & Prof.C. § 11535 required the filing of an approved final parcel map, if the second building was to be constructed for the purpose of sale, lease or financing then or later. 56 Ops.Atty.Gen. 509, 11-29-73.

A stock cooperative conversion was not a "subdivision" within meaning of the Subdivision Map Act (§ 66410 et seq.). California Coastal Commission v. Quanta Inv. Corp. (App. 2 Dist. 1980) 170 Cal.Rptr. 263, 113 Cal.App.3d 579.

9. Condominiums

City was reasonably presumed to have used statutory, Bus. & Prof.C. § 11535.1, meaning of "subdivision" in enacting ordinance, and condominium projects were to be treated as "subdivisions" subject to dedication or "in lieu fees" provisions of Bus. & Prof.C. § 11546. Norsco Enterprises v. City of Fremont (App. 1 Dist. 1976) 126 Cal.Rptr. 659, 54 Cal.App.3d 488.

11. Multiple buildings, generally

The planned construction of five or more apartment or commercial buildings on a single parcel of land, predominantly for the purpose of leasing the units therein, is a subdivision under Bus. & Prof.C. § 11535. 56 Ops.Atty.Gen. 496, 11-28-73.

The requirements for the Subdivision Map Act (§ 66410 et seq.) are applicable to a proposed construction of a condominium project on a previously subdivided, single parcel of property. 65 Ops.Atty.Gen. 101, 1-29-82.

12. Excluded remainders

When an owner subdivides a portion of his land and retains a remainder for his personal residence, the remainder is not a subdivision parcel for the purposes of the Subdivision Map Act (§ 66410 et seq.) which requires a subdivider to obtain local government approval of the subdivision map before the subdivided parcels may be offered for sale or lease, but must be shown on the required maps as part of the area surrounding the subdivision development. 62 Ops.Atty.Gen. 246, 5-16-79.

A tentative and final subdivision map is required by § 66426 et seq. to convert an existing apartment house or an existing clustered single family development to condominiums of five or more ownerships, even if the structure or structures are located on a single lot created by an earlier approved final subdivision map. 62 Ops.Atty.Gen. 410, 8-7-79.

Subdivider who proposes the division of a remainder or area excluded from his prior division of a larger unit must include as "part of the unit or contiguous units" within this section, other parcels resulting from that prior division regardless of whether they are still shown on the tax roll to be in the subdivider's ownership. 61 Ops.Atty.Gen. 114 (1978).

Local governments possessed the powers necessary, under the Subdivision Map Act, Bus. & Prof.C. § 11500 et seq., to set general types of condominium conversion restrictions to prevent major displacement of tenants, scarcity of rental units, the diminishing or defeating of master plan concepts encouraging open occupancy and promote low and moderate income housing or to require approval by existing tenants and certain occupancy rates. 58 Ops.Atty.Gen. 41, 1-22-75.

13. Merger

Contiguous parcels held by the same owner "merge" for purposes of the Subdivision Map Act this section et seq. if (1) a local ordinance has been adopted and the parcels come within the minimum size and development criteria, (2) the "reversion to acreage" provisions are followed, or (3) the general requirements of § 66426 et seq. for subdividing (resubdividing) property are satisfied. 64 Ops.Atty.Gen. 549, 7-3-81.

10. Stock cooperative conversions

Ordinance requiring special-use permit for conversion of apartment complex to stock cooperative form of ownership enacted after effective date of amendment making stock cooperative conversions subject to the Subdivision Map Act (§ 66410 et seq.) was necessarily enacted pursuant to that Act rather than under other statutory authority and, consequently, as an application for a public report from the department of real estate had been made before July 1,

The existence of a leasehold or a deed of trust on either parcel of land, at the time the second parcel was acquired by the owner of the first parcel, would not prevent both parcels being considered as "merged" or treated as one unit for the purpose of the parcel map requirements of Bus. & Prof.C. § 11535 when the construc-

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tion of a building is proposed for the second parcel. 56 Ops.Atty.Gen. 509, 11-29-73.

14. Leasehold interests

Written agreement providing that vendors of lot, who lived on adjoining parcel, could continue to use rear portion of lot until they sold their home on neighboring parcel or until both of them died did not constitute a "sale or lease" so as to create a subdivision within meaning of city subdivision ordinance and this division; agreement was not a sale, since vendors had no ownership interest in rear portion, and it was not a lease because of its uncertain duration. *Robinson v. City of Alameda* (Dalaba) (App. 1 Dist. 1987) 239 Cal.Rptr. 926, 194 Cal.App.3d 1286, review denied.

Granting of five or more 99 year leases to members of a "limited equity housing cooperative" does not constitute a subdivision of land within the meaning of this division; such transactions neither fall within the general language of this section, nor do they constitute the conversion of five or more dwelling units to a "stock cooperative" through the incorporation by reference in this section of the definition of that term found in Bus. & Prof.Code § 11003.2. 72 Ops.Atty.Gen. 248 (1989).

Where a fraternal organization, the owner of a parcel of land, proposes to divide the land into five or more lots for purposes of granting to individual members, for a fee, the sole and exclusive use and occupancy of specified lots, and the granting of a designated "permit" would authorize erection of a house, a mobile home or camping, the fraternal organization would be granting leasehold interests which would create a subdivision subject to the provision of the Subdivision Map Act, Bus. & Prof.C. § 11535. 57 Ops.Atty.Gen. 556, 11-5-74.

15. Land contracts

Where binding land contracts had been entered into resulting in, or as a result of, a division of land into four or less parcels, and the division was in full compliance with applicable law prior to the effective date of Stats.1917, c. 1446 or prior to the effective dates of subsequent legislation relating to land splits, that chapter or subsequent legislation would have no effect on the contracts. 58 Ops.Atty.Gen. 393, 6-3-75.

16. Deeds of trust

Act of creating several deeds of trust upon different portions of a parcel or unit of land constitutes a division of land within the meaning of a "subdivision" under this section. 58 Ops.Atty.Gen. 408 (1975).

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17. Partition actions

Where a court orders the physical division of real property in a partition action, the division must comply with the requirements of the Subdivision Map Act (§ 66410 et seq.), local ordinances adopted thereunder, zoning ordinances, and the general plan for the area in which the property is located. 64 Ops.Atty.Gen. 762, 10-8-81.

18. Tax sales

Subdivision Map Act (§ 66410 et seq.) and subdivision ordinances enacted pursuant to the act do not apply to a tax collector's sale of a portion of a tax-deeded parcel pursuant to Rev. and Tax.C. § 3691. 64 Ops.Atty.Gen. 815 (1981).

19. Condemnation

Where a division for purpose of sale results from condemnation of part of one or more parcels, the number of parcels created is disregarded. 58 Ops.Atty.Gen. 593 (1975).

Parcels of land, each with a diminution or division through condemnation proceedings, may be individually sold if and only if a new parcel map is filed under § 66428, absent a local ordinance waiving such map. 58 Ops.Atty.Gen. 593, 8-7-75.

A division of land through eminent domain proceedings is a division of land for the purpose of sale. 58 Ops.Atty.Gen. 593, 8-7-75.

20. Exemptions, generally

Lots 1, 2 and 3 did not constitute separate and distinct parcels of land legally subdivided within meaning of the state map act (§§ 66410 to 66499.37) by prior United States Survey Map, and were not therefore exempt from regulation under the map act and local ordinances, and because the lots were not legal subdivisions prior to the map act, no merger issue was raised by common ownership of entire parcel. *John Taft Corp. v. Advisory Agency For Ventura County* (Ventura County) (App. 2 Dist. 1984) 207 Cal.Rptr. 840, 161 Cal.App.3d 749.

21. Review

Substantial evidence in record as a whole supported determination of county board of supervisors that grantors, in making certain gift deed conveyances to their children, violated Subdivision Map Act (Gov.C. § 66410 et seq.) and county ordinances in that the transfers were made for purpose of immediate or future sale by or for their children and that grantors intended to circumvent map filing and approval provisions required under § 66499.35 and the ordinances. *Pescosolido v. Smith* (App. 5 Dist. 1983) 191 Cal.Rptr. 415, 142 Cal.App.3d 964.

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Repealed

§ 66424.1. Subdivision where equalized county assessment roll not prepared; consecutive subdivision

Nothing in Section 66424 shall prevent a purchaser of a unit of land created under the provisions of this division or a local ordinance enacted pursuant thereto, from subdividing the land one or more times, pursuant to the provisions of this division prior to the time that an equalized county assessment roll has been completed reflecting the creation of the unit proposed to be subdivided.

Nothing contained in this chapter shall prevent the same subdivider of a unit of land created under the provisions of this division, or a local ordinance enacted pursuant thereto, from making consecutive subdivisions of the same parcel or any portion thereof.

Further, local agencies shall not, by ordinance or policy, prohibit consecutive subdivision of the same parcel or any portion thereof either by the same subdivider or a subsequent purchaser because the parcel was previously subdivided.

Nothing contained in this section shall limit the authority of a local agency to impose appropriate conditions or requirements on the consecutive subdivisions.

(Added by Stats.1976, c. 928, p. 2120, § 3. Amended by Stats.1977, c. 234, p. 1034, § 4, eff. July 7, 1977; Stats.1986, c. 35, § 1.)

Historical and Statutory Notes

The 1977 amendment substituted "a purchaser of a unit of land" for "the subdivision of a unit of land", "from subdividing such land one time, pursuant to the provisions of this division prior to the time that" for "even though at the time of the prospective subdivision", and "has been completed" for "has not been prepared".

Section 16 of Stats.1977, c. 234, p. 1041, provided:

"The Legislature finds and declares that the amendment made to Section 66424.1 of the Government Code by this act is a clarification and restatement of existing law."

The 1986 amendment, in the first paragraph, substituted "the land one or more times" for "such land one time"; and added the last three paragraphs relating to consecutive and subsequent subdivisions.

Library References

Municipal Corporations ☞43.
Zoning and Planning ☞29.5.
WESTLAW Topic Nos. 268, 414.

C.J.S. Municipal Corporations §§ 83, 84.
C.J.S. Zoning and Land Planning § 21.

§ 66424.2. Repealed by Stats.1983, c. 845, § 1

Historical and Statutory Notes

The repealed section added by Stats.1980, c. 1217, § 3, related to merger of contiguous parcels. See Government Code § 66451.10.

Section 4 of Stats.1983, c. 845, provides:

"The repeal of subdivision (b) of Section 66424.2, by Section 1 of this act, shall not be construed to affect the status of any parcel deemed unmerged pursuant to that subdivision. Any parcel unmerged pursuant to that subdivi-

sion, and which has not subsequently been merged, shall for the purposes of this act be considered a separate parcel."

Former § 66424.2, added by Stats.1976, c. 928, p. 2120, § 4, amended by Stats.1977 c. 234, p. 1034, § 5; Stats.1980, c. 403, p. 788, § 2, relating to merger of contiguous parcels was repealed by Stats.1980, c. 1217, p. 4127, § 2, eff. Sept. 29, 1980, operative Jan. 1, 1981.

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§ 66424.5. Tentative map; vesting tentative map

(a) "Tentative map" refers to a map made for the purpose of showing the design and improvement of a proposed subdivision and the existing conditions in and around it and need not be based upon an accurate or detailed final survey of the property.

(b) "Vesting tentative map" refers to a map which meets the requirements of subdivision (a) and Section 66452.

(Added by Stats.1976, c. 660, p. 1400, § 2. Amended by Stats.1984, c. 1113, § 3, operative Jan. 1, 1986.)

Historical and Statutory Notes

The 1984 amendment designated the existing text as subd. (a) and added subd. (b) defining vesting tentative map.

Legislative intent of Stats.1984, c. 1113, see Historical and Statutory Notes under Government Code § 66498.1.

§ 66424.6. Designated remainder or omitted parcel; requirements; election

(a) When a subdivision, as defined in Section 66424, is of a portion of any unit or units of improved or unimproved land, the subdivider may designate as a remainder that portion which is not divided for the purpose of sale, lease, or financing. Alternatively, the subdivider may omit entirely that portion of any unit of improved or unimproved land which is not divided for the purpose of sale, lease, or financing. If the subdivider elects to designate a remainder, the following requirements shall apply:

(1) The designated remainder shall not be counted as a parcel for the purpose of determining whether a parcel or final map is required.

(2) For a designated remainder parcel described in this subdivision, the fulfillment of construction requirements for improvements, including the payment of fees associated with any deferred improvements, shall not be required until a permit or other grant of approval for development of the remainder parcel is issued by the local agency or, where provided by local ordinance, until the construction of the improvements, including the payment of fees associated with any deferred improvements, is required pursuant to an agreement between the subdivider and the local agency. In the absence of that agreement, a local agency may require fulfillment of the construction requirements, including the payment of fees associated with any deferred improvements, within a reasonable time following approval of the final map and prior to the issuance of a permit or other grant of approval for the development of a remainder parcel upon a finding by the local agency that fulfillment of the construction requirements is necessary for reasons of:

(A) The public health and safety; or

(B) The required construction is a necessary prerequisite to the orderly development of the surrounding area.

(b) If the subdivider elects to omit all or a portion of any unit of improved or unimproved land which is not divided for the purpose of sale, lease, or financing, the omitted portion shall not be counted as a parcel for purposes of

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determining whether a parcel or final map is required, and the fulfillment of construction requirements for offsite improvements, including the payment of fees associated with any deferred improvements, shall not be required until a permit or other grant of approval for development is issued on the omitted parcel, except where allowed pursuant to paragraph (2) of subdivision (a).

(c) The provisions of subdivisions (a) and (b) providing for deferral of the payment of fees associated with any deferred improvements shall not apply if the designated remainder or omitted parcel is included within the boundaries of a benefit assessment district or community facilities district.

(d) A designated remainder or any omitted parcel may subsequently be sold without any further requirement of the filing of a parcel map or final map, but the local agency may require a certificate of compliance or conditional certificate of compliance.

(Added by Stats.1979, c. 383, p. 1441, § 1. Amended by Stats.1985, c. 1504, § 2; Stats.1991, c. 907 (A.B.1905), § 1.)

Historical and Statutory Notes

The 1985 amendment designated the existing text as subds. (a) and (b); in subd. (a), added the second sentence relating to counting the remainder as a parcel; in subd. (b), inserted "described in subdivision (a)" and made non-substantive changes; and added subd. (c), relating to sale of the designated remainders.

The 1991 amendment rewrote the section, which had read:

"(a) When a subdivision, as defined in Section 66424, is of a portion of any unit or units of improved or unimproved land, the subdivider may designate as a remainder that portion which is not divided for the purpose of sale, lease, or financing. The designated remainder shall not be counted as a parcel for the purpose of determining whether a parcel map or final map is required.

"(b) For a designated remainder parcel described in subdivision (a), the fulfillment of construction requirements for improvements shall not be required until a permit or other grant of approval for development of the remainder parcel is issued by the local agency or, where provided by local ordinance, until the construction of the improvements is required pursuant to an agreement between the subdivider and the local agency. In the absence of that agreement, a local agency may require fulfillment of the

construction requirements within a reasonable time following approval of the final map and prior to the issuance of a permit or other grant of approval for the development of a remainder parcel upon a finding by the local agency that fulfillment of the construction requirements is necessary for reasons of:

"(1) The public health and safety; or

"(2) The required construction is a necessary prerequisite to the orderly development of the surrounding area.

"(c) A designated remainder may subsequently be sold without any further requirement of the filing of a parcel map or final map, but the local agency may require a certificate of compliance or conditional certificate of compliance."

The Assembly Daily Journal of Sept. 13, 1991, page 4497, contained the following letter from Robert C. Frazee regarding the intent of A.B. 1905 (Stats.1991, c. 907), which provides in part:

"I wish to clarify that it was not my intent in authoring AB 1905 to modify or otherwise affect in any way the federal court decisions in *In Re Eastport Associates*, *Eastport Associates v. City of Los Angeles*, 935 F.2d 1071 (9th Cir.1991),"

Library References

Municipal Corporations Ⓒ43.
Zoning and Planning Ⓒ29.5.
WESTLAW Topic Nos. 268, 414.

C.J.S. Municipal Corporations §§ 83, 84.
C.J.S. Zoning and Land Planning § 21.

Notes of Decisions

Multiple remainder parcels 1

1. Multiple remainder parcels

Under the provisions of the Subdivision Map Act, two or more remainder parcels may not be

designated when a developer subdivides portions of more than one parcel for the first phase of a housing development and intends later to subdivide the undeveloped portions for subsequent phases of the development. 77 Ops.Atty. Gen. 185, 7-21-94.

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Chapter 2 was added by Stats.1974, c. 1536, p. 3467, § 4, operative March 1, 1975.

Cross References

Local control of subdivision design and improvement, see Government Code § 66411.

Law Review and Journal Commentaries

Land development and the environment:
Subdivision Map Act. 5 Pac.L.J. 55 (1974).

Article 1

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66425.	Application of chapter.
66426.	Necessity of tentative and final maps.
66426.5.	Conveyances to governmental agencies, public entities or public utilities for rights-of-way; computing number of parcels.
66427.	Map of condominium, community apartment project, stock cooperative project; three-dimensional portions.
66427.1.	Conversion of residential real property to condominium, community apartment or stock cooperative project; prerequisites to approval of final map.
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66428.	Tentative and parcel maps; waiver by local ordinance; exceptions; options.
66428.1.	Parcel map or tentative and final map; waiver by intent of tenants to convert to resident ownership; exceptions; petition; application; improvements; unsecured improvement agreement; denial of application.
66429.	Recording final and parcel maps.
66430.	Consent to filing.

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66431. County surveyor performing duties of city engineer; agreement; statement.

Article 1 was added by Stats.1974, c. 1536, p. 3467, § 4, operative March 1, 1975.

§ 66425. Application of chapter

The necessity for tentative, final and parcel maps shall be governed by the provisions of this chapter.

(Added by Stats.1974, c. 1536, p. 3467, § 4, operative March 1, 1975.)

Library References

Municipal Corporations ⇐43.
WESTLAW Topic No. 268.

C.J.S. Municipal Corporations §§ 83, 84.
Subdivision mapping. Report of Subcommittee of Assembly Interim Committee on Gov-

ernmental Efficiency and Economy, 1963 to 1965, vol. 8, No. 9, p. 3. Vol. 1 of Appendix to Journal of Assembly, Reg.Sess., 1965.

§ 66426. Necessity of tentative and final maps

A tentative and final map shall be required for all subdivisions creating five or more parcels, five or more condominiums as defined in Section 783 of the Civil Code, a community apartment project containing five or more parcels, or for the conversion of a dwelling to a stock cooperative containing five or more dwelling units, except where any one of the following occurs:

(a) The land before division contains less than five acres, each parcel created by the division abuts upon a maintained public street or highway, and no dedications or improvements are required by the legislative body.

(b) Each parcel created by the division has a gross area of 20 acres or more and has an approved access to a maintained public street or highway.

(c) The land consists of a parcel or parcels of land having approved access to a public street or highway, which comprises part of a tract of land zoned for industrial or commercial development, and which has the approval of the governing body as to street alignments and widths.

(d) Each parcel created by the division has a gross area of not less than 40 acres or is not less than a quarter of a quarter section.

(e) Until January 1, 2003, the land being subdivided is solely for the creation of an environmental subdivision pursuant to Section 66418.2.

(f) A parcel map shall be required for those subdivisions described in subdivisions (a), (b), (c), (d), and (e).

(Added by Stats.1974, c. 1536, p. 3467, § 4, operative March 1, 1975. Amended by Stats.1975, c. 24, p. 30, § 7, eff. April 4, 1975; Stats.1978, c. 88, p. 252, § 1; Stats.1979, c. 383, p. 1442, § 2; Stats.1979, c. 1192, p. 4692, § 2; Stats.1995, c. 955 (A.B.1287), § 2.)

Historical and Statutory Notes

Addition of this section by § 4.1 of Stats.1974, c. 1536, p. 3464, failed to become operative under the provisions of § 10.1 of that Act.

The 1975 amendment substituted "gross area of not less than 40 acres or is not less than a quarter of a quarter section; provided, however, that a local ordinance may specify tentative and final map approval for a subdivision in which one or more of the resultant parcels is between 40 acres and 60 acres in size" for "gross area of 40 acres or more, or each of which is a quarter-quarter section or larger, or such other amount, up to 60 acres, as may be specified by local ordinance" in subd. (d).

The 1978 amendment deleted "; provided, however, that a local ordinance may specify tentative and final map approval for a subdivision in which one or more of the resultant parcels is between 40 acres and 60 acres in

size" following "quarter of a quarter section" in subd. (d).

The 1979 amendment by c. 1192 deleted "or" following "civil code," and inserted "or for the conversion of a dwelling to a stock cooperative containing five or more dwelling units," in the introductory clause of the first paragraph.

Operative effect of amendment by Stats.1979, c. 1192, see Historical Note under § 66424.

Section affected by two or more acts at the same session of the legislature, see Government Code § 9605.

The 1995 amendment, in the introductory paragraph, inserted "any one of the following occurs" following "except where"; inserted subd. (e), relating to environmental subdivisions; designated as subd. (f) the former last paragraph of the section and added subd. (e) to the list of subdivisions requiring a parcel map; and made nonsubstantive changes throughout.

Cross References

Coastlines or shorelines, permits to develop parcels over forty acres, see Government Code § 66478.13.

Subdivision, defined, regulation of transactions in subdivided lands, see Business and Professions Code § 11000 et seq.

Law Review and Journal Commentaries

Lucas and endangered species protection: Review of selected 1995 California legislation. When "take" and "takings" collide. 27 U.C.Davis L.Rev. 185 (1993). 27 Pac.L.J. 349 (1996).

Library References

Zoning and Planning ⇄29.5.
WESTLAW Topic No. 414.
C.J.S. Zoning and Land Planning § 21.

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tion of city's approval of adjustment, where adjustment did not create greater number of parcels than originally existed, adjustment involved nine parcels, and adjustment involved existing adjacent parcels. San Dieguito Partnership, L.P. v. City of San Diego (App. 4 Dist. 1992) 9 Cal.Rptr.2d 440, 7 Cal.App.4th 748.

"Created," in lot line adjustment statute, connoted division resulting in more parcels than originally existed resulting in application of Subdivision Map Act (SMA) to that division; however, if greater number of parcels is not created by lot line adjustment, there is no division of real property and SMA is inapplicable. San Dieguito Partnership, L.P. v. City of San Diego (App. 4 Dist. 1992) 9 Cal.Rptr.2d 440, 7 Cal.App.4th 748.

1. Construction and application

Subdivision Map Act (SMA) did not apply to proposed lot line adjustment so as to require owner to file tentative and final maps as condi-

Where subdivision had been created prior to effective date of subdivision law (Bus. & Prof.C. § 11000 et seq.), subdivision lot owners who were neither original owners, developers, origi-

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nal subdividers, or agents for any such persons were subject to requirements of the Subdivision Law. *Chapman v. Division of Real Estate of State of Cal.* (App. 1957) 153 Cal.App.2d 421, 314 P.2d 773.

2. Construction with other laws

Fact that "five or more" parcels may be created when a division of land for purpose of sale results from condemnation of part of one or more parcels is disregarded and no tentative or final map is required under this section, but fact that the division of land has occurred is not disregarded, and, under § 66428, a parcel map is required in any case in which a final map is not required, unless the parcel map is waived under § 66428. 58 Ops.Atty.Gen. 593, 8-7-75.

3. Duty of local government

Local governing body must require that a parcel map be filed after division of land results in parcels each of forty acres or more, or each a quarter-quarter section or larger, or such other amount as specified by local ordinance. 57 Ops.Atty.Gen. 388 (1974).

4. Maps

Generally, filing of a tentative map and a final map is mandatory for divisions of real property into five parcels or more, and the filing of a parcel map is required for divisions into four or fewer parcels. 62 Ops.Atty.Gen. 147 (1979); 64 Ops.Atty.Gen. 549 (1981).

Procedurally, if a land division results in four or fewer parcels, a parcel map is normally required; a final map involving stricter requirements is generally necessary for a division resulting in five or more parcels. 62 Ops.Atty.Gen. 175 (1979); 62 Ops.Atty.Gen. 281 (1979).

Both a tentative and a final map are required to be filed, approved, and recorded with respect to subdivisions of five or more parcels, and, once a tentative map has been approved or conditionally approved, any final map caused to be filed by the subdivider must be prepared in accordance with the approved or conditionally approved tentative map. 63 Ops.Atty.Gen. 844 (1980).

Generally, filing of a tentative map and a final map is mandatory for divisions of properties into five parcels or more, and the filing of a parcel map is required for division into four or fewer parcels, unless waived by local ordinance. 63 Ops.Atty.Gen. 601 (1980).

Division of land creating five or more parcels generally requires the filing of a tentative and final map; a parcel map is generally required for all other division of land unless waived by local ordinance. 61 Ops.Atty.Gen. 114 (1978).

5. Conditions precedent to approval

Board of supervisors could not require or secure the construction of any street grading and surfacing as a condition precedent to acting upon or approving a tentative map. 10 Ops. Atty.Gen. 8 (1947).

6. Effect of recordation

Recording of final tract map for normal subdivision automatically converts what was formerly a single parcel into as many separate lots as appear on tract map. *Los Angeles County v. Hartford Acc. & Indem. Co.* (App. 2 Dist. 1970) 83 Cal.Rptr. 740, 3 Cal.App.3d 809.

7. Subdivisions

Planned construction of five or more buildings on a single parcel of land for the purpose of sale or lease and planned construction of five or more separate apartment or commercial buildings on a single parcel of land for purpose of leasing the apartments, stores, or offices therein were considered subdivisions within the Subdivision Map Act, Bus. & Prof.C. § 11500 et seq. (repealed). 56 Ops.Atty.Gen. 496 (1973).

Conveyances which occur within a one-year period, which create five or more undivided interests in an entire tract, and which give the grantees the exclusive right to occupy a unit or parcel therein constitute a "subdivision" to which the Subdivision Map Act, Bus. & Prof.C. § 11500 et seq. (repealed) would apply. 38 Ops.Atty.Gen. 126 (1961).

For purpose of filing maps, a subdivision is any land, or portion thereof, which is shown on the last preceding tax roll as a unit or as contiguous units, and which is divided for the purpose of sale, whether immediate or future, by any subdivider into five or more parcels within any one-year period. 5 Ops.Atty.Gen. 107 (1945).

8. Contiguous lands

A commonly-owned parcel of land divided by a road is considered a contiguous unit, and the division of such parcel into five or more parcels for the purpose of sale, lease, or financing would constitute a subdivision within Bus. & Prof.C. § 11535 (repealed). 56 Ops.Atty.Gen. 105 (1973).

County road easement would not make a unit of land in the same ownership noncontiguous, and phrase "shown on the latest adopted county tax roll" as used in Bus. & Prof.C. § 11535 (repealed), was not to be interpreted to mean that a property owner could make four splits each time a new tax roll was adopted. 54 Ops.Atty.Gen. 213 (1971).

9. Merger

Lots 1, 2 and 3 did not constitute separate and distinct parcels of land legally subdivided

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within meaning of the state map act (§§ 66410 to 66499.37) by prior United States Survey Map, and were not therefore exempt from regulation under the map act and local ordinances, and because the lots were not legal subdivisions prior to the map act, no merger issue was raised by common ownership of entire parcel. *John Taft Corp. v. Advisory Agency For Ventura County* (Ventura County) (App. 2 Dist. 1984) 207 Cal.Rptr. 840, 161 Cal.App.3d 749.

Contiguous parcels held by the same owner "merge" for purposes of the Subdivision Map Act if (1) a local ordinance has been adopted and the parcels come within the minimum size and development criteria, (2) the "reversion to acreage" provisions are followed, or (3) the general requirements of this section et seq. for subdividing (resubdividing) property are satisfied. 64 Ops.Atty.Gen. 549, 7-3-81.

In determining number of parcels created by a subdivision for the purpose of applying this section, one does not consider parcels previously created by another under § 66410 et seq. or under prior law regulating the division of land or ordinances thereunder as merged; the fact that several contiguous parcels are owned by a single person does not merge the parcels into a single unit where parcels were legally created under § 66410 et seq. or prior law regulating the division of land. 61 Ops.Atty.Gen. 114 (1978).

Person who owns parcel of land improved with a building, and who subsequently acquires a contiguous parcel in order to construct a second building for purposes of sale or lease has, in effect, merged the two parcels into one parcel under common ownership and, pursuant to the Subdivision Map Act, Bus. & Prof.C. § 11500 (repealed), would have to submit a parcel map for approval before obtaining a building permit, but the map requirement could be waived by a local ordinance if ordinance was in accord with provisions of the act relating to discretionary authority of local governments. 56 Ops.Atty.Gen. 509 (1973).

10. Successive divisions

The successive division of contiguous parcels by the same subdivider must be considered together in determining the applicable standards to be applied under the Subdivision Map Act (§ 66410 et seq.), regardless of whether the contiguous parcels were created by a third party in compliance with applicable law, or that a part of an earlier division had been transferred by sale or otherwise, or whether the parcels were created all at the same time or over a period of time and the fact that some of the earlier parcels have been sold should not detract from the determination that a particular number of parcels have been created overall. 61 Ops.Atty.Gen. 114, 3-15-78.

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A subdivision of five or more parcels is created, subject to § 66424 and this section, where the owner of a unit of property as shown on the latest equalized county assessment roll divides the unit into four parcels for the purpose of sale, lease, or financing, and one parcel thereof is further subdivided during the same year by a purchaser acting independently of the owner. 59 Ops.Atty.Gen. 493, 8-20-76.

11. Condominiums

The requirements for the Subdivision Map Act (§ 66410 et seq.) are applicable to a proposed construction of a condominium project on a previously subdivided, single parcel of property. 65 Ops.Atty.Gen. 101, 1-29-82.

A tentative and final subdivision map is required by § 66426 et seq. to convert an existing apartment house or an existing clustered single family development to condominiums or five or more ownerships, even if the structure or structures are located on a single lot created by an earlier approved final subdivision map. 62 Ops.Atty.Gen. 410, 8-7-79.

Any division of land, improved or unimproved, into condominiums will come within the Subdivision Map Act (§ 66410 et seq.); if the division results in five or more units, compliance with the provisions of the act will require the filing and approval of tentative and final subdivision maps. 62 Ops.Atty.Gen. 410, 8-7-79.

Horizontal condominium was a subdivision subject to the Subdivision Map Act, Bus. & Prof.C. § 11535 (repealed). 39 Ops.Atty.Gen. 82 (1962).

12. Assessment parcels

Where a unit of land has been subdivided in compliance with § 66410 et seq., and three contiguous lots of that subdivision, each improved with a single family dwelling, are retained by the subdivider, fact that the three lots have been combined as one assessment parcel by the county assessor does not require that a new parcel map be processed before any of the lots can be conveyed. 59 Ops.Atty.Gen. 581 (1976).

13. Access

Under Bus. & Prof.C. § 11535 (repealed) defining subdivision as not including parcels of twenty acres or more which had approved access to a maintained public street or highway, the term "approved access" meant that the local governing body had to approve the potential means of ingress and egress connecting such parcels to a maintained public street or highway. 47 Ops.Atty.Gen. 126, 4-13-66.

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14. Airspace

Creation by condominium plan of a three-dimensional division of airspace which is then severed from any ownership interest in the underlying earth would violate the provisions of this section, in the absence of a tentative and final map. 73 Ops.Atty.Gen. 312 (1990).

A condominium project consisting of five or more divisions of airspace within a previously

created three-dimensional air cube would constitute a subdivision under the terms of this section for which a tentative and final map would be required, even though such divisions of airspace are not coupled with any ownership interest in the earth underlying the airspace. 73 Ops.Atty.Gen. 312 (1990).

§ 66426.5. Conveyances to governmental agencies, public entities or public utilities for rights-of-way; computing number of parcels

Any conveyance of land to a governmental agency, public entity, public utility or subsidiary of a public utility for conveyance to that public utility for rights-of-way shall not be considered a division of land for purposes of computing the number of parcels. For purposes of this section, any conveyance of land to a governmental agency shall include a fee interest, an easement, or a license.

(Added by Stats.1982, c. 87, § 6, eff. March 1, 1982. Amended by Stats.1994, c. 458 (A.B.1414), § 4.)

Historical and Statutory Notes

The 1994 amendment made a nonsubstantive change in the first sentence; and added the second sentence including a fee interest, an

easement, or a license in conveyances of land to governmental agencies for the purposes of the section.

Notes of Decisions

Merger 1

1. Merger

Contiguous parcels held by the same owner "merge" for purposes of the Subdivision Map

Act § 66410 et seq. if (1) a local ordinance has been adopted and the parcels come within the minimum size and development criteria, (2) the "reversion to acreage" provisions are followed, or (3) the general requirements of § 66426 et seq. for subdividing (resubdividing) property are satisfied. 64 Ops.Atty.Gen. 549, 7-3-81.

§ 66427. Map of condominium, community apartment project, stock cooperative project; three-dimensional portions

A map of a condominium project, a community apartment project, or of the conversion of five or more existing dwelling units to a stock cooperative project need not show the buildings or the manner in which the buildings or the airspace above the property shown on the map are to be divided, nor shall the governing body have the right to refuse approval of a parcel, tentative, or final map of the project on account of design or location of buildings on the property shown on the map not violative of local ordinances or on account of the manner in which airspace is to be divided in conveying the condominium. Fees and lot design requirements shall be computed and imposed with respect to those maps on the basis of parcels or lots of the surface of the land shown thereon as included in the project. Nothing herein shall be deemed to limit the power of the legislative body to regulate the design or location of buildings in such a project by or pursuant to local ordinances.

If the governing body has approved a parcel map or final map for the establishment of condominiums on property pursuant to the requirements of

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this division, the separation of a three-dimensional portion or portions of the property from the remainder of the property or the division of that three-dimensional portion or portions into condominiums shall not constitute a further subdivision as defined in Section 66424, provided each of the following conditions has been satisfied:

(a) The total number of condominiums established is not increased above the number authorized by the local agency in approving the parcel map or final map.

(b) A perpetual estate or an estate for years in the remainder of the property is held by the condominium owners in undivided interests in common, or by an association as defined in subdivision (a) of Section 1351 of the Civil Code, and the duration of the estate in the remainder of the property is the same as the duration of the estate in the condominiums.

(c) The three-dimensional portion or portions of property are described on a condominium plan or plans, as defined in subdivision (e) of Section 1351 of the Civil Code.

(Added by Stats.1974, c. 1536, p. 3467, § 4, operative March 1, 1975. Amended by Stats.1979, c. 1192, p. 4692, § 3; Stats.1992, c. 400 (S.B.1519), § 2.)

Historical and Statutory Notes

Addition of this section by § 4.2 of Stats.1974, c. 1536, p. 3464, failed to become operative under the provisions of § 10.2 of that Act.

The 1979 amendment substituted a comma for "or" following "condominium project", and inserted "project, or of the conversion of five or more existing dwelling units to a stock cooperative project" in the first sentence.

Operative effect of 1979 amendment, see Historical Note under § 66424.

The 1992 amendment added the second paragraph relating to the separation of a three-dimensional portion or portions of the property from the remainder of the property or the division of that three-dimensional portion or portions into condominiums as not constituting a further subdivision, added subs. (a) to (c), and made other technical nonsubstantive changes.

Forms

See West's California Code Forms, Government.

Law Review and Journal Commentaries

Overview of California condominium law.
Burton Merrill, Edward J. Cooper, Ronald M. Papell, 6 Sw.U.L.Rev. 487 (1974).

Library References

Condominium ⇔1.
WESTLAW Topic No. 89A.
C.J.S. Estates §§ 145, 146.

Notes of Decisions

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Local conversion regulations 3

1. **Construction and application**
The requirements for the Subdivision Map Act (§ 66410 et seq.) are applicable to a proposed construction of a condominium project on a

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previously subdivided, single parcel of property. 65 Ops.Atty.Gen. 101, 1-29-82.

Conversion of an existing residential property into condominiums is subject to requirements of the Subdivision Map Act (§ 66410 et seq.). 62 Ops.Atty.Gen. 410 (1979).

2. Horizontal condominiums

A horizontal condominium was subject to Subdivision Map Act, Bus. & Prof.C. § 11535 (repealed). 39 Ops.Atty.Gen. 82 (1962).

3. Local conversion regulations

Subdivision Map Act did not preempt city's condominium conversion regulations. Griffin

Development Co. v. City of Oxnard (1985) 217 Cal.Rptr. 1, 39 Cal.3d 256, 703 P.2d 339.

4. Contiguous parcels

Contiguous parcels held by the same owner "merge" for purposes of the Subdivision Map Act § 66410 et seq. if (1) a local ordinance has been adopted and the parcels come within the minimum size and development criteria, (2) the "reversion to acreage" provisions are followed, or (3) the general requirements of § 66426 et seq. for subdividing (resubdividing) property are satisfied. 64 Ops.Atty.Gen. 549, 7-3-81.

§ 66427.1. Conversion of residential real property to condominium, community apartment or stock cooperative project; prerequisites to approval of final map

The legislative body shall not approve a final map for a subdivision to be created from the conversion of residential real property into a condominium project, a community apartment project, or a stock cooperative project unless it finds all of the following:

(a) Each of the tenants of the proposed condominium, community apartment project or stock cooperative project has received, pursuant to Section 66452.9, written notification of intention to convert at least 60 days prior to the filing of a tentative map pursuant to Section 66452. There shall be a further finding that each such tenant, and each person applying for the rental of a unit in such residential real property, has, or will have, received all applicable notices and rights now or hereafter required by this chapter or Chapter 3 (commencing with Section 66451). In addition, a finding shall be made that each tenant has received 10 days' written notification that an application for a public report will be, or has been, submitted to the Department of Real Estate, and that such report will be available on request. The written notices to tenants required by this subdivision shall be deemed satisfied if such notices comply with the legal requirements for service by mail.

(b) Each of the tenants of the proposed condominium, community apartment project, or stock cooperative project has been, or will be, given written notification within 10 days of approval of a final map for the proposed conversion.

(c) Each of the tenants of the proposed condominium, community apartment project, or stock cooperative project has been, or will be, given 180 days' written notice of intention to convert prior to termination of tenancy due to the conversion or proposed conversion. The provisions of this subdivision shall not alter or abridge the rights or obligations of the parties in performance of their covenants, including, but not limited to, the provision of services, payment of rent or the obligations imposed by Sections 1941, 1941.1, and 1941.2 of the Civil Code.

(d) Each of the tenants of the proposed condominium, community apartment project, or stock cooperative project has been, or will be, given notice of an

exclusive right to contract for the purchase of his or her respective unit upon the same terms and conditions that such unit will be initially offered to the general public or terms more favorable to the tenant. The right shall run for a period of not less than 90 days from the date of issuance of the subdivision public report pursuant to Section 11018.2 of the Business and Professions Code, unless the tenant gives prior written notice of his or her intention not to exercise the right.

(e) This section shall not diminish, limit or expand, other than as provided herein, the authority of any city, county, or city and county to approve or disapprove condominium projects.

(Added by Stats.1976, c. 890, p. 2047, § 1. Amended by Stats.1979, c. 1192, p. 4692, § 4; Stats.1980, c. 491, p. 1029, § 1; Stats.1980, c. 1048, p. 3353, § 1; Stats.1980, c. 1128, p. 3629, § 1.5.)

Historical and Statutory Notes

The 1979 amendment extended coverage of the section to stock cooperative projects; and, in former subds. (a) and (b), now subds. (c) and (d), deleted "house" following "apartment".

Operative effect of 1979 amendment, see Historical Note under § 66424.

The 1980 amendments substituted "all of the following" for "both that" in the introductory clause; inserted subds. (a) and (b); relettered former subds. (a), (b), and (c) as subds. (c), (d), and (e); inserted commas preceding and following "or will be", and substituted "180 days" for "120 days" in subd. (c); substituted "his or her" for "their" and substituted "unit" for "units" in the first sentence, and substituted "90 days" for "60 days", and inserted "or her"

following "his" in the second sentence of subd. (d).

Under the provisions of § 5.6 of Stats.1980, c. 1128, the 1980 amendments of this section by c. 1048 and c. 1128 were given effect and incorporated in the form set forth in § 1.5 of c. 1128.

Amendment of this section by Stats.1980, c. 1128, p. 3629, § 1, failed to become operative under the provisions of § 5.6 of that act.

Section affected by two or more acts at the same session of the legislature, see Government Code § 9605.

Addition of a § 66427.1 by § 4.3 of Stats. 1974, c. 1536, p. 3512, failed to become operative under the provisions of § 10.3 of that Act.

Forms

See West's California Code Forms, Government.

Law Review and Journal Commentaries

Conversion of apartments to condominiums: Social and economic regulations under California Subdivision Map Act. 16 Cal.W.L.Rev. 466 (1980).

Municipal regulation of condominium conversions. 53 S.Cal.L.Rev. 225 (1979).

Library References

Condominium ⇨3.
WESTLAW Topic No. 89A.
C.J.S. Estates § 148.
California Practice Guide: Landlord-Tenant, Friedman, Garcia & Hagarty, see Guide's

Table of Statutes for chapter paragraph number references to paragraphs discussing this section.

Notes of Decisions

In general 1
Local conversion regulations 2

the Subdivision Map Act (§ 66410 et seq.). 62 Ops.Atty.Gen. 410 (1979).

1. In general
Conversion of an existing residential property into condominiums is subject to requirements of

2. Local conversion regulations
Subdivision Map Act did not preempt city's condominium conversion regulations. Griffin

§ 66427.2. Condominium projects or stock cooperatives; subdivision of airspace; approval of conversion to stock cooperative; inapplicability of certain consistency and findings provisions

Unless applicable general or specific plans contain definite objectives and policies, specifically directed to the conversion of existing buildings into condominium projects or stock cooperatives, the provisions of Sections 66473.5, 66474, and 66474.61, and subdivision (c) of Section 66474.60 shall not apply to condominium projects or stock cooperatives, which consist of the subdivision of airspace in an existing structure, unless new units are to be constructed or added.

A city, county, or city and county acting pursuant to this section shall approve or disapprove the conversion of an existing building to a stock cooperative within 120 days following receipt of a completed application for approval of such conversion.

This section shall not diminish, limit or expand, other than as provided herein, the authority of any city, county, or city and county to approve or disapprove condominium projects.

(Added by Stats.1977, c. 923, p. 2823, § 1. Amended by Stats.1978, c. 209, p. 453, § 1, eff. June 6, 1978; Stats.1979, c. 1192, p. 4693, § 5.)

Historical and Statutory Notes

The 1978 amendment substituted a comma for "and" following "66473.5", and inserted ", and 66474.61, and subdivision (c) of Section 66474.60" in the first paragraph.

The 1979 amendment inserted the references to stock cooperatives in the first paragraph, and inserted the second paragraph, relating to ap-

proval of conversion to stock cooperative within 120 days.

Operative effect of 1979 amendment, see Historical Note under § 66424.

Addition of a § 66427.2 by § 4.33 of Stats. 1974, c. 1536, p. 3512, failed to become operative under the provisions of § 10.4 of that Act.

Library References

Condominium ⇨3.
WESTLAW Topic No. 89A.
C.J.S. Estates § 148.

California Practice Guide: Landlord-Tenant, Friedman, Garcia & Hagarty, see Guide's

Table of Statutes for chapter paragraph number references to paragraphs discussing this section.

Notes of Decisions

In general 1
Master plans 2

1. In general

Conversion of an existing residential property into condominiums is subject to requirements of the Subdivision Map Act (§ 66410 et seq.). 62 Ops.Atty.Gen. 410 (1979).

2. Master plans

Housing element of master plan of city of Glendale contained an extremely comprehen-

sive analysis of present housing inventory and future needs and, given fact that overall plan and its ordinances in area of land use regulation represented an honest and reasonable effort to comply with state's statutory requirements, was not inadequate for failure to discuss in specific terms subject of condominium conversion notwithstanding whether it comported with guidelines of department of housing and community development promulgated pursuant to state planning and zoning law (§ 65000 et seq.). Bownds v. City of Glendale (App. 2 Dist. 1980) 170 Cal.Rptr. 342, 113 Cal.App.3d 875.

§ 66427.3. Inoperative

Historical and Statutory Notes

Addition of this section by § 4.37 of Stats. 1974, c. 1536, p. 3513, failed to become operative under the provisions of § 10.4 of that Act.

§ 66427.4. Conversion of mobilehome park; filing report of impact of conversion upon displaced residents with maps; mitigation of adverse impact

(a) At the time of filing a tentative or parcel map for a subdivision to be created from the conversion of a mobilehome park to another use, the subdivider shall also file a report on the impact of the conversion upon the displaced residents of the mobilehome park to be converted. In determining the impact of the conversion on displaced mobilehome park residents, the report shall address the availability of adequate replacement space in mobilehome parks.

(b) The subdivider shall make a copy of the report available to each resident of the mobilehome park at least 15 days prior to the hearing on the map by the advisory agency or, if there is no advisory agency, by the legislative body.

(c) The legislative body, or an advisory agency which is authorized by local ordinance to approve, conditionally approve, or disapprove the map, may require the subdivider to take steps to mitigate any adverse impact of the conversion on the ability of displaced mobilehome park residents to find adequate space in a mobilehome park.

(d) This section establishes a minimum standard for local regulation of conversions of mobilehome parks into other uses and shall not prevent a local agency from enacting more stringent measures.

(e) This section shall not be applicable to a subdivision which is created from the conversion of a rental mobilehome park to resident ownership.

(Added by Stats.1982, c. 983, § 2, operative Jan. 1, 1989. Amended by Stats.1991, c. 745 (A.B.1863), § 1; Stats.1995, c. 256 (S.B.310), § 4.)

Historical and Statutory Notes

The 1991 amendment inserted subdivision designations, deleted a paragraph relating to the operative date of the section, and added subd. (e), relating to offers to existing tenants of options to purchase.

The 1995 amendment deleted former subd. (e) and added a new subd. (e) relating to application of the section to conversions of mobilehome parks to resident ownership. Prior to amendment, former subd. (e) read:

“(e) The subdivider shall offer each existing tenant an option to purchase his or her condominium unit which is to be created by the conversion of the park into condominium interests or to continue residency as a tenant. In the event that the tenant elects to continue residency as a tenant in a park created pursuant to Chapter 11 (commencing with Section 50780)

of Part 2 of Division 31 of the Health and Safety Code, Section 66427.5 shall be applicable.”

Former § 66427.4, added by Stats.1980, c. 1065, § 1, amended by Stats.1982, c. 983, § 1, relating to conversion of mobilehome parks and impact statements, was repealed by its own terms, operative Jan. 1, 1989. See this section.

Addition of a § 66427.4 by § 4.4 of Stats. 1974, c. 1536, p. 3513, failed to become operative under the provisions of § 10.4 of that Act.

Another § 66427.4, added by Stats.1980, c. 879, p. 2761, § 3, containing identical subject matter, was repealed by Stats.1981, c. 714, § 194.

Derivation: Former § 66427.4, added by Stats.1980, c. 1065, § 1, amended by Stats. 1982, c. 983, § 1.

Library References

Zoning and Planning ⇨ 192.
WESTLAW Topic No. 414.
C.J.S. Zoning and Land Planning §§ 86, 93.
California Practice Guide: Landlord-Tenant,
Friedman, Garcia & Hagarty, see Guide's

Table of Statutes for chapter paragraph number references to paragraphs discussing this section.

Notes of Decisions

Contiguous parcels 1

1. Contiguous parcels

Contiguous parcels held by the same owner "merge" for purposes of the Subdivision Map

Act § 66410 et seq. if (1) a local ordinance has been adopted and the parcels come within the minimum size and development criteria, (2) the "reversion to acreage" provisions are followed, or (3) the general requirements of § 66426 et seq. for subdividing (resubdividing) property are satisfied. 64 Ops.Atty.Gen. 549, 7-3-81.

§ 66427.5. Subdivision created by conversion of rental mobilehome park to resident ownership; nonpurchasing residents; avoidance of economic displacement

At the time of filing a tentative or parcel map for a subdivision to be created from the conversion of a rental mobilehome park to resident ownership, the subdivider shall avoid the economic displacement of all nonpurchasing residents in the following manner:

(a) The subdivider shall offer each existing tenant an option to either purchase his or her condominium or subdivided unit, which is to be created by the conversion of the park to resident ownership, or to continue residency as a tenant.

(b) The subdivider shall file a report on the impact of the conversion upon residents of the mobilehome park to be converted to resident owned subdivided interest.

(c) The subdivider shall make a copy of the report available to each resident of the mobilehome park at least 15 days prior to the hearing on the map by the advisory agency or, if there is no advisory agency, by the legislative body.

(d) The subdivider shall be subject to a hearing by a legislative body or advisory agency, which is authorized by local ordinance to approve, conditionally approve, or disapprove the map. The scope of the hearing shall be limited to the issue of compliance with this section. The subdivider shall be required to avoid the economic displacement of all nonpurchasing residents in accordance with the following:

(1) As to nonpurchasing residents who are not lower income households, as defined in Section 50079.5 of the Health and Safety Code, the monthly rent, including any applicable fees or charges for use of any preconversion amenities, may increase from the preconversion rent to market levels, as defined in an appraisal conducted in accordance with nationally recognized professional appraisal standards, in equal annual increases over a four-year period.

(2) As to nonpurchasing residents who are lower income households, as defined in Section 50079.5 of the Health and Safety Code, the monthly rent, including any applicable fees or charges for use of any preconversion amenities, may increase from the preconversion rent by an amount equal to the

average monthly increase in rent in the four years immediately preceding the conversion, except that in no event shall the monthly rent be increased by an amount greater than the average monthly percentage increase in the Consumer Price Index for the most recently reported period.

(Added by Stats.1991, c. 745 (A.B.1863), § 2. Amended by Stats.1995, c. 256 (S.B.310), § 5.)

Historical and Statutory Notes

The 1995 amendment, in the introductory paragraph, substituted "from the conversion of a rental mobilehome park to resident ownership" for "using financing or funds provided pursuant to Chapter 11 (commencing with Section 50780) of Part 2 of Division 31 of the Health and Safety Code"; added new subd. (a), relating to options to purchase or continue as

tenants; added new subd. (b), relating to a report on the impact of the conversion on residents; added subd. (c), relating to copies of the report; added the introductory paragraph of subd. (d), relating to the scope of the hearing and avoidance of economic displacement of residents; and redesignated as subparagraphs (d)(1) and (d)(2) former subds. (a) and (b).

Library References

California Practice Guide: Landlord-Tenant, Friedman, Garcia & Hagarty, see Guide's Table of Statutes for chapter paragraph

number references to paragraphs discussing this section.

Notes of Decisions

Rent increases 1

1. Rent increases

State statute limiting rent increases charged to nonpurchasing mobile home park residents, after park is converted to resident ownership, applies only after conversion occurs, rather than when tentative map for subdivision is filed. *Donohue v. Santa Paula West Mobile Home Park* (App. 2 Dist. 1996) 55 Cal.Rptr.2d 282, 47 Cal.App.4th 1168.

Mobile home park owners' erroneous reliance on information from city, that state statute concerning conversion of mobile home parks to resident ownership governed amount of permissible rent increase, was not willful violation of city rent control initiative and, thus, park residents were not entitled to treble damages after park owners demanded rent increase authorized by statute; reliance on city's erroneous determination was not unreasonable. *Donohue v. Santa Paula West Mobile Home Park* (App. 2 Dist. 1996) 55 Cal.Rptr.2d 282, 47 Cal.App.4th 1168.

§ 66428. Tentative and parcel maps; waiver by local ordinance; exceptions; options

(a) Local ordinances may require a tentative map where a parcel map is required by this chapter. A parcel map shall be required for subdivisions as to which a final or parcel map is not otherwise required by this chapter, unless the preparation of the parcel map is waived by local ordinance as provided in this section. A parcel map shall not be required for either of the following:

(1) Subdivisions of a portion of the operating right-of-way of a railroad corporation, as defined by Section 230 of the Public Utilities Code, which are created by short-term leases (terminable by either party on not more than 30 days' notice in writing).

(2) Land conveyed to or from a governmental agency, public entity, public utility, or for land conveyed to a subsidiary of a public utility for conveyance to that public utility for rights-of-way, unless a showing is made in individual cases, upon substantial evidence, that public policy necessitates a parcel map.

For purposes of this subdivision, land conveyed to or from a governmental agency shall include a fee interest, an easement, or a license.

(b) A local agency shall, by ordinance, provide a procedure for waiving the requirement for a parcel map, imposed by this division, including the requirements for a parcel map imposed by Section 66426. The procedure may include provisions for waiving the requirement for a tentative and final map for the construction of a condominium project on a single parcel. The ordinance shall require a finding by the legislative body or advisory agency, that the proposed division of land complies with requirements established by this division or local ordinance enacted pursuant thereto as to area, improvement and design, floodwater drainage control, appropriate improved public roads, sanitary disposal facilities, water supply availability, environmental protection, and other requirements of this division or local ordinance enacted pursuant thereto. In any case, where the requirement for a parcel map is waived by local ordinance pursuant to this section, a tentative map may be required by local ordinance.

(c) If a local ordinance does not require a tentative map where a parcel map is required by this division, the subdivider shall have the option of submitting a tentative map, or if he or she desires to obtain the rights conferred by Chapter 4.5 (commencing with Section 66498.1), a vesting tentative map.

(Added by Stats.1974, c. 1536, p. 3468, § 4, operative March 1, 1975. Amended by Stats.1976, c. 928, p. 2120, § 5; Stats.1977, c. 234, p. 1035, § 6, eff. July 7, 1977; Stats.1982, c. 87, § 7, eff. March 1, 1982; Stats.1982, c. 518, § 1; Stats.1984, c. 1113, § 4, operative Jan. 1, 1986; Stats.1989, c. 831, § 1; Stats.1990, c. 1498 (A.B.2954), § 1; Stats.1991, c. 745 (A.B.1863), § 3; Stats.1994, c. 458 (A.B.1414), § 5.)

Historical and Statutory Notes

As added in 1974, the section read:

"Local ordinances may require a tentative map where a parcel map is required by this chapter. A parcel map shall be required for subdivisions as to which a final or parcel map is not otherwise required by this chapter, unless waived by local ordinance as provided in this section, and provided further that a parcel map shall not be required for subdivisions created by short-term leases (terminable by either party on not more than 30 days' notice in writing) of a portion of the operating right-of-way of a railroad corporation defined as such by Section 230 of the Public Utilities Code, unless a showing is made in individual cases, upon substantial evidence, that public policy necessitates such a parcel map.

"A local agency may, by ordinance, provide a procedure for waiving the requirement for a parcel map, imposed by this section. In the event that such a waiver is provided by local ordinance, the ordinance shall require a finding by the legislative body or advisory agency, that the proposed division of land complies with requirements as to area, improvement and design, flood water drainage control, appropriate improved public roads, sanitary disposal facilities, water supply availability, environmental

protection, and other requirements of this division or local ordinance enacted pursuant thereto. In any case, where the requirement for a parcel map is waived by local ordinance pursuant to provisions of this section, a tentative map may be required by local ordinance."

The 1976 amendment inserted, in the second sentence of the first paragraph, "or for land conveyed to a public agency or public utility, or to a subsidiary of a public utility for conveyance to such public utility for rights-of-way," following "Public Utilities Code,"; at the end of the first sentence of the second paragraph, substituted "division" for "section" following "imposed by this"; in the second sentence of the second paragraph, deleted "In the event that such a waiver is provided by local ordinance," preceding "[T]he ordinance shall" and substituted "such requirements as may have been established by this division or local ordinance enacted pursuant thereto" for "requirements" following "complies with".

The 1977 amendment, in the second sentence of the first paragraph, inserted "the preparation of such parcel map is" preceding "waived by local ordinance" and substituted "or from a governmental agency, public entity" for "a public agency" preceding "or public utility"; at the

end of the first sentence of the second paragraph, added “, including the requirements for a parcel map imposed by Section 66426”.

The 1982 amendment by c. 87, in the first paragraph, divided the former second sentence into two sentences by substituting “as provided in this section. A parcel map shall not” for “as provided in this section, and provided further that a parcel map shall not”; substituted “for; (a) subdivisions of a portion of the operating right-of-way of a railroad corporation defined as such by Section 230 of the Public Utilities Code, which are created” for “for subdivision created”, substituted “, or (b) land conveyed” for “of a portion of the operating right-of-way of a railroad corporation defined as such by Section 230 of the Public Utilities Code or for land conveyed,” and inserted “for land conveyed” preceding “to a subsidiary of a public utility” in the third sentence of the first paragraph.

The 1982 amendment by c. 518 inserted a second sentence in the second paragraph, permitting local ordinances to allow waiver of the tentative and final map requirement for construction of a condominium project on a single parcel.

The 1984 amendment added the third paragraph, relating to situations in which a local ordinance does not require a tentative map.

Objectives of Stats.1984, c. 1113, see note under § 66498.1.

The 1989 amendment added subd. (b), relating to waiver of the requirement for a parcel map upon petition of two-thirds of the owners indicating their intent to purchase for the purpose of conversion to condominium ownership.

The 1990 amendment, in subd. (b), inserted “, and a field survey is performed,”; rewrote subd. (b)(2); and added subd. (c), relating to a mobilehome park petition and disclosure statement. Subdivision (b)(2) had read:

“(2) There is a need to perform field surveys on the exterior boundaries of the parcel or parcels appearing on the face of the map.”

The 1991 amendment deleted former subds. (b) and (c); inserted, in the first paragraph of subd. (a), “either of the following” following “required for”; also in subd. (a), inserted paragraph designations (1) and (2); redesignated the second paragraph of subd. (a) as subd. (b); redesignated the third paragraph of subd. (a) as subd. (c); and made nonsubstantive changes. Prior to amendment, subds. (b) and (c) read:

“(b) When at least two-thirds of the owners of mobilehomes who are tenants in the mobile-

home park sign a petition indicating their intent to purchase the mobilehome park for purposes of converting it to tenant-owned, condominium ownership interest, and a field survey is performed, the requirement for a parcel map or a tentative and final map specified by Section 66426, shall be waived unless any of the following exist:

“(1) There are significant design or improvement requirements necessitated by health or safety concerns.

“(2) Subsequent to recordation of the existing parcel or final map, there is an exterior boundary discrepancy that requires recordation of a new parcel or tentative and final map.

“(3) The existing lot or lots were not created by a recorded parcel or final map.

“(4) The conversion would result in the creation of additional parcels.

“(c) The petition signed by owners of mobilehomes in a mobilehome park proposed for conversion to a tenant-owned, condominium ownership interest pursuant to subdivision (b) shall read as follow:

“MOBILEHOME PARK PETITION
 “AND DISCLOSURE STATEMENT

“SIGNING THIS PETITION INDICATES YOUR SUPPORT FOR CONVERSION OF THIS MOBILEHOME PARK TO A CONDOMINIUM INTEREST PROJECT. THIS DISCLOSURE STATEMENT CONCERNS THE REAL PROPERTY SITUATED IN THE CITY OF _____, COUNTY OF _____, STATE OF CALIFORNIA, DESCRIBED AS _____. THE TOTAL COST FOR CONVERSION AND PURCHASE OF THE PARK IS \$___ TO \$____, EXCLUDING FINANCING COSTS. THE TOTAL COST TO YOU FOR CONVERSION AND PURCHASE OF YOUR OWNERSHIP INTEREST IS \$___ TO \$____, EXCLUDING FINANCING COSTS. IF TWO-THIRDS OF THE RESIDENTS IN THIS PARK SIGN THIS PETITION INDICATING THEIR INTENT TO PURCHASE THE MOBILEHOME PARK FOR PURPOSES OF CONVERTING IT TO A CONDOMINIUM INTEREST PROJECT, THEN THE REQUIREMENTS FOR A NEW PARCEL, OR TENTATIVE AND FINAL SUBDIVISION MAP IN COMPLIANCE WITH THE SUBDIVISION MAP ACT MUST BE WAIVED, WITH CERTAIN VERY LIMITED EXCEPTIONS. WAIVING THESE PROVISIONS OF LAW ELIMINATES NUMEROUS PROTECTIONS WHICH ARE AVAILABLE TO YOU.

 Buyer, unit #, date

 Petitioner, date

“After the waiver application is deemed complete pursuant to Section 65943, the local agency shall approve or deny the application within 60 days. The applicant shall have the right to

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appeal that decision to the governing body of the local agency.

"If a tentative or parcel map is required, the local agency shall not impose any onsite or offsite design or improvement requirements unless necessary to mitigate an existing health or safety condition. No other dedications, improvements, or in-lieu fees shall be required by the local agency. In no case shall the mitigation of a health or safety condition have the effect of reducing the number or changing the location of existing mobilehome spaces.

"If the local agency imposes requirements on an applicant to mitigate a health or safety condition, the applicant and the local agency shall enter into an unsecured improvement agreement. The local agency shall not require bonds or other security devices pursuant to Chapter 5 (commencing with Section 66499) for the performance of that agreement. The applicant shall have a period of one year from the date the agreement was executed to complete those improvements."

The 1994 amendment in subd. (a)(2) added the second sentence including a fee interest, an easement, or a license in conveyances of land to or from government agencies for the purposes of the subdivision.

Derivation: Bus. & Prof.C. former § 11535, added by Stats.1943, c. 128, p. 867, § 1, amended by Stats.1943, c. 668, p. 2423, § 1; Stats. 1947, c. 259, p. 822, § 1; Stats.1955, c. 1013, p. 1924, § 3; Stats.1957, c. 1039, p. 2273, § 1; Stats.1959, c. 306, p. 2215, § 2; Stats.1961, c. 2060, p. 4287, § 1; Stats.1963, c. 1551, p. 3136, § 1; Stats.1965, c. 1180, p. 2981, § 7; Stats. 1967, c. 727, p. 2098, § 3; Stats.1967, c. 856, p. 2293, § 1; Stats.1968, c. 269, p. 601, § 2; Stats.1968, c. 331, p. 718, § 4; Stats.1968, c. 520, p. 1164, § 4; Stats.1970, c. 500, p. 983, § 1; Stats.1971, c. 358, p. 716, § 1; Stats.1971, c. 1446, p. 2854, § 5; Stats.1972, c. 706, p. 1287, § 2.

Bus. & Prof.C. former § 11535.2, added by Stats.1971, c. 1635, p. 5331, § 1.

Stats.1941, c. 537, p. 1857, § 1.

Stats.1937, c. 670, p. 1864, § 2.

Cross References

Applications for waivers pursuant to this section, time for agency action, see Government Code § 66451.7.

Subdivision improvements and construction, requirements notwithstanding this section, see Government Code § 66411.1.

Notes of Decisions

- In general 1
- Acreage 3
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1. In general

Generally, filing of a tentative map and a final map is mandatory for divisions of real property into five parcels or more, and the filing of a parcel map is required for divisions into four or fewer parcels. 62 Ops.Atty.Gen. 147 (1979); 63 Ops.Atty.Gen. 601 (1980); 64 Ops.Atty.Gen. 549 (1981).

Procedurally, if a land division results in four or less parcels, a parcel map is normally required; the recording of a final map involving stricter requirements is generally necessary for a division resulting in five or more parcels. 62 Ops.Atty.Gen. 175, 281 (1979).

Any division of land, improved or unimproved, into condominiums will come within the Subdivision Map Act (§ 66410 et seq.); if the division results in five or more units, compliance with the provisions of the act will require the filing and approval of tentative and

final subdivision maps. 62 Ops.Atty.Gen. 410 (1979).

In the case of any division of land, improved or unimproved, into condominiums, a division into fewer than five units would require the preparation of a parcel map, unless a local ordinance, as authorized by this section, either requires the filing of a tentative and final map or waives the preparation of a parcel map. 62 Ops.Atty.Gen. 410 (1979).

Division of land creating five or more parcels generally requires the filing of a tentative and final map; a parcel map is generally required for all other divisions of land unless waived by local ordinance. 61 Ops.Atty.Gen. 114 (1978).

2. Construction with other laws

The fact that "five or more" parcels may be created when a division of land for purpose of sale results from condemnation of part of one or more parcels is disregarded and no tentative or final map is required under § 66426, but the fact that the division of land has occurred is not disregarded, and, under this section, a parcel map is required in any case in which a final map is not required, unless the parcel map is waived under this section. 58 Ops.Atty.Gen. 593 (1975).

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Note 3

3. Acreage

A parcel map must be approved before the parcel of less than 40 acres can be offered for sale. 55 Ops.Atty.Gen. 414, 11-22-72.

4. Contiguous parcels

Contiguous parcels held by the same owner "merge" for purposes of the Subdivision Map Act § 66410 et seq. if (1) a local ordinance has been adopted and the parcels come within the minimum size and development criteria, (2) the "reversion to acreage" provisions are followed, or (3) the general requirements of § 66426 et seq. for subdividing (resubdividing) property are satisfied. 64 Ops.Atty.Gen. 549, 7-3-81.

5. Assessment parcels

Where a unit of land has been subdivided in compliance with the Subdivision Map Act

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Title 7

(§ 66410 et seq.), and three contiguous lots of that subdivision, each improved with a single family dwelling, are retained by the subdivider, the fact that the three lots have been combined as one assessment parcel by the county assessor does not require that a new parcel map be processed before any of the lots can be conveyed. 59 Ops.Atty.Gen. 581, 10-7-76.

6. Condemnation

Parcels of land, each with a diminution or division through condemnation proceedings, may be individually sold if, and only if, a new parcel map is filed under this section, absent a local ordinance waiving such map. 58 Ops. Atty.Gen. 593, 8-7-75.

§ 66428.1. Parcel map or tentative and final map; waiver by intent of tenants to convert to resident ownership; exceptions; petition; application; improvements; unsecured improvement agreement; denial of application

(a) When at least two-thirds of the owners of mobilehomes who are tenants in the mobilehome park sign a petition indicating their intent to purchase the mobilehome park for purposes of converting it to resident ownership, and a field survey is performed, the requirement for a parcel map or a tentative and final map shall be waived unless any of the following conditions exist:

- (1) There are design or improvement requirements necessitated by significant health or safety concerns.
- (2) The local agency determines that there is an exterior boundary discrepancy that requires recordation of a new parcel or tentative and final map.
- (3) The existing parcels which exist prior to the proposed conversion were not created by a recorded parcel or final map.
- (4) The conversion would result in the creation of more condominium units or interests than the number of tenant lots or spaces that exist prior to conversion.

(b) The petition signed by owners of mobilehomes in a mobilehome park proposed for conversion to resident ownership pursuant to subdivision (a) shall read as follows:

MOBILEHOME PARK PETITION AND DISCLOSURE STATEMENT

SIGNING THIS PETITION INDICATES YOUR SUPPORT FOR CONVERSION OF THIS MOBILEHOME PARK TO RESIDENT OWNERSHIP. THIS DISCLOSURE STATEMENT CONCERNS THE REAL PROPERTY SITUATED IN THE CITY OF _____, COUNTY OF _____, STATE OF CALIFORNIA, DESCRIBED AS _____. THE TOTAL COST FOR CONVERSION AND PURCHASE OF THE PARK IS \$_____ TO \$_____, EXCLUDING FINANCING COSTS. THE TOTAL COST TO YOU FOR CONVERSION AND PURCHASE OF YOUR OWNERSHIP INTEREST IS \$_____ TO

§ 66430. Consent to filing

No final map or parcel map required by this chapter or local ordinance which creates a subdivision shall be filed with the local agency without the written consent of all parties having any record title interest in the real property proposed to be subdivided, except as otherwise provided in this division.

(Added by Stats.1974, c. 1536, p. 3468, § 4, operative March 1, 1975.)

Historical and Statutory Notes

Derivation: Bus. & Prof.C. former § 11589, added by Stats.1943, c. 128, p. 872, § 1.

Stats.1941, c. 537, p. 1858, § 2.

Bus. & Prof.C. former § 11625, added by Stats.1943, c. 128, p. 876, § 1.

Stats.1937, c. 670, pp. 1868, 1872, §§ 13, 22.

Cross References

Final maps, certificates of consent, see Government Code § 66436.

Law Review and Journal Commentaries

Forced dedications as a condition to subdivision approval. 9 San Diego L.Rev. 112 (1971).

Notes of Decisions

Conditions precedent 2
Deeds of trust 1

1. Deeds of trust

This section does not indicate that trustee under deed of trust is sole real party in interest to be served in action to foreclose mechanic's lien. *Monterey S.P. Partnership v. W.L. Bangham, Inc.* (1989) 261 Cal.Rptr. 587, 49 Cal.3d 454, 777 P.2d 623.

Neither record title interest of deed of trust trustee nor its role under this division divests beneficiary of security interest in property, and suggests lack of need to serve beneficiary in order to affect security of the deed of trust. *Monterey S.P. Partnership v. W.L. Bangham, Inc.* (1989) 261 Cal.Rptr. 587, 49 Cal.3d 454, 777 P.2d 623.

The interest of a trustee under a deed of trust encumbering property being subdivided is a record title interest within the meaning of this

section and §§ 66436, 66439, 66445, 66465; a local legislative body may not suspend or modify the signature requirement of the trustee as to final subdivision maps but may enact an ordinance suspending or modifying the trustee signature requirement as to parcel maps, however, where there has been dedication or an offer of dedication in connection with the parcel map, the trustee signature requirement with respect to the dedication may not be suspended or modified by the local legislative body. 59 Ops. Atty.Gen. 386, 7-13-76.

2. Conditions precedent

Where recordation of tract map of subdivision by vendors was condition precedent to purchaser's deposit in escrow of \$30,000 and deed of trust, purchaser was not obligated to make deposit until recordation of the map and purchaser could not be placed in default by vendors' demands that he deposit consideration in escrow. *Rubin v. Fuchs* (1969) 81 Cal.Rptr. 373, 1 Cal.3d 50, 459 P.2d 925.

§ 66431. County surveyor performing duties of city engineer; agreement; statement

Upon mutual agreement of their respective legislative bodies, the county surveyor may perform any or all of the duties assigned to the city engineer, including required certifications or statements. Whenever these duties have been divided between the county surveyor and city engineer, each officer shall state the duties performed by him or her.

(Added by Stats.1974, c. 1536, p. 3468, § 4, operative March 1, 1975. Amended by Stats.1987, c. 982, § 2.)

Historical and Statutory Notes

The 1987 amendment inserted, at the end of the first sentence, "or statements", and in the second sentence substituted "state" for "certify" following "shall" and made nonsubstantive changes.

Article 2

FINAL MAPS

Section

- 66433. Content and form; application of article.
- 66434. Form and contents.
- 66434.1. Owner's development lien; insertion of reference on final map.
- 66434.2. Additional survey and map information.
- 66434.5. Soils and geologic reports; filing.
- 66435. Certificates, statements, and acknowledgments; appearance; combination.
- 66435.1. Certificates, statements, and acknowledgments; separate instrument; recording.
- 66435.2. Certificates, statements or acknowledgments; separate instrument; reference on final map.
- 66436. Statement of consent; necessity; exceptions; nonliability for omission of signature; notary acknowledgment.
- 66439. Statement of dedications or offers to dedicate; undedicated streets; public utility facilities.
- 66440. Certificates or statements for clerks of approving legislative bodies.
- 66441. Statement of engineer or surveyor.
- 66442. Certificate or statement by county surveyor or city engineer; qualifications or authorizations to certify.
- 66443. Additional certificates and acknowledgments.

Article 2 was added by Stats.1974, c. 1536, p. 3468, § 4, operative March 1, 1975.

§ 66433. Content and form; application of article

The content and form of final maps shall be governed by the provisions of this article.

(Added by Stats.1974, c. 1536, p. 3468, § 4, operative March 1, 1975.)

Historical and Statutory Notes

Derivation: Bus. & Prof.C. former § 11565, added by Stats.1943, c. 128, p. 870, § 1, amended by Stats.1955, c. 1593, p. 2890, § 11. Stats.1953, c. 1444, p. 3035, § 1; Stats.1959, c. 219, p. 2126, § 1; Stats.1961, c. 377, p. 1431, § 1.

Bus. & Prof.C. former § 11567, added by Stats.1943, c. 128, c. 870, § 1, amended by Stats.1937, c. 670, pp. 1867, 1868, §§ 10, 12.

Law Review and Journal Commentaries

Forced dedications as a condition to subdivision approval. 9 San Diego L.Rev. 112 (1971).

Library References

Municipal Corporations ⇨43.
Zoning and Planning ⇨29.5.
WESTLAW Topic Nos. 268, 414.

C.J.S. Municipal Corporations §§ 83, 84.
C.J.S. Zoning and Land Planning § 21.

Notes of Decisions

Approval of subdivision maps 1
Partial final maps 2

1. Approval of subdivision maps

City was required to act on developers' application for approval of its subdivision maps under the Subdivision Map Act (§ 66410 et seq.) standards and on developers' development allotment application under standards of initiative measure designed to control rate, distribution, quality, and economic level of proposed development on a year-to-year basis. *Simac Design, Inc. v. Alciati* (App. 1 Dist. 1979) 154 Cal.Rptr. 676, 92 Cal.App.3d 146.

Subdividers, who submitted subdivision map to county planning commission, which within 50 days thereafter recommended to board of supervisors that tentative map be disapproved, were not entitled to automatic approval of subdivision map on theory that board did not act upon the report at its next succeeding regular meeting as required by Bus. & Prof.C. § 11552 (repealed; see, now §§ 66451.3, 66452.1 to 66452.3, 66452.5) where at its next regular meeting subdividers appeared and hearing was, with subdividers' consent, postponed to later

time, at which time subdividers fully participated in hearing resulting in disapproval. *Lenney v. Board of Sup'rs of Riverside County* (App. 4 Dist. 1974) 116 Cal.Rptr. 500, 41 Cal.App.3d 902.

2. Partial final maps

A final map may be filed on only a portion of a subdivision as to which a tentative map of the entire subdivision has been filed, but only if the subdivision, as shown on the final map, is "substantially the same" as on the tentative map and all other requirements of state laws and local ordinances have been satisfied, and whether the subdivision is "substantially the same" depends on the facts of each case. 57 Ops.Atty.Gen. 239, 5-24-74.

A final map may be filed on only a portion of a planned unit development, where a tentative map of the entire planned unit development has been filed, but only if the planned unit development is "substantially the same" on the final map as on the tentative map and all other requirements of state laws and local ordinances have been satisfied. 57 Ops.Atty.Gen. 239, 5-24-74.

§ 66434. Form and contents

The final map shall be prepared by or under the direction of a registered civil engineer or licensed land surveyor, shall be based upon a survey, and shall conform to all of the following provisions:

(a) It shall be legibly drawn, printed, or reproduced by a process guaranteeing a permanent record in black on tracing cloth or polyester base film. Certificates, affidavits, and acknowledgments may be legibly stamped or printed upon the map with opaque ink. If ink is used on polyester base film, the ink surface shall be coated with a suitable substance to assure permanent legibility.

(b) The size of each sheet shall be 18 by 26 inches or 460 by 660 millimeters. A marginal line shall be drawn completely around each sheet, leaving an entirely blank margin of one inch or 025 millimeters. The scale of the map shall be large enough to show all details clearly and enough sheets shall be used to accomplish this end. The particular number of the sheet and the total number of sheets comprising the map shall be stated on each of the sheets, and its relation to each adjoining sheet shall be clearly shown.

(c) All survey and mathematical information and data necessary to locate all monuments and to locate and retrace any and all interior and exterior boundary lines appearing thereon shall be shown, including bearings and distances of straight lines, and radii and arc length or chord bearings and length for all curves, and any information which may be necessary to determine the location of the centers of curves and ties to existing monuments used to establish the subdivision boundaries.

(d) Each parcel shall be numbered or lettered and each block may be numbered or lettered. Each street shall be named or otherwise designated.

(e) The exterior boundary of the land included within the subdivision shall be indicated by distinctive symbols and clearly so designated. The map shall show the definite location of the subdivision, and particularly its relation to surrounding surveys.

If the map includes a "designated remainder" parcel, and the gross area of the "designated remainder" parcel or similar parcel is five acres or more, that remainder parcel need not be shown on the map and its location need not be indicated as a matter of survey, but only by deed reference to the existing boundaries of the remainder parcel.

A parcel designated as "not a part" shall be deemed to be a "designated remainder" for purposes of this section.

(f) On and after January 1, 1987, no additional requirements shall be included which do not affect record title interests. However, the map shall contain a notation or reference to additional information required by a local ordinance adopted pursuant to Section 66434.2.

(Added by Stats.1974, c. 1536, p. 3468, § 4, operative March 1, 1975. Amended by Stats.1978, c. 521, p. 1680, § 2; Stats.1979, c. 383, p. 1442, § 3; Stats.1982, c. 87, § 8, eff. March 1, 1982; Stats.1985, c. 883, § 1; Stats.1985, c. 1504, § 3.5; Stats.1994, c. 458 (A.B.1414), § 7; Stats.1995, c. 579 (A.B.1566), § 6, eff. Oct. 4, 1995, operative Jan. 1, 1996.)

Historical and Statutory Notes

Addition of this section by § 4.5 of Stats.1974, c. 1536, p. 3513, failed to become operative under the provisions of § 10.5 of that Act.

Under the provisions of § 8 of Stats.1985, c. 1504, the 1985 amendments of this section by c. 883 and c. 1504 were given effect and incorporated in the form set forth in § 3.5 of c. 1504.

Amendment of this section by § 3 of Stats. 1985, c. 1504, failed to become operative under the provisions of § 8 of that Act.

Amendment of this section by § 1.5 of Stats. 1985, c. 883, failed to become operative under the provisions of § 5 of that Act.

Section affected by two or more acts at the same session of the legislature, see Government Code § 9605.

Derivation: Bus. & Prof.C. former § 11567, added by Stats.1943, c. 128, p. 870, § 1, amended by Stats.1953, c. 1444, p. 3035, § 1; Stats. 1959, c. 219, p. 2126, § 1; Stats.1961, c. 377, p. 1431, § 1.

Bus. & Prof.C. former § 11568, added by Stats.1965, c. 424, p. 1736, § 1.

Forms

See West's California Code Forms, Government.

Cross References

Filing maps with county recorder, see Government Code § 66464 et seq.

Local control of subdivision design and improvement, see Government Code § 66411.

Library References

Municipal Corporations ⇨43.
Zoning and Planning ⇨29.5.
WESTLAW Topic Nos. 268, 414.
C.J.S. Municipal Corporations §§ 83, 84.
C.J.S. Zoning and Land Planning § 21.

Background and general effect of 1965 addition of Bus. & Prof.C. § 11568. Rev. of 1965 Code Leg. (Const.Educ. of Bar, 1965) page 151.

Notes of Decisions

Land use element 2
Preparation 1

et seq.) may not be prepared under the direction of licensed architects. 66 Ops.Atty.Gen. 1, 1-26-83.

1. Preparation

Parcel maps, final maps, and soils reports specified in the Subdivision Map Act (§ 66410

2. Land use element

A parcel specific map is not required for the land use element of a general plan adopted by a city or county. 67 Ops.Atty.Gen. 75, 3-7-84.

§ 66434.1. Owner's development lien; insertion of reference on final map

In the event that an owner's development lien has been created pursuant to the provisions of Article 2.5 (commencing with Section 39327) of Chapter 3 of Part 23 of the Education Code on the real property or portion thereof subject to the final map, a notice shall be placed on the face of the final map specifically referencing the book and page in the county recorder's office in which the resolution creating the owner's development lien was recorded. The notice shall state that the property subdivided is subject to an owner's development lien and that each parcel created by the recordation of the final map shall be subject to a prorated amount of the owner's development lien on a per acre or portion thereof basis.

(Added by Stats.1979, c. 282, p. 1024, § 57, eff. July 24, 1979.)

§ 66434.2. Additional survey and map information

(a) On or after January 1, 1987, a city or county may, by ordinance, require additional information to be filed or recorded simultaneously with a final or parcel map. The additional information shall be in the form of a separate document or an additional map sheet which shall indicate its relationship to the final or parcel map, and shall contain a statement that the additional information is for informational purposes, describing conditions as of the date of filing, and is not intended to affect record title interest. The document or additional map sheet may also contain a notation that the additional information is derived from public records or reports, and does not imply the correctness or sufficiency of those records or reports by the preparer of the document or additional map sheet.

(b) Additional survey and map information may include, but need not be limited to: building setback lines, flood hazard zones, seismic lines and setbacks, geologic mapping, and archaeological sites.

(Added by Stats.1985, c. 883, § 2.)

§ 66434.5. Soils and geologic reports; filing

When a soils report, geologic report, or soils and geologic report has been prepared specifically for the subdivision, each report shall be kept on file for public inspection by the city or county having jurisdiction.

(Added by Stats.1978, c. 521, p. 1681, § 3. Amended by Stats.1982, c. 87, § 9, eff. March 1, 1982.)

Library References

Records 14, 54.
WESTLAW Topic No. 326.
C.J.S. Records §§ 99 to 101, 103, 104.

§ 66435. Certificates, statements, and acknowledgments; appearance; combination

Prior to filing, those certificates, statements, and acknowledgments set forth in this article shall appear on the final map and may be combined where appropriate.

(Added by Stats.1974, c. 1536, p. 3469, § 4, operative March 1, 1975. Amended by Stats.1988, c. 1408, § 5.)

Historical and Statutory Notes

Derivation: Bus. & Prof.C. former § 11585, Stats.1937, c. 670, p. 1868, § 13.
added by Stats.1943, c. 128, p. 872, § 1.
Stats.1941, c. 537, p. 1858, § 2.

Law Review and Journal Commentaries

Forced dedications as a condition to subdivision approval. 9 San Diego L.Rev. 112 (1971).

§ 66435.1. Certificates, statements, and acknowledgments; separate instrument; recording

Notwithstanding any other provision of this article, local agencies may require that those certificates, statements, and acknowledgments required by Sections 66436 and 66443, be made by separate instrument to be recorded concurrently with the final map being filed for record.

(Added by Stats.1982, c. 87, § 10, eff. March 1, 1982. Amended by Stats.1988, c. 1408, § 6.)

§ 66435.2. Certificates, statements or acknowledgments; separate instrument; reference on final map

Whenever a certificate, statement, or acknowledgment is made by separate instrument, there shall appear on the final map a reference to the separately recorded document. This reference shall be completed by the county recorder pursuant to Section 66468.1.

(Added by Stats.1982, c. 87, § 11, eff. March 1, 1982. Amended by Stats.1987, c. 982, § 3.)

§ 66436. Statement of consent; necessity; exceptions; nonliability for omission of signature; notary acknowledgment

(a) A statement, signed and acknowledged by all parties having any record title interest in the subdivided real property, consenting to the preparation and recordation of the final map is required, except in the following circumstances:

(1) A lien for state, county, municipal, or local taxes or special assessments, a trust interest under bond indentures, or mechanics' liens do not constitute a

record title interest in land for the purpose of this chapter or any local ordinance.

(2) The signature of either the holder of beneficial interests under trust deeds or the trustee under the trust deeds, but not both, may be omitted. The signature of either shall constitute a full and complete subordination of the lien of the deed of trust to the map and any interest created by the map.

(3) Signatures of parties owning the following types of interests may be omitted if their names and the nature of their respective interests are stated on the final map:

(A) (i) Rights-of-way, easements or other interests which cannot ripen into a fee, except those owned by a public entity, public utility, or subsidiary of a public utility for conveyance to the public utility for rights-of-way. If, however, the legislative body or advisory agency determines that division and development of the property in the manner set forth on the approved or conditionally approved tentative map will not unreasonably interfere with the free and complete exercise of the public entity or public utility right-of-way or easement, the signature of the public entity or public utility may be omitted. Where that determination is made, the subdivider shall send, by certified mail, a sketch of the proposed final map, together with a copy of this section, to any public entity or public utility which has previously acquired a right-of-way or easement.

(ii) If the public entity or utility objects to either recording the final map without its signature or the determination of the legislative body or advisory agency that the division and development of the property will not unreasonably interfere with the full and complete exercise of its right-of-way or easement, it shall so notify the subdivider and the legislative body or advisory agency within 30 days after receipt of the materials from the subdivider.

(iii) If the public entity or utility objects to recording the final map without its signature, the public entity or utility so objecting may affix its signature to the final map within 30 days of filing its objection with the legislative body or advisory agency.

(iv) If the public entity or utility either does not file an objection with the legislative body or advisory agency or fails to affix its signature within 30 days of filing its objection to recording the map without its signature, the local agency may record the final map without the signature.

(v) If the public entity or utility files an objection to the determination of the legislative body or advisory agency that the division and development of the property will not unreasonably interfere with the exercise of its right-of-way or easement, the legislative body or advisory agency shall set the matter for public hearing to be held not less than 10 nor more than 30 days of receipt of the objection. At the hearing, the public entity or public utility shall present evidence in support of its position that the division and development of the property will unreasonably interfere with the free and complete exercise of the objector's right-of-way or easement.

(vi) If the legislative body or advisory agency finds, following the hearing, that the development and division will in fact unreasonably interfere with the

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free and complete exercise of the objector's right-of-way or easement, it shall set forth those conditions whereby the unreasonable interference will be eliminated and upon compliance with those conditions by the subdivider, the final map may be recorded with or without the signature of the objector. If the legislative body or advisory agency finds that the development and division will in fact not unreasonably interfere with the free and complete exercise of the objector's right-of-way or easement, the final map may be recorded without the signature of the objector, notwithstanding the objections.

(vii) Failure of the public entity or public utility to file an objection pursuant to this section shall in no way affect its rights under a right-of-way or easement.

(viii) No fee shall be charged by a public entity, public utility, subsidiary of a public utility, or objector for signing, omitting a signature, or objecting pursuant to this section.

(B) Rights-of-way, easements, or reversions, which by reason of changed conditions, long disuse, or laches appear to be no longer of practical use or value and signatures are impossible or impractical to obtain. A statement of the circumstances preventing the procurement of the signatures shall also be stated on the map.

(C) Interests in, or rights to, minerals, including but not limited to, oil, gas, or other hydrocarbon substances.

(4) Real property originally patented by the United States or by the State of California, which original patent reserved interest to either or both of those entities, may be included in the final map without the consent of the United States or the State of California to the map or to dedications made by it.

(b) No monetary liability shall be incurred by, and no cause of action shall arise against, a local agency, a party, the subdivider, the subdivider's agent, or the engineer or land surveyor who prepared the map, on account of the omission of any signature, which omission is authorized by this section.

(c) A notary acknowledgment shall be deemed complete for recording without the official seal of the notary, so long as the name of the notary, the county of the notary's principal place of business, and the notary's commission expiration date are typed or printed below or immediately adjacent to the notary's signature in the acknowledgment.

(Added by Stats.1974, c. 1536, p. 3469, § 4, operative March 1, 1975. Amended by Stats.1976, c. 928, p. 2121, § 6; Stats.1976, c. 1081, p. 4903, § 9; Stats.1977, c. 234, p. 1035, § 7, eff. July 7, 1977; Stats.1982, c. 87, § 12, eff. March 1, 1982; Stats.1985, c. 1504, § 4; Stats.1986, c. 789, § 1; Stats.1987, c. 982, § 4; Stats.1988, c. 100, § 2; Stats.1989, c. 847, § 5.)

Historical and Statutory Notes

Section affected by two or more acts at the same session of the legislature, see Government Code § 9605.

Derivation: Bus. & Prof.C. former § 11586 to 11589, added by Stats.1943, c. 128, p. 872, § 1, amended by Stats.1953, c. 565, p. 1819, § 1.

Bus. & Prof.C. former § 11625, added by Stats.1943, c. 128, p. 876, § 1.

Stats.1937, c. 670, pp. 1868, 1872, §§ 13, 22.

Stats.1941, c. 537, p. 1858, § 2.

Library References

California Practice Guide: Real Property Transactions, Greenwald & Asimow, see Guide's Table of Statutes for chapter para-

graph number references to paragraphs discussing this section.

Notes of Decisions

Highways 2
Objections 1
Trustees 3

Cal.Rptr. 334, 166 Cal.App.3d 206, review denied.

3. Trustees

The interest of a trustee under a deed of trust encumbering property being subdivided is a record title interest within the meaning of this section and §§ 66430, 66439, 66445, 66465; a local legislative body may not suspend or modify the signature requirement of the trustee as to final subdivision maps but may enact an ordinance suspending or modifying the trustee signature requirement as to parcel maps; however, where there has been dedication or an offer of dedication in connection with the parcel map, the trustee signature requirement with respect to the dedication may not be suspended or modified by the local legislative body. 59 Ops.Atty.Gen. 386, 7-13-76.

The signature of the trustee, under a deed of trust which encumbers property being subdivided, is required as a condition of the approval and recordation of a final subdivision map. 59 Ops.Atty.Gen. 386, 7-13-76.

1. Objections

Only parties which hold record title interest are entitled to object under provision of Subdivision Map Act governing approval of maps, and only to the extent that the proposed subdivision will interfere with record title interest. La Canada Flintridge Development Corp. v. Department of Transp. (App. 2 Dist. 1985) 212 Cal.Rptr. 334, 166 Cal.App.3d 206, review denied.

2. Highways

State Department of Transportation has no duty to lodge its concerns about state highways with local agencies when those highways are merely adjacent to proposed new developments. La Canada Flintridge Development Corp. v. Department of Transp. (App. 2 Dist. 1985) 212

§ 66439. Statement of dedications or offers to dedicate; undedicated streets; public utility facilities

(a) Dedications of, or offers to dedicate interests in, real property for specified public purposes shall be made by a statement on the final map, signed and acknowledged by those parties having any record title interest in the real property being subdivided, subject to the provisions of Section 66436.

(b) In the event any street shown on a final map is not offered for dedication, the statement may contain a declaration to this effect. If the statement appears on the final map and if the map is approved by the legislative body, the use of the street or streets by the public shall be permissive only.

(c) An offer of dedication of real property for street or public utility easement purposes shall be deemed not to include any public utility facilities located on or under the real property unless, and only to the extent that, an intent to dedicate the facilities is expressly declared in the statement.

(Added by Stats.1974, c. 1536, p. 3470, § 4, operative March 1, 1975. Amended by Stats.1975, c. 24, p. 31, § 8, eff. April 4, 1975; Stats.1987, c. 982, § 5.)

Historical and Statutory Notes

Derivation: Bus. & Prof.C. former § 11590, added by Stats.1943, c. 128, p. 872, § 1, amended by Stats.1953, c. 564, p. 1818, § 1; Stats. 1957, c. 1606, p. 2954, § 1; Stats.1965, c. 1738, p. 3894, § 1.

Stats.1937, c. 670, p. 1868, § 13.

Stats.1941, c. 537, p. 1858, § 2.

Cross References

Dedications, see Government Code § 66475 et seq.

Law Review and Journal Commentaries

Common law and statutory dedication in California. 53 Cal.L.Rev. 559 (1965).

Library References

Background and general effect of 1965 amendment of Bus. & Prof.C. § 11590. Rev. of 1965 Code Leg. (Cont.Educ. of Bar, 1965) page 17.

Notes of Decisions

- Ambiguities 4
- Consummation of dedication 2
- Effect of recordation 3
- Maintenance 5
- Non-exclusive easements 6
- Offer to dedicate 1
- Trustees' signatures 7

1. Offer to dedicate

Although offer of dedication was rejected by county board of supervisors it became irrevocable on day after subdivision map was recorded by subdivider's conveyance of block shown thereon and was accepted by subsequent public use of it as thoroughfare. *Main v. Legnitto* (App. 1 Dist. 1964) 41 Cal.Rptr. 223, 230 Cal.App.2d 667.

Words of dedication on a subdivision map are an offer to dedicate but dedication is not completed until the offer is accepted. *Galeb v. Cupertino Sanitary Dist. of Santa Clara County* (App. 1 Dist. 1964) 38 Cal.Rptr. 580, 227 Cal.App.2d 294.

An offer to dedicate is not governed by the ordinary rules applicable to contracts, but an offer to dedicate partakes both of the nature of a grant and of a gift and is governed by principles controlling such transactions. *Tischauser v. City of Newport Beach* (App. 4 Dist. 1964) 37 Cal.Rptr. 141, 225 Cal.App.2d 138.

Words of dedication on a subdivision map are treated merely as an offer, and the dedication is not completed until offer is accepted by city. *Stump v. Cornell Const. Co.* (1946) 29 Cal.2d 448, 175 P.2d 510.

2. Consummation of dedication

Though county's acceptance of easements for public highways occurred 13 years after conveyance thereof, such was effective to complete dedication of the land to street purposes. *City of Anaheim v. Metropolitan Water Dist. of Southern California* (App. 4 Dist. 1978) 147 Cal.Rptr. 336, 82 Cal.App.3d 763.

When an owner, after filing a map of record designating certain portion of tract as streets

and alleys, sells lots designated thereon by reference to such map, he thereby irrevocably dedicates streets and alleys shown thereon to use of public. *Larkey v. City of Los Angeles* (App. 2 Dist. 1925) 70 Cal.App. 635, 233 P. 991.

3. Effect of recordation

Upon recordation of map and certificate dedicating property to county for highway purposes, title for such purposes vested in county, and rights of contiguous property owners and owners of prior easements were measured by terms of their conveyances to county. *Airways Water Co. v. Los Angeles County* (App. 1951) 106 Cal.App.2d 787, 236 P.2d 199.

4. Ambiguities

When a dedicator has caused an uncertainty as to location and extent of a public way, an interpretation most favorable to the public and against dedicator must be adopted. *Galeb v. Cupertino Sanitary Dist. of Santa Clara County* (App. 1 Dist. 1964) 38 Cal.Rptr. 580, 227 Cal.App.2d 294.

5. Maintenance

As a condition of approval of a subdivision, a county may require that the association of the subdivision parcel owners maintain the subdivision roads dedicated for public use until the roads meet county highway construction standards and become part of the county highway system. 61 Ops.Atty.Gen. 466, 11-3-78.

6. Non-exclusive easements

A non-exclusive easement for road and utility purposes obtained by a private individual and appurtenant to his land may generally not be dedicated to a county for public use in the absence of express language in the original grant of the easement indicating that it is for public use; such an easement may be dedicated to the county for public use if the original grant to the subdivider was for "public road and utility purposes" or "public and private purposes." 61 Ops.Atty.Gen. 466, 11-3-78.

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Note 7

7. Trustees' signatures

The interest of a trustee under a deed of trust encumbering property being subdivided is a record title interest within the meaning of this section and §§ 66430, 66436, 66445, 66465; a local legislative body may not suspend or modify the signature requirement of the trustee as to final subdivision maps but may enact an ordi-

nance suspending or modifying the trustee signature requirement as to parcel maps, however, where there has been dedication or an offer of dedication in connection with the parcel map, the trustee signature requirement with respect to the dedication may not be suspended or modified by the local legislative body. 59 Ops. Atty.Gen. 386, 7-13-76.

SUBDIVISIONS

Title 7

§ 66440. Certificates or statements for clerks of approving legislative bodies

The final map shall contain a certificate or statement for execution by the clerk of each approving legislative body stating that the body approved the map and accepted, accepted subject to improvement, or rejected, on behalf of the public, any real property offered for dedication for public use in conformity with the terms of the offer of dedication.

(Added by Stats.1974, c. 1536, p. 3471, § 4, operative March 1, 1975. Amended by Stats.1987, c. 982, § 6.)

Historical and Statutory Notes

Derivation: Bus. & Prof.C. former § 11591, Stats.1941, c. 537, p. 1858, § 2.
added by Stats.1943, c. 128, p. 872, § 1.
Stats.1937, c. 670, p. 1868, § 13.

Cross References

Acceptance or rejection of offers of dedication, see Government Code § 66477.1.

Notes of Decisions

Maintenance 2

Offers of dedication 1

1. Offers of dedication

Under Subdivision Map Act, Bus. & Prof.C. § 11500 et seq. (repealed), words of dedication on a map are treated merely as an offer, and the dedication is not completed until offer is accepted by city. *Stump v. Cornell Const. Co.* (1946) 29 Cal.2d 448, 175 P.2d 510.

2. Maintenance

As a condition of approval of a subdivision, a county may require that the association of the subdivision parcel owners maintain the subdivision roads dedicated for public use until the roads meet county highway construction standards and become part of the county highway system. 61 Ops.Atty.Gen. 466, 11-3-78.

§ 66441. Statement of engineer or surveyor

A statement by the engineer or surveyor responsible for the survey and final map is required. His or her statement shall give the date of the survey, state that the survey and final map were made by him or her or under his or her direction, and that the survey is true and complete as shown.

The statement shall also state that all the monuments are of the character and occupy the positions indicated, or that they will be set in those positions on or before a specified later date. The statement shall also state that the monuments are, or will be, sufficient to enable the survey to be retraced.

(Added by Stats.1974, c. 1536, p. 3471, § 4, operative March 1, 1975. Amended by Stats.1987, c. 982, § 7.)

Historical and Statutory Notes

Derivation: Bus. & Prof.C. former § 11592, added by Stats.1943, c. 128, p. 873, § 1, amended by Stats.1961, c. 1421, p. 3223, § 2; Stats. 1963, c. 1803, p. 3637, § 2; Stats.1971, c. 539, p. 1047, § 1.

Stats.1937, c. 670, p. 1868, § 13.
Stats.1941, c. 537, p. 1858, § 2.

Notes of Decisions

In general 1

et seq.) may not be prepared under the direction of licensed architects. 66 Ops.Atty.Gen. 1, 1-26-83.

1. In general

Parcel maps, final maps, and soils reports specified in the Subdivision Map Act (§ 66410

§ 66442. Certificate or statement by county surveyor or city engineer; qualifications or authorizations to certify

(a) If a subdivision for which a final map is required lies within an unincorporated area, a certificate or statement by the county surveyor is required. If a subdivision lies within a city, a certificate or statement by the city engineer or city surveyor is required. The appropriate official shall sign, date, and, below or immediately adjacent to the signature, indicate his or her registration or license number with expiration date and state that:

(1) He or she has examined the map.

(2) The subdivision as shown is substantially the same as it appeared on the tentative map, and any approved alterations thereof.

(3) All provisions of this chapter and of any local ordinances applicable at the time of approval of the tentative map have been complied with.

(4) He or she is satisfied that the map is technically correct.

(b) City or county engineers registered as civil engineers after January 1, 1982, shall only be qualified to certify the statements of paragraphs (1), (2), and (3) of subdivision (a). The statement specified in paragraph (4) shall only be certified by a person authorized to practice land surveying pursuant to the Professional Land Surveyors' Act (Chapter 15 (commencing with Section 8700) of Division 3 of the Business and Professions Code) or a person registered as a civil engineer prior to January 1, 1982, pursuant to the Professional Engineers' Act (Chapter 7 (commencing with Section 6700) of Division 3 of the Business and Professions Code). The county surveyor, the city surveyor, or the city engineer, as the case may be, or other public official or employee qualified and authorized to perform the functions of one of those officials, shall complete and file with his or her legislative body his or her certificate or statement, as required by this section, within 20 days from the time the final map is submitted to him or her by the subdivider for approval.

(Added by Stats.1974, c. 1536, p. 3471, § 4, operative March 1, 1975. Amended by Stats.1987, c. 982, § 8; Stats.1988, c. 100, § 3; Stats.1991, c. 738 (A.B.1269), § 1.)

Historical and Statutory Notes

Derivation: Bus. & Prof.C. former § 11593, added by Stats.1943, c. 128, p. 873, § 1, amended by Stats.1943, c. 668, p. 2425, § 5.

Stats.1937, c. 670, p. 1868, § 13.
Stats.1941, c. 537, p. 1858, § 2.

Law Review and Journal Commentaries

Land development and the environment:
Subdivision Map Act. 5 Pac.L.J. 55 (1974).

Notes of Decisions

Fees 2
Final maps 1

1. Final maps

Duty to determine compliance of final tract map with applicable state and local law and to imposed technical conditions was delegated to city engineer. *Great Western Sav. & Loan Ass'n v. City of Los Angeles* (App. 2 Dist. 1973) 107 Cal.Rptr. 359, 31 Cal.App.3d 403.

A final map may be filed on only a portion of a subdivision as to which a tentative map of the entire subdivision has been filed, but only if the subdivision, as shown on the final map, is "substantially the same" as on the tentative map and all other requirements of state laws and local ordinances have been satisfied, and whether the subdivision is "substantially the same" depends on the facts of each case. 57 Ops.Atty.Gen. 239, 5-24-74.

2. Fees

City ordinance requiring a subdivider to pay \$50 per lot as a condition precedent to city's approval of subdivision map to partially cover capital outlays for parks, recreation, and fire protection was for regulatory as well as revenue purposes and was invalid as being in conflict with the Subdivision Map Act, Bus. & Prof.C. § 11500 et seq. (repealed). *Newport Bldg. Corp. v. City of Santa Ana* (App. 4 Dist. 1962) 26 Cal.Rptr. 797, 210 Cal.App.2d 771.

Ordinances requiring subdivider, as condition of approval of subdivision map, to pay \$30 per lot to be placed in park and school site fund and \$99.07 per acre to be placed into subdivision drainage fund in lieu of specified drainage structures both inside and outside subdivision were not local ordinances regulating the design and improvement of a subdivision, and the fees collected by the city under the ordinances were illegally imposed. *Kelber v. City of Upland* (App. 1957) 155 Cal.App.2d 631, 318 P.2d 561.

§ 66443. Additional certificates and acknowledgments

In addition to the certificates, statements, and acknowledgments required herein for final maps, the maps shall contain other certificates and acknowledgments as are required by local ordinance.

(Added by Stats.1974, c. 1536, p. 3471, § 4, operative March 1, 1975. Amended by Stats.1988, c. 1408, § 7.)

Article 3

PARCEL MAPS

Section

- 66444. Content and form; application of article.
- 66445. Preparation; required provisions.
- 66447. Dedications or offers; making by statement on map or separate instrument; recording.
- 66448. Field survey; recorded or filed data.
- 66449. Necessary statements.
- 66450. Certificate or statement by city engineer or county surveyor; contents; filing date.

Article 3 was added by Stats.1974, c. 1536, p. 3471, § 4, operative March 1, 1975.

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§ 66444. Content and form; application of article

The content and form of parcel maps shall be governed by the provisions of this article.

(Added by Stats.1974, c. 1536, p. 3471, § 4, operative March 1, 1975.)

Historical and Statutory Notes

Derivation: Bus. & Prof.C. former § 11575, added by Stats.1965, c. 1180, p. 2985, § 13.

Law Review and Journal Commentaries

Forced dedications as a condition to subdivision approval. 9 San Diego L.Rev. 112 (1971). Land development and the environment: Subdivision Map Act. 5 Pac.L.J. 55 (1974).

Library References

Municipal Corporations ⇨43.
Zoning and Planning ⇨29.5.
WESTLAW Topic Nos. 268, 414.
C.J.S. Municipal Corporations §§ 83, 84.
C.J.S. Zoning and Land Planning § 21.

Subdivision mapping. Report of Subcommittee of Assembly Interim Committee on Governmental Efficiency and Economy, 1963 to 1965, vol. 8, No. 9, p. 3. Vol. 1 of Appendix to Journal of Assembly, Reg.Sess., 1965.

§ 66445. Preparation; required provisions

The parcel map shall be prepared by, or under the direction of, a registered civil engineer or licensed land surveyor, shall show the location of streets and property lines bounding the property, and shall conform to all of the following provisions:

(a) It shall be legibly drawn, printed or reproduced by a process guaranteeing a permanent record in black on tracing cloth or polyester base film. Certificates or statements, affidavits, and acknowledgments may be legibly stamped or printed upon the map with opaque ink. If ink is used on polyester base film, the ink surface shall be coated with a suitable substance to assure permanent legibility.

(b) The size of each sheet shall be 18 by 26 inches or 460 by 660 millimeters. A marginal line shall be drawn completely around each sheet, leaving an entirely blank margin of one inch or 025 millimeters. The scale of the map shall be large enough to show all details clearly and enough sheets shall be used to accomplish this end. The particular number of the sheet and the total number of sheets comprising the map shall be stated on each of the sheets, and its relation to each adjoining sheet shall be clearly shown.

(c) Each parcel shall be numbered or lettered and each block may be numbered or lettered. Each street shall be named or otherwise designated.

(d)(1) The exterior boundary of the land included within the subdivision shall be indicated by distinctive symbols and clearly so designated.

(2) The map shall show the location of each parcel and its relation to surrounding surveys. If the map includes a "designated remainder" parcel or similar parcel, and the gross area of the "designated remainder" parcel or similar parcel is five acres or more, that remainder parcel need not be shown on the map and its location need not be indicated as a matter of survey, but only by deed reference to the existing boundaries of the remainder parcel.

(3) A parcel designated as "not a part" shall be deemed to be a "designated remainder" for purposes of this section.

(e) Subject to the provisions of Section 66436, a statement, signed and acknowledged by all parties having any record title interest in the real property subdivided, consenting to the preparation and recordation of the parcel map is required, except that less inclusive requirements may be provided by local ordinance.

With respect to a division of land into four or fewer parcels, where dedications or offers of dedications are not required, the statement shall be signed and acknowledged by the subdivider only. If the subdivider does not have a record title ownership interest in the property to be divided, the local agency may require that the subdivider provide the local agency with satisfactory evidence that the persons with record title ownership have consented to the proposed division. For purposes of this paragraph, "record title ownership" shall mean fee title of record unless a leasehold interest is to be divided, in which case "record title ownership" shall mean ownership of record of the leasehold interest. Record title ownership does not include ownership of mineral rights or other subsurface interests which have been severed from ownership of the surface.

(f) Notwithstanding any other provision of this article, local agencies may require that those statements and acknowledgments required pursuant to subdivision (e) be made by separate instrument to be recorded concurrently with the parcel map being filed for record.

(g) On and after January 1, 1987, no additional survey and map requirements shall be included on a parcel map which do not affect record title interests. However, the map shall contain a notation of reference to survey and map information required by a local ordinance adopted pursuant to Section 66434.2.

(h) Whenever a certificate or acknowledgment is made by separate instrument, there shall appear on the final map a reference to the separately recorded document. This reference shall be completed by the county recorder pursuant to Section 66468.1.

(i) If a field survey was performed, the parcel map shall contain a statement by the engineer or surveyor responsible for the preparation of the map that states that all monuments are of the character and occupy the positions indicated, or that they will be set in those positions on or before a specified date, and that the monuments are, or will be, sufficient to enable the survey to be retraced.

(Added by Stats.1974, c. 1536, p. 3471, § 4, operative March 1, 1975. Amended by Stats.1976, c. 928, p. 2123, § 7; Stats.1976, c. 1263, p. 5597, § 2.5; Stats.1978, c. 426, p. 1326, § 1; Stats.1979, c. 383, p. 1443, § 4; Stats.1982, c. 87, § 13, eff. March 1, 1982; Stats.1982, c. 518, § 2; Stats.1983, c. 1195, § 1; Stats.1985, c. 883, § 3; Stats.1985, c. 1504, § 5.5; Stats.1987, c. 982, § 9; Stats.1994, c. 458 (A.B.1414), § 8; Stats.1995, c. 579 (A.B.1566), § 7, eff. Oct. 4, 1995, operative Jan. 1, 1996.)

Historical and Statutory Notes

Amendment of this section by § 7.5 of Stats. 1976, c. 928, p. 2118, failed to become operative under the provisions of § 10.5 of that Act.

Under the provisions of § 3 of Stats. 1976, c. 1263, the 1976 amendments of this section by c. 928 and c. 1263 were given effect and incorporated in the form set forth in § 25 of c. 1263.

Amendment of this section by § 2 of Stats. 1976, c. 1263, p. 5596, failed to become operative under the provisions of § 3 of that Act.

Section affected by two or more acts at the same session of the legislature, see Government Code § 9605.

Under the provisions of § 9 of Stats. 1985, c. 1504, the 1985 amendments of this section by c.

883 and c. 1504 were given effect and incorporated in the form set forth in § 5.5 of c. 1504.

Amendment of this section by § 5 of Stats. 1985, c. 1504, failed to become operative under the provisions of § 9 of that Act.

Amendment of this section by § 3.5 of Stats. 1985, c. 883, failed to become operative under the provisions of § 6 of that Act.

Section affected by two or more acts at the same session of the legislature, see Government Code § 9605.

Derivation: Bus. & Prof.C. former §§ 11576, 11577 added by Stats. 1965, c. 1180, pp. 2985, 2986, § 13, amended by Stats. 1967, c. 727, pp. 2100, 2101, §§ 4, 5.

Law Review and Journal Commentaries

Land development and the environment:
Subdivision Map Act. 5 Pac.L.J. 55 (1974).

Library References

Municipal Corporations ⇨43.
Zoning and Planning ⇨29.5.
WESTLAW Topic Nos. 268, 414.

C.J.S. Municipal Corporations §§ 83, 84.
C.J.S. Zoning and Land Planning § 21.

Notes of Decisions

legislative body provides otherwise by ordinance; this conclusion does not apply to any parcel map approved prior to March 1, 1975, the operative date of chapter 1536, Statutes of 1974. 59 Ops.Atty.Gen. 386, 7-13-76.

The interest of a trustee under a deed of trust encumbering property being subdivided is a record title interest within the meaning of this section and §§ 66430, 66436, 66439, 66465; a local legislative body may not suspend or modify the signature requirement of the trustee as to final subdivision maps but may enact an ordinance suspending or modifying the trustee signature requirement as to parcel maps, however, where there has been dedication or an offer of dedication in connection with the parcel map, the trustee signature requirement with respect to the dedication may not be suspended or modified by the local legislative body. 59 Ops. Atty.Gen. 386, 7-13-76.

Land surveyors are authorized under § 66495 to sign final maps of subdivisions and, by this section, parcel maps, since the preparation of maps is a function of surveying and does not involve designing. 58 Ops.Atty.Gen. 430 (1975).

4. Architects

Parcel maps, final maps, and soils reports specified in the Subdivision Map Act (§ 66410 et seq.) may not be prepared under the direction

- Architects 4
- Fixed works 1
- Remainder parcels 2
- Signatures 3

1. Fixed works

Within proposed subdivision for residential use, improvements for drainage, water supply, flood control, municipal improvements, highways, and sewerage as well as improvements of a permanent and firm nature are both considered as fixed works under Professional Engineers Act. 58 Ops.Atty.Gen. 430, 6-18-75.

A grading plan is also a fixed work if it is executed in connection with an improvement which is a fixed work or, if, standing alone, it is of a permanent and firm nature. 58 Ops.Atty. Gen. 430, 6-18-75.

2. Remainder parcels

Where owner subdivides a portion of his land, remainder may be considered and described as "not a part" of the subdivision on the maps required to be filed for approval. 62 Ops.Atty. Gen. 246 (1979).

3. Signatures

The signature of the trustee, under a deed of trust which encumbers property being subdivided, is required as a condition of the approval and recordation of a parcel map unless the local

of licensed architects. 66 Ops.Atty.Gen. 1, 1-26-83.

§ 66447. Dedications or offers; making by statement on map or separate instrument; recording

If dedications or offers of dedication are required, they may be made either by a statement on the parcel map or by separate instrument, as provided by local ordinance. If dedications or offers of dedication are made by separate instrument, the dedications or offers of dedication shall be recorded concurrently with, or prior to, the parcel map being filed for record.

The dedication or offers of dedication, whether by statement or separate instrument, shall be signed by the same parties and in the same manner as set forth in Section 66439 for dedications by a final map.

(Added by Stats.1974, c. 1536, p. 3472, § 4, operative March 1, 1975. Amended by Stats.1987, c. 982, § 10.)

Historical and Statutory Notes

Derivation: Bus. & Prof.C. former § 11590, added by Stats.1943, c. 128, p. 872, § 1, amended by Stats.1953, c. 564, p. 1818, § 1; Stats. 1957, c. 1606, p. 2954, § 1; Stats.1965, c. 1738, p. 3894, § 1.

Stats.1937, c. 670, p. 1868, § 13.

Stats.1941, c. 537, p. 1858, § 2.

Cross References

Dedications,

Generally, see Government Code § 66475 et seq.

Certificates of dedications or offers to dedicate, final maps, see Government Code § 66439.

Notes of Decisions

Ambiguities 3

Consummation of dedication 2

Deeds of trust 4

Non-exclusive easements 5

Offers to dedicate 1

1. Offers to dedicate

An offer to dedicate is not governed by the ordinary rules applicable to contracts, but an offer to dedicate partakes both of the nature of a grant and of a gift and is governed by principles controlling such transactions. *Tischauser v. City of Newport Beach* (App. 4 Dist. 1964) 37 Cal.Rptr. 141, 225 Cal.App.2d 138.

2. Consummation of dedication

Words of dedication on a subdivision map are an offer to dedicate but dedication is not completed until the offer is accepted. *Galeb v. Cupertino Sanitary Dist. of Santa Clara County* (1964) 38 Cal.Rptr. 580, 227 Cal.App.2d 294; *Stump v. Cornell Const. Co.* (1946) 175 P.2d 510, 29 Cal.2d 448.

Though county's acceptance of easements for public highways occurred 13 years after convey-

ance thereof, such was effective to complete dedication of the land to street purposes. *City of Anaheim v. Metropolitan Water Dist. of Southern California* (App. 4 Dist. 1978) 147 Cal.Rptr. 336, 82 Cal.App.3d 763.

Although offer of dedication was rejected by county board of supervisors it became irrevocable on day after subdivision map was recorded by subdivider's conveyance of block shown thereon and was accepted by subsequent public use of it as thoroughfare. *Main v. Legnitto* (App. 1 Dist. 1964) 41 Cal.Rptr. 223, 230 Cal.App.2d 667.

When an owner, after filing a map of record designating certain portion of tract as streets and alleys, sells lots designated thereon by reference to such map, he thereby irrevocably dedicates streets and alleys shown thereon to use of public. *Larkey v. City of Los Angeles* (App. 2 Dist. 1925) 70 Cal.App. 635, 233 P. 991.

3. Ambiguities

When a dedicator has caused an uncertainty as to location and extent of a public way, an interpretation most favorable to the public and against dedicator must be adopted. *Galeb v. Cupertino Sanitary Dist. of Santa Clara County*

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(App. 1 Dist. 1964) 38 Cal.Rptr. 580, 227 Cal. App.2d 294.

to the dedication may not be suspended or modified by the local legislative body. 59 Ops. Atty.Gen. 386, 7-13-76.

4. Deeds of trust

The interest of a trustee under a deed of trust encumbering property being subdivided is a record title interest within the meaning of this section and §§ 66430, 66436, 66445, 66465; a local legislative body may not suspend or modify the signature requirement of the trustee as to final subdivision maps but may enact an ordinance suspending or modifying the trustee signature requirement as to parcel maps, however, where there has been dedication or an offer of dedication in connection with the parcel map, the trustee signature requirement with respect

5. Non-exclusive easements

A non-exclusive easement for road and utility purposes obtained by a private individual and appurtenant to his land may generally not be dedicated to a county for public use in the absence of express language in the original grant of the easement indicating that it is for public use; such an easement may be dedicated to the county for public use if the original grant to the subdivider was for "public and private purposes." 61 Ops.Atty.Gen. 466, 11-3-78.

§ 66448. Field survey; recorded or filed data

In all cases where a parcel map is required, such map shall be based upon a field survey made in conformity with the Land Surveyors Act when required by local ordinance, or, in absence of such requirement, shall be based either upon a field survey made in conformity with the Land Surveyors Act or be compiled from recorded or filed data when sufficient survey information exists on filed maps to locate and retrace the exterior boundary lines of the parcel map if the location of at least one of these boundary lines can be established from an existing monumented line.

(Added by Stats.1974, c. 1536, p. 3472, § 4, operative March 1, 1975.)

Historical and Statutory Notes

Derivation: Bus. & Prof.C. former § 11576, added by Stats.1965, c. 1180, p. 2985, § 13, amended by Stats.1967, c. 727, p. 2100, § 4.

Cross References

Professional Land Surveyors' Act, see Business and Professions Code § 8700 et seq.

§ 66449. Necessary statements

The following statements shall appear on a parcel map:

(a) Engineer's (surveyor's) statement:

This map was prepared by me or under my direction (and was compiled from record data) (and is based upon a field survey) in conformance with the requirements of the Subdivision Map Act and local ordinance at the request of (name of person authorizing map) on (date). I hereby state that this parcel map substantially conforms to the approved or conditionally approved tentative map, if any.

(Signed) _____

R.C.E. (or L.S.) No. _____

(b) Recorder's certificate or statement.

Filed this _____ day of _____, 19____, at _____m. in Book _____ of _____, at page _____, at the request of _____.

Signed _____
County Recorder

(Added by Stats.1974, c. 1536, p. 3472, § 4, operative March 1, 1975. Amended by Stats.1975, c. 24, p. 31, § 9, eff. April 4, 1975; Stats.1976, c. 660, p. 1630, § 3; Stats.1978, c. 335, p. 711, § 1; Stats.1987, c. 982, § 11.)

Historical and Statutory Notes

Derivation: Bus. & Prof.C. former § 11579, amended by Stats.1967, c. 79, p. 980, § 2; added by Stats.1965, c. 1180, p. 2986, § 13, Stats.1967, c. 727, p. 2101, § 6.

Library References

Municipal Corporations ¶43.
Zoning and Planning ¶29.5.
WESTLAW Topic Nos. 268, 414.

C.J.S. Municipal Corporations §§ 83, 84.
C.J.S. Zoning and Land Planning § 21.

Notes of Decisions

Architects 2
Land use elements 1

2. Architects

Parcel maps, final maps, and soils reports specified in the Subdivision Map Act (§ 66410 et seq.) may not be prepared under the direction of licensed architects. 66 Ops.Atty.Gen. 1, 1-26-83.

1. Land use elements

A parcel specific map is not required for the land use element of a general plan adopted by a city or county. 67 Ops.Atty.Gen. 75, 3-7-84.

§ 66450. Certificate or statement by city engineer or county surveyor; contents; filing date

(a) If a subdivision for which a parcel map is required lies within an unincorporated area, a certificate or statement by the county surveyor is required. If a subdivision lies within a city, a certificate or statement by the city engineer or city surveyor is required. The appropriate official shall sign, date, and, below or immediately adjacent to the signature, indicate his or her registration or license number with expiration date and the stamp of his or her seal and state that:

- (1) He or she examined the map.
- (2) The subdivision as shown is substantially the same as it appeared on the tentative map, if required, and any approved alterations thereof.
- (3) All provisions of this chapter and of any local ordinances applicable at the time of approval of the tentative map, if required, have been complied with.
- (4) He or she is satisfied that the map is technically correct.

(b) City or county engineers registered as civil engineers after January 1, 1982, shall only be qualified to certify the statements of paragraphs (1), (2), and (3) of subdivision (a). The statement specified in paragraph (4) of subdivision (a) shall only be certified by a person authorized to practice land surveying pursuant to the Professional Land Surveyors' Act (Chapter 15 (commencing with Section 8700) of Division 3 of the Business and Professions Code) or a person registered as a civil engineer prior to January 1, 1982, pursuant to the Professional Engineers' Act (Chapter 7 (commencing with Section 6700) of Division 3 of the Business and Professions Code).

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(c) The county surveyor, city engineer, or city surveyor, as the case may be, or other public official or employee qualified and authorized to perform the functions of one of those officials, shall complete his or her certificate or statement, as required by this section, within 20 days from the time the parcel map is submitted to him or her by the subdivider for approval. The completed parcel map shall be delivered to the county recorder or, if required by local ordinance, filed with the legislative body prior to delivery to the county recorder, within the same 20-day period.

(Added by Stats.1991, c. 738 (A.B.1269), § 3. Amended by Stats.1993, c. 906 (A.B.557), § 7, eff. Oct. 8, 1993, operative Jan. 1, 1994.)

Historical and Statutory Notes

Section 1 of Stats.1993, c. 906 (A.B.557), provides:

“This act shall be known and may be cited as the Omnibus Local Government Act of 1993.”

Former § 66450, added by Stats.1974, c. 1536, § 4, amended by Stats.1975, c. 24, § 10; Stats.1987, c. 982, § 12; Stats.1988, c. 100, § 4, requiring the submission of a parcel map to the county surveyor or city engineer, was repealed by Stats.1991, c. 738 (A.B.1269), § 2. See this section.

Severability of provisions of Stats.1993, c. 906 (A.B.557), see Historical and Statutory Notes under Government Code § 17558.5.

Derivation: Former § 66450, added by Stats. 1974, c. 1536, p. 3473, § 4, amended by Stats. 1975, c. 24, p. 32, § 10; Stats.1987, c. 982, § 12; Stats.1988, c. 100, § 4.

Bus. & Prof.C. former § 11527, added by Stats.1943, c. 128, p. 866, § 1.

Bus. & Prof.C. former § 11576, added by Stats.1965, c. 1180, p. 2985, § 13, amended by Stats.1967, c. 727, p. 2100, § 4.

Stats.1937, c. 670, p. 1865, § 4.

Chapter 3

PROCEDURE

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Chapter 3 was added by Stats.1974, c. 1536, p. 3473, § 4, operative March 1, 1975.

Article 1

GENERAL PROVISIONS

Section

- 66451. Procedures; application of article and local ordinances.
- 66451.1. Time limits; extension; contract with or employ of private entity or person by local agency to meet; fees.

Section

- 66451.2. Local agency processing fees; limitations.
- 66451.3. Notice of hearing; expenses.
- 66451.4. Map applications; disapprovals in order to comply with chapter time limits.
- 66451.5. Repealed.
- 66451.6. Prohibition of fee as condition to approval of the map for conversion of mobilehome park to condominium or stock cooperative ownership.
- 66451.7. Map exception and waiver applications; agency action upon completion.

Article 1 was added by Stats.1974, c. 1536, p. 3464, § 4, operative March 1, 1975.

§ 66451. Procedures; application of article and local ordinances

The procedures set forth in this chapter shall govern the processing, approval, conditional approval or disapproval and filing of tentative, final and parcel maps and the modification thereof. Local ordinances may modify such procedures to the extent authorized by this chapter.

(Added by Stats.1974, c. 1536, p. 3473, § 4, operative March 1, 1975.)

Historical and Statutory Notes

Derivation: Bus. & Prof.C. former § 11526, added by Stats.1943, c. 128, p. 866, § 1, amended by Stats.1953, c. 1566, p. 3246, § 2; Stats. 1955, c. 1593, p. 2888, § 3; Stats.1965, c. 1180, p. 2981, § 5; Stats.1971, c. 1446, p. 2853, § 3.

Bus. & Prof.C. former § 11551, added by Stats.1943, c. 128, p. 869, § 1.

Stats.1937, c. 670, pp. 1863, 1866, §§ 1, 6.

Forms

See West's California Code Forms, Government.

Cross References

Local ordinance, defined, see Government Code § 66421.

Law Review and Journal Commentaries

Compatibility of economic and environmental objectives in governmental decision making. 5 Pac.L.J. 92 (1974).

Land development and the environment: Subdivision Map Act. 5 Pac.L.J. 55 (1974).

Library References

Municipal Corporations ⇨43.
Zoning and Planning ⇨132.
WESTLAW Topic Nos. 268, 414.

C.J.S. Municipal Corporations §§ 83, 84.
C.J.S. Zoning and Land Planning §§ 12, 14 to 16, 28.

Notes of Decisions

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Failure to act 1
Ordinances 2

specified time limits. 62 Ops.Atty.Gen. 233 (1979).

2. Ordinances

1. Failure to act

Provisions of § 66451 et seq. containing the procedure for approval, conditional approval, or disapproval of tentative and final maps by the local advisory agency, with an appeal to the appeals board, includes approval of tentative maps by failure of the proper body to act within

Local agencies are not authorized to modify, by ordinance, procedures for tentative subdivision map extension set forth in former subd. (c) of § 66452.6 as applied in 1981. *Griffis v. Mono County* (App. 3 Dist. 1985) 209 Cal.Rptr. 519, 163 Cal.App.3d 414.

Municipality could adopt local ordinances which were supplemental to Subdivision Map

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Act, Bus. & Prof.C. § 11500 et seq. (repealed) and bore a reasonable relation to the purposes and requirements of the act. *Kelber v. City of Upland* (App. 1957) 155 Cal.App.2d 631, 318 P.2d 561.

Under Subdivision Map Act, Bus. & Prof. C. § 11500 et seq. (repealed) containing references to ordinances which could be enacted and indicating that such ordinances would be used to supplement the act itself, and providing that design, improvement, and survey data of subdivisions and final maps thereof, and procedure to be followed in securing official approval, were to be governed by provisions of the act and additional provisions of local ordinances dealing with subdivisions, legislature intended to authorize enactment of local ordinances, and, therefore, ordinance requiring subdividers to furnish profile map for approval was not con-

trary to the act. *Mefford v. City of Tulare* (App. 1951) 102 Cal.App.2d 919, 228 P.2d 847.

Subdivision Map Act, Bus. & Prof.C. § 11500 et seq. (repealed) contemplated that counties or cities involved would pass ordinances not in conflict with the act to cover specific problems of the locality. 27 Ops.Atty.Gen. 66 (1956).

3. Estoppel

Encroachment permit-approval process is separate and distinct from Subdivision Map Act-approval process, so that developer could not assert estoppel against State Department of Transportation based upon local agency's actions under the Act. *La Canada Flintridge Development Corp. v. Department of Transp.* (App. 2 Dist. 1985) 212 Cal.Rptr. 334, 166 Cal.App.3d 206, review denied.

§ 66451.1. Time limits; extension; contract with or employ of private entity or person by local agency to meet; fees

(a) The time limits specified in this chapter for reporting and acting on maps may be extended by mutual consent of the subdivider and the advisory agency or legislative body required to report or act. However, no advisory agency or legislative body, may require a routine waiver of time limits as a condition of accepting the application for, or processing of tentative, final, or parcel maps, unless the routine waiver is obtained for the purpose of permitting concurrent processing of related approvals or an environmental review on the same development project.

(b) At the time that the subdivider makes an application pursuant to this division, a local agency shall determine whether or not it is able to meet the time limits specified in this chapter for reporting and acting on maps. If the local agency determines that it will be unable to meet such time limits, such agency shall, upon request of a subdivider and for the purpose of meeting such time limits, contract or employ a private entity or persons on a temporary basis to perform such services as necessary to permit the agency to meet such time limits. However, a local agency need not enter into such a contract or employ such persons if it determines either that (1) no such entities or persons are available or qualified to perform such services or (2) the local agency would be able to perform services in a more rapid fashion than would any available and qualified persons or entities.

Such entities or persons employed by a local agency may, pursuant to an agreement with the local agency, perform all functions necessary to process tentative, final, and parcel maps and to comply with other requirements imposed pursuant to this division or by local ordinances adopted pursuant to this division, except those functions reserved by this division or local ordinance to the legislative body. A local agency may charge the subdivider fees in an amount necessary to defray costs directly attributable to employing or contracting with entities or persons performing services pursuant to this section. (Added by Stats.1974, c. 1536, p. 3473, § 4, operative March 1, 1975. Amended by Stats.1980, c. 1151, p. 3791, § 1; Stats.1980, c. 1152, p. 3798, § 11.)

Historical and Statutory Notes

Section affected by two or more acts at the same session of the legislature, see Government Code § 9605.

Derivation: Bus. & Prof.C. former § 11553, added by Stats.1943, c. 128, p. 870, § 1, amend-

ed by Stats.1955, c. 1144, p. 2141, § 1; Stats. 1961, c. 194, p. 1202, § 4.

Stats.1937, c. 670, p. 1866, § 8.

Notes of Decisions

Extensions 1

1. Extensions

Though county planning commission's action on tentative subdivision map came after expiration of the 50-day period, specified in

§ 66452.1, within which a local authority is required to act on a tentative map, the commission's action did not violate the 50-day time limit where, prior to the expiration of the time limit, the subdivider had consented to an extension of the period. *Carmel Valley View, Ltd. v. Maggini* (App. 1 Dist. 1979) 155 Cal.Rptr. 208, 91 Cal.App.3d 318.

§ 66451.2. Local agency processing fees; limitations

The local agency may establish reasonable fees for the processing of tentative, final and parcel maps and for other procedures required or authorized by this division or local ordinance, but the fees shall not exceed the amount reasonably required by such agency to administer the provisions of this division. The fees shall be imposed pursuant to Chapter 13 (commencing with Section 54990) of Part 1 of Division 2 of Title 5.

(Added by Stats.1974, c. 1536, p. 3473, § 4, operative March 1, 1975. Amended by Stats.1981, c. 914, § 6.)

Historical and Statutory Notes

Derivation: Bus. & Prof.C. former § 11526, added by Stats.1943, c. 128, p. 866, § 1, amended by Stats.1953, c. 1566, p. 3246, § 2; Stats. 1955, c. 1593, p. 2888, § 3; Stats.1965, c. 1180, p. 2981, § 5; Stats.1971, c. 1446, p. 2853, § 3.

Stats.1937, c. 670, p. 1863, § 1.

Cross References

Local ordinance, defined, see Government Code § 66421.

Law Review and Journal Commentaries

Validity of local taxation powers within a state regulated field: *Pines v. City of Santa Monica*. 9 Pepp.L.Rev. 734 (1982).

Notes of Decisions

In general 1

Appeals from planning commission decisions 3

Purpose of fees 2

1. In general

City ordinance provisions imposing fee on subdividers desiring approval of map or building permit and requiring such fees to be deposited in capital outlay recreational fund for city's future needs for recreation purposes were inval-

id as conflicting with provisions of Subdivision Map Act, Bus. & Prof.C. former § 11500 et seq. (repealed). *Santa Clara County Contractors & Homebuilders Ass'n v. City of Santa Clara* (App. 1 Dist. 1965) 43 Cal.Rptr. 86, 232 Cal.App.2d 564.

2. Purpose of fees

This section does not authorize the imposition of fees for a park and recreation fund or the imposition of a business license tax upon subdividers as a condition of approval of a subdivision map; rather, this section limits the fees

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authorized to the purposes set forth in this section. 63 Ops.Atty.Gen. 64 (1980).

3. Appeals from planning commission decisions

City had right to impose reasonable filing fee on party appealing planning commission's deci-

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Note 1

sion to city council. Sea and Sage Audubon Soc., Inc. v. Planning Com'n of City of Anaheim (1983) 194 Cal.Rptr. 357, 34 Cal.3d 412, 668 P.2d 664.

§ 66451.3. Notice of hearing; expenses

(a) Unless otherwise provided by this division, notice of a hearing held pursuant to this division shall be given pursuant to Sections 65090 and 65091.

(b) If the proposed subdivision is a conversion of residential real property to a condominium project, community apartment project, or stock cooperative project, the notice shall also be given by the local agency by United States mail to each tenant of the subject property, and shall also include notification of the tenant's right to appear and be heard. The requirements of this subdivision may be satisfied by service of the notice in compliance with the requirements for service of legal process by mail.

(c) Pursuant to Section 66451.2, fees may be collected from the subdivider for expenses incurred under this section.

(d) Any interested person may appear at the hearing and shall be heard.

(Added by Stats.1974, c. 1536, p. 3474, § 4, operative March 1, 1975. Amended by Stats.1980, c. 1128, p. 3631, § 2; Stats.1984, c. 1009, § 30.)

Historical and Statutory Notes

Legislative intent relating to Stats.1984, c. 1009, see note under Educ. C. § 39002.

Derivation: Bus. & Prof.C. former § 11552, added by Stats.1943, c. 128, p. 869, § 1, amended by Stats.1943, c. 668, p. 2424, § 2; Stats.

1961, c. 194, p. 1201, § 3; Stats.1965, c. 1180, p. 2983, § 10; Stats.1967, c. 181, p. 1288, § 1; Stats.1973, c. 306, p. 721, § 1.

Stats.1937, c. 670, p. 1866, § 7.

Cross References

Newspaper of general circulation, defined, see Government Code § 6000.

Notice, effect of failure to receive, see Government Code § 65093.

Library References

California Practice Guide: Landlord-Tenant, Friedman, Garcia & Hagarty, see Guide's Table of Statutes for chapter paragraph

number references to paragraphs discussing this section.

Notes of Decisions

Parties entitled to notice 1

1. Parties entitled to notice

Where purchaser of lot adjacent to proposed subdivision alleged that subdivision plan as constituted would substantially interfere with his use of only access from his parcel to public

streets and would increase both traffic congestion and air pollution, the purchaser adequately described deprivation sufficiently "substantial" to require procedural due process protection of notice and opportunity to be heard prior to final approval by county of subdivision plan. Horn v. Ventura County (1979) 156 Cal.Rptr. 718, 24 Cal.3d 605, 596 P.2d 1134.

§ 66451.4

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§ 66451.4. Map applications; disapprovals in order to comply with chapter time limits

No advisory agency or legislative body shall disapprove an application for a tentative, final, or parcel map in order to comply with the time limits specified in this chapter unless there are reasons for disapproval other than the failure to timely act in accordance with the time limits specified in this chapter.

(Added by Stats.1994, c. 977 (S.B.243), § 1.)

Historical and Statutory Notes

Former § 66451.4, added by Stats.1980, c. 1154, § 1, requiring notice of application to subdivide be given to owners within 300 feet if substantial or significant deprivation of property rights will result, was repealed by Stats.1984, c. 1009, § 31. See Government Code §§ 65090, 65091, and 66451.3.

§ 66451.5. Repealed by Stats.1984, c. 1009, § 32

Historical and Statutory Notes

The repealed section, added by Stats.1982, c. 87, § 14, related to the effect on subdivision proceedings of the failure to receive required notice. See Government Code § 65093.

§ 66451.6. Prohibition of fee as condition to approval of the map for conversion of mobilehome park to condominium or stock cooperative ownership

No fee shall be charged by a local agency as a condition to the approval of a tentative, final, or parcel map for a subdivision, or a division of land which is not a subdivision, which consists of the conversion of a mobilehome park to condominium or stock cooperative ownership interests, except regulatory fees charged for the issuance of a permit and those fees authorized by Section 66451.2.

(Added by Stats.1984, c. 286, § 1.)

Library References

Zoning and Planning ⇨382.4.
WESTLAW Topic No. 414.
C.J.S. Zoning and Land Planning § 197.

§ 66451.7. Map exception and waiver applications; agency action upon completion

Applications for an exception from the Subdivision Map Act pursuant to Section 66412, and applications for parcel map waivers pursuant to Section 66428, shall be acted upon by a local agency within 60 days of the application being deemed complete pursuant to Section 65943.

(Added by Stats.1994, c. 977 (S.B.243), § 2.)

Article 1.5
MERGER OF PARCELS

Section

- 66451.10. Contiguous parcels not deemed merged by common ownership; authority for merger.
- 66451.11. Merger of nonconforming, contiguous parcels by ordinance; requirements; determination of ownership.
- 66451.12. Recordation of notice.
- 66451.13. Notice of intent to determine status.
- 66451.14. Request for hearing on determination of status.
- 66451.15. Hearing; time, date and place.
- 66451.16. Hearing; evidence; determination of status.
- 66451.17. Failure to request hearing; determination of merger.
- 66451.18. Determination not to merge; release of notice of intent to determine status; recordation; clearance letter.
- 66451.19. Recordation of notice of merger and continuance of mergers; failure to comply.
- 66451.195. Counties more than 20,000 square miles in size; recording notice of merger for parcels 4,000 square feet or less; application of section.
- 66451.20. Resolution of intent to amend merger ordinance; notice; publication.
- 66451.21. Adoption of merger ordinances; resolution; hearing; notice.

Article 1.5 was added by Stats.1983, c. 845, § 2.

§ 66451.10. Contiguous parcels not deemed merged by common ownership; authority for merger

(a) Notwithstanding Section 66424, except as is otherwise provided for in this article, two or more contiguous parcels or units of land which have been created under the provisions of this division, or any prior law regulating the division of land, or a local ordinance enacted pursuant thereto, or which were not subject to those provisions at the time of their creation, shall not be deemed merged by virtue of the fact that the contiguous parcels or units are held by the same owner, and no further proceeding under the provisions of this division or a local ordinance enacted pursuant thereto shall be required for the purpose of sale, lease, or financing of the contiguous parcels or units, or any of them.

(b) This article shall provide the sole and exclusive authority for local agency initiated merger of contiguous parcels. On and after January 1, 1984, parcels may be merged by local agencies only in accordance with the authority and procedures prescribed by this article. This exclusive authority does not, however, abrogate or limit the authority of a local agency or a subdivider with respect to the following procedures within this division:

- (1) Lot line adjustments.
- (2) Amendment or correction of a final or parcel map.
- (3) Reversions to acreage.
- (4) Exclusions.
- (5) Tentative, parcel, or final maps which create fewer parcels.

(Added by Stats.1983, c. 845, § 2. Amended by Stats.1986, c. 727, § 1, eff. Sept. 15, 1986.)

Historical and Statutory Notes

The Assembly Daily Journal for the 1991-92 Regular Session, page 6408, contained the following letter to the Chief Clerk dated April 20, 1992 from Assembly Member Cortese regarding the intent of A.B. 2010 (Stats.1983, c. 845):

"Dear Mr. Wilson: In 1983, I carried legislation (AB 2010, Chapter 845 of 1983) regarding the unmerging of property.

"The purpose of this bill was to alleviate a recurring hardship experienced by property owners who had acquired two or more contiguous parcels of land, neither of which met locally prescribed minimum size standards for development, while affording cities and counties the authority to prevent inappropriate development of lots unsuitable for development.

"The measure was not intended to require a survey at the time a certificate of compliance is issued. This is especially true in light of the fact that a survey is often required at the time of sale. The recorder may wish to provide notice that a survey will need to be performed at the time of sale.

"I hope this clarifies my intent when introducing this legislation."

Derivation: Former § 66424.2, added by Stats.1980, c. 1217, p. 4127, § 3.

Former § 66424.2, added by Stats.1976, c. 928, p. 2120, § 4, amended by Stats.1977, c. 234, p. 1034, § 5; Stats.1980, c. 403, § 2.

Notes of Decisions

- Common ownership established prior to law 6
- Governmental immunity 9
- Local agency authority 1
- Metes and bounds conveyances 7
- Nonmerger exemption 8
- Number of parcels 4
- Ordinances 2
- Parcels created prior to land division regulations 5
- Preemption of ordinances 3

rately by spouse, members of the same immediate family, partners of the same partnership, officers of the same corporation, or shareholders of a closely held corporation. 63 Ops.Atty.Gen. 166, 2-28-80.

Contiguous parcels held by the same owner "merge" for purposes of the Subdivision Map Act § 66410 et seq. if (1) a local ordinance has been adopted and the parcels come within the minimum size and development criteria, (2) the "reversion to acreage" provisions are followed, or (3) the general requirements of § 66426 et seq. for subdividing (resubdividing) property are satisfied. 64 Ops.Atty.Gen. 549, 7-3-81.

Contiguous parcels held by the same owner merge for purposes of the Subdivision Map Act (§ 66410 et seq.) if, inter alia, a local ordinance has been adopted pursuant to this section, and the parcels come within the minimum size and development criteria specified in this section. 64 Ops.Atty.Gen. 549 (1981).

The 1977 amendment of § 66424.2 (repealed) relating to the merger of contiguous parcels under the Subdivision Map Act (§ 66410 et seq.), did not specifically unmerge any particular parcels of property. 62 Ops.Atty.Gen. 281, 5-25-79.

Parcels did not meet the conditions for merger under § 66424.2 (repealed), either as enacted effective January 1, 1977, or as amended, effective July 7, 1977, which related to the merger of contiguous parcels under the Subdivision Map Act, if they were then eligible for use or development pursuant to an existing local ordinance. 62 Ops.Atty.Gen. 281, 5-25-79.

1. Local agency authority

As Subdivision Map Act (§ 66410 et seq.) does not prohibit local agency from deciding whether division is exempt from requirement for certificate of compliance for having been separated into two or more contiguous parcels prior to Act's effective date, county board has authority, in interest of uniformity and predictability in land titles, to decide whether to issue certificate of compliance with respect to land claimed to be exempt. *Kirk v. San Luis Obispo County* (App. 2 Dist. 1984) 202 Cal.Rptr. 606, 156 Cal. App.3d 453.

2. Ordinances

Any parcels that were merged by the original 1977 enactment of § 66424.2 (repealed) relating to the merger of contiguous parcels under the Subdivision Map Act (§ 66410 et seq.) might have been deemed unmerged by ordinance of a local agency pursuant to the 1977 amendment of former § 66424.2. 78 Ops.Atty.Gen. 135, 5-25-79.

The merger provisions of § 66424.2 (repealed) did not apply under a Ventura County Ordinance, which provides for the merger of unimproved, nonconforming, contiguous parcels when they are held, in whole or part, by the same owner, when two unimproved, nonconforming, contiguous parcels are owned sepa-

3. Preemption of ordinances

Statutory preemption of agency initiated mergers for purposes of sale, lease or financing does not expressly preempt county ordinance requiring mergers of commonly owned lots as prerequisite to development. *Morehart v.*

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County of Santa Barbara (1994) 29 Cal.Rptr.2d 804, 7 Cal.4th 725, 872 P.2d 143, as modified.

Possibility or probability that, as a practical matter, restrictions imposed by ordinance requiring merger of parcels for development will drastically effect the value of those rights does not bring the ordinance within the scope of express statutory preemption of ordinances imposing merger for purposes of sale, lease, or financing. *Morehart v. County of Santa Barbara* (1994) 29 Cal.Rptr.2d 804, 7 Cal.4th 725, 872 P.2d 143, as modified.

Ordinance is not within field expressly occupied by the Legislature with respect to imposing merger for purposes of sale, lease or financing of commonly owned contiguous parcels simply because it requires merger as condition to grant of an owner's request for permission to build. *Morehart v. County of Santa Barbara* (1994) 29 Cal.Rptr.2d 804, 7 Cal.4th 725, 872 P.2d 143, as modified.

Because county ordinances dealing with required merger of commonly owned contiguous parcels for development provided as much procedural protection to parcel as the Subdivision Map Acts provisions for agency-initiated merger for lease, sale, or financing, ordinance dealing with merger for development was not impliedly preempted by the Act's concern for procedural rights of the owners. *Morehart v. County of Santa Barbara* (1994) 29 Cal.Rptr.2d 804, 7 Cal.4th 725, 872 P.2d 143, as modified.

State's concern that forced merger of contiguous parcels under single ownership occur only when certain standards were met, as expressed in the Subdivision Map Act, results in implied preemption of local zoning ordinance requiring that parcels which would not be eligible for merger under the provisions relating to sale, lease, or financing nonetheless be merged as a condition to issuance of a development permit. *Morehart v. County of Santa Barbara* (1994) 29 Cal.Rptr.2d 804, 7 Cal.4th 725, 872 P.2d 143, as modified.

Subdivision Map Act's merger provision does not preempt zoning ordinances that require, as a condition to development the merger of parcels that could be merged for sale, lease, or financing by ordinance under the Act. *Morehart v. County of Santa Barbara* (1994) 29 Cal.Rptr.2d 804, 7 Cal.4th 725, 872 P.2d 143, as modified.

4. Number of parcels

Lots 1, 2 and 3 did not constitute separate and distinct parcels of land legally subdivided within meaning of the state map act (§§ 66410 to 66499.37) by prior United States Survey Map, and were not therefore exempt from regulation under the map act and local ordinances, and because the lots were not legal subdivisions

§ 66451.10

Note 5

prior to the map act, no merger issue was raised by common ownership of entire parcel. *John Taft Corp. v. Advisory Agency For Ventura County* (Ventura County) (App. 2 Dist. 1984) 207 Cal.Rptr. 840, 161 Cal.App.3d 749.

In determining number of parcels created by a subdivision for the purpose of applying § 66426, one does not consider parcels previously created by another under § 66410 et seq. or under prior law regulating the division of land or ordinances thereunder as merged; the fact that several contiguous parcels are owned by a single person does not merge the parcels into a single unit where parcels were legally created under § 66410 et seq. or prior law regulating the division of land. 61 Ops.Atty. Gen. 114 (1978).

The successive division of contiguous parcels by the same subdivider must be considered together in determining the applicable standards to be applied under the Subdivision Map Act (§ 66410 et seq.) regardless of whether the contiguous parcels were created by a third party in compliance with applicable law, or that a part of an earlier division had been transferred by sale or otherwise, or whether or not the parcels are created all at the same time or over a period of time and the fact that some of the earlier parcels have been sold should not detract from the determination that a particular number of parcels have been created overall. 61 Ops.Atty. Gen. 114 (1978).

5. Parcels created prior to land division regulations

Three parcels of land were created prior to enactment of any land division regulations, and thus common ownership of parcels and contiguous land did not result in merger, for purposes of exemption from need to comply with Subdivision Map Act (SMA); there was no express statement of grantor that parcels had merged. *Lakeview Meadows Ranch v. County of Santa Clara* (App. 6 Dist. 1994) 32 Cal.Rptr.2d 615, 27 Cal.App.4th 593.

Provision of the Subdivision Map Act that contiguous parcels are not automatically merged by virtue of common ownership if the parcels were created under prior law or "were not subject to those provisions at the time of their creation" applies to parcels created by an antiquated subdivision map prior to 1893, and the provision is not limited to parcels which were exempted from the land-division provisions that were in existence at the time of their creation. *Morehart v. County of Santa Barbara* (1994) 29 Cal.Rptr.2d 804, 7 Cal.4th 725, 872 P.2d 143, as modified.

Subdivision Map Act permits involuntary merger of parcels created in violation of then applicable laws, regardless of other circumstances, but does not apply to pre-1893 parcels

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which were created when there was not yet any land division law to violate. *Morehart v. County of Santa Barbara* (1994) 29 Cal.Rptr.2d 804, 7 Cal.4th 725, 872 P.2d 143, as modified.

6. Common ownership established prior to law

Under California law, strip of land did not merge into adjoining parcel pursuant to California Subdivision Map Act (SMA) merger provisions when both strip and adjoining parcel came into common ownership, even though strip was not expressly exempt from regulation by SMA or any other local ordinance when it was created, where no land-division provisions regulating subdivisions of four or fewer parcels were in existence when strip was created. In re *Van Ness Associates, Ltd.*, Bkrcty.N.D.Cal.1994, 173 B.R. 661.

Front and rear parcels of lot did not merge by operation of law when parcels came into hands of same owner so as to set aside conveyance of rear parcel to owners who planned to erect two-story home in subdivision containing one-story homes; no statute or local ordinance provided for merger at time parcels came into hands of same owner, county or city did not take action to effectuate merger of the two parcels pursuant to Subdivision Map Act and city ordinance permitting merger did not indicate intent on part of city to bypass notice and hearing provisions of Subdivision Map Act concerning merger. *Stell v. Jay Hales Development Co.* (App. 2 Dist.

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1992) 15 Cal.Rptr.2d 220, 11 Cal.App.4th 1214, rehearing denied.

7. Metes and bounds conveyances

County was required to issue certificates of compliance for 15 lots that were described on map properly recorded under predecessor statute to Subdivision Map Act, as well as local ordinance enacted thereunder, and certificates of compliance or conditional certificates of compliance for fractions of 17 other lots described on map, which fractions were subsequently created by metes and bound conveyances in which none of lots were identified or recognized. 74 Op.Atty.Gen. 149, 8-13-91.

8. Nonmerger exemption

Parcels that are ineligible for nonmerger exemption in California Subdivision Map Act (SMA) may or may not be subsequently deemed merged depending on applicability of other merger provisions of SMA. In re *Van Ness Associates, Ltd.*, Bkrcty.N.D.Cal.1994, 173 B.R. 661.

9. Governmental immunity

The sale of 75 contiguous parcels of land owned by the department of transportation in Newport Beach was not immune from the merger provisions of § 66424.2 (repealed). 62 Ops.Atty.Gen. 140, 3-30-79.

§ 66451.11. Merger of nonconforming, contiguous parcels by ordinance; requirements; determination of ownership

A local agency may, by ordinance which conforms to and implements the procedures prescribed by this article, provide for the merger of a parcel or unit with a contiguous parcel or unit held by the same owner if any one of the contiguous parcels or units held by the same owner does not conform to standards for minimum parcel size, under the zoning ordinance of the local agency applicable to the parcels or units of land and if all of the following requirements are satisfied:

(a) At least one of the affected parcels is undeveloped by any structure for which a building permit was issued or for which a building permit was not required at the time of construction, or is developed only with an accessory structure or accessory structures, or is developed with a single structure, other than an accessory structure, that is also partially sited on a contiguous parcel or unit.

(b) With respect to any affected parcel, one or more of the following conditions exists:

(1) Comprises less than 5,000 square feet in area at the time of the determination of merger.

(2) Was not created in compliance with applicable laws and ordinances in effect at the time of its creation.

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(3) Does not meet current standards for sewage disposal and domestic water supply.

(4) Does not meet slope stability standards.

(5) Has no legal access which is adequate for vehicular and safety equipment access and maneuverability.

(6) Its development would create health or safety hazards.

(7) Is inconsistent with the applicable general plan and any applicable specific plan, other than minimum lot size or density standards.

The ordinance may establish the standards specified in paragraphs (3) to (7), inclusive, which shall be applicable to parcels to be merged.

This subdivision shall not apply if one of the following conditions exist:

(A) On or before July 1, 1981, one or more of the contiguous parcels or units of land is enforceably restricted open-space land pursuant to a contract, agreement, scenic restriction, or open-space easement, as defined and set forth in Section 421 of the Revenue and Taxation Code.

(B) On July 1, 1981, one or more of the contiguous parcels or units of land is timberland as defined in subdivision (f) of Section 51104, or is land devoted to an agricultural use as defined in subdivision (b) of Section 51201.

(C) On July 1, 1981, one or more of the contiguous parcels or units of land is located within 2,000 feet of the site on which an existing commercial mineral resource extraction use is being made, whether or not the extraction is being made pursuant to a use permit issued by the local agency.

(D) On July 1, 1981, one or more of the contiguous parcels or units of land is located within 2,000 feet of a future commercial mineral extraction site as shown on a plan for which a use permit or other permit authorizing commercial mineral resource extraction has been issued by the local agency.

(E) Within the coastal zone, as defined in Section 30103 of the Public Resources Code, one or more of the contiguous parcels or units of land has, prior to July 1, 1981, been identified or designated as being of insufficient size to support residential development and where the identification or designation has either (i) been included in the land use plan portion of a local coastal program prepared and adopted pursuant to the California Coastal Act of 1976 (Division 20 of the Public Resources Code), or (ii) prior to the adoption of a land use plan, been made by formal action of the California Coastal Commission pursuant to the provisions of the California Coastal Act of 1976 in a coastal development permit decision or in an approved land use plan work program or an approved issue identification on which the preparation of a land use plan pursuant to the provisions of the California Coastal Act is based.

For purposes of paragraphs (C) and (D) of this subdivision, "mineral resource extraction" means gas, oil, hydrocarbon, gravel, or sand extraction, geothermal wells, or other similar commercial mining activity.

(c) The owner of the affected parcels has been notified of the merger proposal pursuant to Section 66451.13, and is afforded the opportunity for a hearing pursuant to Section 66451.14.

For purposes of this section, when determining whether contiguous parcels are held by the same owner, ownership shall be determined as of the date that notice of intention to determine status is recorded.

(Added by Stats.1983, c. 845, § 2, operative July 1, 1984. Amended by Stats.1984, c. 102, § 1, eff. April 30, 1984; Stats.1985, c. 796, § 1, eff. Sept. 19, 1985; Stats.1995, c. 162 (A.B.555), § 1.)

Historical and Statutory Notes

Legislative intent regarding Stats.1983, c. 845, see Historical and Statutory Notes under § 66451.10.

Section 5.6 of Stats.1984, c. 102, provides:

“It is the intent of the Legislature, in amending the first paragraph of Section 66451.11 of the Government Code, to restore the preexisting requirement of law that established as a necessary precondition for a merger of contiguous parcels or units of land held in common ownership the requirement that one or more of the parcels or units of land not conform to standards for minimum parcel size to permit use or development under the zoning ordinance of the local agency applicable to any such parcels or units of land. The restoration of this requirement is intended to correct its inadvertent deletion in Chapter 845 of the Statutes of 1983 and shall therefore be construed as not constituting

a change in, but, as declaratory of preexisting law.

“It is further the intent of the Legislature in repealing Sections 66451.25 to 66451.29, inclusive, and in amending Section 66451.19, of the Government Code, to relieve counties of the obligation to mail a general notice of potential mergers, in that specific notices are required to be given pursuant to Sections 66451.13 and 66451.19 of the Government Code, as amended by this act.

“It is also the intent of the Legislature in eliminating the delayed operative date of July 1, 1984, formerly contained in Sections 66451.11 to 66451.18, inclusive, of the Government Code, that a local agency may adopt a merger ordinance which complies with these provisions, and which may then become effective on or after the effective date of this act, rather than on or after July 1, 1984.”

Law Review and Journal Commentaries

Review of selected 1995 California legislation. 27 Pac.L.J. 349 (1996).

Notes of Decisions

- Construction with other laws 1
- Parcels created prior to law 3
- Preemption of ordinances 2

1. Construction with other laws

Provisions of budget acts suspending or eliminating some of the mandated services from merger provisions governing lease, sale or financing of contiguous commonly owned parcels did not impinge upon statutory determination of conditions which are prerequisite to the imposition of a parcel merger by a local agency, and those conditions remain as an implied preemption of any zoning ordinance that purports to require merger when those conditions have not been met. *Morehart v. County of Santa Barbara* (1994) 29 Cal.Rptr.2d 804, 7 Cal.4th 725, 872 P.2d 143, as modified.

2. Preemption of ordinances

State’s concern that forced merger of contiguous parcels under single ownership occur only when certain standards were met, as expressed in the Subdivision Map Act, results in implied

preemption of local zoning ordinance requiring that parcels which would not be eligible for merger under the provisions relating to sale, lease, or financing nonetheless be merged as a condition to issuance of a development permit. *Morehart v. County of Santa Barbara* (1994) 29 Cal.Rptr.2d 804, 7 Cal.4th 725, 872 P.2d 143, as modified.

Subdivision Map Act’s merger provision does not preempt zoning ordinances that require, as a condition to development the merger of parcels that could be merged for sale, lease, or financing by ordinance under the Act. *Morehart v. County of Santa Barbara* (1994) 29 Cal.Rptr.2d 804, 7 Cal.4th 725, 872 P.2d 143, as modified.

3. Parcels created prior to law

Provision of the Subdivision Map Act that contiguous parcels are not automatically merged by virtue of common ownership if the parcels were created under prior law or “were not subject to those provisions at the time of their creation” applies to parcels created by an antiquated subdivision map prior to 1893, and the provision is not limited to parcels which

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were exempted from the land-division provisions that were in existence at the time of their creation. *Morehart v. County of Santa Barbara* (1994) 29 Cal.Rptr.2d 804, 7 Cal.4th 725, 872 P.2d 143, as modified.

Subdivision Map Act permits involuntary merger of parcels created in violation of then

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applicable laws, regardless of other circumstances, but does not apply to pre-1893 parcels which were created when there was not yet any land division law to violate. *Morehart v. County of Santa Barbara* (1994) 29 Cal.Rptr.2d 804, 7 Cal.4th 725, 872 P.2d 143, as modified.

§ 66451.12. Recordation of notice

A merger of parcels becomes effective when the local agency causes to be filed for record with the recorder of the county in which the real property is located, a notice of merger specifying the names of the record owners and particularly describing the real property.

(Added by Stats.1983, c. 845, § 2, operative July 1, 1984. Amended by Stats.1984, c. 102, § 1.2, eff. April 30, 1984.)

Historical and Statutory Notes

Legislative intent in deleting the July 1, 1984 operative date of the addition of this section by Stats.1983, c. 845, § 2, see note under § 66451.11.

§ 66451.13. Notice of intent to determine status

Prior to recording a notice of merger, the local agency shall cause to be mailed by certified mail to the then current record owner of the property a notice of intention to determine status, notifying the owner that the affected parcels may be merged pursuant to standards specified in the merger ordinance, and advising the owner of the opportunity to request a hearing on determination of status and to present evidence at the hearing that the property does not meet the criteria for merger. The notice of intention to determine status shall be filed for record with the recorder of the county in which the real property is located on the date that notice is mailed to the property owner.

(Added by Stats.1983, c. 845, § 2, operative July 1, 1984. Amended by Stats.1984, c. 102, § 1.3, eff. April 30, 1984; Stats.1993, c. 59 (S.B.443), § 7, eff. June 30, 1993; Stats.1995, c. 162 (A.B.555), § 2.)

Historical and Statutory Notes

Legislative intent in deleting the July 1, 1984 operative date of the addition of this section by Stats.1983, c. 845, § 2, see note under § 66451.11. Legislative findings, declarations and intent relating to Stats.1993, c. 59 (S.B.443), see Historical and Statutory Notes under Education Code § 45452.

Notes of Decisions

Preemption of ordinances 2 Procedure 1

1. Procedure

In order for local ordinance to provide for merger of parcel with contiguous parcel held by the same owner for purposes of lease, sale, or financing, the agency must initiate a merger by notice of intention to determine status that may be recorded as well as mailed to the record owner, and owner may then request hearing

and present evidence on whether parcels meet standards for merger specified in the ordinance; after deciding whether to merge parcels, local agency must either record notice of merger or release of the notice of intention to determine status. *Morehart v. County of Santa Barbara* (1994) 29 Cal.Rptr.2d 804, 7 Cal.4th 725, 872 P.2d 143, as modified.

2. Preemption of ordinances

Because county ordinances dealing with required merger of commonly owned contiguous

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parcels for development provided as much procedural protection to parcel as the Subdivision Map Acts provisions for agency-initiated merger for lease, sale, or financing, ordinance dealing with merger for development was not impliedly

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preempted by the Act's concern for procedural rights of the owners. *Morehart v. County of Santa Barbara* (1994) 29 Cal.Rptr.2d 804, 7 Cal.4th 725, 872 P.2d 143, as modified.

§ 66451.14. Request for hearing on determination of status

At any time within 30 days after recording of the notice of intention to determine status, the owner of the affected property may file with the local agency a request for a hearing on determination of status.

(Added by Stats.1983, c. 845, § 2, operative July 1, 1983. Amended by Stats.1984, c. 102, § 1.4, eff. April 30, 1984.)

Historical and Statutory Notes

Legislative intent in deleting the July 1, 1984 operative date of the addition of this section by Stats.1983, c. 845, § 2, see note under § 66451.11.

Notes of Decisions

Preemption of ordinances 2 Procedure 1

1. Procedure

In order for local ordinance to provide for merger of parcel with contiguous parcel held by the same owner for purposes of lease, sale, or financing, the agency must initiate a merger by notice of intention to determine status that may be recorded as well as mailed to the record owner, and owner may then request hearing and present evidence on whether parcels meet standards for merger specified in the ordinance; after deciding whether to merge parcels, local agency must either record notice of merger or release of the notice of intention to determine

status. *Morehart v. County of Santa Barbara* (1994) 29 Cal.Rptr.2d 804, 7 Cal.4th 725, 872 P.2d 143, as modified.

2. Preemption of ordinances

Because county ordinances dealing with required merger of commonly owned contiguous parcels for development provided as much procedural protection to parcel as the Subdivision Map Acts provisions for agency-initiated merger for lease, sale, or financing, ordinance dealing with merger for development was not impliedly preempted by the Act's concern for procedural rights of the owners. *Morehart v. County of Santa Barbara* (1994) 29 Cal.Rptr.2d 804, 7 Cal.4th 725, 872 P.2d 143, as modified.

§ 66451.15. Hearing; time, date and place

Upon receiving a request for a hearing on determination of status from the owner of the affected property pursuant to Section 66451.14, the local agency shall fix a time, date, and place for a hearing to be conducted by the legislative body or an advisory agency, and shall notify the property owner of that time, date, and place for the hearing by certified mail. The hearing shall be conducted not more than 60 days following the local agency's receipt of the property owner's request for the hearing, but may be postponed or continued with the mutual consent of the local agency and the property owner.

(Added by Stats.1983, c. 845, § 2, operative July 1, 1984. Amended by Stats.1984, c. 102, § 1.5, eff. April 30, 1984; Stats.1985, c. 796, § 2, eff. Sept. 19, 1985.)

Historical and Statutory Notes

Legislative intent in deleting the July 1, 1984 operative date of the addition of this section by Stats.1983, c. 845, § 2, see note under § 66451.11.

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§ 66451.16. Hearing; evidence; determination of status

At the hearing, the property owner shall be given the opportunity to present any evidence that the affected property does not meet the standards for merger specified in the merger ordinance.

At the conclusion of the hearing, the local agency shall make a determination that the affected parcels are to be merged or are not to be merged and shall so notify the owner of its determination. If the merger ordinance so provides, a determination of nonmerger may be made whether or not the affected property meets the standards for merger specified in Section 66451.11. A determination of merger shall be recorded within 30 days after conclusion of the hearing, as provided for in Section 66451.12.

(Added by Stats.1983, c. 845, § 2, operative July 1, 1984. Amended by Stats.1984, c. 102, § 1.6, eff. April 30, 1984.)

Historical and Statutory Notes

Legislative intent in deleting the July 1, 1984 operative date of the addition of this section by Stats.1983, c. 845, § 2, see note under § 66451.11.

§ 66451.17. Failure to request hearing; determination of merger

If, within the 30-day period specified in Section 66451.14, the owner does not file a request for a hearing in accordance with Section 66451.16, the local agency may, at any time thereafter, make a determination that the affected parcels are to be merged or are not to be merged. A determination of merger shall be recorded as provided for in Section 66451.12 no later than 90 days following the mailing of notice required by Section 66451.15.

(Added by Stats.1983, c. 845, § 2, operative July 1, 1984. Amended by Stats.1984, c. 102, § 1.7, eff. April 30, 1984.)

Historical and Statutory Notes

Legislative intent in deleting the July 1, 1984 operative date of the addition of this section by Stats.1983, c. 845, § 2, see note under § 66451.11.

§ 66451.18. Determination not to merge; release of notice of intent to determine status; recordation; clearance letter

If, in accordance with Section 66451.16 or 66451.17, the local agency determines that the subject property shall not be merged, it shall cause to be recorded in the manner specified in Section 66451.12 a release of the notice of intention to determine status, recorded pursuant to Section 66451.13, and shall mail a clearance letter to the then current owner of record.

(Added by Stats.1983, c. 845, § 2, operative July 1, 1984. Amended by Stats.1984, c. 102, § 1.8, eff. April 30, 1984.)

Historical and Statutory Notes

Legislative intent in deleting the July 1, 1984 operative date of the addition of this section by Stats.1983, c. 845, § 2, see note under § 66451.11.

§ 66451.19. Recordation of notice of merger and continuance of mergers;
failure to comply

(a) Except as provided in Sections 66451.195, 66451.301, and 66451.302, a city or county shall no later than January 1, 1986, record a notice of merger for any parcel merged prior to January 1, 1984. After January 1, 1986, no parcel merged prior to January 1, 1984, shall be considered merged unless a notice of merger has been recorded prior to January 1, 1986.

(b) Notwithstanding the provisions of Sections 66451.12 to 66451.18, inclusive, a city or county having a merger ordinance in existence on January 1, 1984, may, until July 1, 1984, continue to effect the merger of parcels pursuant to that ordinance, unless the parcels would be deemed not to have merged pursuant to the criteria specified in Section 66451.30. The local agency shall record a notice of merger for any parcels merged pursuant to that ordinance.

(c) At least 30 days prior to recording a notice of merger pursuant to subdivision (a) or (b), the local agency shall advise the owner of the affected parcels, in writing, of the intention to record the notice and specify a time, date, and place at which the owner may present evidence to the legislative body or advisory agency as to why the notice should not be recorded.

(d) The failure of a local agency to comply with the requirements of this article for the merger of contiguous parcels or units of land held in common ownership shall render void and ineffective any resulting merger or recorded notice of merger and no further proceedings under the provisions of this division or a local ordinance enacted pursuant thereto shall be required for the purpose of sale, lease, or financing of those contiguous parcels or units, or any of them, until such time as the parcels or units of land have been lawfully merged by subsequent proceedings initiated by the local agency which meet the requirements of this article.

(e) The failure of a local agency to comply with the requirements of any prior law establishing requirements for the merger of contiguous parcels or units of land held in common ownership, shall render voidable any resulting merger or recorded notice of merger. From and after the date the local agency determines that its actions did not comply with the prior law, or a court enters a judgment declaring that the actions of the agency did not comply with the prior law, no further proceedings under the provisions of this division or a local ordinance enacted pursuant thereto shall be required for the purpose of sale, lease, or financing of such contiguous parcels or units, or any of them, until such time as the parcels or units of land have been lawfully merged by subsequent proceedings initiated by the local agency which meet the requirements of this article.

(Added by Stats.1983, c. 845, § 2. Amended by Stats.1984, c. 102, § 2, eff. April 30, 1984; Stats.1985, c. 796, § 3, eff. Sept. 19, 1985; Stats.1986, c. 727, § 2, eff. Sept. 15, 1986.)

Historical and Statutory Notes

Legislative intent in amending this section relating to notice, see Historical and Statutory Notes under Government Code § 66451.11.

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§ 66451.195. Counties more than 20,000 square miles in size; recording notice of merger for parcels 4,000 square feet or less; application of section

(a) Counties more than 20,000 square miles in size shall have until January 1, 1990, to record a notice of merger for parcels of 4,000 square feet or less prior to the time of merger, which were merged prior to January 1, 1984, and for those parcels no parcel merged prior to January 1, 1984, shall be considered merged unless the notice of merger has been recorded prior to January 1, 1990. Counties recording notices of merger pursuant to this subdivision shall comply with the notice requirements of Section 66451.19.

(b) This section shall not be applicable to any parcels or units which meet the criteria of subdivision (a) but which were transferred, or for which the owner has applied for a building permit, during the period between January 1, 1986, and the effective date of this section.

(Added by Stats.1986, c. 727, § 3, eff. Sept. 15, 1986.)

§ 66451.20. Resolution of intent to amend merger ordinance; notice; publication

Prior to amending a merger ordinance which was in existence on January 1, 1984, in order to bring it into compliance with Section 66451.11, the legislative body of the local agency shall adopt a resolution of intention and the clerk of the legislative body shall cause notice of the adoption of the resolution to be published in the manner prescribed by Section 6061. The publication shall have been completed not less than 30 days prior to adoption of the amended ordinance.

(Added by Stats.1983, c. 845, § 2. Amended by Stats.1993, c. 59 (S.B.443), § 8, eff. June 30, 1993; Stats.1995, c. 162 (A.B.555), § 3.)

Historical and Statutory Notes

Legislative findings, declarations and intent relating to Stats.1993, c. 59 (S.B.443), see Historical and Statutory Notes under Education Code § 45452.

§ 66451.21. Adoption of merger ordinances; resolution; hearing; notice

Prior to the adoption of a merger ordinance in conformance with Section 66451.11, by a city or county not having a merger ordinance on January 1, 1984, the legislative body shall adopt a resolution of intention to adopt a merger ordinance and fix a time and place for a public hearing on the proposed ordinance, which shall be conducted not less than 30 nor more than 60 days after adoption of the resolution. The clerk of the legislative body shall cause a notice of the hearing to be published in the manner prescribed by Section 6061. Publication shall have been completed at least seven days prior to the date of the hearing. The notice shall:

- (a) Contain the text of the resolution.
- (b) State the time and place of the hearing.
- (c) State that at the hearing all interested persons will be heard.

(Added by Stats.1983, c. 845, § 2. Amended by Stats.1993, c. 59 (S.B.443), § 9, eff. June 30, 1993; Stats.1995, c. 162 (A.B.555), § 4.)

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Historical and Statutory Notes

Legislative findings, declarations and intent relating to Stats.1993, c. 59 (S.B.443), see Historical and Statutory Notes under Education Code § 45452.

Law Review and Journal Commentaries

Review of selected 1995 California legislation.
27 Pac.L.J. 349 (1996).

Article 1.7

UNMERGER OF PARCELS

Section

66451.25 to 66451.29. Repealed.

66451.30. Criteria and conditions for unmerger of parcels for which notice of merger not recorded prior to Jan. 1, 1984.

66451.301. Merger under valid local merger ordinance without notice of merger deemed not to be merged; conditions.

66451.302. Notice to property owners subject to provisions of § 66451.301; form.

66451.31. Determination of merger or unmerger.

66451.32. Notice following determination of merger or unmerger.

66451.33. Fees.

Article 1.7 was added by Stats.1983, c. 845, § 3.

§§ 66451.25 to 66451.29. Repealed by Stats.1984, c. 102, §§ 2.1 to 2.5, eff. April 30, 1984

Historical and Statutory Notes

The repealed sections, added by Stats.1983, Ch. 845, § 3, related to notices to and from county tax assessors regarding merger of parcels and determination of status of merged parcels.

Legislative intent in repealing these sections relating to notice and hearing, see note under § 66451.11.

§ 66451.30. Criteria and conditions for unmerger of parcels for which notice of merger not recorded prior to Jan. 1, 1984

Any parcels or units of land for which a notice of merger had not been recorded on or before January 1, 1984, shall be deemed not to have merged if on January 1, 1984:

- (a) The parcel meets each of the following criteria:
 - (1) Comprises at least 5,000 square feet in area.
 - (2) Was created in compliance with applicable laws and ordinances in effect at the time of its creation.
 - (3) Meets current standards for sewage disposal and domestic water supply.
 - (4) Meets slope density standards.
 - (5) Has legal access which is adequate for vehicular and safety equipment access and maneuverability.
 - (6) Development of the parcel would create no health or safety hazards.

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(7) The parcel would be consistent with the applicable general plan and any applicable specific plan, other than minimum lot size or density standards.

(b) And, with respect to such parcel, none of the following conditions exist:

(1) On or before July 1, 1981, one or more of the contiguous parcels or units of land is enforceably restricted open-space land pursuant to a contract, agreement, scenic restriction, or open-space easement, as defined and set forth in Section 421 of the Revenue and Taxation Code.

(2) On July 1, 1981, one or more of the contiguous parcels or units of land is timberland as defined in subdivision (f) of Section 51104, or is land devoted to an agricultural use as defined in subdivision (b) of Section 51201.

(3) On July 1, 1981, one or more of the contiguous parcels or units of land is located within 2,000 feet of the site on which an existing commercial mineral resource extraction use is being made, whether or not the extraction is being made pursuant to a use permit issued by the local agency.

(4) On July 1, 1981, one or more of the contiguous parcels or units of land is located within 2,000 feet of a future commercial mineral extraction site as shown on a plan for which a use permit or other permit authorizing commercial mineral resource extraction has been issued by the local agency.

(5) Within the coastal zone, as defined in Section 30103 of the Public Resources Code, one or more of the contiguous parcels or units of land has, prior to July 1, 1981, been identified or designated as being of insufficient size to support residential development and where the identification or designation has either (A) been included in the land use plan portion of a local coastal program prepared and adopted pursuant to the California Coastal Act of 1976 (Division 20 of the Public Resources Code), or (B) prior to the adoption of a land use plan, been made by formal action of the California Coastal Commission pursuant to the provisions of the California Coastal Act of 1976 in a coastal development permit decision or in an approved land use plan work program or approved issue identification on which the preparation of a land use plan pursuant to the provisions of the California Coastal Act is based.

For purposes of paragraphs (3) and (4), "mineral resource extraction" means gas, oil, hydrocarbon, gravel, or sand extraction, geothermal wells, or other similar commercial mining activity.

Each city or county, as applicable, may establish the standards specified in paragraphs (3) to (7), inclusive, of subdivision (a), which shall be applicable to parcels deemed not to have merged pursuant to this section.

(Added by Stats.1983, c. 845, § 3. Amended by Stats.1984, c. 102, § 3, eff. April 30, 1984; Stats.1985, c. 796, § 4, eff. Sept. 19, 1985.)

Historical and Statutory Notes

Legislative intent relating to Stats.1984, c. 102, see note under § 66451.11.

§ 66451.301. Merger under valid local merger ordinance without notice of merger deemed not to be merged; conditions

If any parcels or units of land merged under a valid local merger ordinance which was in effect prior to January 1, 1984, but for which a notice of merger

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had not been recorded before January 1, 1988, and one or more of the merged parcels or units of land is within one of the categories specified in paragraphs (1) to (5), inclusive, of subdivision (b) of Section 66451.30, the parcels or units of land shall be deemed not to have merged unless all of the following conditions exist:

- (a) The parcels or units are contiguous and held by the same owner.
- (b) One or more of the contiguous parcels or units do not conform to minimum parcel size under the applicable general plan, specific plan, or zoning ordinance.
- (c) At least one of the affected parcels is undeveloped by any structure for which a building permit was issued or for which a building permit was not required at the time of construction, or is developed only with an accessory structure or accessory structures, or is developed with a single structure, other than an accessory structure, that is also partially sited on a contiguous parcel or unit.
- (d) The parcels or units which do not conform to minimum parcel size were not created by a recorded parcel or final map.

If all the conditions described in subdivisions (a), (b), (c), and (d) above exist, only a parcel or unit of land which does not conform to minimum parcel size shall remain merged with a contiguous parcel.

(Added by Stats.1985, c. 796, § 5, eff. Sept. 19, 1985.)

Notes of Decisions

Construction and application 1

1. Construction and application

County with valid merger ordinance in existence prior to January 1, 1984 may continue

until January 1, 1988 to treat "resource lands" as merged thereunder, where county has not given notice of merger to landowner or recorded a notice of merger; thereafter, only substandard size parcels may continue to be treated as merged under the terms of this section. 69 Op.Atty.Gen. 208, 8-29-86.

§ 66451.302. Notice to property owners subject to provisions of § 66451.301; form

(a) By January 1, 1987, a city or county or city and county which has within its boundaries, parcels or units of land which are or may be subject to the provisions of Section 66451.301, shall send a notice to all owners of real property affected by Section 66451.301 in substantially the following form:

"The city or county sending you this notice has identified one or more parcels of land which you own as potentially subject to a new state law regarding the merger of substandard parcels which are located in one or more of the following categories:

(1) On or before July 1, 1981, one or more of the contiguous parcels or units of land is enforceably restricted open-space land pursuant to a contract, agreement, scenic restriction, or open-space easement, as defined and set forth in Section 421 of the Revenue and Taxation Code.

(2) On July 1, 1981, one or more of the contiguous parcels or units of land is timberland as defined in subdivision (f) of Section 51104, is in a timberland

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production zone as defined in subdivision (g) of Section 51104, or is land devoted to an agricultural use as defined in subdivision (b) of Section 51201.

(3) On July 1, 1981, one or more of the contiguous parcels or units of land is located within 2,000 feet of the site on which an existing commercial mineral resource extraction use is being made, whether or not the extraction is being made, whether or not the extraction is being made pursuant to a use permit issued by the local agency.

(4) On July 1, 1981, one or more of the contiguous parcels or units of land is located within 2,000 feet of a future commercial mineral extraction site as shown on a plan for which a use permit or other permit authorizing commercial mineral resource extraction has been issued by the local agency.

(5) [In coastal counties only] Within the coastal zone, as defined in Section 30103 of the Public Resources Code, one or more of the contiguous parcels or units of land has, prior to July 1, 1981, been identified or designated as being of insufficient size to support residential development and where the identification or designation has either (i) been included in the land use plan portion of a local coastal program prepared and adopted pursuant to the California Coastal Act of 1976 (Division 20 of the Public Resources Code), or (ii) prior to the adoption of a land use plan, been made by formal action of the California Coastal Commission pursuant to the provisions of the California Coastal Act of 1976 in a coastal development permit decision or in an approved land use plan work program or an approved issue identification on which the preparation of a land use plan pursuant to the provisions of the California Coastal Act is based."

"The new state law contained in Section 66451.301 of the Government Code, generally provides for parcels or units of land located in one or more of the above-described areas which were merged prior to January 1, 1984, and for which the local agency did not record a notice of merger by January 1, 1988, the parcels are deemed unmerged on January 1, 1988, unless all of the following conditions exist:

(a) The parcels or units are contiguous and held by the same owner.

(b) One or more of the contiguous parcels or units do not conform to minimum parcel size under the applicable general plan, specific plan, or zoning ordinance.

(c) At least one of the affected parcels is undeveloped by any structure for which a building permit was issued or for which a building permit was not required at the time of construction, or is developed only with an accessory structure or necessary structures, or is developed with a single structure, other than an accessory structure, that is also partially sited on a contiguous parcel or unit.

(d) The parcels or units which do not conform to minimum parcel size were not created by a recorded parcel or final map.

In order to determine whether this new law applies to your property, you should immediately contact the _____ Department of (City or County) to assist you in determining the application of the new law."

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“WARNING. Your failure to act may result in the loss of valuable legal rights regarding the property.”

(Added by Stats.1985, c. 796, § 6, eff. Sept. 19, 1985.)

§ 66451.31. Determination of merger or unmerger

Upon application made by the owner and payment of any fees authorized by Section 66451.33, the local agency shall make a determination that the affected parcels have merged or, if meeting the criteria of Section 66451.30, are deemed not to have merged.

(Added by Stats.1983, c. 845, § 3. Amended by Stats.1984, c. 102, § 4, eff. April 30, 1984.)

Historical and Statutory Notes

Legislative intent relating to Stats.1984, c. 102, see note under § 66451.11.

§ 66451.32. Notice following determination of merger or unmerger

(a) Upon a determination that the parcels meet the standards specified in Section 66451.30, the local agency shall issue to the owner and record with the county recorder a notice of the status of the parcels which shall identify each parcel and declare that the parcels are unmerged pursuant to this article.

(b) Upon a determination that the parcels have merged and do not meet the criteria specified in Section 66451.30, the local agency shall issue to the owner and record with the county recorder, a notice of merger as provided in Section 66451.12.

(Added by Stats.1983, c. 845, § 3. Amended by Stats.1984, c. 102, § 5, eff. April 30, 1984.)

Historical and Statutory Notes

Legislative intent relating to Stats.1984, c. 102, see note under § 66451.11.

§ 66451.33. Fees

A city or county may impose a fee not to exceed those permitted by Chapter 13 (commencing with Section 54990) of Part 1, payable by the owner, for those costs incurred with respect to a parcel for which application for a determination that the parcels meet the criteria of Section 66451.30 is made.

(Added by Stats.1983, c. 845, § 3. Amended by Stats.1984, c. 102, § 5.5, eff. April 30, 1984.)

Historical and Statutory Notes

Legislative intent relating to Stats.1984, c. 102, see note under § 66451.11.

Article 2
TENTATIVE MAPS

Section

- 66452. Filing; vesting tentative map.
- 66452.1. Time for action by advisory agency.
- 66452.2. Consideration of map by legislative body; time.
- 66452.3. Report or recommendation.
- 66452.4. Approval by failure to act.
- 66452.5. Appeal from act of advisory agency.
- 66452.6. Expiration; development moratorium; pending lawsuit; termination of proceedings; extension of time; appeal from denial of extension.
- 66452.7. Repealed.
- 66452.8. Notice to prospective tenants.
- 66452.9. Notice to tenants of filing tentative map.
- 66452.10. Stock cooperative or community apartment project; conversion to condominium; required number of favorable votes of owners.
- 66452.11. Tentative subdivision map or parcel map; expiration date extension; development project approval.
- 66452.12. Expiration of permits; imposition of conditions or requirements for issuance of building permit or equivalent.
- 66452.13. Expiration date of maps; extension.

Article 2 was added by Stats.1974, c. 1536, p. 3474, § 4, operative March 1, 1975.

§ 66452. Filing; vesting tentative map

(a) A tentative map shall be filed with the clerk of the advisory agency or, if there is no advisory agency, with the clerk of the legislative body, or with any other officer or employee of the local agency as may be designated by local ordinance.

(b) A vesting tentative map shall be filed and processed in the same manner as a tentative map except as otherwise provided by this division or by a local ordinance adopted pursuant to this division.

(c) At the time a vesting tentative map is filed it shall have printed conspicuously on its face the words "Vesting Tentative Map."

(Added by Stats.1974, c. 1536, p. 3474, § 4, operative March 1, 1975. Amended by Stats.1984, c. 1113, § 5, operative Jan. 1, 1986.)

Historical and Statutory Notes

Objectives of Stats.1984, c. 1113, see note under § 66498.1. Stats.1937, c. 670, p. 1866, § 5.

Derivation: Bus. & Prof.C. former § 11550, added by Stats.1943, c. 128, p. 869, § 1.

Cross References

Advisory agency, see Government Code § 66415.
Local ordinance, defined, see Government Code § 66421.

Law Review and Journal Commentaries

Damages for downzoning. Kenneth B. Bley, 8 L.A.Law. 34 (March 1985).

Forced dedications as a condition to subdivision approval. 9 San Diego L.Rev. 112 (1971).

Land development and the environment: Subdivision Map Act. 5 Pac.L.J. 55 (1974).

Library References

Municipal Corporations ⇨43.
Zoning and Planning ⇨132.
WESTLAW Topic Nos. 268, 414.

C.J.S. Municipal Corporations §§ 83, 84.
C.J.S. Zoning and Land Planning §§ 12, 14 to 16, 28.

Notes of Decisions

Effect of map 1
Final maps 2

1. Effect of map

Acceptance by county board of supervisors of subdivision map with strip shown thereon as cul-de-sac and with no showing of easement or right of way for road purposes over strip did not estop county under its zoning power from permitting use of lots or portions thereof in subdivision for roadway purposes so as, in effect, to make strip a through roadway to adjoining tract. *Kappadahl v. Alcan Pac. Co.* (App. 1 Dist. 1963) 35 Cal.Rptr. 354, 222 Cal.App.2d 626.

Consent by property owners to filing of residential tract map did not estop them, and their successors in interest, from using property for other than residential purposes. *Kappadahl v. Alcan Pac. Co.* (App. 1 Dist. 1963) 35 Cal.Rptr. 354, 222 Cal.App.2d 626.

2. Final maps

A final map may be filed on only a portion of a subdivision as to which a tentative map of the entire subdivision has been filed, but only if the subdivision, as shown on the final map, is "substantially the same" as on the tentative map and all other requirements of state laws and local ordinances have been satisfied, and whether the subdivision is "substantially the same" depends on the facts of each case. 57 Ops.Atty.Gen. 239, 5-24-74.

A final map may be filed on only a portion of a planned unit development, where a tentative map of the entire planned unit development has been filed, but only if the planned unit development is "substantially the same" on the final map as on the tentative map and all other requirements of state laws and local ordinances have been satisfied. 57 Ops.Atty.Gen. 239, 5-24-74.

§ 66452.1. Time for action by advisory agency

(a) If the advisory agency is not authorized by local ordinance to approve, conditionally approve or disapprove the tentative map, it shall make its written report on the tentative map to the legislative body within 50 days after the filing thereof with its clerk.

(b) If the advisory agency is authorized by local ordinance to approve, conditionally approve, or disapprove the tentative map, it shall take that action within 50 days after the filing thereof with its clerk and report its action to the subdivider.

(c) The local agency shall comply with the time periods referred to in Section 21151.5 of the Public Resources Code. The time periods specified in subdivisions (a) and (b) shall commence after certification of the environmental impact report, adoption of a negative declaration, or a determination by the local agency that the project is exempt from the requirements of Division 13 (commencing with Section 21000) of the Public Resources Code.

(Added by Stats.1974, c. 1536, p. 3474, § 4, operative March 1, 1975. Amended by Stats.1980, c. 1152, p. 3799, § 12; Stats.1982, c. 87, § 15, eff. March 1, 1982; Stats.1989, c. 847, § 6.)

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Historical and Statutory Notes

Derivation: Bus. & Prof.C. former § 11552, added by Stats.1943, c. 128, p. 869, § 1, amended by Stats.1943, c. 668, p. 2424, § 2; Stats. 1961, c. 194, p. 1201, § 3; Stats.1965, c. 1180, p. 2983, § 10; Stats.1967, c. 181, p. 1288, § 1; Stats.1973, c. 306, p. 721, § 1. Stats.1937, c. 670, p. 1866, § 7.

Cross References

Advisory agency, defined, see Government Code § 66415.
Local ordinance, defined, see Government Code § 66421.

Law Review and Journal Commentaries

Subdivisions: Conditions imposed by local government. John Paul Hanna, 6 Santa Clara L.Rev. 172 (1966).

Library References

Subdivision mapping. Report of Subcommittee of Assembly Interim Committee on Governmental Efficiency and Economy, 1963 to 1965, vol. 8, No. 9, p. 3. Vol. 1 of Appendix to Journal of Assembly, Reg.Sess., 1965.

Notes of Decisions

Construction and application 1
Corrected maps 2
Misrepresentation and coercion 3
Waiver 4

1. Construction and application

Reasonable interpretation of procedures under this section and §§ 66452.2, 66452.4 for approval of tentative subdivision map would be that failure of advisory agency to act within 50 days triggered the 30-day period within which legislative body had to act and failure of that body to act within 30 days would be deemed an approval of map. *Benny v. City of Alameda* (App. 1 Dist. 1980) 164 Cal.Rptr. 776, 105 Cal.App.3d 1006.

2. Corrected maps

Where date on which subdivider filed corrected tentative subdivision map was June 15, county planning commission had until August 5 to act on the map, and, where the commission disapproved the map within the 50-day period, and the county board of supervisors thereafter disapproved the map within the time period specified by this section, the map was never approved by operation of the law. *Carmel Valley View, Ltd. v. Maggini* (App. 1 Dist. 1979) 155 Cal.Rptr. 208, 91 Cal.App.3d 318.

3. Misrepresentation and coercion

Although tentative map and tenant-participating conversion (TPC) application seeking to convert residential rental property to condominiums were not approved or disapproved within specified time period, they could not be deemed automatically approved as matter of law since tentative map and TPC application failed to comply with local law; map and application were result of misrepresentation or coercion in that property owner threatened to evict tenant or go out of business if tenant did not agree to conversion. *Pongputmong v. City of Santa Monica* (App. 2 Dist. 1993) 18 Cal.Rptr.2d 550, 15 Cal.App.4th 99.

4. Waiver

Subdividers, who submitted subdivision map to county planning commission, which within 50 days thereafter recommended to board of supervisors that tentative map be disapproved, were not entitled to automatic approval of subdivision map on theory that board did not act upon the report at its next succeeding regular meeting as required by § 11552, where at its next regular meeting subdividers appeared and hearing was postponed with subdivider's consent to later time, at which time subdividers fully participated in hearing resulting in disapproval. *Lenney v. Board of Sup'rs of Riverside County* (App. 4 Dist. 1974) 116 Cal.Rptr. 500, 41 Cal.App.3d 902.

§ 66452.2. Consideration of map by legislative body; time

(a) If there is an advisory agency which is not authorized by local ordinance to approve, conditionally approve or disapprove the tentative map, at the next regular meeting of the legislative body following the filing of the advisory agency's report with it, the legislative body shall fix the meeting date at which

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the tentative map will be considered by it, which date shall be within 30 days thereafter and the legislative body shall approve, conditionally approve, or disapprove the tentative map within that 30-day period.

(b) If there is no advisory agency, the clerk of the legislative body shall submit the tentative map to the legislative body at its next regular meeting which shall approve, conditionally approve or disapprove that map within 50 days thereafter.

(c) The local agency shall comply with the time periods referred to in Section 21151.5 of the Public Resources Code. The time periods specified in subdivisions (a) and (b) shall commence after certification of the environmental impact report, adoption of a negative declaration, or a determination by the local agency that the project is exempt from the requirements of Division 13 (commencing with Section 21000) of the Public Resources Code.

(Added by Stats.1974, c. 1536, p. 3474, § 4, operative March 1, 1975. Amended by Stats.1980, c. 1152, p. 3799, § 13; Stats.1982, c. 87, § 16, eff. March 1, 1982; Stats.1989, c. 847, § 7.)

Historical and Statutory Notes

Derivation: Bus. & Prof.C. former § 11552, added by Stats.1943, c. 128, p. 869, § 1, amended by Stats.1943, c. 668, p. 2424, § 2; Stats. 1961, c. 194, p. 1201, § 3; Stats.1965, c. 1180,

p. 2983, § 10; Stats.1967, c. 181, p. 1288, § 1; Stats.1973, c. 306, p. 721, § 1.

Stats.1937, c. 670, p. 1866, § 7.

Notes of Decisions

Construction and application 1

Land uses 3

Review 4

Waiver 2

1. Construction and application

Reasonable interpretation of procedures under this section and §§ 66452.1, 66452.4 for approval of tentative subdivision map would be that failure of advisory agency to act within 50 days triggered the 30-day period within which legislative body must act and that failure of that body to act within 30 days would be deemed an approval of map. *Benny v. City of Alameda* (App. 1 Dist. 1980) 164 Cal.Rptr. 776, 105 Cal. App.3d 1006.

2. Waiver

Subdividers who submitted subdivision map to county planning commission, which within 50 days thereafter recommended to board of supervisors that tentative map be disapproved, were not entitled to automatic approval of subdivision map on theory that board did not act upon the report at its next succeeding regular

meeting as required by Bus. & Prof.C. § 11552 (repealed), where, at the next regular meeting, subdividers appeared, and hearing was postponed with subdividers' consent to a later time, at which time subdividers fully participated in a hearing which resulted in disapproval. *Lenney v. Board of Sup'rs of Riverside County* (App. 4 Dist. 1974) 116 Cal.Rptr. 500, 41 Cal.App.3d 902.

3. Land uses

County board of supervisors did not abuse its discretion in approving tentative subdivision map providing for one-acre lots, a land use permitted by the then zoning and general plan. *Youngblood v. Board of Sup'rs of San Diego County* (1978) 150 Cal.Rptr. 242, 22 Cal.3d 644, 586 P.2d 556.

4. Review

Approval of a tentative subdivision map is a quasi-judicial act subject to judicial review for abuse of discretion. *Youngblood v. Board of Sup'rs of San Diego County* (1978) 150 Cal. Rptr. 242, 22 Cal.3d 644, 586 P.2d 556.

§ 66452.3. Report or recommendation

Any report or recommendation on a tentative map by the staff of the local agency to the advisory agency or legislative body shall be in writing and a copy

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thereof served on the subdivider and on each tenant of the subject property, in the case of a proposed conversion of residential real property to a condominium project, community apartment project, or stock cooperative project, at least three days prior to any hearing or action on such map by such advisory agency or legislative body. Pursuant to Section 66451.2, fees may be collected from the subdivider for expenses incurred under this section.

(Added by Stats.1974, c. 1536, p. 3474, § 4, operative March 1, 1975. Amended by Stats.1980, c. 1128, p. 3632, § 3.)

Historical and Statutory Notes

Derivation: Bus. & Prof.C. former § 11552, p. 2983, § 10; Stats.1967, c. 181, p. 1288, § 1; added by Stats.1943, c. 128, p. 869, § 1, amended by Stats.1943, c. 668, p. 2424, § 2; Stats.1961, c. 194, p. 1201, § 3; Stats.1965, c. 1180, Stats.1973, c. 306, p. 721, § 1. Stats.1937, c. 670, p. 1866, § 7.

Cross References

Subdivider, defined, see Government Code § 66423.

Library References

Zoning and Planning ⇨133.
WESTLAW Topic No. 414.

C.J.S. Zoning and Land Planning §§ 12, 14, 16.

Notes of Decisions

Waiver 1

1. Waiver

Contention by plaintiffs that action of director of planning in denying approval of plaintiffs' subdivision map was illegal on ground that plaintiffs were not given the three-day notice of

his intended consideration was waived where although protesting to the board of supervisors, plaintiffs elected to pursue their appropriate remedy of an appeal to the regional planning commission, before which plaintiffs submitted their application for approval of subdivision map on the merits. *Vernon & Vernons, Ltd. v. Los Angeles County* (App. 2 Dist. 1981) 171 Cal.Rptr. 785, 115 Cal.App.3d 943.

§ 66452.4. Approval by failure to act

If no action is taken upon a tentative map by an advisory agency which is authorized by local ordinance to approve, conditionally approve, or disapprove the tentative map or by the legislative body within the time limits specified in this chapter or any authorized extension thereof, the tentative map as filed, shall be deemed to be approved, insofar as it complies with other applicable requirements of this division and local ordinance, and it shall be the duty of the clerk of the legislative body to certify or state his or her approval.

(Added by Stats.1974, c. 1536, p. 3475, § 4, operative March 1, 1975. Amended by Stats.1987, c. 982, § 13.)

Historical and Statutory Notes

Derivation: Bus. & Prof.C. former § 11553, Stats.1937, c. 670, p. 1866, § 8. added by Stats.1943, c. 128, p. 870, § 1, amended by Stats.1955, c. 1144, p. 2141, § 1; Stats.1961, c. 194, p. 1202, § 4.

Notes of Decisions

Construction and application 1
Misrepresentation or coercion 4

Supplemental report requests 2

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Ltd. v. Maggini (App. 1 Dist. 1979) 155 Cal. Rptr. 208, 91 Cal.App.3d 318.

1. Construction and application

Reasonable interpretation of procedures under this section and §§ 66452.1, 66452.2 for approval of tentative subdivision map would be that failure of advisory agency to act within 50 days triggered, the 30-day period within which legislative body must act, and failure of that body to act within 30 days would be deemed an approval of map. *Benny v. City of Alameda* (App. 1 Dist. 1980) 164 Cal.Rptr. 776, 105 Cal. App.3d 1006.

Section 66451 et seq. provisions containing the procedure for approval, conditional approval, or disapproval of tentative and final maps by the local advisory agency, with an appeal to the appeals board, includes approval of tentative maps by failure of the proper body to act within specified time limits. 62 Ops.Atty.Gen. 233 (1979).

2. Supplemental report requests

Where county board of supervisors did not expressly or conditionally approve or disapprove tentative subdivision map but, rather, requested a supplemental environmental impact report, the board effectively placed the subdivider on notice that its subdivision map would be disapproved unless the subdivider provided the supplemental information, and, therefore, even though the board did not expressly act on the map, the board satisfied the requirements of § 66452.2 in that it implicitly disapproved the map in the absence of the supplemental environmental impact report. *Carmel Valley View,*

3. Waiver

Subdividers, who submitted subdivision map to county planning commission, which within 50 days thereafter recommended to board of supervisors that tentative map be disapproved, were not entitled to automatic approval of subdivision map on theory that board did not act upon the report at its next succeeding regular meeting as required by Bus. & Prof.C. § 11552 (repealed) where at its next regular meeting subdividers appeared and hearing was postponed with subdivider's consent to later time, at which time subdividers fully participated in hearing resulting in disapproval. *Lenney v. Board of Sup'rs of Riverside County* (App. 4 Dist. 1974) 116 Cal.Rptr. 500, 41 Cal.App.3d 902.

4. Misrepresentation or coercion

Although tentative map and tenant-participating conversion (TPC) application seeking to convert residential rental property to condominiums were not approved or disapproved within specified time period, they could not be deemed automatically approved as matter of law since tentative map and TPC application failed to comply with local law; map and application were result of misrepresentation or coercion in that property owner threatened to evict tenant or go out of business if tenant did not agree to conversion. *Pongputmong v. City of Santa Monica* (App. 2 Dist. 1993) 18 Cal.Rptr.2d 550, 15 Cal.App.4th 99.

§ 66452.5. Appeal from act of advisory agency

(a) The subdivider, or any tenant of the subject property, in the case of a proposed conversion of residential real property to a condominium project, community apartment project, or stock cooperative project, may appeal from any action of the advisory agency with respect to a tentative map to the appeal board established by local ordinance or, if none, to the legislative body.

The appeal shall be filed with the clerk of the appeal board, or if there is none, with the clerk of the legislative body within 10 days after the action of the advisory agency from which the appeal is being taken.

Upon the filing of an appeal, the appeal board or legislative body shall set the matter for hearing. The hearing shall be held within 30 days after the date of filing the appeal. Within 10 days following the conclusion of the hearing, the appeal board or legislative body shall render its decision on the appeal.

(b) The subdivider, any tenant of the subject property, in the case of a conversion of residential real property to a condominium project, community apartment project, or stock cooperative project, or the advisory agency may appeal from the action of the appeal board to the legislative body. The appeal

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shall be filed in writing with the clerk of the legislative body within 10 days after the action of the appeal board from which the appeal is being taken.

After the filing of an appeal, the legislative body shall set the matter for hearing. The hearing shall be held within 30 days after the date of a request therefor filed by the subdivider or the appellant. Within 10 days following the conclusion of the hearing, the legislative body shall render its decision on the appeal. The decision shall comply with the provisions of Sections 66473, 66473.5, and 66474, and shall include any findings required by those sections.

(c) If there is an appeal board and it fails to act upon an appeal within the time limit specified in this chapter, the decision from which the appeal was taken shall be deemed affirmed and an appeal therefrom may thereupon be taken to the legislative body as provided in subdivision (b) of this section. If no further appeal is taken, the tentative map, insofar as it complies with applicable requirements of this division and local ordinance, shall be deemed approved or conditionally approved as last approved or conditionally approved by the advisory agency, and it shall be the duty of the clerk of the legislative body to certify or state that approval, or if the advisory agency is one which is not authorized by local ordinance to approve, conditionally approve, or disapprove the tentative map, the advisory agency shall submit its report to the legislative body as if no appeal had been taken.

If the legislative body fails to act upon an appeal within the time limit specified in this chapter, the tentative map, insofar as it complies with applicable requirements of this division and local ordinance, shall be deemed to be approved or conditionally approved as last approved or conditionally approved, and it shall be the duty of the clerk of the legislative body to certify or state that approval.

(d) Any interested person adversely affected by a decision of the advisory agency or appeal board may file a complaint with the governing body concerning any decision of the advisory agency or appeal board. The complaint shall be filed with the clerk of the governing body within 10 days after the action of the advisory agency or appeal board which is the subject of the complaint. Upon the filing of the complaint, the governing body shall set the matter for hearing. The hearing shall be held within 30 days after the filing of the complaint. The hearing may be a public hearing for which notice shall be given in the time and manner provided.

Upon conclusion of the hearing, the governing body shall, within seven days, declare its findings based upon the testimony and documents produced before it or before the advisory board or the appeal board. It may sustain, modify, reject, or overrule any recommendations or rulings of the advisory board or the appeal board and may make any findings which are not inconsistent with the provisions of this chapter or local ordinance adopted pursuant to this chapter.

(e) Notice of each hearing provided for in this section shall be sent by United States mail to each tenant of the subject property, in the case of a conversion of residential real property to a condominium project, community apartment project, or stock cooperative project, at least three days prior to the hearing. The notice requirement of this subdivision shall be deemed satisfied if the

notice complies with the legal requirements for service by mail. Pursuant to Section 66451.2, fees may be collected from the subdivider or from persons appealing or filing a complaint for expenses incurred under this section.

(Added by Stats.1974, c. 1536, p. 3475, § 4, operative March 1, 1975. Amended by Stats.1980, c. 1128, p. 3632, § 4; Stats.1981, c. 714, § 195; Stats.1981, c. 309, § 1; Stats.1982, c. 466, § 68; Stats.1982, c. 479, § 1; Stats.1987, c. 982, § 14; Stats.1988, c. 1408, § 8.)

Historical and Statutory Notes

The 1980 amendment inserted “, or any tenant of the subject property, in the case of a proposed conversion of residential real property to a condominium project, community apartment project, or stock cooperative project,” in the first paragraph of subd. (a); made substantially the same insertion in the first sentence of the first paragraph of subd. (b); and added subd. (e).

The 1981 amendment by c. 309 substituted “10 days” for “15 days” in the third paragraph of subd. (a), the second sentence of the first paragraph of subd. (b), and the second sentence of the first paragraph of subd. (d).

Subordination of legislation by Stats.1981, c. 714 to other legislation during the 1981 portion of the 1981-82 Regular Session which is effective on or before Jan. 1, 1982, see Historical Note under Business and Professions Code § 726.

Section affected by two or more acts at the same session of the legislature, see Government Code § 9605.

The 1982 amendment by c. 479 inserted “in writing” in the last sentence of the first paragraph of subd. (b); and substituted “After” for “Upon” in the first sentence and “date of a

request therefor filed by the subdivider or the appellant” for “date of filing the appeal” in the second sentence of the second paragraph of subd. (b).

Section affected by two or more acts at the same session of the legislature, see Government Code § 9605.

The 1987 amendment made nonsubstantive changes throughout the section.

The 1988 amendment, in subd. (d), deleted from the beginning of the first sentence “Where a local ordinance so provides,” and in the third sentence, substituted “shall” for “may” following “governing body”; in the final sentence of subd. (e), inserted “or from persons appealing or filing a complaint” following “subdivider”.

Derivation: Bus. & Prof.C. former § 11552, added by Stats.1943, c. 128, p. 869, § 1, amended by Stats.1943, c. 668, p. 2424, § 2; Stats. 1961, c. 194, p. 1201, § 3; Stats.1965, c. 1180, p. 2983, § 10; Stats.1967, c. 181, p. 1288, § 1; Stats.1973, c. 306, p. 721, § 1.

Bus. & Prof.C. former § 11552.2, added by Stats.1972, c. 825, p. 1473, § 6.

Stats.1937, c. 670, p. 1866, § 7.

Notes of Decisions

- Completion of hearing 5
- Due process 1
- Extensions 7
- Fees 8
- Findings or decision 6
- Interested person 4
- Notice 2
- Right of appeal 3

Cohan v. City of Thousand Oaks (App. 2 Dist. 1994) 35 Cal.Rptr.2d 782, 30 Cal.App.4th 547, modified on denial of rehearing, review denied.

2. Notice

Plaintiffs failed to exhaust their administrative remedy where they did not appeal to board of supervisors within 15 days after planning of commission’s denial of their application for approval of a subdivision map, as required by this section, despite fact that notice of commission’s action was not received by plaintiffs until 17 days after the action, in that plaintiffs were chargeable with discovering the action taken at the hearing, even though they had elected not to appear at the hearing. *Vernon & Vernons, Ltd. v. Los Angeles County* (App. 2 Dist. 1981) 171 Cal.Rptr. 785, 115 Cal.App.3d 943.

3. Right of appeal

A charter provision of a charter city may not disallow the statutory right of persons affected

1. Due process

Cumulative effect of city council’s actions resulted in violation of landowners’ substantive and procedural due process rights, where, after planning commission approved of owners’ project, city council appealed planning commission’s decision to itself in violation of municipal code, where landowners were not given notice of grounds of appeal, and where council did not file its findings in resolutions until after landowners filed their petition for writ of mandate.

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by a parcel or tentative map determination made by a city advisory agency or appeal board to appeal the decision to the governing body of the city. 73 Ops.Atty.Gen. 338 (1990).

Legislature may enact a statute that does not allow persons affected by a parcel or tentative map determination made by a city advisory agency or appeal board to appeal the decision to the governing body of the city. 73 Ops.Atty.Gen. 338 (1990).

Persons must be allowed to appeal to governing body of city the determination made by city advisory agency or appeal board to approve, conditionally approve, or disapprove a parcel or tentative map of a proposed subdivision with respect to required findings concerning general and specific plan consistency, suitable site, environmental, public health, public easements, substantial compliance, and regional water quality control violations that are assigned to the advisory agency or appeal board; in addition, with respect to a tentative map determination, the subdivider, any tenant of the subject property in the case of a residential conversion project, and the advisory agency must be allowed to appeal, and any interested person adversely affected must be allowed to obtain review. 73 Ops.Atty.Gen. 338 (1990).

4. Interested person

Local zoning ordinance extending right of administrative appeal to any interested person from planning commission's approval of tentative subdivision map would be inconsistent with preemptive state law, and it was necessary that the general appeals section of ordinance be construed not to provide such a right, and, thus, respondents, as mere interested persons had no available administrative remedy as to such tentative subdivision map. *Environmental Law Fund, Inc. v. Town of Corte Madera* (App. 1 Dist. 1975) 122 Cal.Rptr. 282, 49 Cal.App.3d 105.

In a chartered or general law city, the planning director is considered an "interested person" within the meaning of subd. (d) of this section, so as to authorize the planning director to appeal to the city council from a subdivision map decision made by the planning commission, acting as the advisory agency. 71 Op.Atty.Gen. 326, December 1, 1988.

5. Completion of hearing

Statute providing that subdivider in case of proposed conversion of residential real property to condominium project may appeal from any action of advisory agency with respect to tentative map to appeal board and hearing shall be held within 30 days after date of filing of appeal does not require that hearing conclude within specified period. *Pongputmong v. City of Santa Monica* (App. 2 Dist. 1993) 18 Cal.Rptr.2d 550, 15 Cal.App.4th 99.

Subd. (d) of this section does not require that hearing be completed within 30 days. *Knoell v. City of Lompoc* (App. 2 Dist. 1987) 240 Cal.Rptr. 464, 195 Cal.App.3d 378.

6. Findings or decision

Provision of Subdivision Map Act regulating appeals from act of advisory agency, which requires governing body to declare its findings within seven days, and provision of city municipal code requiring city council to announce its decision from appeal by resolution within 14 days, are both directory rather than jurisdictional. *Cohan v. City of Thousand Oaks* (App. 2 Dist. 1994) 35 Cal.Rptr.2d 782, 30 Cal.App.4th 547, modified on denial of rehearing, review denied.

7. Extensions

Tentative subdivision map was extended due to failure of board of supervisors to decide appeal of developer within ten days where developer appealed decision of planning board to rescind a previously granted extension. *Griffis v. Mono County* (App. 3 Dist. 1985) 209 Cal.Rptr. 519, 163 Cal.App.3d 414.

Approvals of final subdivision map by planning commission and board of supervisors during extension of tentative map under this section were lawful. *Griffis v. Mono County* (App. 3 Dist. 1985) 209 Cal.Rptr. 519, 163 Cal.App.3d 414.

8. Fees

Amendment to Subdivision Map Act (§ 66410 et seq.) did not preclude local entity from imposing filing fee on anyone other than subdivider. *Sea and Sage Audubon Soc., Inc. v. Planning Com'n of City of Anaheim* (1983) 194 Cal.Rptr. 357, 34 Cal.3d 412, 668 P.2d 664.

§ 66452.6. Expiration; development moratorium; pending lawsuit; termination of proceedings; extension of time; appeal from denial of extension

(a) An approved or conditionally approved tentative map shall expire 24 months after its approval or conditional approval, or after any additional period of time as may be prescribed by local ordinance, not to exceed an additional 12 months. However, if the subdivider is required to expend one hundred twenty-

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five thousand dollars (\$125,000) or more to construct, improve, or finance the construction or improvement of public improvements outside the property boundaries of the tentative map, excluding improvements of public rights-of-way which abut the boundary of the property to be subdivided and which are reasonably related to the development of that property, each filing of a final map authorized by Section 66456.1 shall extend the expiration of the approved or conditionally approved tentative map by 36 months from the date of its expiration, as provided in this section, or the date of the previously filed final map, whichever is later. The extensions shall not extend the tentative map more than 10 years from its approval or conditional approval. However, a tentative map on property subject to a development agreement authorized by Article 2.5 (commencing with Section 65864) of Chapter 4 of Division 1 may be extended for the period of time provided for in the agreement, but not beyond the duration of the agreement. The number of phased final maps which may be filed shall be determined by the advisory agency at the time of the approval or conditional approval of the tentative map.

The amount of one hundred twenty-five thousand dollars (\$125,000) shall be increased by the registrar of contractors according to the adjustment for inflation set forth in the statewide cost index for class B construction, as determined by the State Allocation Board at its January meeting. The adjustment by the registrar of contractors shall be effective on the first day of the month occurring more than 30 calendar days after the registrar of contractors makes that adjustment. The adjusted amount shall apply to tentative and vesting tentative maps whose applications were received after the effective date of the adjustment.

“Public improvements,” as used in this subdivision, include traffic controls, streets, roads, highways, freeways, bridges, overcrossings, street interchanges, flood control or storm drain facilities, sewer facilities, water facilities, and lighting facilities.

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

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

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

(c) The period of time specified in subdivision (a), including any extension thereof granted pursuant to subdivision (e), shall not include the period of time

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during which a lawsuit involving the approval or conditional approval of the tentative map is or was pending in a court of competent jurisdiction, if the stay of the time period is approved by the local agency pursuant to this section. After service of the initial petition or complaint in the lawsuit upon the local agency, the subdivider may apply to the local agency for a stay pursuant to the local agency's adopted procedures. Within 40 days after receiving the application, the local agency shall either stay the time period for up to five years or deny the requested stay. The local agency may, by ordinance, establish procedures for reviewing the requests, including, but not limited to, notice and hearing requirements, appeal procedures, and other administrative requirements.

(d) The 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 the tentative map shall be filed with the legislative body without first processing a new tentative map. Once a timely filing is made, subsequent actions of the local agency, including, but not limited to, processing, approving, and recording, may lawfully occur after the date of expiration of the tentative map. Delivery to the county surveyor or city engineer shall be deemed a timely filing for purposes of this section.

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

(f) For purposes of this section, a development moratorium includes a water or sewer moratorium, or a water and sewer moratorium, as well as other 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 the tentative map, which thereafter prevents, prohibits, or delays the approval of a final or parcel map. A development moratorium shall also be deemed to exist for purposes of this section for any period of time during which a condition imposed by the city or county could not be satisfied because of either of the following:

(1) The condition was one which, by its nature, necessitated action by the city or county, and the city or county either did not take the necessary action or by its own action or inaction was prevented or delayed in taking the necessary action prior to expiration of the tentative map.

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

(g) The rights conferred by a vesting tentative map as provided by Chapter 4.5 (commencing with Section 66498.1) shall last for an initial time period, as provided by ordinance, but shall not be less than one year or more than two years beyond the recording of the final map. Where several final maps are recorded on various phases of a project covered by a single vesting tentative map, the one-year initial time period shall begin for each phase when the final map for that phase is recorded.

The initial time period shall be automatically extended by any time used by the local agency for processing a complete application for a grading permit or for design or architectural review, if the time used by the local agency to process the application exceeds 30 days, from the date that a complete application is filed. At any time prior to the expiration of the initial time period provided by this section, the subdivider may apply for a one-year extension. If the extension is denied by an advisory agency, the subdivider may appeal that denial to the legislative body within 15 days.

(h) If the subdivider submits a complete application for a building permit during the periods of time specified in subdivision (g), the rights conferred by Chapter 4.5 (commencing with Section 66498.1) shall continue until the expiration of that permit, or any extension of that permit granted by the local agency.

(Added by Stats.1974, c. 1536, p. 3476, § 4, operative March 1, 1975. Amended by Stats.1977, c. 883, p. 2652, § 1; Stats.1979, c. 297, p. 1108, § 1, eff. July 25, 1979; Stats.1981, c. 482, § 1; Stats.1982, c. 87, § 17, eff. March 1, 1982; Stats.1982, c. 259, § 1, eff. June 11, 1982; Stats.1982, c. 518, § 3; Stats.1984, c. 1113, § 6, operative Jan. 1, 1986; Stats.1984, c. 1302, § 3, eff. Sept. 20, 1984; Stats.1984, c. 1302, § 3.5, eff.

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Sept. 20, 1984, operative Jan. 1, 1986; Stats.1985, c. 688, § 1; Stats.1985, c. 852, § 1.5; Stats.1986, c. 789, § 2; Stats.1988, c. 1330, § 2; Stats.1989, c. 1268, § 1; Stats.1991, c. 907 (A.B.1905), § 2; Stats.1996, c. 894 (S.B.560), § 1.)

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Historical and Statutory Notes

Section affected by two or more acts at the same session of the legislature, see Government Code § 9605.

Under the provisions of § 6 of Stats.1984, c. 1302, the 1984 amendments of this section by c. 1113 and c. 1302 were given effect and incorporated in the form set forth in § 3 of c. 1302, operative until Jan. 1, 1986, then in the form set forth in § 3.5 of c. 1302.

Section affected by two or more acts at the same session of the legislature, see Government Code § 9605.

Objectives of Stats.1984, c. 1113, see note under § 66498.1.

Under the provisions of § 3 of Stats.1985, c. 852, the 1985 amendments of this section by c. 688 and c. 852 were given effect and incorporated in the form set forth in § 1.5 of c. 852.

Amendment of this section by § 1 of Stats. 1985, c. 852, failed to become operative under the provisions of § 3 of that Act.

Amendment of this section by § 1.5 of Stats. 1985, c. 688, failed to become operative under the provisions of § 2 of that Act.

The 1985 amendments of this section by c. 688 and c. 852 both explicitly amended the

1984 amendment of this section by c. 1302, § 3.5.

Section 66452.6 as amended by Stats.1984, c. 1302, § 3, was repealed by Stats.1985, c. 852, § 2.

Section affected by two or more acts at the same session of the legislature, see Government Code § 9605.

Amendment of this section by § 2.5 of Stats. 1988, c. 1330, failed to become operative under the provisions of § 3 of that Act.

Letter of legislative intent, Stats.1991, c. 907 (A.B.1905), see § 66424.6.

Derivation: Bus. & Prof.C. former § 11554, added by Stats.1943, c. 128, p. 870, § 1, amended by Stats.1943, c. 668, p. 2425, § 3; Stats. 1955, c. 1593, p. 2890, § 9; Stats.1961, c. 1063, p. 2750, § 1; Stats.1965, c. 1180, p. 2984, § 11; Stats.1967, c. 1623, p. 3888, § 1.

Bus. & Prof.C. former § 11554.5, added by Stats.1972, c. 639, p. 1190, § 1.

Bus. & Prof.C. former § 11555, added by Stats.1943, c. 128, p. 870, § 1, amended by Stats.1943, c. 668, p. 2425, § 4; Stats.1955, c. 1593, p. 2890, § 10; Stats.1965, c. 1180, p. 2985, § 12.

Stats.1937, c. 670, p. 1867, § 11.

Forms

See West's California Code Forms, Government.

Notes of Decisions

instead of 300-unit subdivision did not by itself prevent developer from filing final map, even though developer argued that 300-unit development was not economically feasible. In re Eastport Associates, C.A.9 (Cal.)1991, 935 F.2d 1071, rehearing denied.

2. Extensions

Time for filing subdivision map under change of zone approval would not be extended under California statute providing that development moratorium exists when condition was one which by its nature necessitated action by city or county and city or county either did not take necessary action or was prevented or delayed in taking necessary action prior to expiration of tentative map, although county refused to sell land for secondary access road that would permit development of 500-unit subdivision instead of 300-unit subdivision and developer argued that as a practical matter the only way to get county to convey property was for city to initiate condemnation proceedings, where county

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1. Expiration of maps

Time for expiration of subdivision map permissible under change of zone would not be extended under California law on theory developer was subject to development moratorium under preamendment version of statute defining development moratorium extending development entitlement to include when actions of public agencies prevent, prohibit, or delay approval of final or partial map, where county's refusal to convey to developer land for secondary access road allowing 500-unit subdivision

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could have conveyed land to developer on its own. In re Eastport Associates, C.A.9 (Cal.)1991, 935 F.2d 1071, rehearing denied.

Two extensions of tentative subdivision zoning map granted by planning commission, totaling two years, were valid because they were authorized by the Map Act (§ 66410 et seq.) itself, even though they contravened local ordinance. *Griffis v. Mono County* (App. 3 Dist. 1985) 209 Cal.Rptr. 519, 163 Cal.App.3d 414.

City could not require that petitioners, who sought vested right determination as to conversion of apartment building into condominium, comply with rent control charter amendment on ground that they sought and received extension of tentative subdivision map. *El Patio v. Permanent Rent Control Bd. of City of Santa Monica* (App. 2 Dist. 1980) 168 Cal.Rptr. 276, 110 Cal.App.3d 915.

A county, under the Subdivision Map Act, Bus. & Prof.C. § 11554 (repealed), had the authority to grant a subdivider successive extensions of time in which to record a final map after approval or conditional approval of the tentative map, provided total of such extensions should not exceed one year in length. 43 Ops. Atty.Gen. 148, 4-7-64.

3. Validity of ordinances

To the extent that county ordinance purported to divest planning commission of authority to grant a tentative subdivision map extension or purported to limit the maximum duration of an extension to one year, ordinance was without statutory authority and void. *Griffis v. Mono County* (App. 3 Dist. 1985) 209 Cal.Rptr. 519, 163 Cal.App.3d 414.

4. Partial final maps

A final map may be filed on only a portion of a planned unit development, where a tentative map of the entire planned unit development has been filed, but only if the planned unit development is "substantially the same" on the final map as on the tentative map and all other requirements of state laws and local ordinances have been satisfied. 57 Ops.Atty,Gen 239, 5-24-74.

5. Moratoria

Amendment to California statute adding to definition of development moratorium extending development entitlement any period of time during which condition imposed by city could not be satisfied because condition necessitates acquisition of real property from public agency and that agency fails or refuses to convey property interest necessary to satisfy condition was not retroactively applicable. In re Eastport Associates, C.A.9 (Cal.)1991, 935 F.2d 1071, rehearing denied.

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Amendment indicating that development moratorium exists to extend development entitlement any time during which condition requiring acquisition of real property from public agency cannot be satisfied because agency refuses to convey property applies retroactively to tentative maps approved prior to amendment's effective date of January 1, 1989, but does not apply to maps that expired prior to that date. In re Eastport Associates, C.D.Cal.1990, 114 B.R. 686, affirmed 935 F.2d 1071, rehearing denied.

County's refusal to sell land to owner for development, based on county's contemplated use of land for landfill, involved county acting in proprietary capacity rather than in its regulatory function, and did not "by its nature," require action by city, so that refusal did not entitle owner to benefit of provisions of this section indicating that development moratorium includes actions of public agencies which regulate land use or development or when a condition by its nature requires action by city and city does not take necessary action. In re Eastport Associates, C.D.Cal.1990, 114 B.R. 686, affirmed 935 F.2d 1071, rehearing denied.

Evidence supported conclusion that development moratorium arose from condition imposed by city to prepare, complete and adopt subarea facilities plan and related financing plan prior to approval of project; moratorium applied to original tentative subdivision map until 120 days following completion of condition, but not for a tolling period exceeding five years from Nov. 28, 1990. *Native Sun/Lyon Communities v. City of Escondido* (App. 4 Dist. 1993) 19 Cal.Rptr.2d 344, 15 Cal.App.4th 892, rehearing denied.

6. Bankruptcies

City, which sought reconsideration of bankruptcy court's order granting Chapter 11 debtor landowner's motion for summary judgment and holding that amendment to development moratorium provision applied retroactively, failed to show that it could not have discovered allegedly relevant portions of legislative record debtor had omitted or that bankruptcy court's ruling was based on manifest error of law or fact, and thus was not entitled to reconsideration. In re Eastport Associates, C.D.Cal.1990, 114 B.R. 686, affirmed 935 F.2d 1071, rehearing denied.

7. Limitation of actions

Developer's suit seeking writ of mandate and declaratory relief from county board of supervisors' denial of developer's request to toll expiration date of tentative subdivision map was governed, and thus barred, by 90-day statute of limitations. Presenting *Jamul v. Board of Sup'rs of San Diego County* (App. 4 Dist. 1991) 282 Cal.Rptr. 564, 231 Cal.App.3d 665, review denied.

Resident and taxpayer was barred from attacking extension of subdivision map by 90-day

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statute of limitations (§ 66499.37) even though action was filed within 90 days of approval of final map and even though attack on final map was based on grounds that extension was improperly granted, where action was brought more than 90 days after extension. *Griffis v. Mono County* (App. 3 Dist. 1985) 209 Cal.Rptr. 519, 163 Cal.App.3d 414.

from planning commission's approval of tentative subdivision map would be inconsistent with preemptive state law, and it was necessary that general appeals section of ordinance be construed not to provide such a right, and, thus, respondents, as mere interested persons, had no available administrative remedy as to such tentative subdivision map. *Environmental Law Fund, Inc. v. Town of Corte Madera* (App. 1 Dist. 1975) 122 Cal.Rptr. 282, 49 Cal.App.3d 105.

8. Interested parties

Local zoning ordinance extending right of administrative appeal to any interested person

§ 66452.7. Repealed by Stats.1996, c. 872 (A.B.3472), § 65

Historical and Statutory Notes

The repealed section, added by Stats.1974, c. 1536, § 4, amended by Stats.1983, c. 101, § 88, related to extensions of time permitted for action on tentative maps to allow for consideration of the evaluation by the office of intergovernmental management.

Statutory Notes under Business and Professions Code § 8762.

Subordination of legislation by Stats.1996, c. 872 (A.B.3472), to other 1996 legislation, see Historical and Statutory Notes under Business and Professions Code § 8762.

Short title, legislative findings, and intent of Stats.1996, c. 872 (A.B.3472), see Historical and

§ 66452.8. Notice to prospective tenants

(a) Commencing at a date not less than 60 days prior to the filing of a tentative map pursuant to Section 66452, the subdivider or his or her agent shall give notice of such filing, in the form outlined in subdivision (b), to each person applying after such date for rental of a unit of the subject property immediately prior to the acceptance of any rent or deposit from the prospective tenant by the subdivider.

(b) The notice shall be as follows:

"To the prospective occupant(s) of _____:
(address)

The owner(s) of this building, at (address), has filed or plans to file a tentative map with the (city, county, or city and county) to convert this building to a (condominium, community apartment, or stock cooperative project). No units may be sold in this building unless the conversion is approved by the (city, county, or city and county) and until after a public report is issued by the Department of Real Estate. If you become a tenant of this building, you shall be given notice of each hearing for which notice is required pursuant to Sections 66451.3 and 66452.5 of the Government Code, and you have the right to appear and the right to be heard at any such hearing.

(signature of owner or owner's agent)

(dated)

I have received this notice on _____
(date)

(prospective tenant's signature)"

(c) Failure by a subdivider or his or her agent to give the notice required in subdivision (a) shall not be grounds to deny the conversion. However, if the subdivider or his or her agent fails to give notice pursuant to this section, he or she shall pay to each prospective tenant who becomes a tenant and who was entitled to such notice, and who does not purchase his or her unit pursuant to subdivision (d) of Section 66427.1, an amount equal to the sum of the following:

- (1) Actual moving expenses incurred when moving from the subject property, but not to exceed five hundred dollars (\$500).
- (2) The first month's rent on the tenant's new rental unit, if any, immediately after moving from the subject property, but not to exceed five hundred dollars (\$500).

The requirements of this subdivision constitute a minimum state standard. However, nothing in this subdivision shall be construed to prohibit any city, county, or city and county from requiring, by ordinance or charter provision, a subdivider to compensate any tenant, whose tenancy is terminated as the result of a condominium, community apartment project, or stock cooperative conversion, in amounts or by services which exceed those set forth in paragraphs (1) and (2) of this subdivision. In the case of such a requirement by any city, county, or city and county, a subdivider who meets the compensation requirements of the local ordinance or charter provision shall be deemed to satisfy the requirements of this subdivision.

(Added by Stats.1980, c. 1128, p. 3634, § 5. Amended by Stats.1981, c. 603, § 1, eff. Sept. 22, 1981.)

§ 66452.9. Notice to tenants of filing tentative map

(a) Pursuant to the provisions of subdivision (a) of Section 66427.1, the subdivider shall give notice 60 days prior to the filing of a tentative map pursuant to Section 66452 in the form outlined in subdivision (b), to each tenant of the subject property.

(b) The notice shall be as follows:

"To the occupant(s) of

(address)

The owner(s) of this building, at (address), plans to file a tentative map with the (city, county, or city and county) to convert this building to a (condominium, community apartment, or stock cooperative project). You shall be given notice of each hearing for which notice is required pursuant to Sections 66451.3 and 66452.5 of the Government Code, and you have the right to appear and the right to be heard at any such hearing.

(signature of owner or owner's agent)

(date)''

The written notices to tenants required by this section shall be deemed satisfied if such notices comply with the legal requirements for service by mail. (Added by Stats.1980, c. 1128, p. 3635, § 5.3. Amended by Stats.1981, c. 603, § 2, eff. Sept. 22, 1981.)

§ 66452.10. Stock cooperative or community apartment project; conversion to condominium; required number of favorable votes of owners

A stock cooperative, as defined in Section 11003.2 of the Business and Professions Code, or a community apartment project, as defined in Section 11004 of the Business and Professions Code, shall not be converted to a condominium, as defined in Section 783 of the Civil Code, unless the required number of owners in the cooperative or project, as specified in the bylaws, or other organizational documents, have voted in favor of such conversion. If the bylaws or other organizational documents do not expressly specify the number of votes required to approve such a conversion, a majority vote of the owners in the cooperative or project shall be required. The provisions of Section 66499.31 shall not apply to a violation of this section.

(Added by Stats.1982, c. 1426, § 3.)

Library References

Condominium ⇨3.
WESTLAW Topic No. 89A.
C.J.S. Estates § 148.

§ 66452.11. Tentative subdivision map or parcel map; expiration date extension; development project approval

(a) The expiration date of any tentative subdivision map or parcel map for which a tentative map has been approved that has not expired on the date that the act that adds this section becomes effective shall be extended by 24 months.

(b) The extension provided by subdivision (a) shall be in addition to any extension of the expiration date provided for in Section 66452.6 or 66463.5.

(c) Any legislative, administrative, or other approval by any agency of the State of California that pertains to a development project included in a map that is extended pursuant to subdivision (a) shall be extended by 24 months if this approval has not expired on the date that the act that adds this section becomes effective.

(Added by Stats.1993, c. 407 (S.B.428), § 1, eff. Sept. 13, 1993.)

§ 66452.12. Expiration of permits; imposition of conditions or requirements for issuance of building permit or equivalent

(a) Any permit issued by a local agency in conjunction with a tentative subdivision map for a planned unit development shall expire pursuant to Section 65863.9.

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(b) Conditions or requirements for the issuance of a building permit or equivalent permit may be imposed pursuant to Section 65961.

(Added by Stats.1994, c. 458 (A.B.1414), § 6.)

§ 66452.13. Expiration date of maps; extension

(a) The expiration date of any tentative or vesting tentative subdivision map or parcel map for which a tentative map or vesting tentative map has been approved, that has not expired on or before the date the act that adds this section becomes effective shall be extended by 12 months.

(b) The extension provided by subdivision (a) shall be in addition to any extension of the expiration date provided for in Section 66452.11, 66452.6, or 66463.5.

(c) Any legislative, administrative, or other approval by any state agency that pertains to a development project included in a map that is extended pursuant to subdivision (a) shall be extended by 12 months if this approval has not expired on the date that the act that adds this section becomes effective. This extension shall be in addition to any extension provided for in Section 66452.11.

(Added by Stats.1996, c. 46 (A.B.771), § 1, eff. May 15, 1996.)

Article 2.5

NEW RENTAL HOUSING: CONVERSION

Section

66452.50. Agreement to make units available for rental; insurance; notice of conversion; requirements; recordation.

66452.51. Notice to prospective tenants.

Article 2.5 was added by Stats.1982, c. 1447, § 1.

Cross References

Rental housing developments financed from insured mortgages, conversions to be in accordance with this article, see Health and Safety Code § 51653.

§ 66452.50. Agreement to make units available for rental; insurance; notice of conversion; requirements; recordation

(a) Notwithstanding any other provision of this division, a local agency may, upon application by a subdivider, in connection with the approval of a tentative or final map for the proposed construction of a condominium development, which requires the obtaining of a tentative or final map under provisions of this division or local ordinances enacted pursuant thereto, enter into a binding agreement with the subdivider mandating that the units be first made available for rental housing for a period of not less than 10 years from the date a certificate of occupancy has been issued for the units within the development; provided that (1) at the expiration of the 10-year period the units within the

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development may be sold to individual purchasers, in accordance with the approved final map authorizing the development without further proceedings under the provisions of this division or local ordinances enacted pursuant thereto, and (2), except as otherwise provided in subdivision (b), during the period the units are required to be made available for rental purposes, the units are insured or are to be insured or co-insured pursuant to the provisions of Chapter 4 (commencing with Section 51850) of Part 4 of Division 31 of the Health and Safety Code, and (3) each tenant of a unit within the development shall be given 180 days' written notice prior to actual conversion. Such notice shall include an offer of an exclusive right to contract for his or her respective unit upon the same terms and conditions that such unit will be initially offered to the general public or on terms more favorable to the tenant. The right shall run for a period of not less than 90 days from the date written notice of actual conversion was sent to the tenant.

Any such agreement shall be in writing, particularly describe the real property and set forth the name or names of the record title owner of the real property affected thereby, and be executed by the person authorized to act on behalf of the local agency and by the subdivider. From the date of execution of the agreement, it shall be binding upon the local agency, the subdivider, and their successors. The fact that a condominium development is subject to such an agreement shall be set forth on the face of any tentative or final map approved by the local agency and the agreement shall be recorded in the office of the county recorder in the county in which the real property is located on or before the date of recordation of the final map.

(b) Multifamily rental housing financed on or after January 1, 1983, with the proceeds of sale of tax-exempt bonds sold pursuant to any laws of this state shall not be subject to the requirements of condition (2) prescribed in the first paragraph of subdivision (a), but shall be subject to all the requirements of the law pursuant to which the bonds are being issued, including, but not limited to, any requirement in such law that the housing be maintained as rental housing for a period in excess of 10 years.

(Added by Stats.1982, c. 1447, § 1. Amended by Stats.1983, c. 84, § 1, eff. June 14, 1983.)

Historical and Statutory Notes

Section 13 of Stats.1982, c. 1447, provides:

"Sections 1 to 12, inclusive, of this act shall not be operative unless Senate Bill 1862 of the 1981-82 Regular Session is enacted [Stats.1982, c. 1450] and becomes operative."

Section 2 of Stats.1983, c. 84, provided, in part:

"In order to achieve successful financing of urgently needed multifamily rental housing developments in this state, it is frequently necessary to file a subdivision map allowing conversion to condominium units in order to assure or facilitate refinancing after a certain number of years under the terms of the project loan. Such

conversion is required under federal tax law to be deferred for a given number of years and agreements so providing are a common requirement of the financing program.

"Section 66452.50 of the Government Code, as added by Chapter 1447 of the Statutes of 1982, is susceptible to the construction that mortgage insurance under Chapter 4 (commencing with Section 51850) of Part 4 of Division 31 of the Health and Safety Code must be taken out in order to be able to enter into such an agreement. In order to allow the financing of urgently needed multifamily rental housing units to proceed without that insurance, it is essential that this act take effect immediately."

Library References

Condominium ⇄3.
WESTLAW Topic No. 89A.
C.J.S. Estates § 148.

§ 66452.51. Notice to prospective tenants

Prior to the acceptance of any rent or deposit from a prospective tenant, the following notice shall be provided:

To the prospective occupant(s) of

(address)

The owner(s) of this building at (address), have received a tentative map with (city, county, or city and county) to convert this building to a (condominium, community apartment, or stock cooperative), no sooner than (date). You will be notified at least 180 days prior to the actual conversion. Further, if you still reside in your unit, you will be given an exclusive right to purchase your unit.

(signature of owner or owner's agent)

(dated)

I have received this notice on _____

(dated)

(prospective tenant's signature)

(Added by Stats.1982, c. 1447, § 1.)

Historical and Statutory Notes

Operative effect of Stats.1982, c. 1447, see
Historical and Statutory Notes under Govern-
ment Code § 66452.50.

Article 3

REVIEW OF TENTATIVE MAP BY OTHER AGENCIES

Section

- 66453. Territorial map of proposed subdivisions in adjoining city or unincorporated territory; receipt; transmission of copy; recommendations.
- 66454. Proposed subdivision of property intended to be annexed to city; tentative map; procedure; time limits.
- 66455. Territorial map of subdivisions affecting existing or future highways; receipt; transmission of copy; recommendations.
- 66455.1. Territorial map of state water resources development facility; receipt; tentative maps of proposed subdivisions; recommendations.
- 66455.5, 66455.6. Repealed.
- 66455.7. Notice to schools and school districts; recommendations by district.

Article 3 was added by Stats.1974, c. 1536, p. 3477, § 4, operative March 1, 1975.

§ 66453. Territorial map of proposed subdivisions in adjoining city or unincorporated territory; receipt; transmission of copy; recommendations

(a) A local agency may make recommendations concerning proposed subdivisions in any adjoining city, or in any adjoining unincorporated territory provided that the proposed subdivisions are within three miles of the exterior boundary of the requesting local agency. A local agency wishing to make recommendations concerning proposed subdivisions shall file with the local agency having jurisdiction over the subdivisions a map indicating the territory for which it wishes to make recommendations. The local agency having jurisdiction shall issue a receipt for the territorial map.

(b) Within five days of a tentative map application being determined to be complete pursuant to Section 65943 for a proposed subdivision located, in whole or in part, within the territory outlined on the territorial map, the local agency shall transmit one copy of the proposed tentative map to the requesting local agency.

(c) Within 15 days of receiving a copy of a proposed subdivision map, the requesting local agency may submit recommendations to the local agency having jurisdiction. The local agency having jurisdiction shall consider these recommendations before acting on the tentative map.

(Added by Stats.1974, c. 1536, p. 3477, § 4, operative March 1, 1975. Amended by Stats.1994, c. 1075 (S.B.869), § 1.)

Historical and Statutory Notes

Derivation: Bus. & Prof.C. former § 11528, Stats.1937, c. 670, p. 1866, § 9.
 added by Stats.1943, c. 128, p. 866, § 1, amended by Stats.1961, c. 194, p. 1200, § 2.

Cross References

Local agency, defined, see Government Code § 66420.

Library References

Municipal Corporations ¶43.	C.J.S. Municipal Corporations §§ 83, 84.
Zoning and Planning ¶29.5.	C.J.S. Zoning and Land Planning § 21.
WESTLAW Topic Nos. 268, 414.	

§ 66454. Proposed subdivision of property intended to be annexed to city; tentative map; procedure; time limits

Any subdivider may file with a city the tentative map of a proposed subdivision of unincorporated territory adjacent to such city. The map, in the discretion of the city, may be acted upon in the manner provided in Article 2 (commencing with section 66452) of this chapter, except that if it is approved, such approval shall be conditioned upon annexation of the property to such city within such period of time as shall be specified by the city, and such approval shall not be effective until annexation of such property to the city has been completed. If annexation is not completed within the time specified or any extension thereof, then the approval of such map by such adjacent city shall be null and void. No subdivision of unincorporated territory may be effected by

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approval of a map by a city unless annexation thereof to the city is completed prior to the approval of the final map thereof.

(Added by Stats.1974, c. 1536, p. 3477, § 4, operative March 1, 1975.)

Historical and Statutory Notes

Derivation: Bus. & Prof.C. former § 11531, added by Stats.1953, c. 1276, p. 2836, § 1, amended by Stats.1961, c. 194, p. 1200, § 2.5.

Cross References

Annexation of territory, see Government Code § 56108 et seq.
Subdivider, defined, see Government Code § 66423.

§ 66455. Territorial map of subdivisions affecting existing or future high-ways; receipt; transmission of copy; recommendations

(a) The Department of Transportation may file with the legislative body of any local agency having jurisdiction, a map or an amended map of any territory within one mile on either or both sides of any state highway routing if the department believes the subdivision would have an effect upon an existing or a future state highway in that territory, the route of which has been adopted by the California Transportation Commission. The local agency having jurisdiction shall issue a receipt for the territorial map.

(b) Within five days of a tentative map application being determined to be complete pursuant to Section 65943 for a proposed subdivision located, in whole or in part, within the territory outlined on the territorial map, the local agency shall transmit one copy of the proposed tentative map to the district office of the department in which the proposed subdivision is located.

(c) Within 15 days after receiving a copy of the proposed subdivision map, the department may make recommendations to the local agency regarding the effect of the proposed subdivision upon the highway or highway route. The local agency shall consider these recommendations before acting on the tentative map.

(Added by Stats.1974, c. 1536, p. 3477, § 4, operative March 1, 1975. Amended by Stats.1975, c. 24, p. 32, § 12, eff. April 4, 1975; Stats.1982, c. 681, § 22; Stats.1994, c. 1075 (S.B.869), § 2.)

Historical and Statutory Notes

Derivation: Bus. & Prof.C. former § 11528.1, added by Stats.1955, c. 1012, p. 1923, § 1.

§ 66455.1. Territorial map of state water resources development facility; receipt; tentative maps of proposed subdivisions; recommendations

(a) The Department of Water Resources may file with the legislative body of any local agency having jurisdiction, a map or amended map of any territory within one mile on either or both sides of any facility of the State Water Resources Development System, if the department believes a proposed subdivision may have an effect upon any existing or planned future facility of the State

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Water Resources Development System in that territory. The local agency having jurisdiction shall issue a receipt for the territorial map.

(b) Within five days of a tentative map application being determined to be complete pursuant to Section 65943 for a proposed subdivision located, in whole or in part, within the territory outlined on the territorial map, the local agency shall transmit one copy of the proposed tentative map to the office of the department nearest the subdivision, unless the department specifies a different office on the territorial map filed with the local agency.

(c) Within 15 days after receiving a copy of a proposed subdivision map, the department may make recommendations to the local agency regarding the effect of the proposed subdivision upon the State Water Resources Development System or proposed additions to the system. The local agency having jurisdiction shall consider any recommendations before acting on the tentative map.

(Added by Stats.1990, c. 243 (S.B.2161), § 1. Amended by Stats.1994, c. 1075 (S.B. 869), § 3.)

§ 66455.5. Repealed by Stats.1996, c. 872 (A.B.3472), § 65.5

Historical and Statutory Notes

Short title, legislative findings, and intent of Stats.1996, c. 872 (A.B.3472), see Historical and Statutory Notes under Business and Professions Code § 8762.

Subordination of legislation by Stats.1996, c. 872 (A.B.3472), to other 1996 legislation, see Historical and Statutory Notes under Business and Professions Code § 8762.

The repealed section, added by Stats.1974, c. 1536, § 4, derived from Business and Professions Code former § 11550.1, added by Stats. 1971, c. 1327, § 1, related to evaluation of the environmental impact of the proposed subdivision.

§ 66455.6. Repealed by Stats.1974, c. 1536, p. 3478, § 4, operative Jan. 1, 1977

Historical and Statutory Notes

The repealed section, added by Stats.1974, c. 1536, p. 3478, § 4, derived from Bus. & Prof.C. former § 11528.2, added by initiative measure approved by electors Nov. 7, 1982, relating to

recommendations by California Coastal Zone Conservation Commission, was repealed by its own terms on Jan. 1, 1977.

§ 66455.7. Notice to schools and school districts; recommendations by district

(a) Within five days of a tentative map application being determined to be complete pursuant to Section 65943, the local agency shall send a notice of this determination to the governing board of any elementary school, high school, or unified school district within the boundaries of which the subdivision is proposed to be located. The notice shall identify information about the location of the proposed subdivision, the number of units, density, and any other information which would be relevant to the affected school district.

(b) Within 15 days after receiving the notice, the school district may make recommendations to the local agency regarding the effect of the proposed

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subdivision upon the school district. If the school district fails to respond within 15 days, the failure to respond shall be deemed approval of the proposed subdivision. The local agency having jurisdiction shall consider any recommendations before acting on the tentative subdivision map.

(Added by Stats.1976, c. 5, p. 3, § 1. Amended by Stats.1994, c. 1075 (S.B.869), § 4.)

Library References

Municipal Corporations ⇨43.
Zoning and Planning ⇨134.
WESTLAW Topic Nos. 268, 414.

C.J.S. Municipal Corporations §§ 83, 84.
C.J.S. Zoning and Land Planning §§ 12 to 14,
16.

Article 4

FINAL MAPS

Section

66456. Survey; preparation of final map.
66456.1. Multiple final maps; filing; notice.
66456.2. Improvement plans; time limits; fees.
66457. Filing for approval.
66458. Approval or disapproval; failure to act as approval; date of receiving map.
66459. Rental of unit in condominium project, community apartment project or stock cooperative project following final map approval; notice to tenant; right of first refusal; exceptions.
66462. Agreements relating to improvements not completed.
66462.5. Incomplete offsite improvements; property acquisition by local entity; time limit; waiver of conditions; agreement for completion; costs.

Article 4 was added by Stats.1974, c. 1536, p. 3478, § 4, operative March 1, 1975.

§ 66456. Survey; preparation of final map

After the approval or conditional approval of the tentative map and prior to the expiration of such map, the subdivider may cause the real property included within the map, or any part thereof, to be surveyed and a final map thereof prepared in accordance with the approved or conditionally approved tentative map.

(Added by Stats.1974, c. 1536, p. 3478, § 4, operative March 1, 1975.)

Historical and Statutory Notes

Derivation: Bus. & Prof.C. former § 11554, p. 2750, § 1; Stats.1965, c. 1180, p. 2984, § 11;
added by Stats.1943, c. 128, p. 870, § 1, amend- Stats.1967, c. 1623, p. 3888, § 1.
ed by Stats.1943, c. 668, p. 2425, § 3; Stats.
1955, c. 1593, p. 2890, § 9; Stats.1961, c. 1063, Stats.1937, c. 670, p. 1867, § 11.

Cross References

Tentative map, defined, see Government Code § 66424.5.

Library References

Municipal Corporations ⇨43.
Zoning and Planning ⇨29.5.

WESTLAW Topic Nos. 268, 414.
C.J.S. Municipal Corporations §§ 83, 84.

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C.J.S. Zoning and Land Planning § 21.

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2. Portion of subdivision

Final map may be filed on only a portion of a subdivision as to which a tentative map of the entire subdivision has been filed, but only if the subdivision, as shown on the final map, is "substantially the same" as on the tentative map and all other requirements of state laws and local ordinances have been satisfied; whether subdivision is "substantially the same" depends on facts of each case. 57 Ops.Atty.Gen. 239 (1974).

1. Construction and application

Both a tentative and a final map are required to be filed, approved, and recorded with respect to subdivisions of five or more parcels, and, once a tentative map has been approved or conditionally approved, any final map caused to be filed by the subdivider must be prepared in accordance with the approved or conditionally approved tentative map. 63 Ops.Atty.Gen. 844 (1980).

§ 66456.1. Multiple final maps; filing; notice

Multiple final maps relating to an approved or conditionally approved tentative map may be filed prior to the expiration of the tentative map if: (a) the subdivider, at the time the tentative map is filed, informs the advisory agency of the local agency of the subdivider's intention to file multiple final maps on such tentative map, or (b) after filing of the tentative map, the local agency and the subdivider concur in the filing of multiple final maps. In providing such notice, the subdivider shall not be required to define the number or configuration of the proposed multiple final maps. The filing of a final map on a portion of an approved or conditionally approved tentative map shall not invalidate any part of such tentative map. The right of the subdivider to file multiple final maps shall not limit the authority of the local agency to impose reasonable conditions relating to the filing of multiple final maps.

(Added by Stats.1978, c. 338, p. 713, § 1. Amended by Stats.1982, c. 87, § 18, eff. March 1, 1982.)

Historical and Statutory Notes

Section 2 of Stats.1978, c. 338, p. 713, provides:

"The Legislature finds and declares that the authorization to file multiple final maps relating to an approved or conditionally approved tenta-

tive map prior to the expiration of such tentative map, specified in Section 66456.1 of the Government Code, as enacted by Section 1 of this act, is declaratory of existing law."

Library References

Municipal Corporations ⇨43.
Zoning and Planning ⇨132.
WESTLAW Topic Nos. 268, 414.

C.J.S. Municipal Corporations §§ 83, 84.
C.J.S. Zoning and Land Planning §§ 12, 14 to 16, 28.

§ 66456.2. Improvement plans; time limits; fees

(a) An improvement plan being processed in conjunction with either an approved tentative, parcel, or final map shall be prepared by a registered civil engineer and acted on within 60 working days of its submittal, except that at least 15 working days shall be provided for processing any resubmitted improvement plan. The 60 working day period shall not include any days during which the improvement plan has been returned to the applicant for correction,

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has been subject to review by other than the local agency or, following that review, has been returned to the applicant for correction.

(b) The time limits specified in this section for acting on improvement plans may be extended by mutual consent of the subdivider and the advisory agency or legislative body required to act. However, no advisory agency or legislative body may require a routine waiver of time limits as a condition of accepting the improvement plan. A routine waiver may be obtained for the purpose of permitting concurrent processing of other requirements related to the improvement plan or map.

(c) If, at the time of submittal or resubmittal, the local agency or designee determines it is unable to meet the time limits of this section, the local agency or designee shall, upon request of the subdivider and for purposes of meeting the time limits, contract or employ a private entity or persons on a temporary basis to perform services necessary to permit the agency or designee to meet the time limits. However, a local agency or designee need not enter into a contract or employ those persons if it determines either of the following:

- (1) No entities or persons are available or qualified to perform the services.
- (2) The local agency or designee would be able to perform services in a more rapid fashion by modifying its own work schedule than would any available and qualified persons or entities.

A local agency may charge the subdivider fees in an amount necessary to defray costs directly attributable to employing or contracting with entities or persons performing services pursuant to this section.

(d) "Improvement plan" means the plan for public improvement as described in Sections 66418 and 66419.

(Added by Stats.1987, c. 1085, § 1. Amended by Stats.1989, c. 847, § 8.)

§ 66457. Filing for approval

(a) A final map or parcel map conforming to the approved or conditionally approved tentative map, if any, may be filed with the legislative body for approval after all required certificates or statements on the map have been signed and, where necessary, acknowledged.

(b) If the subdivision lies entirely within the territory of a city, the map shall be filed with the city. If the subdivision lies entirely within unincorporated territory, the map shall be filed with the county. If the subdivision lies partially within two or more territories, the map shall be filed with each, and each shall act thereon as provided in this chapter.

(Added by Stats.1974, c. 1536, p. 3478, § 4, operative March 1, 1975. Amended by Stats.1980, c. 403, p. 789, § 3; Stats.1984, c. 337, § 1; Stats.1986, c. 789, § 3; Stats.1987, c. 982, § 15.)

Historical and Statutory Notes

Derivation: Bus. & Prof.C. former § 11610,
added by Stats.1943, c. 128, p. 875, § 1.

Stats.1937, c. 670, p. 1871, § 20.

Cross References

Preparation and recordation of final map, certificate of consent, see Government Code § 66436.

Law Review and Journal Commentaries

Forced dedications as a condition to subdivision approval. 9 San Diego L.Rev. 112 (1971).

§ 66458. Approval or disapproval; failure to act as approval; date of receiving map

(a) The legislative body shall, at the meeting at which it receives the map or, at its next regular meeting after the meeting at which it receives the map, approve the map if it conforms to all the requirements of this chapter and any local subdivision ordinance applicable at the time of approval or conditional approval of the tentative map and any rulings made thereunder. If the map does not conform, the legislative body shall disapprove the map.

(b) If the legislative body does not approve or disapprove the map within the prescribed time, or any authorized extension thereof, and the map conforms to all requirements and rulings, it shall be deemed approved, and the clerk of the legislative body shall certify or state its approval thereon.

(c) The meeting at which the legislative body receives the map shall be the date on which the clerk of the legislative body receives the map.

(Added by Stats.1974, c. 1536, p. 3478, § 4, operative March 1, 1975. Amended by Stats.1980, c. 403, p. 789, § 4; Stats.1986, c. 789, § 4; Stats.1987, c. 982, § 16.)

Historical and Statutory Notes

Derivation: Bus. & Prof.C. former § 11611, 3747, § 1; Stats.1963, c. 340, p. 1129, § 1; Stats.1943, c. 128, p. 875, § 1, amended by Stats.1949, c. 1080, p. 1982, § 1; Stats.1961, c. 1740, p. 1951, c. 339, p. 774, § 1; Stats.1965, c. 1180, p. 2987, § 15. Stats.1937, c. 670, p. 1871, § 20.

Law Review and Journal Commentaries

Validity of local taxation powers within a state regulated field: Pines v. City of Santa Monica. 9 Pepp.L.Rev. 734 (1982).

Library References

Subdivision mapping. Report of Subcommittee of Assembly Interim Committee on Government Efficiency and Economy. 1963 to 1965, vol. 8, No. 9, p. 3. Vol. 1 of Appendix to Journal of Assembly, Reg.Sess., 1965.

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view tract map. Great Western Sav. & Loan Ass'n v. City of Los Angeles (App. 2 Dist. 1973) 107 Cal.Rptr. 359, 31 Cal.App.3d 403.

2. Conditions

Where developer had relied on approved tentative map with conditions and had produced final tract map which satisfied such conditions, developer was entitled to acceptance and approval of that final map without imposition of new or altered conditions and without undue delay in absence of his consent. Great Western

1. Discretion

Local governing body does not have absolute discretion to approve or disapprove final subdivi-

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Note 2

Sav. & Loan Ass'n v. City of Los Angeles (App. 2 Dist. 1973) 107 Cal.Rptr. 359, 31 Cal.App.3d 403.

3. Extensions

Resident and taxpayer was barred from attacking extension of subdivision map by 90-day statute of limitations even though action was filed within 90 days of approval of final map and even though attack on final map was based on grounds that extension was improperly granted, where action was brought more than 90 days after extension. *Griffis v. Mono County* (App. 3 Dist. 1985) 209 Cal.Rptr. 519, 163 Cal. App.3d 414.

4. Portion of development

A final map may be filed on only a portion of a planned unit development, where a tentative map of the entire planned unit development has been filed, but only if the planned unit development is "substantially the same" on the final map as on the tentative map and all other requirements of state laws and local ordinances have been satisfied. 57 Ops.Atty.Gen. 239, 5-24-74.

5. Incorporation of city

Where a county, prior to the incorporation of a city, has conditionally approved a tentative subdivision map for land located within the boundaries of the city, all of which conditions have been satisfied, and a final map has not been recorded prior to the date of incorporation, the city may not withhold final approval or amend the conditions thereof. 63 Ops.Atty.Gen. 844, 11-7-80.

6. Contracts

Fact that plaintiff was obligated to construct road across its property to boundary of defendant's property by reason of filing tentative tract map did not render unenforceable for want of sufficient consideration contract whereby defendant was to pay for construction of such road, where plaintiff's obligation to construct the improvement would arise only when the final subdivision map was filed, and where, by its contract with defendant, plaintiff committed itself to constructing the improvement within a definite time period to be designated by defendant. *Potrero Homes v. Western Orbis Co.* (App. 2 Dist. 1972) 104 Cal.Rptr. 633, 28 Cal.App.3d 450.

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§ 66459. Rental of unit in condominium project, community apartment project or stock cooperative project following final map approval; notice to tenant; right of first refusal; exceptions

(a) If a final map has been approved for a condominium project, community apartment project, or stock cooperative project, and the subdivider or subsequent owner of the project, on or after January 1, 1993, rents a dwelling in that project, he or she shall, prior to offering the separate interest for sale to the general public, deliver the following notice, printed in at least 14-point bold print, prior to the execution of the rental agreement:

TO THE PROSPECTIVE TENANTS OF

(address)

THE UNIT YOU MAY RENT HAS BEEN APPROVED FOR SALE TO THE PUBLIC AS A CONDOMINIUM PROJECT, COMMUNITY APARTMENT PROJECT, OR STOCK COOPERATIVE PROJECT (WHICHEVER APPLIES). THE RENTAL UNIT MAY BE SOLD TO THE PUBLIC, AND, IF IT IS OFFERED FOR SALE, YOUR LEASE MAY BE TERMINATED. YOU WILL BE NOTIFIED AT LEAST 90 DAYS PRIOR TO ANY OFFERING TO SELL. IF YOU STILL LAWFULLY RESIDE IN THE UNIT, YOU WILL BE GIVEN A RIGHT OF FIRST REFUSAL TO PURCHASE THE UNIT.

(signature of owner or owner's agent)

(dated)

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(b) The condominium project, community apartment project, or stock cooperative project shall not be referred to in a lease or rental agreement as an "apartment" or "apartments" on or after the date of the approval by the local agency of the final map for the condominium project, community apartment project, or stock cooperative project in which the final map was approved on or after January 1, 1993.

(c) Any tenant of a condominium project, community apartment project, or stock cooperative project pursuant to this section shall be given at least 90 days' written notice of the intention to sell the rental unit to the general public. This subdivision shall not alter or abridge the rights or obligations of the parties in performance of their covenants, including, but not limited to, the provision of services, payment of rent, or other obligations imposed by Sections 1941, 1941.1, and 1941.2 of the Civil Code.

(d) Any tenant who lawfully resides in a condominium project, community apartment project, or stock cooperative project pursuant to this section shall be given a right of first refusal by the subdivider or subsequent owner of the project for the purchase of his or her rental unit upon the same terms and conditions that the unit will be initially offered to the general public or terms and conditions more favorable to the tenant. This right to purchase shall run for a period of 90 days from the date of the notice, unless the tenant gives written notice within the 90-day period of his or her intention not to exercise that right.

(e) Failure to comply with this section shall not invalidate the transfer of title to real property.

(f) This section shall not apply to any of the following:

(1) An owner of four dwelling units or less.

(2) Transfers pursuant to court order, including, but not limited to, transfers ordered by a probate court in the administration of an estate, transfers by any foreclosure sale after default, transfers by any foreclosure sale after default in an obligation secured by a mortgage, or transfers by a sale under a power of sale after a default in an obligation secured by a deed of trust or secured by any other instrument containing a power of sale, and any subsequent transfer by a mortgagor or beneficiary of a deed of trust who accepts a deed in lieu of foreclosure or purchases the property at a foreclosure sale.

(3) Transfers by a fiduciary in the course of the administration of a decedent's estate, guardianship, conservatorship, or trust. For purposes of this paragraph, a "fiduciary" means a state- or federally-chartered bank, trust company, savings association, savings bank, credit union, or industrial loan company.

(Added by Stats.1992, c. 1098 (A.B.3013), § 1.)

Historical and Statutory Notes

Section 2 of Stats.1992, c. 1098, provides:
"Notwithstanding any other provision of law, no provision of this act shall be introduced as evidence, either directly, by referring to the

name or contents of the statute, or indirectly, through the testimony of any expert or lay witness, or otherwise referred to in any way in any action pending, as of the effective date of this

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act, in which a claim is asserted relating to the noticing of tenants when the subdivider of a condominium project, community apartment project, or stock cooperative project makes a

unit or units available for rental housing prior to offering that unit or those units for sale to the general public."

Law Review and Journal Commentaries

Review of selected 1992 California legislation.
24 Pac.L.J. 1010 (1993).

Library References

California Practice Guide: Landlord-Tenant, Friedman, Garcia & Hagarty, see Guide's Table of Statutes for chapter paragraph

number references to paragraphs discussing this section.

§ 66462. Agreements relating to improvements not completed

(a) If, at the time of approval of the final map by the legislative body, any public improvements required by the local agency pursuant to this division or local ordinance have not been completed and accepted in accordance with standards established by the local agency by ordinance applicable at the time of the approval or conditional approval of the tentative map, the legislative body, as a condition precedent to the approval of the final map, shall require the subdivider to enter into one of the following agreements specified by the local agency:

(1) An agreement with the local agency upon mutually agreeable terms to thereafter complete the improvements at the subdivider's expense.

(2) An agreement with the local agency to thereafter do either of the following:

(A) Initiate and consummate proceedings under an appropriate special assessment act or the Mello-Roos Community Facilities Act of 1982, Chapter 2.5 (commencing with Section 53311) of Part 1 of Division 2 of Title 5 for the financing and completion of all of the improvements.

(B) If the improvements are not completed under a special assessment act or the Mello-Roos Community Facilities Act of 1982, Chapter 2.5 (commencing with Section 53311) of Part 1 of Division 2 of Title 5, to complete the improvements at the subdivider's expense.

(b) The standards may be adopted by reference, without posting or publishing them, if they have been printed in book or booklet form and three copies of the books or booklets have been filed for use and examination by the public in the office of the clerk of the legislative body.

(c) The local agency entering into any agreement pursuant to this section shall require that performance of the agreement be guaranteed by the security specified in Chapter 5 (commencing with Section 66499).

(Added by Stats.1974, c. 1536, p. 3479, § 4, operative March 1, 1975. Amended by Stats.1986, c. 1102, § 40, eff. Sept. 24, 1986.)

Historical and Statutory Notes

Derivation: Bus. & Prof.C. former § 11611, added by Stats.1943, c. 128, p. 875, § 1, amended by Stats.1949, c. 1080, p. 1982, § 1; Stats.

1951, c. 339, p. 774, § 1; Stats.1961, c. 1740, p. 3747, § 1; Stats.1963, c. 340, p. 1129, § 1; Stats.1965, c. 1180, p. 2987, § 15.

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Stats.1937, c. 670, p. 1871, § 20.

Cross References

California housing and infrastructure finance agency, authority to set aside security reserve in conjunction with construction loan in lieu of security otherwise required, see Health and Safety Code § 51054.

Local agency, defined, see Government Code § 66420.

Notes of Decisions

County charter 3
Developer's liability 1
Security 2

lic improvement which requires relocation of existing utility equipment, private party bears the necessary relocation costs. Pacific Gas & Elec. Co. v. Damé Const. Co., Inc. (App. 1 Dist. 1987) 236 Cal.Rptr. 351, 191 Cal.App.3d 233.

1. Developer's liability

Developer whose development of land was conditioned by county on widening of road was required to bear costs of moving electric distribution line which ran alongside the road, whether the beneficiaries of the move was viewed as being developer or that portion of the public which would purchase homes in the development. Pacific Gas & Elec. Co. v. Damé Const. Co., Inc. (App. 1 Dist. 1987) 236 Cal. Rptr. 351, 191 Cal.App.3d 233.

Where private party, on its own initiative and not that of government, develops parcel of land and thereby creates or aggravates need for pub-

2. Security

In subdivisions of five or more parcels, security must be given by the subdivider to insure construction of the required improvements. 62 Ops.Atty.Gen. 175 (1979).

3. County charter

A county charter amendment may not prohibit the county from approving a development project unless a demonstrable method exists for financing the roads, schools, water, and sewer facilities necessary to serve the project. 79 Op. Atty.Gen. 149, July 8, 1996.

§ 66462.5. Incomplete offsite improvements; property acquisition by local entity; time limit; waiver of conditions; agreement for completion; costs

A city, county, or city and county shall not postpone or refuse approval of a final map because the subdivider has failed to meet a tentative map condition which requires the subdivider to construct or install offsite improvements on land in which neither the subdivider nor the local agency has sufficient title or interest, including an easement or license, at the time the tentative or final map is filed with the local agency, to permit the improvements to be made. In such cases, the city, county or city and county shall, within 120 days of the filing of the final map, pursuant to Section 66457, acquire by negotiation or commence proceedings pursuant to Title 7 (commencing with Section 1230.010) of Part 3 of the Code of Civil Procedure to acquire an interest in the land which will permit the improvements to be made, including proceedings for immediate possession of the property under Article 3 (commencing with Section 1255.410) of Chapter 6 of such title. In the event a city, county, or city and county fails to meet the 120-day time limitation, the condition for construction of offsite improvements shall be conclusively deemed to be waived. Prior to approval of the final map the city, county, or city and county may require the subdivider to enter into an agreement to complete the improvements pursuant to Section 66462 at such time as the city, county, or city and county acquires an interest in the land which will permit the improvements to be made.

Nothing in this section precludes a city, county, or city and county from requiring a subdivider to pay the cost of acquiring offsite real property interests required in connection with a subdivision.

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Title 7

"Offsite improvements," as used in this section, does not include improvements which are necessary to assure replacement or construction of housing for persons and families of low or moderate income, as defined in Section 50093 of the Health and Safety Code.

(Added by Stats.1982, c. 1248, § 1. Amended by Stats.1983, c. 910, § 1.)

Library References

Zoning and Planning ☞382.1.
WESTLAW Topic No. 414.
C.J.S. Zoning and Land Planning § 197.

Article 5

PARCEL MAPS

Section

66463. Compliance with local ordinances; application of other laws; time limits.
66463.1. Multiple parcel maps filed prior to expiration of tentative map; conditions precedent.
66463.5. Expiration of tentative map; effect; extension of time; appeal from denial of extension; development moratorium; pending lawsuits.

Article 5 was added by Stats.1974, c. 1536, p. 3479, § 4, operative March 1, 1975.

§ 66463. Compliance with local ordinances; application of other laws; time limits

(a) Except as otherwise provided for in this code, the procedure for processing, approval, conditional approval, or disapproval and filing of parcel maps and modifications thereof shall be as provided by local ordinance. The provisions of Sections 66477.1, 66477.2, and 66477.3 relating to dedications and offers of dedication on final maps, shall apply to dedications and offers of dedications on parcel maps.

(b) Whenever a local agency provides, by ordinance, for the approval, conditional approval, or disapproval of parcel maps by the county engineer, surveyor, or other designated official, the local agency may also, by ordinance, provide that the officer may accept or reject dedications and offers of dedication that are made by a statement on the map.

(c) Whenever a local agency provides, by ordinance, for the approval of parcel maps by the legislative body, the parcel maps shall be filed pursuant to the procedure for final maps as prescribed by Sections 66457 and 66458.

(d) The time limits for action or approval of a tentative map and parcel map for which a tentative map is not required shall be no longer than the time limits contained in Sections 66452.1 and 66452.2.

(Added by Stats.1974, c. 1536, p. 3479, § 4, operative March 1, 1975. Amended by Stats.1977, c. 234, p. 1037, § 8, eff. July 7, 1977; Stats.1983, c. 1224, § 3; Stats.1984, c. 337, § 2; Stats.1987, c. 982, § 17; Stats.1989, c. 847, § 9.)

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Historical and Statutory Notes

Derivation: Bus. & Prof.C. former § 11575,
added by Stats.1965, c. 1180, p. 2985, § 13.

Library References

Municipal Corporations ⇨43.
Zoning and Planning ⇨29.5.
WESTLAW Topic Nos. 268, 414.

C.J.S. Municipal Corporations §§ 83, 84.
C.J.S. Zoning and Land Planning § 21.

Notes of Decisions

Conditional acceptance 2
Construction with other law 1

1. Construction with other law

General contract law principles applied to statutory offers of dedication and acceptances thereof. *Mikels v. Rager* (App. 4 Dist. 1991) 284 Cal.Rptr. 87, 232 Cal.App.3d 334, rehearing denied and modified, review denied.

Offer of dedication of roadway easement did not have legal effect of creating public roadway easement where offer of dedication was accepted on condition that proffered property be improved. *Mikels v. Rager* (App. 4 Dist. 1991) 284 Cal.Rptr. 87, 232 Cal.App.3d 334, rehearing denied and modified, review denied.

2. Conditional acceptance

Offer of dedication of roadway easement did not have legal effect of creating public roadway

easement where offer of dedication was accepted on condition that proffered property be improved. *Mikels v. Rager* (App. 4 Dist. 1991) 284 Cal.Rptr. 87, 232 Cal.App.3d 334, rehearing denied and modified, review denied.

Public entity's interest in streets and easements offered by dedication is limited by conditional nature of its acceptance thereof, which depends for finality upon subsequent acceptance after satisfactory completion of street improvements; qualified acceptance results in outstanding offer of dedication which entity may accept upon its conditions of acceptance being met, and until offer is unconditionally accepted, no public interest is created. *Mikels v. Rager* (App. 4 Dist. 1991) 284 Cal.Rptr. 87, 232 Cal.App.3d 334, rehearing denied and modified, review denied.

§ 66463.1. Multiple parcel maps filed prior to expiration of tentative map; conditions precedent

Multiple parcel maps filed pursuant to Section 66426 relating to an approved or conditionally approved tentative map may be filed prior to the expiration of the tentative map if either condition is satisfied:

(a) The subdivider, at the time the tentative map is filed, provides a written notice to the advisory agency or the local agency of the subdivider's intention to file multiple parcel maps on the tentative map.

(b) After filing of the tentative map, the local agency and the subdivider concur in the filing of multiple parcel maps.

In providing the notice specified in subdivision (a), the subdivider shall not be required to define the number or configuration of the proposed multiple parcel maps. The filing of a parcel map on a portion of an approved or conditionally approved tentative map shall not invalidate any part of the tentative map. The right of the subdivider to file multiple parcel maps shall not limit the authority of the local agency to impose reasonable conditions relating to the filing of multiple parcel maps.

(Added by Stats.1991, c. 907 (A.B.1905), § 3.)

Historical and Statutory Notes

Letter regarding legislative intent of Stats.
1991, c. 907 (A.B.1905), see Government Code
§ 66424.6.

§ 66463.5. Expiration of tentative map; effect; extension of time; appeal from denial of extension; development moratorium; pending lawsuits

(a) When a tentative map is required, an approved or conditionally approved tentative map shall expire 24 months after its approval or conditional approval, or after any additional period of time as may be prescribed by local ordinance, not to exceed an additional 12 months.

(b) The expiration of the approved or conditionally approved tentative map shall terminate all proceedings and no parcel map of all or any portion of the real property included within the tentative map shall be filed without first processing a new tentative map. Once a timely filing is made, subsequent actions of the local agency, including, but not limited to, processing, approving, and recording, may lawfully occur after the date of expiration of the tentative map. Delivery to the county surveyor or city engineer shall be deemed a timely filing for purposes of this section.

(c) Upon application of the subdivider filed prior to the expiration of the approved or conditionally approved tentative map, the time at which the map expires may be extended by the legislative body or by an advisory agency authorized to approve or conditionally approve tentative maps for a period or periods not exceeding a total of five years. Prior to the expiration of an approved or conditionally approved tentative map, upon the application by the subdivider to extend that map, the map shall automatically be extended for 60 days or until the application for the extension is approved, conditionally approved, or denied, whichever occurs first. If the advisory agency denies a subdivider's application for an extension, the subdivider may appeal to the legislative body within 15 days after the advisory agency has denied the extension.

(d)(1) The period of time specified in subdivision (a) shall not include any period of time during which a development moratorium, imposed after approval of the tentative map, is in existence. However, the length of the moratorium shall not exceed five years.

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

(e) The period of time specified in subdivision (a), including any extension thereof granted pursuant to subdivision (c), shall not include the period of time during which a lawsuit involving the approval or conditional approval of the tentative map is, or was, pending in a court of competent jurisdiction, if the stay of the time period is approved by the local agency pursuant to this section. After service of the initial petition or complaint in the lawsuit upon the local

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agency, the subdivider may apply to the local agency for a stay pursuant to the local agency's adopted procedures. Within 40 days after receiving the application, the local agency shall either stay the time period for up to five years or deny the requested stay. The local agency may, by ordinance, establish procedures for reviewing the requests, including, but not limited to, notice and hearing requirements, appeal procedures, and other administrative requirements.

(f) For purposes of this section, a development moratorium shall include a water or sewer moratorium or a water and sewer moratorium, as well as other actions of public agencies that regulate land use, development, or the provision of services to the land, including the public agency with the authority to approve or conditionally approve the tentative map, which thereafter prevents, prohibits, or delays the approval of a parcel map.

(g) Notwithstanding subdivisions (a), (b), and (c), for the purposes of Chapter 4.5 (commencing with Section 66498.1), subdivisions (g) and (h) of Section 66452.6 shall apply to vesting tentative maps prepared in connection with a parcel map except that, for purposes of this section, the time periods specified in subdivisions (g) and (h) of Section 66452.6 shall be determined from the recordation of the parcel map instead of the final map.

(Added by Stats.1984, c. 1302, § 5, eff. Sept. 20, 1984, operative Jan. 1, 1985. Amended by Stats. 1986, c. 789, § 5; Stats.1994, c. 977 (S.B.243), § 3; Stats.1996, c. 46 (A.B.771), § 2, eff. May 15, 1996.)

Historical and Statutory Notes

Former § 66463.5, added by Stat.1974, c. 1536, § 4, amended by Stats.1982, c. 923, § 4; Stats.1984, c. 337, § 3; Stats.1984, c. 1113, § 7; Stats.1984, c. 1302, § 4, relating to the expiration of a tentative map, was repealed by its own terms on Jan. 1, 1985. See this section.

Derivation: Former § 66463.5, added by Stats.1974, c. 1536, p. 3479, § 4, amended by Stats.1982, c. 923, § 4; Stats.1984, c. 337, § 3; Stats.1984, c. 1113, § 7; Stats.1984, c. 1302, § 4.

Library References

Zoning and Planning ⇨372.1.
WESTLAW Topic No. 414.
C.J.S. Zoning and Planning § 191.

Article 6

FILING MAPS WITH COUNTY RECORDER

Section

- 66464. Transmittal of maps; certification or statement concerning certificates, statements and deposits.
- 66465. Proof of consent of all parties having record title interest.
- 66466. Acceptance or rejection by county recorder; fee; storage; index.
- 66467. Permissive filing.
- 66468. Determination of validity of map.
- 66468.1. Separate documents recorded concurrently with final or parcel map; completion of cross-reference.
- 66468.2. Performance of clerk's duties or approval of security for payment of taxes by county officer.

Article 6 was added by Stats.1974, c. 1536, p. 3480, § 4, operative March 1, 1975.

Cross References

Local building permits, issuance prior to recordation of parcel maps, see Health and Safety Code § 19828.

§ 66464. Transmittal of maps; certification or statement concerning certificates, statements and deposits

(a) Unless otherwise provided by the county, if the final map or map parcel is not subject to Section 66493, after the approval by the city of a final map of a subdivision or a parcel map, the city clerk shall transmit the map to the county recorder.

(b) If a final map or parcel map is subject to Section 66493, after all certificates or statements and security required under Section 66493 have been filed and deposited with the clerk of the board of supervisors and approved by the county, the clerk of the board of supervisors shall certify or state that the certificates and statements have been filed and deposits have been made and shall transmit the final map or parcel map to the county recorder.

(c) After the approval by the county of a final or parcel map of a subdivision within unincorporated territory, the map shall be transmitted ultimately to the county recorder.

(Added by Stats.1974, c. 1536, p. 3480, § 4, operative March 1, 1975. Amended by Stats.1975, c. 24, p. 33, § 13, eff. April 4, 1975; Stats.1978, c. 340, p. 722, § 1; Stats.1983, c. 1224, § 4; Stats.1985, c. 114, § 9, eff. June 28, 1985; Stats.1987, c. 982, § 18.)

Historical and Statutory Notes

Derivation: Bus. & Prof.C. former § 11580, added by Stats.1965, c. 1180, p. 2987, § 13, amended by Stats.1967, c. 79, p. 980, § 3; Stats.1967, c. 727, p. 2102, § 7.

Bus. & Prof.C. former § 11617, added by Stats.1943, c. 128, p. 876, § 1.
Stats.1937, c. 670, p. 1872, § 21.

Library References

Municipal Corporations ⇨43.
Zoning and Planning ⇨132.
WESTLAW Topic Nos. 268, 414.
C.J.S. Municipal Corporations §§ 83, 84.
C.J.S. Zoning and Land Planning §§ 12, 14 to 16, 28.

Subdivision mapping. Report of Subcommittee of Assembly Interim Committee on Governmental Efficiency and Economy. 1963 to 1965, vol. 8, No. 9, p. 3. Vol. 1 of Appendix to Journal of Assembly, Reg.Sess., 1965.

§ 66465. Proof of consent of all parties having record title interest

The subdivider shall present to the county recorder evidence that, at the time of the filing of the final or parcel map in the office of the county recorder, the parties consenting to such filing are all of the parties having a record title interest in the real property being subdivided whose signatures are required by this division, as shown by the records in the office of the recorder, otherwise the map shall not be filed.

For purposes of this section and Sections 66436, 66439, and 66447, a public entity which has obtained a prejudgment order for possession of property

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pursuant to Section 1255.410 of the Code of Civil Procedure shall be deemed to be the record title owner of the property or property interests described in the order, provided the order for possession has not been stayed or vacated pursuant to Section 1255.420, 1255.430, or 1255.440 of the Code of Civil Procedure, no motion therefor is pending before the court, and the time prescribed by Section 1255.420 of the Code of Civil Procedure for filing a motion for relief from the order has passed.

(Added by Stats.1974, c. 1536, p. 3480, § 4, operative March 1, 1975. Amended by Stats.1979, c. 309, p. 1128, § 1.)

Historical and Statutory Notes

Derivation: Bus. & Prof.C. former § 11625, added by Stats.1943, c. 128, p. 876, § 1.

Stats.1937, c. 670, p. 1872, § 22.

Cross References

Final maps,

Certificate of consent, see Government Code § 66436.

Filing by local agency, consent, see Government Code § 66430.

Subdivider, defined, see Government Code § 66423.

Law Review and Journal Commentaries

Using the county general plan to guide habitat mitigation under CEQA. Robert A. Johnston and Mary Madison, 34 Santa Clara L.Rev. 81 (1993).

Notes of Decisions

Trustee 1

1. Trustee

The signature of the trustee, under a deed of trust which encumbers property being subdivided, is required as a condition of the approval and recordation of a final subdivision map. 59 Ops.Atty.Gen. 386, 7-13-76.

The interest of a trustee under a deed of trust encumbering property being subdivided is a record title interest within the meaning of this

section and §§ 66430, 66436, 66439, 66445; a local legislative body may not suspend or modify the signature requirement of the trustee as to final subdivision maps but may enact an ordinance suspending or modifying the trustee signature requirement as to parcel maps, however, where there has been dedication or an offer of dedication in connection with the parcel map, the trustee signature requirement with respect to the dedication may not be suspended or modified by the local legislative body. 59 Ops. Atty.Gen. 386, 7-13-76.

§ 66466. Acceptance or rejection by county recorder; fee; storage; index

(a) The county recorder shall have not more than 10 days within which to examine a final or parcel map and either accept or reject it for filing.

(b) If the county recorder rejects a final or parcel map for filing, the county recorder shall, within 10 days thereafter, mail notice to the subdivider and the city engineer if the map is within a city, or the county surveyor if the map is within the unincorporated area, that the map has been rejected for filing, giving the reasons therefor, and that the map is being returned to the city clerk if the map is within a city, or to the clerk of the board if the map is within the unincorporated area, for action by the legislative body. Upon receipt of the map, the clerk shall place the map on the agenda of the next regular meeting of the legislative body and the legislative body shall, within 15 days thereafter, rescind its approval of the map and return the map to the subdivider unless the

subdivider presents evidence that the basis for the rejection by the county recorder has been removed. The subdivider may consent to a continuance of the matter; however, the prior approval of the legislative body shall be deemed rescinded during any period of continuance. If a map is returned to the county recorder, the county recorder shall have a new 10-day period to examine the map and either accept or reject it for filing.

(c) If the county recorder accepts the map for filing, the acceptance shall be certified on the face thereof. The map shall be securely fastened in a book of subdivision maps, in a book of parcel maps, or in a book of cities and towns which shall be kept for that purpose, or in any other manner as will assure that the maps will be kept together. The map shall become a part of the official records of the county recorder upon its acceptance by the county recorder for filing.

(d) The fee for filing and indexing the map is as prescribed in Section 27372 of the Government Code.

(e) The original map shall be stored for safekeeping in a reproducible condition. The county recorder may maintain for public reference a set of counter maps that are prints of the original maps and produce the original maps for comparison upon demand.

(f) Upon the filing of any map, including amended maps and certificates of correction for recordation pursuant to this section or any record of survey pursuant to the Professional Land Surveyors' Act (Chapter 15 (commencing with Section 8700) of Division 3 of the Business and Professions Code), the surveyor or engineer who prepared the document shall transmit a copy of the document, including all recording information, to the county surveyor, who shall maintain an index, by geographic location, of the documents. The county surveyor may charge a fee not to exceed the fee charged for recording the document, for purposes of financing the costs of maintaining the index of the documents.

The requirements of this subdivision shall not apply to any county which requires a document filed pursuant to this section to be transmitted to the county surveyor and requires that official to maintain an index of those documents.

(Added by Stats.1974, c. 1536, p. 3480, § 4, operative March 1, 1975. Amended by Stats.1980, c. 403, p. 790, § 5; Stats.1991, c. 350 (A.B.427), § 3.)

Historical and Statutory Notes

Derivation: Bus. & Prof.C. former § 11628, added by Stats.1943, c. 128, p. 876, § 1, amended by Stats.1957, c. 1865, p. 3268, § 8; Stats. 1965, c. 1180, p. 2988, § 18; Stats.1967, c. 727, p. 2102, § 8.

Stats.1937, c. 670, p. 1873, § 25.

Library References

Subdivision mapping. Report of Subcommittee of Assembly Interim Committee on Governmental Efficiency and Economy, 1963 to

1965, vol. 8, No. 9, p. 3. Vol. 1 of Appendix to Journal of Assembly, Reg.Sess., 1965.

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Notes of Decisions

Condition precedent 1

1. Condition precedent

Where recordation of tract map of subdivision by vendors was condition precedent to purchas-

er's deposit in escrow of \$30,000 and deed of trust, purchaser was not obliged to make deposit until recordation of the map and purchaser could not be placed in default by vendors' demands that he deposit consideration in escrow. *Rubin v. Fuchs* (1969) 81 Cal.Rptr. 373, 1 Cal.3d 50, 459 P.2d 925.

§ 66467. Permissive filing

This chapter shall not prevent filing in the office of the county recorder of a final or parcel map of a subdivision for which a final or parcel map is not required, provided such map meets the requirements of this division and any local ordinance.

(Added by Stats.1974, c. 1536, p. 3481, § 4, operative March 1, 1975.)

Historical and Statutory Notes

Derivation: Bus. & Prof.C. former § 11536, added by Stats.1943, c. 128, p. 868, § 1, amended by Stats.1967, c. 727, p. 2100, § 3.5.

Bus. & Prof.C. former § 11537, added by Stats.1943, c. 128, p. 868, § 1, amended by

Stats.1955, c. 1593, p. 2889, § 7; Stats.1963, c. 623, p. 1499, § 1; Stats.1967, c. 332, p. 1532, § 1.

Stats.1937, c. 670, pp. 1865, 1873, §§ 3, 24.

§ 66468. Determination of validity of map

The filing for record of a final or parcel map by the county recorder shall automatically and finally determine the validity of such map and when recorded shall impart constructive notice thereof.

(Added by Stats.1974, c. 1536, p. 3481, § 4, operative March 1, 1975.)

Historical and Statutory Notes

Derivation: Bus. & Prof.C. former § 11627, added by Stats.1943, c. 128, p. 876, § 1.

Stats.1937, c. 670, p. 1873, § 23.

Notes of Decisions

Appeal 2

Prior subdivisions 1

1. Prior subdivisions

Lots 1, 2 and 3 did not constitute separate and distinct parcels of land legally subdivided within meaning of the state map act by prior United States Survey Map, and were not therefore exempt from regulation under the map act and local ordinances, and because the lots were not legal subdivisions prior to the map act, no merger issue was raised by common ownership of entire parcel. *John Taft Corp. v. Advisory*

Agency For Ventura County (Ventura County) (App. 2 Dist. 1984) 207 Cal.Rptr. 840, 161 Cal. App.3d 749.

2. Appeal

City council approval of and recordation of final map for subdivision simply confirmed fulfillment of tentative map conditions, and approval and recordation, and resultant final validity of the map, did not per se moot appeal in action challenging tentative subdivision map. *Kriebel v. City of San Diego, City Council* (App. 4 Dist. 1980) 169 Cal.Rptr. 342, 112 Cal.App.3d 693.

§ 66468.1

§ 66468.1. Separate documents recorded concurrently with final or parcel map; completion of cross-reference

Whenever separate documents are to be recorded concurrently with the final or parcel map pursuant to Section 66435.1 or 66445, the county recorder shall complete the cross-reference to such concurrently recorded separate documents.

(Added by Stats.1982, c. 87, § 19, eff. March 1, 1982.)

§ 66468.2. Performance of clerk's duties or approval of security for payment of taxes by county officer

The board of supervisors may, by resolution, authorize any county officer to :
(a) Perform the duties required of the clerk of the board of supervisors under this article.

(b) Approve the security for payment of taxes required pursuant to subdivision (b) of Section 66464 if that county officer also performs the other duties required of the clerk of the board of supervisors under that subdivision.

(Added by Stats.1984, c. 866, § 4.1. Amended by Stats.1990, c. 1001 (A.B.3107), § 2.)

Article 7

CORRECTION AND AMENDMENT OF MAPS

Section

- 66469. Method and purposes of amendment.
- 66470. Preparation; requirements; index; fees; copies.
- 66471. Examination; presentation for recording; noncomplying certificates of correction.
- 66472. Filing or recordation; indexing; effect.
- 66472.1. Modification of recorded final map.

Article 7 was added by Stats.1974, c. 1536, p. 3481, § 4, operative March 1, 1975.

§ 66469. Method and purposes of amendment

After a final map or parcel map is filed in the office of the county recorder, it may be amended by a certificate of correction or an amending map for any of the following purposes:

- (a) To correct an error in any course or distance shown thereon.
- (b) To show any course or distance that was omitted therefrom.
- (c) To correct an error in the description of the real property shown on the map.
- (d) To indicate monuments set after the death, disability, retirement from practice, or replacement of the engineer or surveyor charged with responsibilities for setting monuments.
- (e) To show the proper location or character of any monument which has been changed in location or character originally was shown at the wrong location or incorrectly as to its character.

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(f) To correct any additional information filed or recorded pursuant to Section 66434.2, if the correction does not impose any additional burden on the present fee owner of the property and does not alter any right, title, or interest in the real property reflected on the recorded map.

(g) To correct any other type of map error or omission as approved by the county surveyor or city engineer, which does not affect any property right. Such errors and omissions may include, but are not limited to, lot numbers, acreage, street names, and identification of adjacent record maps.

As used in this section, "error" does not include changes in courses or distances from which an error is not ascertainable from the data shown on the final or parcel map.

(Added by Stats.1974, c. 1536, p. 3481, § 4, operative March 1, 1975. Amended by Stats.1976, c. 660, p. 1630, § 4; Stats.1977, c. 234, p. 1037, § 9, eff. July 7, 1977; Stats.1990, c. 1001 (A.B.3107), § 3; Stats.1996, c. 894 (S.B.560), § 2.)

Historical and Statutory Notes

Derivation: Bus. & Prof.C. former § 11629, amended by Stats.1965, c. 1180, p. 2988, § 19; added by Stats.1959, c. 1221, p. 3304, § 1, Stats.1967, c. 241, p. 1374, § 1.

Cross References

Monuments set by substitute engineer or surveyor, amendment of maps, see Government Code § 66498.

Library References

Municipal Corporations ⇨43.
Zoning and Planning ⇨191.
WESTLAW Topic Nos. 268, 414.
C.J.S. Municipal Corporations §§ 83, 84.
C.J.S. Zoning and Land Planning §§ 84 to 93.

Subdivision mapping. Report of Subcommittee of Assembly Interim Committee on Governmental Efficiency and Economy, 1963 to 1965, vol. 8, No. 9, p. 3. Vol. 1 of Appendix to Journal of Assembly, Reg.Sess., 1965.

§ 66470. Preparation; requirements; index; fees; copies

The amending map or certificate of correction shall be prepared and signed by a registered civil engineer or licensed land surveyor. An amending map shall conform to the requirements of Section 66434, if a final map, or subdivisions (a) to (d), inclusive, and (f) to (i), inclusive, of Section 66445, if a parcel map. The amending map or certificate of correction shall set forth in detail the corrections made and show the names of the present fee owners of the property affected by the correction or omission. Upon recordation of a certificate of correction, the county recorder shall within 60 days of recording transmit a certified copy to the county surveyor or county engineer who shall maintain an index of recorded certificates of correction.

The county recorder may charge a fee, in addition to the fee charged for recording the certificate of correction, which shall be transmitted to the county surveyor or the county engineer, as compensation for the cost of maintaining an index of recorded certificates of correction. The amount of this additional fee shall not exceed the fee which is charged for recording the certificate of correction.

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If the property affected by a map is located within a city, the county recorder shall, upon request of the city engineer, provide copies of recorded certificates of correction to the city engineer.

(Added by Stats.1974, c. 1536, p. 3481, § 4, operative March 1, 1975. Amended by Stats.1977, c. 234, p. 1038, § 10, eff. July 7, 1977; Stats.1985, c. 883, § 4; Stats.1993, c. 906 (A.B.557), § 7.5, eff. Oct. 8, 1993, operative Jan. 1, 1994.)

Historical and Statutory Notes

Section 1 of Stats.1993, c. 906 (A.B.557), provides:

"This act shall be known and may be cited as the Omnibus Local Government Act of 1993."

Severability of provisions of Stats.1993, c. 906 (A.B.557), see Historical and Statutory Notes under Government Code § 17558.5.

Derivation: Bus. & Prof.C. former § 11629, added by Stats.1959, c. 1221, p. 3304, § 1, amended by Stats.1965, c. 1180, p. 2988, § 19; Stats.1967, c. 241, p. 1374, § 1.

§ 66471. Examination; presentation for recording; noncomplying certificates of correction

(a) If the subdivision is in unincorporated territory, the county surveyor shall examine the amending map or certificate of correction and if the only changes made are those set forth in Section 66469, he or she shall certify to this fact on the amending map or certificate of correction. If the subdivision is in the city, such examination and certification shall be by the city surveyor or city engineer.

(b) As to a certificate of correction, the county surveyor, city surveyor, or city engineer shall have 20 working days in which to examine the certificate of correction for compliance with Sections 66469 and 66470, endorse a statement on it of his or her examination and certification, and present it to the county recorder for recordation. In the event the submitted certificate of correction fails to comply with Sections 66469 and 66470, the county surveyor, city surveyor, or city engineer shall return it within the same 20 working days to the person who presented it, together with a written statement of the changes necessary to make it conform to the requirements of Sections 66469 and 66470. The licensed land surveyor or registered civil engineer submitting the certificate of correction may then make the changes in compliance with Sections 66469 and 66470 and resubmit the certificate of correction to the county surveyor, city surveyor, or city engineer for approval. The county surveyor, city surveyor, or city engineer shall have 10 working days after resubmission and approval of the certificate of correction to present it to the county recorder for recordation.

(Added by Stats.1974, c. 1536, p. 3481, § 4, operative March 1, 1975. Amended by Stats.1992, c. 634 (A.B.1268), § 3.)

Historical and Statutory Notes

Derivation: Bus. & Prof.C. former § 11629, added by Stats.1959, c. 1221, p. 3304, § 1, amended by Stats.1965, c. 1180, p. 2988, § 19; Stats.1967, c. 241, p. 1374, § 1.

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Law Review and Journal Commentaries

Review of selected 1992 California legislation.
24 Pac.L.J. 985 (1993).

§ 66472. Filing or recordation; indexing; effect

The amending map or certificate of correction certified by the county surveyor, city surveyor, or city engineer shall be filed or recorded in the office of the county recorder in which the original map was filed. Upon such filing or recordation, the county recorder shall index the names of the fee owners and the appropriate tract designation shown on the amending map or certificate of correction in the general index and map index respectively. Thereupon, the original map shall be deemed to have been conclusively so corrected, and thereafter shall impart constructive notice of all such corrections in the same manner as though set forth upon the original map.

(Added by Stats.1974, c. 1536, p. 3481, § 4, operative March 1, 1975. Amended by Stats.1992, c. 634 (A.B.1268), § 4.)

Historical and Statutory Notes

Derivation: Bus. & Prof.C. former § 11629, amended by Stats.1965, c. 1180, p. 2988, § 19; added by Stats.1959, c. 1221, p. 3304, § 1, Stats.1967, c. 241, p. 1374, § 1.

Law Review and Journal Commentaries

Review of selected 1992 California legislation.
24 Pac.L.J. 985 (1993).

§ 66472.1. Modification of recorded final map

In addition to the amendments authorized by Section 66469, after a final map or parcel map is filed in the office of the county recorder, such a recorded final map may be modified by a certificate of correction or an amending map, if authorized by local ordinance, if the local agency finds that there are changes in circumstances which make any or all of the conditions of such a map no longer appropriate or necessary and that the modifications do not impose any additional burden on the present fee owner of the property, and if the modifications do not alter any right, title, or interest in the real property reflected on the recorded map, and the local agency finds that the map as modified conforms to the provisions of Section 66474. Any such modifications shall be set for public hearing as provided for in Section 66451.3 of this division. The legislative body shall confine the hearing to consideration of and action on the proposed modification.

(Added by Stats.1981, c. 1184, § 2.)

Library References

Municipal Corporations ⇨43.
Zoning and Planning ⇨191, 199.
WESTLAW Topic Nos. 268, 414.

C.J.S. Municipal Corporations §§ 83, 84.
C.J.S. Zoning and Land Planning §§ 84 to 93.

Chapter 4

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Chapter 4 was added by Stats.1974, c. 1536, p. 3482, § 4, operative March 1, 1975.

Article 1

GENERAL

Section	
66473.	Noncompliance with statute or local ordinance; waiver of technical or inadvertent error.
66473.1.	Provision for future passive or natural heating or cooling opportunities in design.
66473.2.	Provision for availability of individual household telephone service to each residential parcel.
66473.3.	Cable television services; public use land.
66473.5.	Consistency with general and specific plans.
66473.6.	Replacement, undergrounding or relocation of telephone or cable television lines as condition to approval of tentative or parcel map; reimbursement of costs by developer.
66474.	Findings justifying disapproval.
66474.01.	Tentative map or parcel map; approval.
66474.1.	Approval of final or parcel map; substantial compliance with approved tentative map.
66474.2.	Approval of tentative map; ordinance, policies and standards applicable.
66474.3.	Previous initiative measure affecting tentative project; likely default on bonds; project to proceed; conditions.
66474.4.	Land subject to contract pursuant to California Land Conservation Act and resulting parcels too small to sustain agricultural use; denial of approval of tentative map or parcel map; homesite parcels; minimum parcel sizes.
66474.5.	Approval of final map for land project.
66474.6.	Proposed waste discharge violating water quality requirements.
66474.7.	Assignment of responsibilities to advisory agency or appeal board.
66474.8.	Application of local grading or drainage regulations to construction of design or improvement work.
66474.9.	Claims against local agency; defense, indemnification, or holding harmless by subdivider as condition for tentative, parcel, or final map application or approval; participation in defense by local agency; settlements.
66474.10.	Engineering or land surveying conditions imposed; review.

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Note 1

Article 1 was added by Stats.1974, c. 1536, p. 3482, § 4, operative March 1, 1975.

§ 66473. Noncompliance with statute or local ordinance; waiver of technical or inadvertent error

A local agency shall disapprove a map for failure to meet or perform any of the requirements or conditions imposed by this division or local ordinance enacted pursuant thereto; provided that a final map shall be disapproved only for failure to meet or perform requirements or conditions which were applicable to the subdivision at the time of approval of the tentative map; and provided further that such disapproval shall be accompanied by a finding identifying the requirements or conditions which have not been met or performed. Such local ordinance shall include, but need not be limited to, a procedure for waiver of the provisions of this section when the failure of the map is the result of a technical and inadvertent error which, in the determination of the local agency, does not materially affect the validity of the map.

(Added by Stats.1974, c. 1536, p. 3482, § 4, operative March 1, 1975. Amended by Stats.1976, c. 21, p. 32, § 1.)

Historical and Statutory Notes

Derivation: Bus. & Prof.C. former § 11526, added by Stats.1943, c. 128, p. 866, § 1, amended by Stats.1953, c. 1566, p. 3246, § 2; Stats. 1955, c. 1593, p. 2888, § 3; Stats.1965, c. 1180, p. 2981, § 5; Stats.1971, c. 1446, p. 2853, § 3.

Bus. & Prof.C. former § 11551, added by Stats.1943, c. 128, p. 869, § 1.

Stats.1937, c. 670, pp. 1863, 1866, §§ 1, 6.

Cross References

Improvement, defined, see Government Code § 66419.

Local agency, defined, see Government Code § 66420.

Law Review and Journal Commentaries

Common law and statutory dedication in California. 53 Cal.L.Rev. 559 (1965).

Subdivision exactions in California: Expansion of municipal power. 23 Hastings L.J. 403 (1972).

Subdivisions: Conditions imposed by local government. John Paul Hanna, 6 Santa Clara L.Rev. 172 (1966).

Validity of local taxation powers within a state regulated field: Pines v. City of Santa Monica. 9 Pepp.L.Rev. 734 (1982).

Library References

Municipal Corporations ⇨43.
Zoning and Planning ⇨372.1.
WESTLAW Topic Nos. 268, 414.

C.J.S. Municipal Corporations §§ 83, 84.
C.J.S. Zoning and Land Planning § 191.

Notes of Decisions

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Conditions 4
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1. Construction with other laws

Under statute vesting control of the design of subdivisions in the governing bodies of cities and counties, a requirement by city of curved streets as opposed to straight streets as a condi-

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tion of approval of a proposed subdivision could in most cases be upheld as valid exercise of police power either upon considerations of safety, the general welfare, or both. 43 Ops.Atty. Gen. 89, 2-25-64.

2. Local ordinances

Subdivision owners, who never filed for or possessed a final map approval, could not base a claim of vested right to subdivide over restrictive provisions of subsequent planning agency's ordinance on asserted ground that property had been in effect in use as residential subdivision property prior to effective date of ordinance. *Call v. Feher* (App. 3 Dist. 1979) 155 Cal.Rptr. 387, 93 Cal.App.3d 434.

Insofar as court might find that land had been divided in violation of local ordinance, as distinguished from Subdivision Map Act (Bus. & Prof.C. § 11525 et seq. [repealed; see, now, § 66410 et seq.]), court would be obliged to determine validity of ordinance. *City of Tiburon v. Northwestern Pac. R. Co.* (App. 1 Dist. 1970) 84 Cal.Rptr. 469, 4 Cal.App.3d 160.

County subdivision ordinance which required property owner to submit proposed division of property into four or less parcels to county planning director and which gave right of appeal to planning commission, which could not refuse application if it appeared from satisfactory evidence that proposed division conformed to requirements of subdivision ordinance, did not contemplate a judicial or quasi-judicial type of determination by commission and afforded property owners a hearing which met requirements of procedural due process. *San Mateo County v. Palomar Holding Co.* (App. 1 Dist. 1962) 24 Cal.Rptr. 905, 208 Cal.App.2d 194.

The word "local ordinance" as used in statute providing that governing body shall approve subdivision map if it conforms to all requirements of act and of any "local ordinance" which is applicable, refers to an ordinance regulating design and improvement of subdivision insofar as such regulations are consistent with and not in conflict with the Act. *Kelber v. City of Upland* (App. 1957) 155 Cal.App.2d 631, 318 P.2d 561.

Under Subdivision Map Act containing numerous references to ordinances which may be enacted, and indicating that such ordinances would be used to supplement act itself, and providing that design, improvement and survey data of subdivisions and final maps thereof, and procedure to be followed in securing official approval are governed by provisions of chapter and by additional provisions of local ordinances dealing with subdivisions, legislature intended to authorize enactment of local ordinances, and therefore ordinance requiring subdividers to furnish profile map for approval, was not con-

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trary thereto. *Mefford v. City of Tulare* (App. 1951) 102 Cal.App.2d 919, 228 P.2d 847.

Where, after Jan. 1, 1973, counties and general law cities must have a general plan including a mandatory housing element, counties and cities will have to find a tentative or final subdivision map consistent with the housing element of the general plan in order to approve the map. *Op.Leg.Counsel*, 1972 S.J. 8013.

3. Power of governing body

County board has first right to exercise its discretion in determining whether portion of work required by contract under former Subdivision Map Act, was in and of itself a completed unit and to reject or accept streets, before there was court interference. *Kern County v. Edgemont Development Corp.* (App. 5 Dist. 1963) 35 Cal.Rptr. 629, 222 Cal.App.2d 874.

The county may not disapprove the tentative map solely on the grounds that the subdivision or improvements under it would result in a violation of a Williamson Act contract. The underlying facts which constitute a violation of a Williamson Act contract may, however, also constitute grounds for disapproving the tentative subdivision map. 62 Ops.Atty.Gen. 233, 5-11-79.

Provisions of the former Subdivision Map Act support the authority of local governing bodies to require that all roads created pursuant to a subdivision or land project determine lot boundary lines. 56 Ops.Atty.Gen. 105, 2-27-73.

4. Conditions

It is not an impermissible impairment of the subdivision process for a landowner who holds a tentative tract map conditioned on reducing the number of dwelling units in a proposed condominium conversion to be required by subsequently enacted legislation to obtain a permit from a newly created rent control board authorizing the removal of a controlled rental unit. *Hazon-Iny Development, Inc. v. City of Santa Monica* (App. 2 Dist. 1982) 179 Cal.Rptr. 860, 128 Cal.App.3d 1.

City could not impose additional conditions after conditional approval of tentative subdivision map. *El Patio v. Permanent Rent Control Bd. of City of Santa Monica* (App. 2 Dist. 1980) 168 Cal.Rptr. 276, 110 Cal.App.3d 915.

Where a county, prior to the incorporation of a city, has conditionally approved a tentative subdivision map for land located within the boundaries of the city, all of which conditions have been satisfied, and a final map has not been recorded prior to the date of incorporation, the city may not withhold final approval or amend the conditions thereof. 63 Ops.Atty. Gen. 844, 11-7-80.

A local government might approve the subdivision map upon conditions which will reduce

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the density of population or structures, but such conditions must be consistent with the act and other state law, local ordinances, applicable general or specific plans, and be reasonably required in relation to local and neighborhood planning, zoning, and traffic conditions. 56 Ops.Atty.Gen. 274, 6-15-73.

5. Evidence

Evidence supported trial court's finding that, as required by county ordinance for approval of

grade of street in excess of ten percent, evidence was presented to planning commission which showed, to its satisfaction, that lower grade than 15 percent for access road to proposed residential subdivision in mountains was not possible. Big Rock Mesas Property Owners Ass'n v. Board of Sup'rs of Los Angeles County (App. 2 Dist. 1977) 139 Cal.Rptr. 445, 73 Cal. App.3d 218.

§ 66473.1. Provision for future passive or natural heating or cooling opportunities in design

The design of a subdivision for which a tentative map is required pursuant to Section 66426 shall provide, to the extent feasible, for future passive or natural heating or cooling opportunities in the subdivision.

Examples of passive or natural heating opportunities in subdivision design, include design of lot size and configuration to permit orientation of a structure in an east-west alignment for southern exposure.

Examples of passive or natural cooling opportunities in subdivision design include design of lot size and configuration to permit orientation of a structure to take advantage of shade or prevailing breezes.

In providing for future passive or natural heating or cooling opportunities in the design of a subdivision, consideration shall be given to local climate, to contour, to configuration of the parcel to be divided, and to other design and improvement requirements, and such provision shall not result in reducing allowable densities or the percentage of a lot which may be occupied by a building or structure under applicable planning and zoning in force at the time the tentative map is filed.

The requirements of this section do not apply to condominium projects which consist of the subdivision of airspace in an existing building when no new structures are added.

For the purposes of this section, "feasible" means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social and technological factors.

(Added by Stats.1978, c. 1154, p. 3544, § 8.)

Historical and Statutory Notes

Title and legislative findings and declarations of Stats.1978, c. 1154, p. 3541, see Historical Note under Civil Code § 714.

Law Review and Journal Commentaries

Obtaining solar access in California: Solar Rights Act. 17 Cal.W.L.Rev. 123 (1980).

Library References

Municipal Corporations ⇄43.
WESTLAW Topic No. 268.
C.J.S. Municipal Corporations §§ 83, 84.

§ 66473.1

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Notes of Decisions

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to the examples given in that section. 64 Ops.
Atty.Gen. 328, 4-21-81.

1. Ordinances

The design requirement of this section is sufficiently specific for implementation by local agencies, and a local agency may adopt an ordinance specifying passive and natural heating and cooling design requirements in addition

2. Disapproval of map

A tentative map of a subdivision must be disapproved if it fails to meet the design requirement of this section, even though such requirement is not mentioned in § 66474. 64 Ops.Atty.Gen. 328, 4-21-81.

§ 66473.2. Provision for availability of individual household telephone service to each residential parcel

The legislative body of a city or county may, by ordinance, require the design of a subdivision for which a tentative map is required pursuant to Section 66426 to provide for the availability of individual household telephone service to each residential parcel in the subdivision.

(Added by Stats.1980, c. 870, p. 2709, § 1.)

Library References

Telecommunications ⇨261.
Zoning and Planning ⇨29.5.
WESTLAW Topic Nos. 372, 414.

C.J.S. Telegraphs, Telephones, Radio and
Television § 256.
C.J.S. Zoning and Land Planning § 21.

§ 66473.3. Cable television services; public use land

The legislative body of a city or county may, by ordinance, require the design of a subdivision for which a tentative map or parcel map is required pursuant to Section 66426 to provide one or more appropriate cable television systems an opportunity to construct, install, and maintain, on land identified on the map as dedicated or to be dedicated to public utility use, any equipment necessary to extend cable television services to each residential parcel in the subdivision.

“Appropriate cable television systems,” as used in this section, means those franchised or licensed to serve the geographical area in which the subdivision is located.

This section shall not apply to the conversion of existing dwelling units to condominiums, community apartments, or stock cooperatives.

(Added by Stats.1985, c. 917, § 1.)

§ 66473.5. Consistency with general and specific plans

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.

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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.

(Added by Stats.1974, c. 1536, p. 3482, § 4, operative March 1, 1975. Amended by Stats.1982, c. 87, § 20, eff. March 1, 1982; Stats.1983, c. 101, § 89.)

Historical and Statutory Notes

Derivation: Bus. & Prof.C. former § 11526, added by Stats.1943, c. 128, p. 866, § 1, amended by Stats.1953, c. 1566, p. 3246, § 2; Stats.1955, c. 1593, p. 2888, § 3; Stats.1965, c. 1180, p. 2981, § 5; Stats.1971, c. 1446, p. 2853, § 3.

Stats.1937, c. 670, p. 1863, § 1.

Cross References

Design, defined, see Government Code § 66418.
Local agency, defined, see Government Code § 66420.
Subdivision, defined, see Government Code § 66424.

Law Review and Journal Commentaries

California local initiatives and referenda: An argument for keeping progressive flame burning. Patrick J. Borchers, 21 Pac.L.J. 119 (1989).

California's land planning requirements: Case for deregulation. George Lefcoe, 54 S.Cal.L.Rev. 447 (1981).

Consistency doctrine. Joseph F. DiMento, 20 Santa Clara L.Rev. 285 (1980).

Time is money: Detering condemnation blight through stricter standards for inequitable pre-condemnation activity. 15 U.C.Davis L.Rev. 763 (1982).

Notes of Decisions

- Absence of general plan 4
- Amendment of plans 5
- Consistency doctrine 2
- Construction with other laws 1
- Findings 6
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- Injunctive relief 7
- Review 9
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seq. to condition and to reject the subdivision of land for residential purposes or otherwise by, inter alia, requiring that the environment will not be substantially damaged and that the subdivision is consistent with applicable general or specific plans and authorizing ordinances which would prescribe greatly expanded design and improvement standards as a condition of subdivision map approval. 59 Ops.Atty.Gen. 129, 3-16-76.

Local governments possess the powers necessary, under the Subdivision Map Act, to set general types of condominium conversion restrictions to prevent major displacement of tenants, scarcity of rental units, the diminishing or defeating of master plan concepts or to require approval by existing tenants and the requirement for certain occupancy rates. 58 Ops.Atty.Gen. 41, 1-22-75.

While both this section and § 66474, relate to similar subject matter, the latter section because it requires findings in addition to the finding of consistency with the general plan is of much broader scope and requires a much wider inquiry on the part of the local governing body. 58 Ops.Atty.Gen. 21, 1-15-75.

1. Construction with other laws

A local government may not approve an alternative use of Williamson Act contract property which is not consistent with its current general plan under the "window" provisions of Stats. 1981, c. 1095. 67 Ops.Atty.Gen. 247, 6-5-84.

The county may not disapprove the tentative map solely on the grounds that the subdivision or improvements under it would result in a violation of a Williamson Act contract. The underlying facts which constitute a violation of a Williamson Act contract may, however, also constitute grounds for disapproving the tentative subdivision map. 62 Ops.Atty.Gen. 233, 5-11-79.

To a greater degree than before, cities and counties may utilize the amendments and additions to the Subdivision Map Act and § 65300 et

2. Consistency doctrine

Consistency doctrine, requiring tentative maps to be consistent with general plan, was

not common-law rule that imposed general duty apart from Subdivision Map Act provisions dealing with same subject. *Corona-Norco Unified School Dist. v. City of Corona (W. & J. Cole Family Trust)* (App. 4 Dist. 1993) 17 Cal.Rptr.2d 236, 13 Cal.App.4th 1577.

3. General plan elements

Elements of general plan set forth by state law are guidelines rather than prerequisites. *Greenebaum v. City of Los Angeles* (App. 2 Dist. 1984) 200 Cal.Rptr. 237, 153 Cal.App.3d 391.

When city's general plan includes an objective to provide adequate housing opportunities for persons of low and moderate incomes, city's failure to provide such meaningful low and moderate income housing opportunities within a proposed community planning area may be challenged at the subdivision map stage, since state law requires that subdivision map approvals be consistent with the community general plan. *City of Del Mar v. City of San Diego* (App. 4 Dist. 1982) 183 Cal.Rptr. 898, 133 Cal.App.3d 401.

Housing element of master plan in city of Glendale contained an extremely comprehensive analysis of present housing inventory and future needs and, given fact that overall plan and its ordinances in area of land use regulation represented an honest and reasonable effort to comply with state's statutory requirements, was not inadequate for failure to discuss in specific terms subject of condominium conversion notwithstanding whether it comported with guidelines of department of housing and community development promulgated pursuant to state Planning and Zoning Law. *Bownds v. City of Glendale* (App. 2 Dist. 1980) 170 Cal.Rptr. 342, 113 Cal.App.3d 875.

4. Absence of general plan

Since consistency with general plan is required, absence of a valid general plan, or relevant elements or components thereof, precludes enactment of zoning ordinances and the like. *Resource Defense Fund v. Santa Cruz County* (App. 1 Dist. 1982) 184 Cal.Rptr. 371, 133 Cal.App.3d 800.

5. Amendment of plans

County board of supervisors could legally amend county general plan to accommodate developer's project in mountainous acreage, and it was not necessary that plan first be amended and that developer then make his project consistent with it. *Mountain Defense League v. Board of Sup'rs, San Diego County* (App. 4 Dist. 1977) 135 Cal.Rptr. 588, 65 Cal.App.3d 723.

6. Findings

Administrative findings need not be as precise or formal as would be required of a court, thus, where motion which produced city council findings that proposed development of 70-unit condominium complex contained a specific reference to staff report which considered the conflicting factors relevant to determining whether the proposed project was consistent with city's general plan, the reference to the staff report sufficed to incorporate that part of the report in the formal findings of the council. *McMillan v. American General Finance Corp.* (App. 1 Dist. 1976) 131 Cal.Rptr. 462, 60 Cal.App.3d 175.

Requirement that planning commission and city council make findings that proposed subdivision was consistent with applicable general or specific plans before subdivision could be approved was not satisfied on theory that tie vote by commission, on appeal from advisory agency's approval of subdivision, and tie vote by council, on appeal from commission's alleged approval of subdivision, were findings "by implication" that subdivision was consistent with such applicable plans. *Woodland Hills Residents Ass'n, Inc. v. City Council of Los Angeles* (App. 2 Dist. 1975) 118 Cal.Rptr. 856, 44 Cal.App.3d 825.

Advisory agency, planning commission and city council could not approve tract map of proposed subdivision, absent findings that subdivision was consistent with district plan which was part of general plan. *Woodland Hills Residents Ass'n, Inc. v. City Council of Los Angeles* (App. 2 Dist. 1975) 118 Cal.Rptr. 856, 44 Cal.App.3d 825.

7. Injunctive relief

In action brought by citizens' group challenging city's proposed street improvement project, trial court was authorized to grant injunctive relief on the basis of inconsistency of the proposed street project with city's general plan and on the basis of the lack of a noise element in city's general plan with which the street project was to be consistent. *Friends of B St. v. City of Hayward* (App. 1 Dist. 1980) 165 Cal.Rptr. 514, 106 Cal.App.3d 988.

8. Sufficiency of evidence

City council's finding that developer's proposed project was consistent with city's applicable general plan was not abuse of discretion; there was evidence that project was consistent with land use designation for site and with applicable policies of city's comprehensive plan. *Sequoyah Hills Homeowners Ass'n v. City of Oakland (W.P.N. Associates)* (App. 1 Dist. 1993) 29 Cal.Rptr.2d 182, 23 Cal.App.4th 704.

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Findings and decision of city council regarding conformity of proposed development for construction of 70-unit condominium complex were supported by substantial evidence. *McMillan v. American General Finance Corp.* (App. 1 Dist. 1976) 131 Cal.Rptr. 462, 60 Cal.App.3d 175.

9. Review

Superior court's finding that no substantial evidence supported city council's determination that proposed development conformed with city's general plan was not binding on court of

appeal, especially where the superior court improperly considered evidence which had not been before the council. *McMillan v. American General Finance Corp.* (App. 1 Dist. 1976) 131 Cal.Rptr. 462, 60 Cal.App.3d 175.

Function of appellate court in reviewing city council's approval of development plan is to determine whether the findings of the agency are legally sufficient and whether the findings are supported by substantial evidence and support the agency's decision. *McMillan v. American General Finance Corp.* (App. 1 Dist. 1976) 131 Cal.Rptr. 462, 60 Cal.App.3d 175.

§ 66473.6. Replacement, undergrounding or relocation of telephone or cable television lines as condition to approval of tentative or parcel map; reimbursement of costs by developer

Whenever a city or county imposes as a condition to its approval of a tentative map or a parcel map a requirement that necessitates replacing, undergrounding, or permanently or temporarily relocating existing facilities of a telephone corporation or cable television system, the developer or subdivider shall reimburse the telephone corporation or cable television system for all costs for the replacement, undergrounding, or relocation. All these costs shall be billed after they are incurred, and shall include a credit for any required advance payments and for the salvage value of any facilities replaced. In no event shall the telephone corporation or cable television system be reimbursed for costs incurred in excess of the cost to replace the facilities with substantially similar facilities.

(Added by Stats.1985, c. 865, § 1.)

§ 66474. Findings justifying disapproval

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.

(Added by Stats.1974, c. 1536, p. 3482, § 4, operative March 1, 1975. Amended by Stats.1975, c. 24, p. 33, § 14, eff. April 4, 1975; Stats.1982, c. 87, § 21, eff. March 1, 1982; Stats.1982, c. 518, § 4.)

Historical and Statutory Notes

Derivation: Bus. & Prof.C. former § 11549.5, added by Stats.1971, c. 1446, p. 2856, § 7. Bus. & Prof.C. former § 11551.5, added by Stats.1953, c. 1335, p. 2896, § 1.

Law Review and Journal Commentaries

Birth control for premature subdivisions—a legislative pill. 12 Santa Clara L.Rev. 523 (1972).

Duty of private parties to file environmental statement. 61 Cal.L.Rev. 559 (1973).

Lucas and endangered species protection: When "take" and "takings" collide. 27 U.C.Davis L.Rev. 185 (1993).

Notes of Decisions

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Proposed county ordinances which would provide that applicants for subdivision map or building permit approval comply with an affirmative marketing program developed by the county and designed to prevent discrimination in the sale or rental of housing would be invalid because they constitute additional regulations in a field which has been preempted by Health & S.C. §§ 35700 to 35739 (Fair Housing Act). 60 Ops.Atty.Gen. 44, 1-12-77.

To a greater degree than before, cities and counties may utilize the amendments and additions to the Subdivision Map Act and § 65300 et seq. to condition and to reject the subdivision of land for residential purposes or otherwise by, inter alia, requiring that the environment will not be substantially damaged and that the subdivision is consistent with applicable general or specific plans and authorizing ordinances which would prescribe greatly expanded design and improvement standards as a condition of subdivision map approval. 59 Ops.Atty.Gen. 129, 3-16-76.

1. Construction with other laws

A tentative map of a subdivision must be disapproved if it fails to meet the design requirement of § 66473.1, providing for future passive or natural heating or cooling opportunities in design, even though such requirement is not mentioned in this section. 64 Ops.Atty.Gen. 328, 4-21-81.

The county may not disapprove the tentative map solely on the grounds that the subdivision or improvements under it would result in a violation of a Williamson Act contract. The underlying facts which constitute a violation of a Williamson Act contract may, however, also constitute grounds for disapproving the tentative subdivision map. 62 Ops.Atty.Gen. 233, 5-11-79.

While both § 66473.5 and this section relate to similar subject matter, the latter section because it requires findings in addition to the finding of consistency with the general plan is of much broader scope and requires a much wider inquiry on the part of the local governing body. 58 Ops.Atty.Gen. 21, 1-15-75.

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2. Consistency with plans

When city's general plan includes an objective to provide adequate housing opportunities for persons of low and moderate incomes, city's failure to provide such meaningful low and moderate income housing opportunities within a proposed community planning area may be challenged at the subdivision map stage, since state law requires that subdivision map approvals be consistent with the community general plan. *City of Del Mar v. City of San Diego* (App. 4 Dist. 1982) 183 Cal.Rptr. 898, 133 Cal.App.3d 401.

Advisory agency, planning commission and city council could not approve tract map of proposed subdivision, absent findings that subdivision was consistent with district plan which was part of general plan. *Woodland Hills Residents Ass'n, Inc. v. City Council of Los Angeles* (App. 2 Dist. 1975) 118 Cal.Rptr. 856, 44 Cal.App.3d 825.

A local government may not approve an alternative use of Williamson Act contract property which is not consistent with its current general plan under the "window" provisions of Stats. 1981, c. 1095. 67 Ops.Atty.Gen. 247, 6-5-84.

3. Density of development

The Subdivision Map Act, Bus. & Prof.C. § 11500 et seq. did not restrict a local planning commission or city council from limiting the density of a proposed subdivision, so long as such limitation was in conformity with local ordinances, but, to the contrary, the former Subdivision Map Act compelled such limitation of density. 56 Ops.Atty.Gen. 274, 6-15-73.

4. Environmental impact

County board of supervisors' determination that residential development would cause no substantial environmental damage was supported by sufficient evidence, including initial study made by county department of regional planning. *Topanga Ass'n for a Scenic Community v. County of Los Angeles* (Oakmont Development Associates) (App. 2 Dist. 1989) 263 Cal.Rptr. 214, 214 Cal.App.3d 1348.

County board of supervisors' determination that development of property would not cause substantial and avoidable injury to wildlife habitat was supported by sufficient evidence, even though 57 out of 177 oak trees in project area would be destroyed, where developer obtained oak tree permit, and board also imposed conditions requiring replacement of trees to be removed with new trees on two-to-one ratio and protection of remaining trees during and after development of project. *Topanga Ass'n for a Scenic Community v. County of Los Angeles* (Oakmont Development Associates) (App. 2 Dist. 1989) 263 Cal.Rptr. 214, 214 Cal.App.3d 1348.

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Mere presence of archaeological resources on property does not require finding that development of property would cause "significant effect on the environment" or "substantial environmental damage" would require disapproval of project. *Topanga Ass'n for a Scenic Community v. County of Los Angeles* (Oakmont Development Associates) (App. 2 Dist. 1989) 263 Cal.Rptr. 214, 214 Cal.App.3d 1348.

That property to be developed contained archaeological sites did not preclude county board of supervisors from finding that development would not cause substantial environmental damage and did not require board to impose conditions on developer designed to mitigate significant effects of project on archaeological resources, where board made no finding that archaeological sites contained unique archaeological resources. *Topanga Ass'n for a Scenic Community v. County of Los Angeles* (Oakmont Development Associates) (App. 2 Dist. 1989) 263 Cal.Rptr. 214, 214 Cal.App.3d 1348.

If significant adverse environmental effects identified with respect to tentative map of subdivision relate to design of or proposed improvements of subdivision, local agency may not approve the map under Pub.Res.C. § 21081. 68 Ops.Atty.Gen. 108, 5-17-85.

5. Conditions

It is not an impermissible impairment of the subdivision process for a landowner who holds a tentative tract map conditioned on reducing the number of dwelling units in a proposed condominium conversion to be required by subsequently enacted legislation to obtain a permit from a newly created rent control board authorizing the removal of a controlled rental unit. *Hazon-Iny Development, Inc. v. City of Santa Monica* (App. 2 Dist. 1982) 179 Cal.Rptr. 860, 128 Cal.App.3d 1.

City could not impose additional conditions after conditional approval of tentative subdivision map. *El Patio v. Permanent Rent Control Bd. of City of Santa Monica* (App. 2 Dist. 1980) 168 Cal.Rptr. 276, 110 Cal.App.3d 915.

6. Improper denial

Fact that tentative subdivision map conformed to zoning law in existence at date on which it was improperly denied because of incorrect interpretation of this section did not entitle applicant to approval under law then in effect without complying with subsequently enacted zoning conditions where there was no bad faith in denial of application, rezoning process had been in existence prior to denial and applicant did not claim any vested rights. *Palmer v. Board of Sup'rs of Ventura County* (App. 2 Dist. 1983) 193 Cal.Rptr. 669, 145 Cal.App.3d 779.

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7. Ordinances

Since consistency with general plan is required, absence of a valid general plan, or relevant elements or components thereof, precludes enactment of zoning ordinances and the like. *Resource Defense Fund v. Santa Cruz County* (App. 1 Dist. 1982) 184 Cal.Rptr. 371, 133 Cal.App.3d 800.

8. Findings

City council's finding that developer's proposed project was consistent with city's applicable general plan was not abuse of discretion; there was evidence that project was consistent with land use designation for site and with applicable policies of city's comprehensive plan. *Sequoyah Hills Homeowners Ass'n v. City of Oakland (W.P.N. Associates)* (App. 1 Dist. 1993) 29 Cal.Rptr.2d 182, 23 Cal.App.4th 704.

Deemed approval provision of Permit Streamlining Act conflicts with requirement of § 66474 that city must deny subdivision map application unless city makes specified findings. *Selinger v. City Council of City of Redlands* (App. 4 Dist. 1989) 264 Cal.Rptr. 499, 216 Cal.App.3d 259, review denied.

Administrative findings need not be as precise or formal as would be required of a court, thus, where motion which produced city council findings that proposed development of 70-unit condominium complex contained a specific reference to staff report which considered the conflicting factors relevant to determining whether the proposed project was consistent with city's general plan, the reference to the staff report sufficed to incorporate that part of the report in the formal findings of the council. *McMillan v. American General Finance Corp.* (App. 1 Dist. 1976) 131 Cal.Rptr. 462, 60 Cal.App.3d 175.

Administrative findings are substantively sufficient if they inform the parties of the bases on which to seek review and permit the courts to determine whether the decision is based on lawful principles. *McMillan v. American General Finance Corp.* (App. 1 Dist. 1976) 131 Cal.Rptr. 462, 60 Cal.App.3d 175.

Denial or approval of tentative subdivision map is required if governing body of the county makes certain findings; most findings must be sufficient to expose for review the basis for the action. *Carmel Valley View, Ltd. v. Board of Sup'rs, in and for Monterey County* (App. 1 Dist. 1976) 130 Cal.Rptr. 249, 58 Cal.App.3d 817.

Where action of county board of supervisors in denying tentative subdivision map in effect adopted the findings of the planning commission with respect to physical unsuitability of the site for the planned development, the developer was fully apprised of the reason for the action of

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the board of supervisors and no written findings in addition to those made by the planning commission were necessary. *Carmel Valley View, Ltd. v. Board of Sup'rs, in and for Monterey County* (App. 1 Dist. 1976) 130 Cal.Rptr. 249, 58 Cal.App.3d 817.

Requirement that planning commission and city council make findings that proposed subdivision was consistent with applicable general or specific plans before subdivision could be approved was not satisfied on theory that tie vote by commission, on appeal from advisory agency's approval of subdivision, and tie vote by council, on appeal from commission's alleged approval of subdivision, were findings "by implication" that subdivision was consistent with such applicable plans. *Woodland Hills Residents Ass'n, Inc. v. City Council of Los Angeles* (App. 2 Dist. 1975) 118 Cal.Rptr. 856, 44 Cal.App.3d 825.

9. Substantial evidence

Admission of validity of environmental impact report concerning subdivision constituted requisite substantial evidence as to propriety and adequacy of subdivision map findings by city council. *Kriebel v. City of San Diego, City Council* (App. 4 Dist. 1980) 169 Cal.Rptr. 342, 112 Cal.App.3d 693.

Findings and decision of city council regarding conformity of proposed development for construction of 70-unit condominium complex were supported by substantial evidence. *McMillan v. American General Finance Corp.* (App. 1 Dist. 1976) 131 Cal.Rptr. 462, 60 Cal.App.3d 175.

Environmental impact report which indicated that seepage of waste effluent from proposed individual septic tanks in proposed residential development would eventually reach the Carmel River because the property was on a steep slope and because of the thinness of the overlying soil layer and the limited permeability of the underlying shale and that there was thus a substantial threat of direct infiltration of underground water by untreated effluents presented substantial evidence to support planning commission's and board of supervisors' rejection of tentative subdivision map. *Carmel Valley View, Ltd. v. Board of Sup'rs, in and for Monterey County* (App. 1 Dist. 1976) 130 Cal.Rptr. 249, 58 Cal.App.3d 817.

10. Review

Plaintiff's challenges to subdivision use permit and approval of tentative subdivision map were barred where plaintiff did not seek judicial review of factual bases for county's quasi-judicial decisions in form of administrative mandamus action, but, rather, plaintiff's sole claim was that proposed subdivision was necessarily invalid because it did not conform to adequate

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general plan. *Holt v. Monterey County* (App. 1 Dist. 1982) 180 Cal.Rptr. 514, 128 Cal.App.3d 797.

General Finance Corp. (App. 1 Dist. 1976) 131 Cal.Rptr. 462, 60 Cal.App.3d 175.

Superior court's finding that no substantial evidence supported city council's determination that proposed development conformed with city's general plan was not binding on court of appeal, especially where the superior court improperly considered evidence which had not been before the council. *McMillan v. American*

Function of appellate court in reviewing city council's approval of development plan is to determine whether the findings of the agency are legally sufficient and whether the findings are supported by substantial evidence and support the agency's decision. *McMillan v. American General Finance Corp.* (App. 1 Dist. 1976) 131 Cal.Rptr. 462, 60 Cal.App.3d 175.

§ 66474.01. Tentative map or parcel map; approval

Notwithstanding subdivision (e) of Section 66474, a local government may approve a tentative map, or a parcel map for which a tentative map was not required, if an environmental impact report was prepared with respect to the project and a finding was made pursuant to paragraph (3) of subdivision (a) of Section 21081 of the Public Resources Code that specific economic, social, or other considerations make infeasible the mitigation measures or project alternatives identified in the environmental impact report.

(Added by Stats.1985, c. 738, § 1. Amended by Stats.1994, c. 1294 (A.B.314), § 1, eff. Oct. 4, 1994.)

§ 66474.1. Approval of final or parcel map; substantial compliance with approved tentative map

A legislative body shall not deny approval of a final or parcel map if it has previously approved a tentative map for the proposed subdivision and if it finds that the final or parcel map is in substantial compliance with the previously approved tentative map.

(Added by Stats.1974, c. 1536, p. 3483, § 4, operative March 1, 1975. Amended by Stats.1975, c. 24, p. 33, § 15, eff. April 4, 1975; Stats.1982, c. 87, § 22, eff. March 1, 1982.)

Historical and Statutory Notes

Derivation: Bus. § Prof.C. former § 11549.6, added by Stats.1971, c. 1446, p. 2856, § 7.5.

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Satisfaction of conditions 1

1. Satisfaction of conditions

The time for a local agency to take action with respect to a proposed subdivision is when the tentative map is under consideration and, provided the final map is in substantial compliance with the tentative map and any conditions imposed on its approval, the approval of the final map becomes a ministerial act. *Beck Development Co., Inc. v. Southern Pacific Transp. Co.* (App. 3 Dist. 1996) 52 Cal.Rptr.2d 518, 44 Cal.App.4th 1160, review denied.

Where developer has relied on a tentative map approval with conditions and has pro-

duced a final tract map which satisfies conditions, he is entitled to acceptance and approval of that final map without imposition of new or altered conditions by local governing agency. *South Central Coast Regional Commission v. Charles A. Pratt Const. Co., Inc.* (App. 5 Dist. 1982) 180 Cal.Rptr. 555, 128 Cal.App.3d 830.

Where a county, prior to the incorporation of a city, has conditionally approved a tentative subdivision map for land located within the boundaries of the city, all of which conditions have been satisfied, and a final map has not been recorded prior to the date of incorporation, the city may not withhold final approval or amend the conditions thereof. 63 Ops.Atty. Gen. 844, 11-7-80.

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§ 66474.2. Approval of tentative map; ordinance, policies and standards applicable

(a) Except as otherwise provided in subdivision (b) or (c), in determining whether to approve or disapprove an application for a tentative map, the local agency shall apply only those ordinances, policies, and standards in effect at the date the local agency has determined that the application is complete pursuant to Section 65943 of the Government Code.

(b) Subdivision (a) shall not apply to a local agency which, before it has determined an application for a tentative map to be complete pursuant to Section 65943, has done both of the following:

(1) Initiated proceedings by way of ordinance, resolution, or motion.

(2) Published notice in the manner prescribed in subdivision (a) of Section 65090 containing a description sufficient to notify the public of the nature of the proposed change in the applicable general or specific plans, or zoning or subdivision ordinances.

A local agency which has complied with this subdivision may apply any ordinances, policies, or standards enacted or instituted as a result of those proceedings which are in effect on the date the local agency approves or disapproves the tentative map.

(c) If the subdivision applicant requests changes in applicable ordinances, policies or standards in connection with the same development project, any ordinances, policies or standards adopted pursuant to the applicant's request shall apply.

(Added by Stats.1982, c. 1449, § 2. Amended by Stats.1988, c. 548, § 1; Stats.1989, c. 847, § 10.)

Historical and Statutory Notes

Prospective application of Stats.1982, c. 1449,
see Historical Note under § 65961.

Library References

Zoning and Planning ¶372.1.
WESTLAW Topic No. 414.
C.J.S. Zoning and Land Planning § 191.

Notes of Decisions

Existing ordinances, standards, and policies 2

Notice 1

Retroactive application 3

Sufficiency of evidence 4

1. Notice

Vesting tentative map statute requires prior notice, either actual or constructive, as condition to imposing ordinances, policies and standards upon developer/applicant who is entitled to rely on complete vesting tentative map. *Bright Development v. City of Tracy* (App. 3 Dist. 1993) 24 Cal.Rptr.2d 618, 20 Cal.App.4th 783, as modified, review denied.

Ordinance, policy, or standard of public agency which is written and accessible is reasonably calculated to apprise interested parties of their responsibilities in connection with development project, and would suffice to supply "constructive notice" for purposes of vesting tentative map statute. *Bright Development v. City of Tracy* (App. 3 Dist. 1993) 24 Cal.Rptr.2d 618, 20 Cal.App.4th 783, as modified, review denied.

2. Existing ordinances, standards, and policies

At time developer's vesting tentative map application was deemed complete, city did not have ordinance, policy or standard in effect requiring developer, at its own expense, to "un-

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derground" existing off-site utilities fronting proposed subdivision, so as to entitle city to impose undergrounding requirement on developer; standard plans enacted by city depicted requirement relating solely to on-site improvements, standard specifications did not expressly require undergrounding of existing off-site utilities but, rather, implied contrary, and condition for approval of map made no mention of undergrounding requirement for off-site utilities. *Bright Development v. City of Tracy* (App. 3 Dist. 1993) 24 Cal.Rptr.2d 618, 20 Cal.App.4th 783, as modified, review denied.

3. Retroactive application

City could not retroactively apply policy pursuant to which it sought to require developer, at its own expense, to "underground" existing off-site utilities fronting proposed subdivision, absent finding by city that condition promoted health and safety of city residents. *Bright Development v. City of Tracy* (App. 3 Dist. 1993)

24 Cal.Rptr.2d 618, 20 Cal.App.4th 783, as modified, review denied.

4. Sufficiency of evidence

Evidence did not support trial court's finding that developer, at time its vesting tentative map application was deemed complete, had notice of city policy pursuant to which city sought to require developer, at its own expense, to "underground" existing off-site utilities fronting proposed subdivision and, thus, city could not impose such requirement; statement in transcript of development review commission meeting suggested, if anything, that no such ordinance, policy or standard was then in existence, and addition to city's design standards of resolution allegedly memorializing undergrounding policy suggested absence of any such preexisting policy outside minds of city employees. *Bright Development v. City of Tracy* (App. 3 Dist. 1993) 24 Cal.Rptr.2d 618, 20 Cal.App.4th 783, as modified, review denied.

§ 66474.3. Previous initiative measure affecting tentative project; likely default on bonds; project to proceed; conditions

(a) If the legislative body of a city or county finds, based upon substantial evidence in the record, that any project for which a tentative map or a vesting tentative map has been approved will be affected by a previously enacted initiative measure to the extent that there is likely to be a default on land-secured bonds issued to finance infrastructure on the project, the legislative body shall allow that portion of the project served by that infrastructure to proceed in a manner consistent with the approved tentative map or vesting tentative map.

(b) For purposes of this section, land-secured bond means any bond issued pursuant to the Improvement Act of 1911 (Division 7 (commencing with Section 5000) of the Streets and Highways Code), the Municipal Improvement Act of 1913 (Division 12 (commencing with Section 10000) of the Streets and Highways Code), the Improvement Bond Act of 1915 (Division 10 (commencing with Section 8500) of the Streets and Highways Code), or the Mello-Roos Community Facilities Act of 1982 (Chapter 2.5 (commencing with Section 53311) of Part 1 of Division 2 of Title 5, so long as the bond was issued and sold at least 90 days before the proposed initiative was adopted by either popular vote at an election or by ordinance adopted by the legislative body.

(c) Notwithstanding subdivision (a), the legislative body may condition or deny a permit, approval, extension, or entitlement if it determines any of the following:

(1) A failure to do so would place the residents of the subdivision or the immediate community, or both, in a condition dangerous to their health or safety, or both.

(2) The condition or denial is required, in order to comply with state or federal law.

(d) An approved or conditionally approved tentative or vesting tentative map shall be subject to the periods of time set forth in Section 66452.6.

(e) The rights conferred by this section shall expire if a final map is not approved prior to the expiration of the tentative map or of the vesting tentative map.

(f) An approved or conditionally approved tentative map or vesting tentative map shall not limit a legislative body from imposing reasonable conditions on subsequent required approvals or permits necessary for the development and authorized by the ordinances, policies, and standards described in Section 66474.2 or 66498.1.

(Added by Stats.1988, c. 1561, § 2.)

¹ The chaptered copy did not include a closing parenthesis.

§ 66474.4. Land subject to contract pursuant to California Land Conservation Act and resulting parcels too small to sustain agricultural use; denial of approval of tentative map or parcel map; homesite parcels; minimum parcel sizes

(a) The 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 finds that the land is subject to a contract entered into pursuant to the California Land Conservation Act of 1965 (Chapter 7 (commencing with Section 51200) of Division 1 of Title 5) and that the resulting parcels following a subdivision of that land would be too small to sustain their agricultural use. For purposes of this section, land shall be presumed to be in parcels too small to sustain their agricultural use if the land is (1) less than 10 acres in size in the case of prime agricultural land, or (2) less than 40 acres in size in the case of land which is not prime agricultural land. For purposes of this section, agricultural land shall be presumed to be in parcels large enough to sustain their agricultural use if the land is (1) at least 10 acres in size in the case of prime agricultural land, or (2) at least 40 acres in size in the case of land which is not prime agricultural land.

(b) A legislative body may approve a subdivision with parcels smaller than those specified in this section if the legislative body makes either of the following findings:

(1) The parcels can nevertheless sustain an agricultural use permitted under the contract, or are subject to a written agreement for joint management pursuant to Section 51230.1, provided that the parcels which are jointly managed total at least 10 acres in size in the case of prime agricultural land or 40 acres in size in the case of land which is not prime agricultural land.

(2) One of the parcels contains a residence and is subject to Section 428 of the Revenue and Taxation Code; the residence has existed on the property for at least five years; the landowner has owned the parcels for at least 10 years; and the remaining parcels shown on the map are at least 10 acres in size if the land is prime agricultural land, or at least 40 acres in size if the land is not prime agricultural land.

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(c) No other homesite parcels as described in paragraph (2) of subdivision (b) may be created on any remaining parcels under contract for at least 10 years following the creation of a homesite parcel pursuant to this section.

(d) This section shall not apply to land which is subject to a contract when any of the following has occurred:

(1) A local agency formation commission has approved the annexation of the land to a city and the city will not succeed to the contract as provided in Sections 51243 and 51243.5.

(2) Written notice of nonrenewal of the contract has been served prior to March 7, 1985, as provided in Section 51245.

(3) Written notice of nonrenewal of the contract has been served on or after March 7, 1985, as provided in Section 51245, and, as a result of that notice, there are no more than three years remaining in the term of the contract.

(4) The board or council has granted tentative approval for cancellation of the contract as provided in Section 51282.

(e) This section shall not be construed as limiting the power of legislative bodies to establish minimum parcel sizes larger than those specified in subdivision (a).

(Added by Stats.1984, c. 1111, § 2. Amended by Stats.1985, c. 788, § 2; Stats.1990, c. 841 (A.B.2764), § 7.)

Library References

Health and Environment ⇨25.5(4).
WESTLAW Topic No. 199.

C.J.S. Health and Environment §§ 91 et seq.,
130, 132.

Notes of Decisions

Contracts 1

1. Contracts

When approving the subdivision of land subject to a Williamson Act contract, a county may require, either pursuant to a term of the original contract or pursuant to a duly enacted subdivi-

sion ordinance, new contracts for each parcel of the subdivision, and may unilaterally impose new contract terms for the resulting parcels, including the waiver of a previous notice of nonrenewal filed for all of the property to be subdivided, either pursuant to a term of the original contract or pursuant to a duly enacted subdivision ordinance. 75 Op.Atty.Gen. 278, 12-2-92.

§ 66474.5. Approval of final map for land project

No local agency shall approve a final subdivision map for any land project, as defined in Section 11000.5 of the Business and Professions Code, unless:

(a) The local agency has adopted a specific plan covering the area proposed to be included within the land project.

(b) The local agency finds that the proposed land project, together with the provisions for its design and improvement, is consistent with the specific plan for the area.

This section shall apply to land projects for which tentative maps were approved on or after November 10, 1969.

(Added by Stats.1974, c. 1536, p. 3483, § 4, operative March 1, 1975.)

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Historical and Statutory Notes

Derivation: Bus. & Prof.C. former § 11526.1, added by Stats.1971, c. 1446, p. 2853, § 4, amended by Stats.1972, c. 706, p. 1287, § 1.

§ 66474.6. Proposed waste discharge violating water quality requirements

The governing body of any local agency shall determine whether the discharge of waste from the proposed subdivision into an existing community sewer system would result in violation of existing requirements prescribed by a California regional water quality control board pursuant to Division 7 (commencing with Section 13000) of the Water Code. In the event that the governing body finds that the proposed waste discharge would result in or add to violation of requirements of such board, it may disapprove the tentative map or maps of the subdivision.

(Added by Stats.1974, c. 1536, p. 3483, § 4, operative March 1, 1975.)

Historical and Statutory Notes

Derivation: Bus. & Prof.C. former § 11551.6, added by Stats.1969, c. 482, p. 1085, § 20.

Cross References

Regional water quality control plans, see Water Code § 13240 et seq.

§ 66474.7. Assignment of responsibilities to advisory agency or appeal board

The responsibilities of the governing body under the provisions of Sections 66473.5, 66474, 66474.1 and 66474.6 may be assigned to an advisory agency or appeal board provided the governing body adopts an ordinance which allows any interested person to appeal any decision of the advisory agency or the appeal board relative to such matters to the governing body. Such appellant shall be entitled to the same notice and rights regarding testimony as are accorded a subdivider under Section 66452.5.

(Added by Stats.1974, c. 1536, p. 3514, § 4.55, operative March 1, 1975.)

Historical and Statutory Notes

Section 10.9 of Stats.1974, c. 1536, provided:

"It is the intent of the Legislature, if this bill and Assembly Bill No. 3317 [Stats.1974, c. 700] are both chaptered and become effective, and this bill is chaptered after Assembly Bill No. 3317, that Section 66474.7 be added to the Government Code on the operative date of this act in the form set forth in Section 4.55 of this act. Therefore, Section 4.55 of this act shall

become operative only if this bill and Assembly Bill No. 3317 are both chaptered and become effective, and this bill is chaptered after Assembly Bill No. 3317, in which case Section 4.55 of this act shall become operative on the operative date of this act."

Addition of this section by § 2 of Stats.1974, c. 700, p. 1571, failed to become operative under the provisions of § 4 of that Act.

Library References

Municipal Corporations ⇨43.
Zoning and Planning ⇨354.
WESTLAW Topic Nos. 268, 414.

C.J.S. Municipal Corporations §§ 83, 84.
C.J.S. Zoning and Land Planning §§ 180 to 189.

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§ 66474.8. Application of local grading or drainage regulations to construction of design or improvement work

No ordinance, regulation, policy, or procedure which regulates or prescribes standards for grading or drainage, adopted by or applicable to a local agency pursuant to Section 17922 or 17958 of the Health and Safety Code, shall apply to the construction of design or improvement work, including the rough grading of lots within the subdivision, performed pursuant to, or in connection with an approved or conditionally approved tentative map, final map, or parcel map unless the local agency has no other applicable ordinance, regulation, policy, or procedure which regulates or prescribes standards for grading or drainage for subdivision design or improvement.

(Added by Stats.1985, c. 1504, § 6.)

§ 66474.9. Claims against local agency; defense, indemnification, or holding harmless by subdivider as condition for tentative, parcel, or final map application or approval; participation in defense by local agency; settlements

(a) Except as provided in subdivision (b), a local agency may not require, as a condition for a tentative, parcel, or final map application or approval, that the subdivider or an agent of the subdivider, defend, indemnify, or hold harmless the local agency or its agents, officers, and employees from any claim, action, or proceeding against the local agency as a result of the action or inaction of the local agency, advisory agency, appeal board, or legislative body in reviewing, approving, or denying the map.

(b)(1) A local agency may require, as a condition for a tentative, parcel, or final map application or approval, that the subdivider defend, indemnify, and hold harmless the local agency or its agents, officers, and employees from any claim, action, or proceeding against the local agency, or approval of the local agency, employees to attack, set aside, void, or annul, an approval of the subdivision, advisory agency, appeal board, or legislative body concerning a subdivision, which action is brought within the time period provided for in Section 66499.37.

(2) Any condition imposed pursuant to this subdivision shall include the requirement that the local agency promptly notify the subdivider of any claim, action, or proceeding and that the local agency cooperate fully in the defense. If the local agency fails to promptly notify the subdivider of any claim, action, or proceeding, or if the local agency fails to cooperate fully in the defense, the subdivider shall not thereafter be responsible to defend, indemnify, or hold harmless the local agency.

(c) Nothing contained in this section prohibits the local agency from participating in the defense of any claim, action, or proceeding, if both of the following occur:

(1) The agency bears its own attorney's fees and costs.

(2) The agency defends the action in good faith.

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(d) The subdivider shall not be required to pay or perform any settlement unless the settlement is approved by the subdivider.

(Added by Stats.1986, c. 789, § 6.)

Notes of Decisions

Defense, indemnification, or holding harmless
1

Prof. Conduct Rule 3-310 prohibiting attorneys from representing conflicting interests except with written consent of all parties concerned, inasmuch as interest of board and developer in outcome of litigation challenging board's approval of developer's proposed projects were not conflicting, but rather were identical. *To-panga Ass'n for a Scenic Community v. County of Los Angeles* (Oakmont Development Associates) (App. 2 Dist. 1989) 263 Cal.Rptr. 214, 214 Cal.App.3d 1348.

1. Defense, indemnification, or holding harmless

Subdivision (b) of this section authorizing county board of supervisors, as condition of its approval of development project, to require developer to defend actions challenging board's approval of project did not constitute breach of

§ 66474.10. Engineering or land surveying conditions imposed; review

If the legislative body or advisory agency determines that engineering or land surveying conditions are to be imposed on a tentative map or a parcel map for which a tentative map was not required, those conditions shall be reviewed by the city engineer, city surveyor, county engineer or county surveyor, as appropriate, to determine compliance with generally accepted engineering or surveying practices.

(Added by Stats.1989, c. 847, § 11.)

Article 2

ADVISORY AGENCIES

Section

66474.60. City of Los Angeles; application of chapter and local ordinances; fees.

66474.61. City of Los Angeles; findings justifying disapproval.

66474.62. City of Los Angeles; approval of final map in substantial compliance with previously approved tentative map.

66474.63. City of Los Angeles; proposed waste discharge violating water quality requirements.

66474.64. City of Los Angeles; report of advisory agency; notice; hearing.

Article 2 was added by Stats.1974, c. 1536, p. 3483, § 4, operative March 1, 1975.

§ 66474.60. City of Los Angeles; application of chapter and local ordinances; fees

(a) In cities having a population of more than 2,800,000, the design, improvement and survey data of subdivisions and the form and content of tentative and final maps thereof, and the procedure to be followed in securing official approval are governed by the provisions of this chapter and by the additional provisions of local ordinances dealing with subdivisions, the enactment of which is required by this chapter.

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(b) Local ordinances may provide a proper and reasonable fee to be collected from the subdivider for the examination of tentative and final maps.

(Added by Stats.1974, c. 1536, p. 3483, § 4, operative March 1, 1975. Amended by Stats.1982, c. 518, § 5.)

Historical and Statutory Notes

Derivation: Bus. & Prof.C. former § 11526.2, added by Stats.1972, c. 825, p. 1472, § 1.

Library References

Municipal Corporations ⇔43.
Zoning and Planning ⇔29.5.
WESTLAW Topic Nos. 268, 414.

C.J.S. Municipal Corporations §§ 83, 84.
C.J.S. Zoning and Land Planning § 21.

Notes of Decisions

Population 1

nique of California municipal law. City of Los Angeles v. City of Artesia (App. 2 Dist. 1977) 140 Cal.Rptr. 684, 73 Cal.App.3d 450.

1. Population

Exclusive treatment of public entities on basis of population is a long-accepted legislative tech-

§ 66474.61. City of Los Angeles; findings justifying disapproval

In cities having a population of more than 2,800,000, the advisory agency, appeal board or legislative body 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 the 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 legislative 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 subdivision 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

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acquired easements for access through or use of property within the proposed subdivision.

(Added by Stats.1974, c. 1536, p. 3484, § 4, operative March 1, 1975. Amended by Stats.1975, c. 24, p. 34, § 16, eff. April 4, 1975; Stats.1982, c. 518, § 6.)

Historical and Statutory Notes

Derivation: Bus. & Prof.C. former § 11549.7, added by Stats.1972, c. 825, p. 1472, § 2.

Cross References

Easements, see Civil Code § 801 et seq.

Library References

Municipal Corporations ⇨43.
Zoning and Planning ⇨372.1.
WESTLAW Topic Nos. 268, 414.

C.J.S. Municipal Corporations §§ 83, 84.
C.J.S. Zoning and Land Planning § 191.

Notes of Decisions

Consistency with plans 1

1. Consistency with plans

Fact that proposed condominium project was half of allowable density of existing zone or community plan designation meant that deputy advisory agency properly found, and city planning commission and city council properly agreed, that proposed map together with design and improvement were consistent with applicable general and specific plans. *Markley v. City Council of City of Los Angeles* (App. 2 Dist. 1982) 182 Cal.Rptr. 659, 131 Cal.App.3d 656.

Advisory agency, planning commission and city council could not approve tract map of proposed subdivision, absent findings that subdivision was consistent with district plan which

was part of general plan. *Woodland Hills Residents Ass'n, Inc. v. City Council of Los Angeles* (App. 2 Dist. 1975) 118 Cal.Rptr. 856, 44 Cal. App.3d 825.

Requirement that planning commission and city council make findings that proposed subdivision was consistent with applicable general or specific plans before subdivision could be approved was not satisfied on theory that tie vote by commission, on appeal from advisory agency's approval of subdivision, and tie vote by council, on appeal from commission's alleged approval of subdivision, were findings "by implication" that subdivision was consistent with such applicable plans. *Woodland Hills Residents Ass'n, Inc. v. City Council of Los Angeles* (App. 2 Dist. 1975) 118 Cal.Rptr. 856, 44 Cal. App.3d 825.

§ 66474.62. City of Los Angeles; approval of final map in substantial compliance with previously approved tentative map

In cities having a population of more than 2,800,000, a legislative body shall not deny approval of a final subdivision map pursuant to subdivision (c) of Section 66474.60 or Section 66474.61 if it, the advisory agency or the appeal board has previously approved a tentative map for the proposed subdivision and if it finds that the final map is in substantial compliance with the previously approved tentative map and with the conditions to the approval thereof.

(Added by Stats.1974, c. 1536, p. 3484, § 4, operative March 1, 1975.)

Historical and Statutory Notes

Derivation: Bus. & Prof.C. former § 11549.8, added by Stats.1972, c. 825, p. 1473, § 3.

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§ 66474.63. City of Los Angeles; proposed waste discharge violating water quality requirements

In cities having a population of more than 2,800,000, the advisory agency, appeal board or legislative body shall determine whether the discharge of waste from the proposed subdivision into an existing community sewer system would result in violation of existing requirements prescribed by a California regional water quality control board pursuant to Division 7 (commencing with Section 13000) of the Water Code. In the event that the advisory agency, appeal board or legislative body finds that the proposed waste discharge would result in or add to violation of requirements of such board, the body making such finding may disapprove the tentative map or maps of the subdivision.

(Added by Stats.1974, c. 1536, p. 3484, § 4, operative March 1, 1975.)

Historical and Statutory Notes

Derivation: Bus. & Prof.C. former § 11551.7,
added by Stats.1972, c. 825, p. 1473, § 4.

Cross References

Regional water quality control plans, see Water Code § 13240 et seq.

§ 66474.64. City of Los Angeles; report of advisory agency; notice; hearing

In cities having a population of more than 2,800,000, if the legislative body authorizes the advisory agency to report its action directly to the subdivider, the advisory agency shall, prior to making its report to the subdivider upon a subdivision as defined in this chapter, give notice of hearing in such manner as may be prescribed by local ordinance to the subdivider and to all property owners within 300 feet of the proposed subdivision and pursuant thereto shall conduct a public hearing at which time all persons interested in or affected by such proposed subdivision shall be heard.

(Added by Stats.1974, c. 1536, p. 3484, § 4, operative March 1, 1975.)

Historical and Statutory Notes

Derivation: Bus. & Prof.C. former § 11552.1,
added by Stats.1972, c. 825, p. 1473, § 5.

Cross References

Advisory agency, defined, see Government Code § 66415.
Subdivider, defined, see Government Code § 66423.

Law Review and Journal Commentaries

Land development and the environment:
Subdivision Map Act. 5 Pac.L.J. 55 (1974).

Article 3

DEDICATIONS

Section

- 66475. Public easements.
- 66475.1. Bicycle paths.
- 66475.2. Local transit facilities; requirements.
- 66475.3. Solar easements for solar energy systems; ordinance; contents.
- 66475.4. Repealed.
- 66476. Waiver of direct access rights.
- 66477. Park and recreational purposes.
- 66477.1. Acceptance or rejection of offers of dedication; acceptance into county road system.
- 66477.2. Offer of dedication; continuation after rejection; termination.
- 66477.3. Time of passing title.
- 66477.5. Certificate of dedication for public improvements or construction of public facilities; contents; recording with county recorder; exceptions; continuance of public purpose; disposal of dedicated property.
- 66478. School purposes.

Article 3 was added by Stats.1974, c. 1536, p. 3485, § 4, operative March 1, 1975.

Law Review and Journal Commentaries

When governments become land developers.
George Lefcoe (1978) 51 S.Cal.L.Rev. 165 (1978).

§ 66475. Public easements

There may be imposed by local ordinance a requirement of dedication or irrevocable offer of dedication of real property within the subdivision for streets, alleys, including access rights and abutter's rights, drainage, public utility easements and other public easements. Such irrevocable offers may be terminated as provided in subdivisions (c) and (d) of Section 66477.2.

(Added by Stats.1974, c. 1536, p. 3485, § 4, operative March 1, 1975.)

Historical and Statutory Notes

Derivation: Bus. & Prof.C. former § 11535, added by Stats.1943, c. 128, p. 867, § 1, amended by Stats.1943, c. 668, p. 2423, § 1; Stats. 1947, c. 259, p. 822, § 1; Stats.1955, c. 1013, p. 1924, § 3; Stats.1957, c. 1039, p. 2273, § 1; Stats.1959, c. 306, p. 2215, § 2; Stats.1961, c. 2060, p. 4287, § 1; Stats.1963, c. 1551, p. 3136, § 1; Stats.1965, c. 1180, p. 2981, § 7; Stats. 1967, c. 727, p. 2098, § 3; Stats.1967, c. 856, p. 2293, § 1; Stats.1968, c. 269, p. 601, § 2; Stats.1968, c. 331, p. 718, § 4; Stats.1968, c. 520, p. 1164, § 4; Stats.1970, c. 500, p. 983, § 1; Stats.1971, c. 358, p. 716, § 1; Stats.1971, c. 1446, p. 2854, § 5; Stats.1972, c. 706, p. 1287, § 2.
Stats.1941, c. 537, p. 1857, § 1.
Stats.1937, c. 670, p. 1864, § 2.

Cross References

Local ordinance, defined, see Government Code § 66421.
Subdivision, defined, regulation of transactions in subdivided lands, see Business and Professions Code § 11000.

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Note 6

Law Review and Journal Commentaries

Forced dedications as a condition to subdivision approval. 9 San Diego L.Rev. 112 (1971). The legality of California development fees. 13 Pepp.L.Rev. 759 (1986).

Library References

Dedication ☞36.
Municipal Corporations ☞43.
Zoning and Planning ☞29.5.
WESTLAW Topic Nos. 119, 268, 414.
C.J.S. Dedication §§ 38, 39.
C.J.S. Municipal Corporations §§ 83, 84.
C.J.S. Zoning and Land Planning § 21.

Notes of Decisions

Conditional acceptance 6
Conditional approval 4
Contract law 3
Implied dedication 5
Nature of easements 1
Recipient of easement 2

1. Nature of easements

Easements created by grant must be either express or implied. *Mikels v. Rager* (App. 4 Dist. 1991) 284 Cal.Rptr. 87, 232 Cal.App.3d 334, rehearing denied and modified, review denied.

2. Recipient of easement

One cannot grant easement to oneself; one can only reserve such interest in land granted to another. *Mikels v. Rager* (App. 4 Dist. 1991) 284 Cal.Rptr. 87, 232 Cal.App.3d 334, rehearing denied and modified, review denied.

3. Contract law

General contract law principles applied to statutory offers of dedication and acceptances thereof. *Mikels v. Rager* (App. 4 Dist. 1991) 284 Cal.Rptr. 87, 232 Cal.App.3d 334, rehearing denied and modified, review denied.

4. Conditional approval

City may constitutionally require dedication of land for widening of existing street as condition of its approval of subdivision, where such condition is reasonably related to increased traffic and other needs of subdivision and it is no defense that fulfillment of conditions will incidentally also benefit city as a whole. *People ex rel. Dept. of Public Works v. Curtis* (App. 2 Dist. 1967) 63 Cal.Rptr. 138, 255 Cal.App.2d 378.

A city has no authority to require subdividers, as a condition of approving subdivision maps, to pay money into a fund to be used to install traffic signals at major intersections within the general area but outside the boundaries of the subdivision. 63 Ops.Atty.Gen. 64, 1-29-80.

As a condition of approval of a subdivision, a county may require that the association of the subdivision parcel owners maintain the subdivision roads dedicated for public use until the

roads meet county highway construction standards and become part of the county highway system. 61 Ops.Atty.Gen. 466, 11-3-78.

5. Implied dedication

Facts set forth by grantors were insufficient to establish that grantors reserved easement by implication even though deed described conveyance by reference to parcel map; grantors failed to show unambiguous intent to create easement as opposed to depicting road and referring to map for purposes of description only or as aid in identification. *Mikels v. Rager* (App. 4 Dist. 1991) 284 Cal.Rptr. 87, 232 Cal.App.3d 334, rehearing denied and modified, review denied.

Reference-to-a-map method of creating easement by implication presupposes ownership of street in question by one who recorded the tract map, and presupposes intent on part of original grantor, by depicting road on map and by referring to map in deed, to create easement, as opposed to depicting road and referring to map for purposes of description only or as aid in identification. *Mikels v. Rager* (App. 4 Dist. 1991) 284 Cal.Rptr. 87, 232 Cal.App.3d 334, rehearing denied and modified, review denied.

A non-exclusive easement for road and utility purposes obtained by a private individual and appurtenant to his land may generally not be dedicated to a county for public use in the absence of express language in the original grant of the easement indicating that it is for public use; such an easement may be dedicated to the county for public use if the original grant to the subdivider was for "public road and utility purposes" or "public and private purposes." 61 Ops.Atty.Gen. 466, 11-3-78.

6. Conditional acceptance

Offer of dedication of roadway easement did not have legal effect of creating public roadway easement where offer of dedication was accepted on condition that proffered property be improved. *Mikels v. Rager* (App. 4 Dist. 1991) 284 Cal.Rptr. 87, 232 Cal.App.3d 334, rehearing denied and modified, review denied.

Public entity's interest in streets and easements offered by dedication is limited by condi-

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Note 6

tional nature of its acceptance thereof, which depends for finality upon subsequent acceptance after satisfactory completion of street improvements; qualified acceptance results in outstanding offer of dedication which entity may accept upon its conditions of acceptance being

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met, and until offer is unconditionally accepted, no public interest is created. *Mikels v. Rager* (App. 4 Dist. 1991) 284 Cal.Rptr. 87, 232 Cal. App.3d 334, rehearing denied and modified, review denied.

§ 66475.1. Bicycle paths

Whenever a subdivider is required pursuant to Section 66475 to dedicate roadways to the public, he may also be required to dedicate such additional land as may be necessary and feasible to provide bicycle paths for the use and safety of the residents of the subdivision, if the subdivision, as shown on the final map thereof, contains 200 or more parcels.

(Added by Stats.1974, c. 1536, p. 3484, § 4, operative March 1, 1975.)

Historical and Statutory Notes

Derivation: Pub.Res.C. former § 5078.9, added by Stats.1971, c. 1361, p. 2681, § 1.

Cross References

Development permits, fee or exaction as condition of approval, see Government Code § 66005.
Subdivider, defined, see Government Code § 66423.

§ 66475.2. Local transit facilities; requirements

There may be imposed by local ordinance a requirement of dedication or irrevocable offer of dedication of land within the subdivision for local transit facilities such as bus turnouts, benches, shelters, landing pads and similar items which directly benefit the residents of a subdivision if (a) the subdivision as shown on the tentative map has the potential for 200 dwelling units or more if developed to the maximum density shown on the adopted general plan or contains 100 acres or more, and (b) the governing body finds that transit services are or will within a reasonable time period be made available to such subdivision. Such irrevocable offers may be terminated as provided in subdivisions (c) and (d) of Section 66477.2.

The provisions of this section do not apply to condominium projects or stock cooperatives which consist of the subdivision of airspace in an existing apartment building which is more than five years old when no new dwelling units are added.

(Added by Stats.1975, c. 491, p. 1016, § 1. Amended by Stats.1979, c. 1192, p. 4693, § 6.)

Historical and Statutory Notes

Operative effect of 1979 amendment, see Historical Note under § 66424.

Cross References

Local ordinance, defined, see Government Code § 66421.

Library References

Dedication ⇨4.

Municipal Corporations ⇨43.

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Zoning and Planning ⇨29.5.
WESTLAW Topic Nos. 119, 268, 414.
C.J.S. Dedication § 8.

C.J.S. Municipal Corporations §§ 83, 84.
C.J.S. Zoning and Land Planning § 21.

§ 66475.3. Solar easements for solar energy systems; ordinance; contents

For divisions of land for which a tentative map is required pursuant to Section 66426, the legislative body of a city or county may by ordinance require, as a condition of the approval of a tentative map, the dedication of easements for the purpose of assuring that each parcel or unit in the subdivision for which approval is sought shall have the right to receive sunlight across adjacent parcels or units in the subdivision for which approval is sought for any solar energy system, provided that such ordinance contains all of the following:

(1) Specifies the standards for determining the exact dimensions and locations of such easements.

(2) Specifies any restrictions on vegetation, buildings and other objects which would obstruct the passage of sunlight through the easement.

(3) Specifies the terms or conditions, if any, under which an easement may be revised or terminated.

(4) Specifies that in establishing such easements consideration shall be given to feasibility, contour, configuration of the parcel to be divided, and cost, and that such easements shall not result in reducing allowable densities or the percentage of a lot which may be occupied by a building or a structure under applicable planning and zoning in force at the time such tentative map is filed.

(5) Specifies that the ordinance is not applicable to condominium projects which consist of the subdivision of airspace in an existing building where no new structures are added.

For the purposes of this section, "solar energy systems" shall be defined as set forth in Section 801.5 of the Civil Code.

For purposes of this section, "feasibility" shall have the same meaning as set forth in Section 66473.1 for the term "feasible".

(Added by Stats.1978, c. 1154, p. 3544, § 9.)

Historical and Statutory Notes

Title and legislative findings and declarations of Stats.1978, c. 1154, p. 3541, see Historical Note under Civil Code § 714.

Forms

See West's California Code Forms, Government.

Cross References

Tentative map, defined, see Government Code § 66424.5.

Law Review and Journal Commentaries

Obtaining solar access in California: Solar Rights Act. 17 Cal.W.L.Rev. 123 (1980).

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Library References

Counties ☞7.
Municipal Corporations ☞43.
Zoning and Planning ☞29.5.
WESTLAW Topic Nos. 104, 268, 414.

C.J.S. Counties §§ 13 to 15, 18.
C.J.S. Municipal Corporations §§ 83, 84.
C.J.S. Zoning and Land Planning § 21.

§ 66475.4. Repealed by Stats.1987, c. 803, § 2, operative Jan. 1, 1996

Historical and Statutory Notes

The repealed section, added by Stats.1984, c. 1722, § 1, amended by Stats.1987, c. 803, § 2, related to a dedication requirement as condition of approval of tentative map and was repealed by its own terms.

§ 66476. Waiver of direct access rights

There may be imposed by local ordinance a requirement that dedications or offers of dedication of streets include a waiver of direct access rights to any such street from any property shown on a final or parcel map as abutting thereon and if the dedication is accepted, any such waiver shall become effective in accordance with its provisions.

(Added by Stats.1974, c. 1536, p. 3484, § 4, operative March 1, 1975.)

Historical and Statutory Notes

Derivation: Bus. & Prof.C. former § 11590, added by Stats.1943, c. 128, p. 872, § 1, amended by Stats.1953, c. 564, p. 1818, § 1; Stats.1957, c. 1606, p. 2954, § 1; Stats.1965, c. 1738, p. 3894, § 1.

Stats.1941, c. 537, p. 1858, § 2.
Stats.1937, c. 670, p. 1868, § 13.

Cross References

Local ordinance, defined, see Government Code § 66421.

§ 66477. Park and recreational purposes

The legislative body of a city or county may, by ordinance, require the dedication of land or impose a requirement of the payment of fees in lieu thereof, or a combination of both, for park or recreational purposes as a condition to the approval of a tentative map or parcel map, provided that:

(a) The ordinance has been in effect for a period of 30 days prior to the filing of the tentative map of the subdivision or parcel map.

(b) The ordinance includes definite standards for determining the proportion of a subdivision to be dedicated and the amount of any fee to be paid in lieu thereof. The amount of land dedicated or fees paid shall be based upon the residential density, which shall be determined on the basis of the approved or conditionally approved tentative map or parcel map and the average number of persons per household. There shall be a rebuttable presumption that the average number of persons per household by units in a structure is the same as that disclosed by the most recent available federal census or a census taken pursuant to Chapter 17 (commencing with Section 40200) of Part 2 of Division 3 of Title 4. However, the dedication of land, or the payment of fees, or both, shall not exceed the proportionate amount necessary to provide three acres of

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park area per 1,000 persons residing within a subdivision subject to this section, unless the amount of existing neighborhood and community park area, as calculated pursuant to this subdivision, exceeds that limit, in which case the legislative body may adopt the calculated amount as a higher standard not to exceed five acres per 1,000 persons residing within a subdivision subject to this section.

(1) The park area per 1,000 members of the population of the city, county, or local public agency shall be derived from the ratio that the amount of neighborhood and community park acreage bears to the total population of the city, county, or local public agency as shown in the most recent available federal census. The amount of neighborhood and community park acreage shall be the actual acreage of existing neighborhood and community parks of the city, county, or local public agency as shown on its records, plans, recreational element, maps, or reports as of the date of the most recent available federal census.

(2) For cities incorporated after the date of the most recent available federal census, the park area per 1,000 members of the population of the city shall be derived from the ratio that the amount of neighborhood and community park acreage shown on the records, maps, or reports of the county in which the newly incorporated city is located bears to the total population of the new city as determined pursuant to Section 11005 of the Revenue and Taxation Code. In making any subsequent calculations pursuant to this section, the county in which the newly incorporated city is located shall not include the figures pertaining to the new city which were calculated pursuant to this paragraph. Fees shall be payable at the time of the recording of the final map or parcel map or at a later time as may be prescribed by local ordinance.

(c) The land, fees, or combination thereof are to be used only for the purpose of developing new or rehabilitating existing neighborhood or community park or recreational facilities to serve the subdivision.

(d) The legislative body has adopted a general plan or specific plan containing policies and standards for parks and recreation facilities, and the park and recreational facilities are in accordance with definite principles and standards.

(e) The amount and location of land to be dedicated or the fees to be paid shall bear a reasonable relationship to the use of the park and recreational facilities by the future inhabitants of the subdivision.

(f) The city, county, or other local public agency to which the land or fees are conveyed or paid shall develop a schedule specifying how, when, and where it will use the land or fees, or both, to develop park or recreational facilities to serve the residents of the subdivision. Any fees collected under the ordinance shall be committed within five years after the payment of such fees or the issuance of building permits on one-half of the lots created by the subdivision, whichever occurs later. If the fees are not committed, they, without any deductions, shall be distributed and paid to the then record owners of the subdivision in the same proportion that the size of their lot bears to the total area of all lots within the subdivision.

(g) Only the payment of fees may be required in subdivisions containing 50 parcels or less, except that when a condominium project, stock cooperative, or community apartment project exceeds 50 dwelling units, dedication of land may be required notwithstanding that the number of parcels may be less than 50.

(h) Subdivisions containing less than five parcels and not used for residential purposes shall be exempted from the requirements of this section. However a condition may be placed on the approval of such parcel map that if a building permit is requested for construction of a residential structure or structures on one or more of the parcels within four years the fee may be required to be paid by the owner of each such parcel as a condition to the issuance of such permit.

(i) If the subdivider provides park and recreational improvements to the dedicated land, the value of the improvements together with any equipment located thereon shall be a credit against the payment of fees or dedication of land required by the ordinance.

Land or fees required under this section shall be conveyed or paid directly to the local public agency which provides park and recreational services on a communitywide level and to the area within which the proposed development will be located, if such agency elects to accept the land or fee. The local agency accepting such land or funds shall develop the land or use the funds in the manner provided in this section.

If park and recreational services and facilities are provided by a public agency other than a city or a county, the amount and location of land to be dedicated or fees to be paid shall, subject to subdivision (b), be jointly determined by the city or county having jurisdiction and such public agency.

This section does not apply to commercial or industrial subdivisions or to condominium projects or stock cooperatives which consist of the subdivision of airspace in an existing apartment building which is more than five years old when no new dwelling units are added.

Planned developments, real estate developments, stock cooperatives, and community apartment projects, as defined in Sections 11003, 11003.1, 11003.2, 11003.4, and 11004, respectively, of the Business and Professions Code, and condominiums, as defined in Section 783 of the Civil Code, shall be eligible to receive a credit, as determined by the legislative body, against the amount of land required to be dedicated, or the amount of the fee imposed, pursuant to this section, for the value of private open space within the development which is usable for active recreational uses.

Park and recreation purposes shall include land and facilities for the activity of "recreational community gardening," which activity consists of the cultivation by persons other than, or in addition to, the owner of such land, of plant material not for sale.

(Added by Stats.1974, c. 1536, p. 3484, § 4, operative March 1, 1975. Amended by Stats.1974, c. 1537, p. 3522, § 2; Stats.1975, c. 24, p. 34, § 17, eff. April 4, 1975; Stats.1977, c. 561, p. 1791, § 3; Stats.1978, c. 709, p. 2232, § 1; Stats.1979, c. 1192, p. 4694, § 7; Stats.1982, c. 1467, § 1; Stats.1984, c. 1001, § 1; Stats.1984, c. 1009, § 33.5; Stats.1985, c. 286, § 1; Stats.1986, c. 291, § 1.)

Historical and Statutory Notes

Section 3 of Stats.1974, c. 1537 provides:

"It is the intent of the Legislature, if this bill and Senate Bill No. 977 [Stats.1974, c. 1536] are both chaptered and become effective on or before January 1, 1975, both bills affect Section 11546 of the Business and Professions Code, and this bill is chaptered after Senate Bill No. 977, that Section 11546 of the Business and Professions Code, as repealed and reenacted as Section 66477 of the Government Code by Section 4 of Senate Bill No. 977, be further amended on the effective date of this act in the form set forth in Section 2 of this act to incorporate the changes in Section 11546 proposed by this bill. Therefore, if this bill and Senate Bill No. 977 are both chaptered and become effective on or before January 1, 1975, and Senate Bill No. 977 is chaptered before this bill and repeals Section 11546, Section 2 of this act shall become operative on the effective date of this act and Section 1 of this act shall not become operative."

Amendment of this section by § 4.7 of Stats. 1974, c. 1536, p. 3517, failed to become operative under the provisions of § 10.7 of that Act.

Section affected by two or more acts at the same session of the legislature, see Government Code § 9605.

Operative effect of 1979 amendment, see Historical Note under § 66424.

Under the provisions of § 46 of Stats.1984, c. 1009, the 1984 amendments of this section by c. 1001 and c. 1009 were given effect and incorporated in the form set forth in § 33.5 of c. 1009. An amendment of this section by § 33 of Stats. 1984, c. 1009, failed to become operative under the provisions of § 46 of that Act.

Amendment of this section by § 2 of Stats. 1984, c. 1001, failed to become operative under the provisions of § 3 of that Act.

Effect of amendment of section by two or more acts at the same session of the legislature, see Government Code § 9605.

Derivation: Bus. & Prof.C. former § 11546, added by Stats.1965, c. 1809, p. 4183, § 2, amended by Stats.1972, c. 1049, p. 1926, § 1; Stats.1972, c. 1387, p. 2879, § 1; Stats.1972, c. 1388, p. 2884, § 2.

Forms

See West's California Code Forms, Government.

Cross References

Capital community facilities under Mello-Roos Community Facilities Act of 1982, duplicate levy, impact fee, or other exaction under this section prohibited, see Government Code § 53313.1. Development permits, fee or exaction as condition of approval, see Government Code § 66005.

Law Review and Journal Commentaries

Dedication of parks: Legislative review. 4 Pac.L.J. 578 (1973).

Forced dedications: Requirement that applicant dedicate portion of land to public use as condition to granting of zoning variance, issuance of building permit or approval of subdivision map. 20 Hastings L.J. 735 (1969).

Forced dedications as a condition to subdivision approval. 9 San Diego L.Rev. 112 (1971).

Land development and the environment: Subdivision Map Act. 5 Pac.L.J. 55 (1974).

Land use regulation. (1976) 23 UCLA L.Rev. 904.

Misdirected quest for park and recreation space. 8 Cal.W.L.Rev. 254 (1972).

Preservation of open space in California. Daniel J. Curtin, Jr. (1972) 47 Los Angeles B.Bull. 108.

Public access to beaches. 22 Stan.L.Rev. 564 (1970).

Public recreation and subdivisions on lakes and reservoirs in California. 23 Stan.L.Rev. 811 (1971).

Subdivision exactions in California: Expansion of municipal power. 23 Hastings L.J. 403 (1972).

Taking without compensation through compulsory dedication by land developers. 5 Loy. L.A.L.Rev. 218 (1972).

Library References

- Counties ⇨18.
- Dedication ⇨6.
- Municipal Corporations ⇨43.
- Zoning and Planning ⇨29.5.
- WESTLAW Topic Nos. 104, 119, 268, 414.
- C.J.S. Counties §§ 31 to 33.
- C.J.S. Dedication § 8.
- C.J.S. Municipal Corporations §§ 83, 84.

- C.J.S. Zoning and Land Planning § 21.
- Background and general effect of 1965 addition to Bus. & Prof.C. § 11546. Rev. of 1965 Code Leg. (Cont.Educ. of Bar, 1965) page 17.
- Inverse condemnation laws—recent developments. Nathaniel Sterling (1971) 10 Cal.L.Rev.Comm.Reports 377.

Neighborhood parks in new subdivisions.
Report of Assembly Interim Committee on
Municipal and County Government, 1963 to

1965, vol. 6, No. 21, p. 31. Vol. 1 of
Appendix to Journal of Assembly, Reg.Sess.,
1965.

Notes of Decisions

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1. Validity, generally

Where legislative classification was not palpably erroneous or arbitrary, it was necessarily upheld. *Norsco Enterprises v. City of Fremont* (App. 1 Dist. 1976) 126 Cal.Rptr. 659, 54 Cal.App.3d 488.

Statute authorizing cities and counties to require dedication of land or payment of fees in lieu thereof for park or recreational purposes as condition to approval of subdivision maps was constitutional, notwithstanding contentions, inter alia, that it violated equal protection and due process in that it deprived subdivider of his property without just compensation and that parks and recreational facilities are not so directly related to health and safety as to warrant dedication requirement. *Associated Home Builders of Greater East Bay, Inc. v. City of Walnut Creek* (1971) 94 Cal.Rptr. 630, 4 Cal.3d 633, 484 P.2d 606, appeal dismissed 92 S.Ct. 202, 404 U.S. 878, 30 L.Ed.2d 159.

Within provisions of statute requiring subdivider to dedicate land or pay fees for park and recreational purposes, subdivision providing that city or county must specify when development of the facilities will begin was not unconstitutional on theory that it was arbitrary delegation of power to local governmental body and denial of due process and equal protection. *Associated Home Builders of Greater East Bay, Inc. v. City of Walnut Creek* (1971) 94 Cal.Rptr. 630, 4 Cal.3d 633, 484 P.2d 606, appeal dismissed 92 S.Ct. 202, 404 U.S. 878, 30 L.Ed.2d 159.

Under statute authorizing cities and counties to require subdivider to dedicate land or pay fees in lieu thereof for park or recreational purposes as condition to approval of subdivision map, absence of requirement that city reduce dedication or fee requirement in event that sub-

divider had voluntarily provided recreational areas was valid in light of policy of encouraging adoption of long-range master plans for recreational needs of the community. *Associated Home Builders of Greater East Bay, Inc. v. City of Walnut Creek* (1971) 94 Cal.Rptr. 630, 4 Cal.3d 633, 484 P.2d 606, appeal dismissed 92 S.Ct. 202, 404 U.S. 878, 30 L.Ed.2d 159.

In face of constitutional challenge on due process and equal protection grounds statutory requirement of statute that subdivider dedicate land or pay fees in lieu thereof for park or recreational purposes as condition of approval of subdivision map could be justified on basis of general public need for recreational facilities caused by present and future subdivisions; it need not be shown that the need for additional park and recreational facilities was attributable to the increase in population stimulated by the new subdivision alone. *Associated Home Builders of Greater East Bay, Inc. v. City of Walnut Creek* (1971) 94 Cal.Rptr. 630, 4 Cal.3d 633, 484 P.2d 606, appeal dismissed 92 S.Ct. 202, 404 U.S. 878, 30 L.Ed.2d 159.

Unique problem with development of subdivision in that it reduces the supply of open land while increasing the demand therefor, as well as special benefits to the residents of the subdivision, warrant distinction between park and recreational facilities, as to which subdivider may be required to make contribution of land or fees, and other governmental services necessitated by the entry of new residents. *Associated Home Builders of Greater East Bay, Inc. v. City of Walnut Creek* (1971) 94 Cal.Rptr. 630, 4 Cal.3d 633, 484 P.2d 606, appeal dismissed 92 S.Ct. 202, 404 U.S. 878, 30 L.Ed.2d 159.

2. Construction with other laws

Condition imposed by the coastal commission in granting application of petitioner for permit to demolish an existing structure in a recreational area and erect a restaurant in its place and which operated to require petitioner to dedicate property for free public parking until 5:00 p.m. daily was unreasonable and unfair in that it imposed a burden on petitioner to an extent beyond his own use and shifted government's burden unfairly to a private party. *Liberty v. California Coastal Commission* (App. 4 Dist. 1980) 170 Cal.Rptr. 247, 113 Cal.App.3d 491.

3. Preemption

Statute authorizing city by ordinance to require payment of fees for park or recreational purposes as condition to approval of final subdivi-

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vision map, but limiting "subdivision" to division of land into five or more parcels, did not preempt field of control of land development and did not preclude charter city from imposing park or recreation fee as condition for approval of map creating less than five parcels. *Hirsch v. City of Mountain View* (App. 1 Dist. 1976) 134 Cal.Rptr. 519, 64 Cal.App.3d 425.

Statute authorizing cities, as a condition to approval of subdivision maps, to require dedication of land for park and recreation purposes or payment of fees in lieu of such dedication, with subdivision being defined as a division of land into five or more parcels, did not preempt the field and, thus, prior to 1972 amendment authorizing a city to utilize the same procedure in relation to lot splits as formerly applied to subdivision, the city of Merced, as a charter city, was not without authority, as a condition of approving a lot split, to require payment of fees in lieu of dedication of land for park and recreation purposes. *Codding Enterprises v. City of Merced* (App. 5 Dist. 1974) 116 Cal.Rptr. 730, 42 Cal.App.3d 375.

4. Ordinances—In general

City's environmental excise tax, which was a special nonrecurring tax based on number of bedrooms in a new residential dwelling, did not run afoul of § 66410 et seq. on ground that tax was tantamount to a parkland dedication requirement as a precondition to approval of the final subdivision map; just because tax revenue was channeled to a special fund from which park and recreational land was to be financed did not raise the tax to a prohibited subdivision exaction; exercise of city's plenary tax power was just one way that revenue could be raised for purchase of parklands and open space. *Westfield-Palos Verdes Co. v. City of Rancho Palos Verdes* (App. 2 Dist. 1977) 141 Cal.Rptr. 36, 73 Cal.App.3d 486.

Although ordinance stated it was enacted pursuant to authority granted by statute authorizing city to require payment of park or recreational fees as condition for approval of final subdivision maps and, at that time, subdivision was defined in statute as division of five or more parcels, where charter city's ordinance assessing such fees defined subdivision map as including parcel map and, at time ordinance was enacted, term "parcel map" was defined by § 11503.1 as referring to land divided into four or less parcels, the specific provision defining subdivision map as including parcel map controlled general statement of purpose of enactment and land divided into four or fewer parcels was subject to fees. *Hirsch v. City of Mountain View* (App. 1 Dist. 1976) 134 Cal.Rptr. 519, 64 Cal.App.3d 425.

Where city, in exercise of its powers over municipal affairs as charter city, could properly

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require plaintiffs to file a parcel map in order to consolidate six parcels into one parcel for purpose of constructing apartment complex, city could assess park and recreation fee as condition for approval of the parcel map. *Hirsch v. City of Mountain View* (App. 1 Dist. 1976) 134 Cal.Rptr. 519, 64 Cal.App.3d 425.

Ordinance providing, subject, to exception, that any use of structure, lot or parcel otherwise allowed pursuant to regulations applicable in particular zoning district involved should not be treated differently because ownership thereof is divided by sale of condominiums rather than by lease of apartments, offices or stores did not relate to "revenue" ordinances authorized by this section. *Norsco Enterprises v. City of Fremont* (App. 1 Dist. 1976) 126 Cal.Rptr. 659, 54 Cal.App.3d 488.

City was reasonably presumed to have used statutory meaning of "subdivision" in enacting ordinance, and condominium projects were to be treated as "subdivisions" subject to provisions of this section providing for dedication or "in lieu fees" or both. *Norsco Enterprises v. City of Fremont* (App. 1 Dist. 1976) 126 Cal.Rptr. 659, 54 Cal.App.3d 488.

Municipal ordinance enacted pursuant to this section may require land dedication or "in lieu fees" upon conversion of building into condominium and thus into a "subdivision," even though "new residents" of the community do not result therefrom. *Norsco Enterprises v. City of Fremont* (App. 1 Dist. 1976) 126 Cal.Rptr. 659, 54 Cal.App.3d 488.

5. — Validity, ordinances

Developer did not suffer denial of equal protection of laws because city imposed park fee upon conversion of apartment house into condominium but not upon identical structure as an apartment house. *Norsco Enterprises v. City of Fremont* (App. 1 Dist. 1976) 126 Cal.Rptr. 659, 54 Cal.App.3d 488.

Ordinance requiring subdivider to dedicate land or pay fee in lieu thereof for park or recreational purposes was not unconstitutionally arbitrary in the imposition of fees on population basis, though results might be that developer of valuable high-density land would be required to pay higher fee, since persons occupying housing in high-density area might be expected to make more use of public recreational facilities than persons with larger private yards. *Associated Home Builders of Greater East Bay, Inc. v. City of Walnut Creek* (1971) 94 Cal.Rptr. 630, 4 Cal.3d 633, 484 P.2d 606, appeal dismissed 92 S.Ct. 202, 404 U.S. 878, 30 L.Ed.2d 159.

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6. Development fees

Park development fee charged to condominium developer was authorized by this section and municipal ordinance authorizing collection of park fees, and provisions governing return of unused fees governed developer's entitlement to refund of fees. *B & P Development Corp. v. City of Saratoga* (App. 6 Dist. 1986) 230 Cal. Rptr. 192, 185 Cal.App.3d 949.

7. In lieu fees

Under this section providing that governing body of city or county might by ordinance require dedication of land, payment of fees in lieu thereof or combination of both, for park or recreational purposes as condition to approval of final subdivision map, land to be dedicated, if city had required dedication of land, would necessarily have been unimproved, and where city instead took "in lieu fees," statute and ordinance would be interpreted as requiring that fees be of amount equal to value of unimproved land for which they were substituted. *Norsco Enterprises v. City of Fremont* (App. 1 Dist. 1976) 126 Cal.Rptr. 659, 54 Cal.App.3d 488.

This section does not authorize a city to impose a park and recreation in-lieu fee as a condition to the approval of a parcel map for the division of one parcel into two parcels, where the parcel is being divided only for the purpose of sale, not for residential development, and is to be subsequently subdivided by the purchaser into smaller parcels for residential development. *Op.Leg. Counsel*, 83 A.J. 8844.

8. Refund of fees

Developer was entitled to return of subdivision fee, where developer had been given authorization to convert apartment building into condominium, but had not exercised his right to do so, and the right had expired. *Wright Development v. City of Mountain View* (App. 1 Dist. 1975) 125 Cal.Rptr. 723, 53 Cal.App.3d 274.

9. Credits

A city or county, as a condition of regulating and approving the creation of a subdivision, may not lawfully require the dedication of land

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improved for park and recreational purposes without credit being given to the subdivider for the value of the recreational improvements. 73 *Ops.Atty.Gen.* 152 (1990).

10. Use of funds

This section which requires that fees paid as condition of approval of subdivision map be used only for purpose of providing park and recreational facilities does not require that facilities purchased with fees be used only by residents of the subdivision that made the contribution. *Wright Development v. City of Mountain View* (App. 1 Dist. 1975) 125 Cal.Rptr. 723, 53 Cal.App.3d 274.

Statute providing that land or fees exacted as condition to approval of subdivision map are to be used only for the purpose of providing park or recreational facilities to serve the subdivision did not require that such facilities might be used only by the residents of the subdivision, but only that any such fees might not be diverted to any purpose other than for park or recreational facilities which would be available for use by those residents. *Associated Home Builders of Greater East Bay, Inc. v. City of Walnut Creek* (1971) 94 Cal.Rptr. 630, 4 Cal.3d 633, 484 P.2d 606, appeal dismissed 92 S.Ct. 202, 404 U.S. 878, 30 L.Ed.2d 159.

Statute authorizing city or county to require subdivider to dedicate land or pay fees in lieu thereof, fees might be used for improvement of the land itself, as well as for acquisition of land, but not for other purposes. *Associated Home Builders of Greater East Bay, Inc. v. City of Walnut Creek* (1971) 94 Cal.Rptr. 630, 4 Cal.3d 633, 484 P.2d 606, appeal dismissed 92 S.Ct. 202, 404 U.S. 878, 30 L.Ed.2d 159.

11. Use of land

A portion of land dedicated for park and recreational uses pursuant to a final subdivision map and developed for park uses may not be leased by a city to a school district for purposes of constructing a school, but may be leased for other uses which are consistent with park and recreational purposes. 78 *Op.Atty.Gen.* 181, June 8, 1995.

§ 66477.1. Acceptance or rejection of offers of dedication; acceptance into county road system

(a) At the time the legislative body approves a final map, it shall also accept, accept subject to improvement, or reject any offer of dedication. The clerk of the legislative body shall certify or state on the map the action by the legislative body.

(b) The legislative body of a county, or a county officer designated by the legislative body, may accept into the county road system, pursuant to Section

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941 of the Streets and Highways Code, any road for which an offer of dedication has been accepted or accepted subject to improvements.

(Added by Stats.1974, c. 1536, p. 3486, § 4, operative March 1, 1975. Amended by Stats.1985, c. 114, § 10, eff. June 28, 1985; Stats.1987, c. 982, § 19; Stats.1988, c. 132, § 1.)

Historical and Statutory Notes

Derivation: Bus. & Prof.C. former § 11611, added by Stats.1943, c. 128, p. 875, § 1, amended by Stats.1949, c. 1080, p. 1982, § 1; Stats. 1951, c. 339, p. 774, § 1; Stats.1961, c. 1740, p.

3747, § 1; Stats.1963, c. 340, p. 1129, § 1; Stats.1965, c. 1180, p. 2987, § 15.

Stats.1937, c. 670, p. 1871, § 20.

Cross References

Dedications and offers of dedications on parcel maps, provisions of this section to apply, see Government Code § 66463.

Final maps,

Generally, see Government Code § 66433 et seq.

Certificates or statements for clerks of approving legislative bodies, see Government Code § 66440.

Law Review and Journal Commentaries

Background and general effect of 1963 amendment of Bus. & Prof.C. § 11611. (1963) 38 Cal.St.B.J. 626.

Notes of Decisions

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Contract law 2

1. Construction with other laws

Provisions of the former Subdivision Map Act and Bus. & Prof.C. § 11551 support the authority of local governing bodies to require that all roads created pursuant to a subdivision or land project determine lot boundary lines. 56 Ops. Atty.Gen. 105, 2-27-73.

2. Contract law

General contract law principles applied to statutory offers of dedication and acceptances thereof. Mikels v. Rager (App. 4 Dist. 1991) 284 Cal.Rptr. 87, 232 Cal.App.3d 334, rehearing denied and modified, review denied.

3. Acceptance, generally

Filing of a subdivision map delineating a street thereon is an offer to dedicate, and use of the land by the public for over a reasonable period of time constitutes an acceptance of the offer so made without any formal actions in relation thereto by governmental authority, and if it precedes revocation of the offer, the dedication becomes effectual and irrevocable. McKinney v. Ruderman (App. 4 Dist. 1962) 21 Cal. Rptr. 263, 203 Cal.App.2d 109.

4. Conditional acceptance

Subdivision Map Act allows conditional acceptance of streets proposed to be dedicated to city, and conditional nature of public entity's acceptance prevents creation of public liability for street until dedication is unconditionally accepted. Copeland v. City of Oakland (App. 1 Dist. 1993) 23 Cal.Rptr.2d 719, 19 Cal.App.4th 717.

Public entity's interest in streets and easements offered by dedication is limited by conditional nature of its acceptance thereof, which depends for finality upon subsequent acceptance after satisfactory completion of street improvements; qualified acceptance results in outstanding offer of dedication which entity may accept upon its conditions of acceptance being met, and until offer is unconditionally accepted, no public interest is created. Mikels v. Rager (App. 4 Dist. 1991) 284 Cal.Rptr. 87, 232 Cal. App.3d 334, rehearing denied and modified, review denied.

5. City land

When city makes dedication, manner of offering property for public use is regulated by city charter. Copeland v. City of Oakland (App. 1 Dist. 1993) 23 Cal.Rptr.2d 719, 19 Cal.App.4th 717.

When city dedicates its own land for public use, no acceptance by city is necessary in order for city to be responsible for maintenance of

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land. Copeland v. City of Oakland (App. 1 Dist. 1993) 23 Cal.Rptr.2d 719, 19 Cal.App.4th 717.

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§ 66477.2. Offer of dedication; continuation after rejection; termination

(a) **[Street, paths, alleys, public utility easements, rights-of-way for local transit facilities, storm drainage easements]** If at the time the final map is approved, any streets, paths, alleys, public utility easements, rights-of-way for local transit facilities such as bus turnouts, benches, shelters, landing pads, and similar items, which directly benefit the residents of a subdivision, or storm drainage easements are rejected, subject to Section 771.010 of the Code of Civil Procedure, the offer of dedication shall remain open and the legislative body may by resolution at any later date, and without further action by the subdivision, rescind its action and accept and open the streets, paths, alleys, rights-of-way for local transit facilities such as bus turnouts, benches, shelters, landing pads, and similar items, which directly benefit the residents of a subdivision, or storm drainage easements for public use, which acceptance shall be recorded in the office of the county recorder.

(b) **[Access to coastline bay shoreline, waterway, river, lake, reservoir; time for acceptance]** In the case of any subdivision fronting upon the ocean coastline or bay shoreline, the offer of dedication of public access route or routes from public highways to land below the ordinary high watermark shall be accepted within three years after the approval of the final map; in the case of any subdivision fronting upon any public waterway, river, or stream, the offer of dedication of public access route or routes from public highways to the bank of the waterway, river, or stream and the public easement along a portion of the bank of the waterway, river, or stream shall be accepted within three years after the approval of the final map; in the case of any subdivision fronting upon any lake or reservoir which is owned in part or entirely by any public agency, including the state, the offer of dedication of public access route or routes from public highways to any water of the lake or reservoir shall be accepted within five years after the approval of the final map; all other offers of dedication may be accepted at any time.

(c) **[Termination and abandonment; procedure]** Offers of dedication which are covered by subdivision (a) may be terminated and abandoned in the same manner as prescribed for the summary vacation of streets by Part 3 (commencing with Section 8300) of Division 9 of the Streets and Highways Code.

(d) **[Abandonment]** Offers of dedication which are not accepted within the time limits specified in subdivision (b) shall be deemed abandoned.

(e) **[Termination]** Except as provided in Sections 66499.16, 66499.17, and 66499.18, if a resubdivision or reversion to acreage of the tract is subsequently filed for approval, any offer of dedication previously rejected shall be deemed to be terminated upon the approval of the map by the legislative body. The map shall contain a notation identifying the offer or offers of dedication deemed terminated by this subdivision.

(Added by Stats.1974, c. 1536, p. 3486, § 4, operative March 1, 1975. Amended by Stats.1975, c. 491, p. 1016, § 2; Stats.1980, c. 1050, p. 3357, § 5; Stats.1982, c. 87, § 23, eff. March 1, 1982; Stats.1994, c. 458 (A.B.1414), § 9.)

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Legislative Committee Comment—Assembly

1980 Amendment

Section 66477.2 is amended to authorize summary vacation proceedings for unaccepted offers of dedication under the Subdivision Map Act.

Historical and Statutory Notes

Derivation: Bus. & Prof.C. former § 11610.5, added by Stats.1970, c. 1308, p. 2434, § 1, amended by Stats.1972, c. 882, p. 1560, § 1.

Bus. & Prof.C. former § 11610.7, added by Stats.1970, c. 761, p. 1442, § 1.

Bus. & Prof.C. former § 11616, added by Stats.1943, c. 128, p. 876, § 1, amended by Stats.1951, c. 1137, p. 2904, § 1; Stats.1955, c. 489, p. 963, § 1.

Stats.1937, c. 670, p. 1871, § 20.

Cross References

Dedications and offers of dedications on parcel maps, provisions of this section to apply, see Government Code § 66463.

Dedications for public easements, termination of irrevocable offers, see Government Code § 66475. Final maps, see Government Code § 66433 et seq.

Subdivision, defined, see Government Code § 66424.

Library References

Recommendation relating to vacation of public streets, highways, and service ease-

ments, 15 Cal.L.Rev.Comm.Reports 1137 (1980); 80 Senate J. 16798.

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Construction with other laws 1

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3. Acceptance following rejection

The county supervisors' previous rejection of offer of dedication of streets did not render subsequent resolution ordering such streets to be accepted into the county road system ineffective since statute in former Subdivision Map Act indicated that offers remain open, and board might accept them at any later date. *Galeb v. Cupertino Sanitary Dist. of Santa Clara County* (App. 1 Dist. 1964) 38 Cal.Rptr. 580, 227 Cal. App.2d 294.

4. Termination of offer

An offer of dedication of land under Bus. & Prof.C. § 11616 could only be terminated by the procedure set out in that section and a tax sale of the land did not terminate the offer of dedication. 54 Ops.Atty.Gen. 230, 11-16-71.

5. Notice

The constructive notice required by Bus. & Prof.C. § 11616 where previous offers of dedication have been rejected was merely an ancillary ministerial act and was not an essential requirement of statutory dedication. *Galeb v. Cupertino Sanitary Dist. of Santa Clara County* (App. 1 Dist. 1964) 38 Cal.Rptr. 580, 227 Cal. App.2d 294.

1. Construction with other laws

No valid basis was demonstrated for holding that C.C.P. § 748.5 relating to proposed dedication of land for public improvement was inapplicable to offers of dedication governed by the former Subdivision Map Act, Bus. & Prof.C. § 11500 et seq. *Paris v. Santa Clara County* (App. 1 Dist. 1969) 76 Cal.Rptr. 66, 270 Cal. App.2d 691.

Fact that issuance of tax deed may otherwise start a new chain of title under Rev. & T.C. § 3712, a previous offer of dedication of land runs with the land as a restraint upon its use. 54 Ops.Atty.Gen. 230, 11-16-71.

2. Acceptance of offer

A city after its incorporation was not required to accept streets previously accepted by county. *Galeb v. Cupertino Sanitary Dist. of Santa Clara County* (App. 1 Dist. 1964) 38 Cal.Rptr. 580, 227 Cal.App.2d 294.

§ 66477.3. Time of passing title

Acceptance of offers of dedication on a final map shall not be effective until the final map is filed in the office of the county recorder or a resolution of acceptance by the legislative body is filed in such office.

(Added by Stats.1974, c. 1536, p. 3487, § 4, operative March 1, 1975.)

Historical and Statutory Notes

Derivation: Bus. & Prof.C. former § 11615,
added by Stats.1943, c. 128, p. 875, § 1.

Stats.1937, c. 670, p. 1871, § 20.

Cross References

Certificates of dedications or offers to dedicate, see Government Code § 66439.

Dedications and offers of dedications on parcel maps, provisions of this section to apply, see Government Code § 66463.

Dedications or offers made by certificate on map or separate instrument, see Government Code § 66447.

Streets, dedications or offers of dedication, waiver of direct access rights, see Government Code § 66476.

Law Review and Journal Commentaries

Common law and statutory dedication in California. 53 Cal.L.Rev. 559 (1965).

§ 66477.5. Certificate of dedication for public improvements or construction of public facilities; contents; recording with county recorder; exceptions; continuance of public purpose; disposal of dedicated property

(a) The local agency to which property is dedicated in fee for public purposes, or for making public improvements or constructing public facilities, other than for open space, parks, or schools, shall record a certificate with the county recorder in the county in which the property is located. The certificate shall be attached to the map and shall contain all of the following information:

(1) The name and address of the subdivider dedicating the property.

(2) A legal description of the real property dedicated.

(3) A statement that the local agency shall reconvey the property to the subdivider if the local agency makes a determination pursuant to this section that the same public purpose for which the property was dedicated does not exist, or the property or any portion thereof is not needed for public utilities, as specified in subdivision (c).

(b) The subdivider may request that the local agency make the determination that the same public purpose for which the dedication was required still exists, after payment of a fee which shall not exceed the amount reasonably required to make the determination. The determination may be made by reference to a capital improvement plan as specified in Section 65403 or 66002, an applicable general or specific plan requirement, the subdivision map, or other public documents that identify the need for the dedication.

(c) If a local agency has determined that the same public purpose for which the dedication was required does not exist, it shall reconvey the property to the subdivider or the successor in interest, as specified in subdivision (a), except for all or any portion of the property that is required for that same public purpose or for public utilities.

(d) If a local agency decides to vacate, lease, sell, or otherwise dispose of the dedicated property the local agency shall give at least 60 days notice to the

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subdivider whose name appears on the certificate before vacating, leasing, selling, or otherwise disposing of the dedicated property. This notice is not required if the dedicated property will be used for the same public purpose for which it was dedicated.

(e) This section shall only apply to property required to be dedicated on or after January 1, 1990.

(Added by Stats.1989, c. 822, § 1.)

Historical and Statutory Notes

Former § 66477.5, added by Stats.1982, c. 1555, § 1, amended by Stats.1984, c. 896, § 1, relating to the use of interest on accumulated in-lieu fees, was repealed by its own terms on Jan. 1, 1987.

§ 66478. School purposes

Whether by request of a county board of education or otherwise, a city or county may adopt an ordinance requiring any subdivider who develops or completes the development of one or more subdivisions in one or more school districts maintaining an elementary school to dedicate to the school district, or districts, within which such subdivisions are to be located, such land as the local legislative body shall deem to be necessary for the purpose of constructing thereon such elementary schools as are necessary to assure the residents of the subdivision adequate public school service. In no case shall the local legislative body require the dedication of an amount of land which would make development of the remaining land held by the subdivider economically unfeasible or which would exceed the amount of land ordinarily allowed under the procedures of the State Allocation Board.

An ordinance adopted pursuant to this section shall not be applicable to a subdivider who has owned the land being subdivided for more than 10 years prior to the filing of the tentative maps in accordance with Article 2 (commencing with Section 66452) of Chapter 3 of this division. The requirement of dedication shall be imposed at the time of approval of the tentative map. If, within 30 days after the requirement of dedication is imposed by the city or county, the school district does not offer to enter into a binding commitment with the subdivider to accept the dedication, the requirement shall be automatically terminated. The required dedication may be made any time before, concurrently with, or up to 60 days after, the filing of the final map on any portion of the subdivision. The school district shall, in the event that it accepts the dedication, repay to the subdivider or his successors the original cost to the subdivider of the dedicated land, plus a sum equal to the total of the following amounts:

(a) The cost of any improvements to the dedicated land since acquisition by the subdivider.

(b) The taxes assessed against the dedicated land from the date of the school district's offer to enter into the binding commitment to accept the dedication.

(c) Any other costs incurred by the subdivider in maintenance of such dedicated land, including interest costs incurred on any loan covering such land.

If the land is not used by the school district, as a school site, within 10 years after dedication, the subdivider shall have the option to repurchase the property from the district for the amount paid therefor.

The school district to which the property is dedicated shall record a certificate with the county recorder in the county in which the property is located. The certificate shall contain the following information:

- (1) The name and address of the subdivider dedicating the property.
- (2) A legal description of the real property dedicated.
- (3) A statement that the subdivider dedicating the property has an option to repurchase the property if it is not used by the school district as a school site within 10 years after dedication.
- (4) Proof of the acceptance of the dedication by the school district and the date of the acceptance. The certificate shall be recorded not more than 10 days after the date of acceptance of the dedication. The subdivider shall have the right to compel the school district to record such certificate, but until such certificate is recorded, any rights acquired by any third party dealing in good faith with the school district shall not be impaired or otherwise affected by the option right of the subdivider.

If any subdivider is aggrieved by, or fails to agree to the reasonableness of any requirement imposed pursuant to this section, he may bring a special proceeding in the superior court pursuant to Section 66499.37.

(Added by Stats.1974, c. 1536, p. 3487, § 4, operative March 1, 1975.)

Historical and Statutory Notes

Derivation: Bus. & Prof.C. former § 11525.2, Stats.1968, c. 554, p. 1220, § 1; Stats.1972, c. added by Stats.1965, c. 1961, p. 4489, § 1, 366, p. 685, § 1; amended by Stats.1967, c. 1160, p. 2844, § 1;

Forms

See West's California Code Forms, Government.

Law Review and Journal Commentaries

Forced dedications: Requirement that applicant dedicate portion of land to public use as condition to granting of zoning variance, issuance of building permit or approval of subdivision map. 20 Hastings L.J. 735 (1969).

Land development and the environment: Subdivision Map Act. 5 Pac.L.J. 55 (1974).

Return right of land taken. Nathaniel Sterling, 4 Pac.L.J. 65 (1973).

Library References

Counties ⇨18, 47.
Municipal Corporations ⇨43, 60.
Vendor and Purchaser ⇨39.
Zoning and Planning ⇨29.5.
WESTLAW Topic Nos. 104, 268, 400, 414.
C.J.S. Counties §§ 31 to 33, 70 to 73.
C.J.S. Municipal Corporations §§ 83, 84, 142, 153.

C.J.S. Vendor and Purchaser § 72 et seq.
C.J.S. Zoning and Land Planning § 21.
Background and general effect of 1965 addition of Bus. & Prof.C. § 11525.2. Rev. of 1965 Code Leg. (Cont.Educ. of Bar, 1965) page 17.

Article 3.5

PUBLIC ACCESS TO PUBLIC RESOURCES

Section

- 66478.1. Legislative intent.
- 66478.2. Legislative findings; diminishing public access.
- 66478.3. Legislative findings; health and well-being.
- 66478.4. Waterway, river or stream; reasonable public access; considerations.
- 66478.5. Public waterway, river or stream; provision for dedication of public easement; extent, width and character of easement.
- 66478.6. Designation of public access route on map.
- 66478.7. Effect of article on other laws.
- 66478.8. Access available near subdivision sufficient.
- 66478.9. Electric power generating facilities; exemption.
- 66478.10. Industrial subdivisions; exemption.
- 66478.11. Subdivisions fronting on coastline or shoreline; provision for reasonable public access; access available near subdivision; designation of routes on maps; improvements to or conveyance of routes.
- 66478.12. Subdivisions fronting on lake or reservoir; reasonable public access; access near subdivision; designation of routes on map; conveyance of routes.
- 66478.13. Parcel over 40 acres; reasonable public access to shoreline of bodies of water.
- 66478.14. Improvement of access routes.

Article 3.5 was added by Stats.1974, c. 1536, p. 3488, § 4, operative March 1, 1975.

Cross References

New development projects, application of this article, see Public Resources Code § 30212.

§ 66478.1. Legislative intent

It is the intent of the Legislature, by the provisions of Sections 66478.1 through 66478.10 of this article to implement Section 4 of Article X of the California Constitution insofar as Sections 66478.1 through 66478.10 are applicable to navigable waters.

(Added by Stats.1974, c. 1536, p. 3488, § 4, operative March 1, 1975. Amended by Stats.1975, c. 24, p. 35, § 18, eff. April 4, 1975; Stats.1986, c. 1019, § 27.)

Historical and Statutory Notes

Derivation: Pub.Res.C. former § 10000, added by Stats.1971, c. 1667, p. 3583, § 1.

Forms

See West's California Code Forms, Government.

Law Review and Journal Commentaries

Validity of local taxation powers within a state regulated field: Pines v. City of Santa Monica. 9 Pepp.L.Rev. 734 (1982).

Library References

Municipal Corporations ⇨43.

Navigable Waters ⇨29.

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WESTLAW Topic Nos. 268, 270.
C.J.S. Municipal Corporations §§ 83, 84.
C.J.S. Navigable Waters § 55 et seq.

§ 66478.2. Legislative findings; diminishing public access

The Legislature finds and declares that the public natural resources of this state are limited in quantity and that the population of this state has grown at a rapid rate and will continue to do so, thus increasing the need for utilization of public natural resources. The increase in population has also increased demand for private property adjacent to public natural resources through real estate subdivision developments which resulted in diminishing public access to public natural resources.

(Added by Stats.1974, c. 1536, p. 3489, § 4, operative March 1, 1975.)

Historical and Statutory Notes

Derivation: Pub.Res.C. former § 10001, added by Stats.1971, c. 1667, p. 3583, § 1.

§ 66478.3. Legislative findings; health and well-being

The Legislature further finds and declares that it is essential to the health and well-being of all citizens of this state that public access to public natural resources be increased. It is the intent of the Legislature to increase public access to public natural resources.

(Added by Stats.1974, c. 1536, p. 3489, § 4, operative March 1, 1975.)

Historical and Statutory Notes

Derivation: Pub.Res.C. former § 10002, added by Stats.1971, c. 1667, p. 3583, § 1.

§ 66478.4. Waterway, river or stream; reasonable public access; considerations

(a) No local agency shall approve either a tentative or a final map of any proposed subdivision to be fronted upon a public waterway river or stream which does not provide, or have available, reasonable public access by fee or easement from a public highway to that portion of the bank of the river or stream bordering or lying within the proposed subdivision.

(b) Reasonable public access shall be determined by the local agency in which the proposed subdivision is to be located. In making the determination of what shall be reasonable access, the local agency shall consider all of the following:

(1) That access may be by highway, foot trail, bike trail, horse trail, or any other means of travel.

(2) The size of the subdivision.

(3) The type of riverbank and the various appropriate recreational, educational, and scientific uses, including, but not limited to, swimming, diving, boating, fishing, water skiing, scientific collection, and teaching.

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(4) The likelihood of trespass on private property and reasonable means of avoiding such trespasses.

(c) A public waterway river or stream for the purposes of Sections 66477.2, 66478.4, 66478.5 and 66478.6 means those waterways, rivers and streams defined in Sections 100 through 106 of the Harbors and Navigation Code, any stream declared to be a public highway for fishing pursuant to Sections 25660 through 25662 of the Government Code, the rivers listed in Section 1505 of the Fish and Game Code as spawning areas, all waterways, rivers and streams downstream from any state or federal salmon or steelhead fish hatcheries. (Added by Stats.1974, c. 1536, p. 3489, § 4, operative March 1, 1975.)

Historical and Statutory Notes

Derivation: Pub.Res.C. former §§ 10020, 10043, added by Stats.1971, c. 1667, p. 3583, § 1.

§ 66478.5. Public waterway, river or stream; provision for dedication of public easement; extent, width and character of easement

(a) No local agency shall approve either a tentative or a final map of any proposed subdivision to be fronted upon a public waterway river or stream which does not provide for a dedication of a public easement along a portion of the bank of the river or stream bordering or lying within the proposed subdivision.

(b) The extent, width and character of the public easement shall be reasonably defined to achieve reasonable public use of the public waterway river or stream consistent with public safety. The reasonableness and extent of the easement shall be determined by the local agency in which the proposed subdivision is to be located. In making the determination for reasonably defining the extent, width, and character of the public easement, the local agency shall consider all of the following:

(1) That the easement may be for a foot trail, bicycle trail, or horse trail.

(2) The size of the subdivision.

(3) The type of riverbank and the various appropriate recreational, educational and scientific uses including, but not limited to, swimming, diving, boating, fishing, water skiing, scientific collection and teaching.

(4) The likelihood of trespass on private property and reasonable means of avoiding such trespasses.

(Added by Stats.1974, c. 1536, p. 3489, § 4, operative March 1, 1975.)

Historical and Statutory Notes

Derivation: Pub.Res.C. former § 10021, added by Stats.1971, c. 1666, p. 3584, § 1.

Law Review and Journal Commentaries

Using the county general plan to guide habitat mitigation under CEQA. Robert A. Johnston and Mary Madison, 34 Santa Clara L.Rev. 81 (1993).

Notes of Decisions

Right to easement 1

1. Right to easement

Statute requiring subdivider to provide for dedication of public easement along bank of river or stream bordering or lying within pro-

posed subdivision requires dedication of reasonable public easement along riverbank, and only limitation on public's right to such easement is public safety. Kern River Public Access Committee v. City of Bakersfield (App. 5 Dist. 1985) 217 Cal.Rptr. 125, 170 Cal.App.3d 1205, review denied.

§ 66478.6. Designation of public access route on map

Any public access route or routes and any easement along the bank of a public waterway river or stream provided by the subdivider shall be expressly designated on the tentative or final map, and such map shall expressly designate the governmental entity to which such route or routes are dedicated and its acceptance of such dedication.

(Added by Stats.1974, c. 1536, p. 3490, § 4, operative March 1, 1975. Amended by Stats.1975, c. 24, p. 35, § 19, eff. April 4, 1975.)

Historical and Statutory Notes

Derivation: Pub.Res.C. former § 10022, added by Stats.1971, c. 1667, p. 3584, § 1.

§ 66478.7. Effect of article on other laws

Nothing in this article shall be construed to limit any powers or duties in connection with or affect the operation of beaches or parks in this state or to limit or decrease the authority, powers, or duties of any public agency or entity.

(Added by Stats.1974, c. 1536, p. 3490, § 4, operative March 1, 1975.)

Historical and Statutory Notes

Derivation: Pub.Res.C. former § 10040, added by Stats.1971, c. 1667, p. 3584, § 1.

§ 66478.8. Access available near subdivision sufficient

Nothing in Sections 66478.1 through 66478.10 of this article shall require a local agency to disapprove either a tentative or final map solely on the basis that the reasonable public access otherwise required by this article is not provided through or across the subdivision itself, if the local agency makes a finding that such reasonable public access is otherwise available within a reasonable distance from the subdivision.

Any such finding shall be set forth on the face of the tentative or final map.

(Added by Stats.1974, c. 1536, p. 3490, § 4, operative March 1, 1975. Amended by Stats.1975, c. 24, p. 36, § 20, eff. April 4, 1975.)

Historical and Statutory Notes

Derivation: Pub.Res.C. former § 10041, added by Stats.1971, c. 1667, p. 3584, § 1.

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Notes of Decisions

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1. In general

Statute providing that local agency is not required to disapprove either tentative or final map for subdivision solely on basis that reasonable public access to bank of river or stream bordering on or within proposed subdivision is not provided through or across subdivision itself, if local agency makes finding that reason-

able public access is otherwise available within reasonable distance from subdivision, did not permit developer to provide reasonable alternative to easement along riverbank within subdivision under statute governing necessity of provision for dedication of public easement along bank of river or stream. Kern River Public Access Committee v. City of Bakersfield (App. 5 Dist. 1985) 217 Cal.Rptr. 125, 170 Cal.App.3d 1205, review denied.

§ 66478.9. Electric power generating facilities; exemption

Nothing in Section 66478.5 shall apply to the site of electric power generating facilities.

(Added by Stats.1974, c. 1536, p. 3490, § 4, operative March 1, 1975.)

Historical and Statutory Notes

Derivation: Pub.Res.C. former § 10042, added by Stats.1971, c. 1667, p. 3585, § 1.

§ 66478.10. Industrial subdivisions; exemption

Nothing in Sections 66478.1 through 66478.10 of this article shall apply to industrial subdivisions.

(Added by Stats.1974, c. 1536, p. 3490, § 4, operative March 1, 1975.)

Historical and Statutory Notes

Derivation: Pub.Res.C. former § 10043, added by Stats.1971, c. 1667, p. 3585, § 1.

§ 66478.11. Subdivisions fronting on coastline or shoreline; provision for reasonable public access; access available near subdivision; designation of routes on maps; improvements to or conveyance of routes

(a) No local agency shall approve either the tentative or the final map of any subdivision fronting upon the coastline or shoreline which subdivision does not provide or have available reasonable public access by fee or easement from public highways to land below the ordinary high water mark on any ocean coastline or bay shoreline within or at a reasonable distance from the subdivision.

Any public access route or routes provided by the subdivider shall be expressly designated on the tentative or final map, and such map shall expressly designate the governmental entity to which such route or routes are dedicated.

(b) Reasonable public access, as used in subdivision (a), shall be determined by the local agency in which the subdivision lies.

(c) In making the determination of what shall be reasonable public access, the local agency shall consider:

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(1) That access may be by highway, foot trail, bike trail, horse trail, or any other means of travel.

(2) The size of the subdivision.

(3) The type of coastline or shoreline and the various appropriate recreational, educational, and scientific uses, including, but not limited to, diving, sunbathing, surfing, walking, swimming, fishing, beachcombing, taking of shellfish and scientific exploration.

(4) The likelihood of trespass on private property and reasonable means of avoiding such trespasses.

(d) Nothing in this section shall require a local agency to disapprove either a tentative or final map solely on the basis that the reasonable public access otherwise required by this section is not provided through or across the subdivision itself, if the local agency makes a finding that such reasonable public access is otherwise available within a reasonable distance from the subdivision.

Any such finding shall be set forth on the face of the tentative or final map.

(e) The provisions of this section shall not apply to the final map of any subdivision the tentative map of which has been approved by a local agency prior to the effective date of this section.

(f) The provisions of this section shall not apply to the final or tentative map of any subdivision which is in compliance with the plan of any planned development or any planned community which has been approved by a local agency prior to December 31, 1968. The exclusion provided by this subdivision shall be in addition to the exclusion provided by subdivision (e).

(g) Nothing in this section shall be construed as requiring the subdivider to improve any access route or routes which are primarily for the benefit of nonresidents of the subdivision area.

(h) Any access route or routes provided by the subdivider pursuant to this section may be conveyed or transferred to any state or local agency by the governmental entity to which such route or routes have been dedicated, at any future time, by mutual consent of such governmental entity and the particular state or local agency. Such conveyance or transfer shall be recorded by the recipient state or local agency in the office of the county recorder of the county in which such route or routes are located.

(Added by Stats.1974, c. 1536, p. 3490, § 4, operative March 1, 1975. Amended by Stats.1975, c. 24, p. 36, § 21, eff. April 4, 1975.)

Historical and Statutory Notes

Derivation: Bus. & Prof.C. former § 11610.5, added by Stats.1970, c. 1308, p. 2434, § 1, amended by Stats.1972, c. 882, p. 1560, § 1.

Law Review and Journal Commentaries

Coastal zone management: The California experience. Robert B. Krueger (1972) 47 Cal.St. B.J. 402.

Constitutional right to fish: A new theory of access to the waterfront. 16 U.C.Davis L.Rev. 661 (1983).

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Title to lands in the coastal zone: Their complexities and impact on real estate transactions. Thomas E. McKnight (1972) 47 Cal.St.B.J. 408.

§ 66478.12. Subdivisions fronting on lake or reservoir; reasonable public access; access near subdivision; designation of routes on map; conveyance of routes

(a) No local agency shall approve either the tentative or the final map of any subdivision fronting upon any lake or reservoir which is owned in part or entirely by any public agency including the state, which subdivision does not provide or have available reasonable access by fee or easement from public highways to any water of the lake or reservoir upon which the subdivision borders either within the subdivision or a reasonable distance from the subdivision.

Any public access route or routes provided by the subdivider shall be expressly designated on the tentative or final map, and such map shall expressly designate the governmental entity to which such route or routes are dedicated and its acceptance of such dedication.

(b) Reasonable access, as used in subdivision (a), shall be determined by the local agency in which the subdivision lies.

(c) In making the determination of what shall be reasonable access, the local agency shall consider:

(1) That access may be by highway, foot trail, bike trail, horse trail, or any other means of travel.

(2) The size of the subdivision.

(3) The type of shoreline and the various appropriate recreational, educational, and scientific uses, including, but not limited to, swimming, diving, boating, fishing, water skiing, scientific exploration, and teaching.

(4) The likelihood of trespass on private property and reasonable means of avoiding such trespasses.

(d) Nothing in this section shall require a local agency to disapprove either a tentative or final map solely on the basis that the reasonable access otherwise required by this section is not provided through or across the subdivision itself, if the local agency makes a finding that such reasonable access is otherwise available within a reasonable distance from the subdivision.

Any such finding shall be set forth on the face of the tentative or final map.

(e) The provisions of this section shall not apply to the final map of any subdivision the tentative map of which has been approved by a local agency prior to the effective date of this section.

(f) Any access route or routes provided by the subdivider pursuant to this section may be conveyed or transferred to any state or local agency by the governmental entity to which such route or routes have been dedicated, at any future time, by mutual consent of such governmental entity and the particular state or local agency. Such conveyance or transfer shall be recorded by the

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recipient state or local agency in the office of the county recorder of the county in which such route or routes are located.

(Added by Stats.1974, c. 1536, p. 3491, § 4, operative March 1, 1975. Amended by Stats.1975, c. 24, p. 37, § 22, eff. April 4, 1975.)

Historical and Statutory Notes

Derivation: Bus. & Prof.C. former § 11610.7, added by Stats.1970, c. 761, p. 1442, § 1.

Law Review and Journal Commentaries

Constitutional right to fish: A new theory of access to the waterfront. 16 U.C.Davis L.Rev. 661 (1983).

Public recreation and subdivisions on lakes and reservoirs in California. 23 Stan.L.Rev. 811 (1971).

Title to lands in the coastal zone: Their complexities and impact on real estate transactions. Thomas E. McKnight, 47 Cal.St.B.J. 408 (1972).

Library References

Municipal Corporations ⇨43.
Navigable Waters ⇨29.
Zoning and Planning ⇨29.5.
WESTLAW Topic Nos. 268, 270, 414.

C.J.S. Municipal Corporations §§ 83, 84.
C.J.S. Navigable Waters § 55 et seq.
C.J.S. Zoning and Land Planning § 21.

§ 66478.13. Parcel over 40 acres; reasonable public access to shoreline of bodies of water

No local agency shall issue any permit or grant any approval necessary to develop any real property which is excluded from regulation under this division as a subdivision pursuant to subdivision (d) of Section 66426 because such property is in excess of 40 acres and was created as such a parcel after December 31, 1969, when such property fronts on the coastline or a shoreline, unless it finds that reasonable public access has been provided from public highways to land below the ordinary high-water mark or any ocean coastline or bay shoreline or any water of a lake or reservoir upon which the real property fronts.

“Reasonable public access” as used in this section shall be determined by the local agency in which the real property lies. In making such determination the local agency shall use the same criteria as those set forth in subdivisions (c) and (d) of Section 66478.11 and subdivisions (c) and (d) of Section 66478.12.

(Added by Stats.1974, c. 1536, p. 3492, § 4, operative March 1, 1975.)

Historical and Statutory Notes

Derivation: Bus. & Prof.C. former § 11610.8, added by Stats.1972, c. 935, p. 1689, § 1.

Law Review and Journal Commentaries

Constitutional right to fish: A new theory of access to the waterfront. 16 U.C.Davis L.Rev. 661 (1983).

Library References

Municipal Corporations ⇨601.
Navigable Waters ⇨33, 39.

WESTLAW Topic Nos. 268, 270.

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C.J.S. Municipal Corporations §§ 224, 225.

C.J.S. Navigable Waters §§ 60, 61 et seq.

§ 66478.14. Improvement of access routes

Nothing in this article shall be construed as requiring the subdivider to improve any route or routes which are primarily for the benefit of nonresidents of the subdivision area or nonowners of the real property in question.

(Added by Stats.1974, c. 1536, p. 3493, § 4, operative March 1, 1975.)

Article 4

RESERVATIONS

Section

66479. Public uses; conditions.

66480. Acquisition of reserved area, time; price.

66481. Termination of reservation.

66482. Cumulative authority.

Article 4 was added by Stats.1974, c. 1536, p. 3493, § 4, operative March 1, 1975.

§ 66479. Public uses; conditions

There may be imposed by local ordinance a requirement that areas of real property within the subdivision be reserved for parks, recreational facilities, fire stations, libraries, or other public uses, subject to the following conditions:

(a) The requirement is based upon an adopted specific plan or an adopted general plan containing policies and standards for those uses, and the required reservations are in accordance with those policies and standards.

(b) The ordinance has been in effect for a period of at least 30 days prior to the filing of the tentative map.

(c) The reserved area is of such size and shape as to permit the balance of the property within which the reservation is located to develop in an orderly and efficient manner.

(d) The amount of land reserved will not make development of the remaining land held by the subdivider economically unfeasible.

The reserved area shall conform to the adopted specific or general plan and shall be in such multiples of streets and parcels as to permit an efficient division of the reserved area in the event that it is not acquired within the prescribed period; in such event, the subdivider shall make those changes as are necessary to permit the reserved area to be developed for the intended purpose consistent with good subdividing practices.

(Added by Stats.1974, c. 1536, p. 3493, § 4, operative March 1, 1975. Amended by Stats.1984, c. 1009, § 34.)

Historical and Statutory Notes

Legislative intent relating to Stats.1984, c. 1009, see note under Educ.C. § 39002.
 amended by Stats.1972, c. 1049, p. 1926, § 1; Stats.1972, c. 1387, p. 2879, § 1; Stats.1972, c. 1388, p. 2884, § 2.
Derivation: Bus. & Prof.C. former § 11546, added by Stats.1965, c. 1809, p. 4183, § 2,

Law Review and Journal Commentaries

The legality of California development fees.
 13 Pepp.L.Rev. 759 (1986).

Library References

Municipal Corporations ⇨43.
 Zoning and Planning ⇨11.5.
 WESTLAW Topic Nos. 268, 414.
 C.J.S. Municipal Corporations §§ 83, 84.
 C.J.S. Zoning and Land Planning § 48.

Notes of Decisions

In general 1

1. In general

City's environmental excise tax, which was a special nonrecurring tax based on number of bedrooms in a new residential dwelling, did not run afoul of subdivision statutes on ground that tax was tantamount to a parkland dedication requirement as a precondition to approval of the final subdivision map; just because tax revenue was channeled to a special fund from which park and recreational land was to be financed did not raise the tax to a prohibited subdivision exaction; exercise of city's plenary tax power

was just one way that revenue could be raised for purchase of park lands and open space. Westfield-Palos Verdes Co. v. City of Rancho Palos Verdes (App. 2 Dist. 1977) 141 Cal.Rptr. 36, 73 Cal.App.3d 486.

Provisions of city ordinance requiring fee from subdividers desiring approval of map or building permit, such fees to be deposited in capital outlay recreational fund for city's future needs for recreation purposes, were invalid as conflicting with provisions of Subdivision Map Act, Bus. & Prof.C. § 11500 et seq. (repealed). Santa Clara County Contractors & Homebuilders Ass'n v. City of Santa Clara (App. 1 Dist. 1965) 43 Cal.Rptr. 86, 232 Cal.App.2d 564.

§ 66480. Acquisition of reserved area, time; price

The public agency for whose benefit an area has been reserved shall at the time of approval of the final map or parcel map enter into a binding agreement to acquire such reserved area within two years after the completion and acceptance of all improvements, unless such period of time is extended by mutual agreement. The purchase price shall be the market value thereof at the time of the filing of the tentative map plus the taxes against such reserved area from the date of the reservation and any other costs incurred by the subdivider in the maintenance of such reserved area, including interest costs incurred on any loan covering such reserved area.

(Added by Stats.1974, c. 1536, p. 3493, § 4, operative March 1, 1975.)

§ 66481. Termination of reservation

If the public agency for whose benefit an area has been reserved does not enter into such a binding agreement, the reservation of such area shall automatically terminate.

(Added by Stats.1974, c. 1536, p. 3493, § 4, operative March 1, 1975.)

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§ 66482. Cumulative authority

The authority granted by this article is additional to all other authority granted by law to local agencies relating to subdivisions and shall in no way be construed as a limitation on or diminution of any such authority.

(Added by Stats.1974, c. 1536, p. 3493, § 4, operative March 1, 1975.)

Article 5

FEES

Section

66483. Cost of drainage and sewer facilities; conditions; deposits to funds; expenditures.
- 66483.1. Surplus; determination; disposition.
- 66483.2. Refund of surplus.
66484. Cost of bridges or major thoroughfares; conditions; protests; deposits in funds; expenditures.
- 66484.3. Orange County; fees as condition for defrayment of costs of bridge and thoroughfare construction; ordinances; funds; expenditures; design standards; toll charges; contested fees.
- 66484.5. Groundwater recharge facilities; fees; requirements; protests; construction and operation of facilities; funds; expenditures; credits.

Article 5 was added by Stats.1974, c. 1536, p. 3494, § 4, operative March 1, 1975.

§ 66483. Cost of drainage and sewer facilities; conditions; deposits to funds; expenditures

There may be imposed by local ordinance a requirement for the payment of fees for purposes of defraying the actual or estimated costs of constructing planned drainage facilities for the removal of surface and storm waters from local or neighborhood drainage areas and of constructing planned sanitary sewer facilities for local sanitary sewer areas, subject to the following conditions:

(a) The ordinance has been in effect for a period of at least 30 days prior to the filing of the tentative map or parcel map if no tentative map is required.

(b) The ordinance refers to a drainage or sanitary sewer plan adopted for a particular drainage or sanitary sewer area which contains an estimate of the total costs of constructing the local drainage or sanitary sewer facilities required by the plan, and a map of such area showing its boundaries and the location of such facilities.

(c) The drainage or sanitary sewer plan, in the case of a city situated in a county having a countywide general drainage or sanitary sewer plan, has been determined by resolution of the legislative body of the county to be in conformity with such a county plan; or in the case of a city situated in a county not having such a plan but in a district having such a plan, has been determined by resolution of the legislative body of the district to be in conformity with the district general plan; or in the case of a city situated in a county having such a

plan and in a district having such a plan, has been determined by resolution of the legislative body of the county to be in conformity with such a plan and by resolution of the legislative body of the district to be in conformity with the district general plan.

(d) The costs, whether actual or estimated, are based upon findings by the legislative body which has adopted the local plan, that subdivision and development of property within the planned local drainage area or local sanitary sewer area will require construction of the facilities described in the drainage or sewer plan, and that the fees are fairly apportioned within such areas either on the basis of benefits conferred on property proposed for subdivision or on the need for such facilities created by the proposed subdivision and development of other property within such areas.

(e) The fee as to any property proposed for subdivision within such a local area does not exceed the pro rata share of the amount of the total actual or estimated costs of all facilities within such area which would be assessable on such property if such costs were apportioned uniformly on a per-acre basis.

(f) The drainage or sanitary sewer facilities planned are in addition to existing facilities serving the area at the time of the adoption of such a plan for the area.

Such fees shall be paid to the local public agencies which provide drainage or sanitary sewer facilities, and shall be deposited by such agencies into a "planned local drainage facilities fund" and a "planned local sanitary sewer fund," respectively. Separate funds shall be established for each local drainage and sanitary sewer area. Moneys in such funds shall be expended solely for the construction or reimbursement for construction of local drainage or sanitary sewer facilities within the area from which the fees comprising the fund were collected, or to reimburse the local agency for the cost of engineering and administrative services to form the district and design and construct the facilities. The local ordinance may provide for the acceptance of considerations in lieu of the payment of fees.

A local agency imposing or requesting the imposition of, fees pursuant to this section, including the agencies providing the facilities, may advance money from its general fund to pay the costs of constructing such facilities within a local drainage or sanitary sewer area and reimburse the general fund for such advances from the planned local drainage or sanitary sewer facilities fund for the local drainage or sanitary sewer area in which the drainage or sanitary sewer facilities were constructed.

A local agency receiving fees pursuant to this section may incur an indebtedness for the construction of drainage or sanitary sewer facilities within a local drainage or sanitary sewer area; provided that the sole security for repayment of such indebtedness shall be moneys in the planned local drainage or sanitary sewer facilities fund.

(Added by Stats.1974, c. 1536, p. 3494, § 4, operative March 1, 1975. Amended by Stats.1975, c. 365, p. 811, § 1.)

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Historical and Statutory Notes

Derivation: Bus. & Prof.C. former § 11543.5, 1248, p. 3028, § 1; Stats.1970, c. 206, p. 460, added by Stats.1959, c. 1920, p. 4505, § 1, § 1; Stats.1970, c. 629, p. 1247, § 5; Stats. amended by Stats.1961, c. 427, p. 1290, § 1; 1970, c. 1242, p. 2232, § 2. Stats.1965, c. 831, p. 2429, § 2; Stats.1967, c.

Forms

See West's California Code Forms, Government.

Cross References

Adoption of plan and map by local agency, charge on property benefited, see Government Code § 66488.

Law Review and Journal Commentaries

The legality of California development fees. 13 Pepp.L.Rev. 759 (1986).

Provision for parks in municipalities. 12 UCLA L.Rev. 917 (1965).

Subdivisions: Conditions imposed by local government. John Paul Hanna, 6 Santa Clara L.Rev. 172 (1966).

Validity of local taxation powers within a state regulated field: Pines v. City of Santa Monica. 9 Pepp.L.Rev. 734 (1982).

Notes of Decisions

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ordinances which are inconsistent with language and apparent intent of code are invalid. Friends of Lake Arrowhead v. San Bernardino County Bd. of Sup'rs (App. 4 Dist. 1974) 113 Cal.Rptr. 539, 38 Cal.App.3d 497.

1. Police powers

A city must comply with the requirements of this section when enacting a drainage fee ordinance under its police powers regulating the division of land; however, the requirements of the statute need not be followed when enacting a drainage fee ordinance under some other police powers authority or taxation powers. 66 Ops.Atty.Gen. 120, 3-31-83.

2. Implied powers

Power to adopt supplemental ordinances or regulations in connection with matters covered by this code, though not expressly granted, may also be implied provided they bear a reasonable relation to purposes and requirements of the code and are not inconsistent with it, but local

3. Fee calculation

In calculating the maximum possible drainage fee under the provisions of statute, the total acreage in the drainage area is to be the basis of the calculation. 66 Ops.Atty.Gen. 120, 3-31-83.

4. Severability

Fee provisions of city subdivision ordinance, which required fee from subdividers desiring approval of map or building permit, and which were invalid as conflicting with Subdivision Map Act, Bus. & Prof.C. § 11500 et seq. (repealed) were not severable from other requirements of ordinance. Santa Clara County Contractors & Homebuilders Ass'n v. City of Santa Clara (App. 1 Dist. 1965) 43 Cal.Rptr. 86, 232 Cal.App.2d 564.

§ 66483.1. Surplus; determination; disposition

After completion of the facilities and the payment of all claims from any "planned local drainage facilities fund" or any "planned local sanitary sewer fund," the legislative body of a county or city shall determine by resolution the amount of the surplus, if any, remaining in any of those funds. Any surplus shall be used, in those amounts as the legislative body may determine, for one or more of the following purposes:

(a) For transfer to the general fund of the county or city, provided that the amount of the transfer shall not exceed 5 percent of the total amount expended

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from the particular fund, and provided that the funds transferred are used to support the operation and maintenance of those facilities for which the fees were collected;

(b) For the construction of additional or modified facilities within the particular drainage or sanitary sewer area; or

(c) As a refund in the manner provided in Section 66483.2.

(Added by Stats.1975, c. 365, p. 813, § 2. Amended by Stats.1981, c. 914, § 7.)

Library References

Counties ☞161.

Municipal Corporations ☞887.

WESTLAW Topic Nos. 104, 268.

C.J.S. Counties § 195.

C.J.S. Municipal Corporations § 1884.

§ 66483.2. Refund of surplus

Any surplus remaining shall be refunded as follows:

(a) There shall be refunded to the current owners of property for which a fee was previously collected, the balance of such moneys in the same proportion which each individual fee collected bears to the total of all individual fees collected from the particular drainage or sewer area;

(b) Where property for which a fee was previously collected has subsequently been subdivided into more than one lot, each current owner of a lot shall share in the refund payable to the owners of the property for which a fee was previously collected in the same proportion which the area of each individual lot bears to the total area of the property for which a fee was previously collected; and

(c) There shall be transferred to the general fund of the county or city any remaining portion of the surplus which has not been paid to or claimed by the persons entitled thereto within two years from the date either of the completion of the improvements, or the adoption by the legislative body of a resolution declaring a surplus, whichever is later to occur.

(Added by Stats.1975, c. 365, p. 813, § 3.)

Library References

Municipal Corporations ☞523(1).

WESTLAW Topic No. 268.

C.J.S. Municipal Corporations § 1575.

§ 66484. Cost of bridges or major thoroughfares; conditions; protests; deposits in funds; expenditures

(a) A local ordinance may require the payment of a fee as a condition of approval of a final map or as a condition of issuing a building permit for purposes of defraying the actual or estimated cost of constructing bridges over waterways, railways, freeways, and canyons, or constructing major thoroughfares. The ordinance may require payment of fees pursuant to this section if all of the following requirements are satisfied:

(1) The ordinance refers to the circulation element of the general plan and, in the case of bridges, to the transportation or flood control provisions thereof

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which identify railways, freeways, streams, or canyons for which bridge crossings are required on the general plan or local roads and in the case of major thoroughfares, to the provisions of the circulation element which identify those major thoroughfares whose primary purpose is to carry through traffic and provide a network connecting to the state highway system, if the circulation element, transportation or flood control provisions have been adopted by the local agency 30 days prior to the filing of a map or application for a building permit.

(2) The ordinance provides that there will be a public hearing held by the governing body for each area benefited. Notice shall be given pursuant to Section 65091 and shall include preliminary information related to the boundaries of the area of benefit, estimated cost, and the method of fee apportionment. The area of benefit may include land or improvements in addition to the land or improvements which are the subject of any map or building permit application considered at the proceedings.

(3) The ordinance provides that at the public hearing, the boundaries of the area of benefit, the costs, whether actual or estimated, and a fair method of allocation of costs to the area of benefit and fee apportionment are established. The method of fee apportionment, in the case of major thoroughfares, shall not provide for higher fees on land which abuts the proposed improvement except where the abutting property is provided direct usable access to the major thoroughfare. A description of the boundaries of the area of benefit, the costs, whether actual or estimated, and the method of fee apportionment established at the hearing shall be incorporated in a resolution of the governing body, a certified copy of which shall be recorded by the governing body conducting the hearing with the recorder of the county in which the area of benefit is located. The apportioned fees shall be applicable to all property within the area of benefit and shall be payable as a condition of approval of a final map or as a condition of issuing a building permit for the property or portions of the property. Where the area of benefit includes lands not subject to the payment of fees pursuant to this section, the governing agency shall make provision for payment of the share of improvement costs apportioned to those lands from other sources.

(4) The ordinance provides that payment of fees shall not be required unless the major thoroughfares are in addition to, or a reconstruction of, any existing major thoroughfares serving the area at the time of the adoption of the boundaries of the area of benefit.

(5) The ordinance provides that payment of fees shall not be required unless the planned bridge facility is an original bridge serving the area or an addition to any existing bridge facility serving the area at the time of the adoption of the boundaries of the area of benefit. The fees shall not be expended to reimburse the cost of existing bridge facility construction.

(6) The ordinance provides that if, within the time when protests may be filed under the provisions of the ordinance, there is a written protest, filed with the clerk of the legislative body, by the owners of more than one-half of the area of the property to be benefited by the improvement, and sufficient protests are not

withdrawn so as to reduce the area represented to less than one-half of that to be benefited, then the proposed proceedings shall be abandoned, and the legislative body shall not, for one year from the filing of that written protest, commence or carry on any proceedings for the same improvement or acquisition under the provisions of this section.

(b) Any protest may be withdrawn by the owner protesting, in writing, at any time prior to the conclusion of a public hearing held pursuant to the ordinance.

(c) If any majority protest is directed against only a portion of the improvement then all further proceedings under the provisions of this section to construct that portion of the improvement so protested against shall be barred for a period of one year, but the legislative body may commence new proceedings not including any part of the improvement or acquisition so protested against. Nothing in this section prohibits a legislative body, within that one-year period, from commencing and carrying on new proceedings for the construction of a portion of the improvement so protested against if it finds, by the affirmative vote of four-fifths of its members, that the owners of more than one-half of the area of the property to be benefited are in favor of going forward with that portion of the improvement or acquisition.

(d) Nothing in this section precludes the processing and recordation of maps in accordance with other provisions of this division if the proceedings are abandoned.

(e) Fees paid pursuant to an ordinance adopted pursuant to this section shall be deposited in a planned bridge facility or major thoroughfare fund. A fund shall be established for each planned bridge facility project or each planned major thoroughfare project. If the benefit area is one in which more than one bridge is required to be constructed, a fund may be so established covering all of the bridge projects in the benefit area. Money in the fund shall be expended solely for the construction or reimbursement for construction of the improvement serving the area to be benefited and from which the fees comprising the fund were collected, or to reimburse the local agency for the cost of constructing the improvement.

(f) An ordinance adopted pursuant to this section may provide for the acceptance of considerations in lieu of the payment of fees.

(g) A local agency imposing fees pursuant to this section may advance money from its general fund or road fund to pay the cost of constructing the improvements and may reimburse the general fund or road fund for any advances from planned bridge facility or major thoroughfares funds established to finance the construction of those improvements.

(h) A local agency imposing fees pursuant to this section may incur an interest-bearing indebtedness for the construction of bridge facilities or major thoroughfares. However, the sole security for repayment of that indebtedness shall be moneys in planned bridge facility or major thoroughfares funds.

(i) The term "construction" as used in this section includes design, acquisition of right-of-way, administration of construction contracts, and actual construction.

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(j) The term "construction," as used in this section, with respect to the unincorporated area of San Diego County only, includes design, acquisition of rights-of-way, and actual construction, including, but not limited to, all direct and indirect environmental, engineering, accounting, legal, administration of construction contracts, and other services necessary therefor. The term "construction," with respect to the unincorporated area of San Diego County only, also includes reasonable administrative expenses, not exceeding three hundred thousand dollars (\$300,000) in any calendar year after January 1, 1986, as adjusted annually for any increase or decrease in the Consumer Price Index of the Bureau of Labor Statistics of the United States Department of Labor for all Urban Consumers, San Diego, California (1967 = 100), as published by the United States Department of Commerce for the purpose of constructing bridges and major thoroughfares. "Administrative expenses" means those office, personnel, and other customary and normal expenses associated with the direct management and administration of the agency, but not including costs of construction.

(k) Nothing in this section precludes a county or city from providing funds for the construction of bridge facilities or major thoroughfares to defray costs not allocated to the area of benefit.

(Added by Stats.1974, c. 1536, p. 3514, § 4.6, operative March 1, 1975. Amended by Stats.1975, c. 24, p. 38, § 23, eff. April 4, 1975; Stats.1984, c. 1009, § 35; Stats.1988, c. 1408, § 9.)

Historical and Statutory Notes

Amendment of this section by § 2 of Stats. 1974, c. 1216, p. 2632, failed to become operative under the provisions of § 3 of that Act.

Addition of this section by § 4 of Stats.1974, c. 1536, p. 3495, failed to become operative under the provisions of § 10.6 that Act.

Legislative intent relating to Stats.1984, c. 1009, see note under Educ.C. § 39002.

Section 13 of Stats.1988, c. 1408, provides:

"The Legislature finds and declares that unique circumstances exist in the unincorporat-

ed area of San Diego County which require a different definition of 'construction' in Section 66484 of the Government Code amended by Section 9 of this act and that a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution."

Derivation: Bus. & Prof.C. former § 11547, added by Stats.1970, c. 663, p. 1290, § 1, amended by Stats.1973, c. 665, p. 1216, § 1.

Forms

See West's California Code Forms, Government.

Cross References

Bridge or major thoroughfare, charge to reimburse subdivider, see Government Code § 66489.

Law Review and Journal Commentaries

Recordation of documents; comment: 5 Pacific L.J. 488 (1974).

Library References

Municipal Corporations ⇨43.
Zoning and Planning ⇨382.4.
WESTLAW Topic Nos. 268, 414.

C.J.S. Municipal Corporations §§ 83, 84.
C.J.S. Zoning and Land Planning § 197.

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2. Approval by voters

1. In general

A city has no authority to require subdividers, as a condition of approving subdivision maps, to pay money into a fund to be used to install traffic signals at major intersections within the general area but outside the boundaries of the subdivision. 63 Ops.Atty.Gen. 64, 1-29-80.

Approval by two-thirds of the qualified electors of fees imposed pursuant to this section is not required by Const. Art. 13A, § 4, which provides that cities, counties and special districts, by two-thirds of the qualified electors of such district, may impose special taxes on such district, because such fees are not special taxes. 62 Ops.Atty.Gen. 663, 11-1-79.

§ 66484.3. Orange County; fees as condition for defrayment of costs of bridge and thoroughfare construction; ordinances; funds; expenditures; design standards; toll charges; contested fees

(a) Notwithstanding Section 53077.5, the Board of Supervisors of the County of Orange and the city council or councils of any city or cities in that county may, by ordinance, require the payment of a fee as a condition of approval of a final map or as a condition of issuing a building permit for purposes of defraying the actual or estimated cost of constructing bridges over waterways, railways, freeways, and canyons, or constructing major thoroughfares.

(b) The local ordinance may require payment of fees pursuant to this section if:

(1) The ordinance refers to the circulation element of the general plan and, in the case of bridges, to the transportation provisions or flood control provisions of the general plan which identify railways, freeways, streams, or canyons for which bridge crossings are required on the general plan or local roads, and in the case of major thoroughfares, to the provisions of the circulation element which identify those major thoroughfares whose primary purpose is to carry through traffic and provide a network connecting to or which is part of the state highway system, and the circulation element, transportation provisions, or flood control provisions have been adopted by the local agency 30 days prior to the filing of a map or application for a building permit. Bridges which are part of a major thoroughfare need not be separately identified in the transportation or flood control provisions of the general plan.

(2) The ordinance provides that there will be a public hearing held by the governing body for each area benefited. Notice shall be given pursuant to Section 65905. In addition to the requirements of Section 65905, the notice shall contain preliminary information related to the boundaries of the area of benefit, estimated cost, and the method of fee apportionment. The area of benefit may include land or improvements in addition to the land or improvements which are the subject of any map or building permit application considered at the proceedings.

(3) The ordinance provides that at the public hearing, the boundaries of the area of benefit, the costs, whether actual or estimated, and a fair method of allocation of costs to the area of benefit and fee apportionment are established. The method of fee apportionment, in the case of major thoroughfares, shall not provide for higher fees on land which abuts the proposed improvement except

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where the abutting property is provided direct usable access to the major thoroughfare. A description of the boundaries of the area of benefit, the costs, whether actual or estimated, and the method of fee apportionment established at the hearing shall be incorporated in a resolution of the governing body, a certified copy of which shall be recorded by the governing body conducting the hearing with the recorder of the County of Orange. The resolution may subsequently be modified in any respect by the governing body. Modifications shall be adopted in the same manner as the original resolution, except that the resolution of a city or county which has entered into a joint exercise of powers agreement pursuant to subdivision (f), relating to constructing bridges over waterways, railways, freeways, and canyons or constructing major thoroughfares by the joint powers agency, may be modified by the joint powers agency following public notice and a public hearing, if the joint powers agency has complied with all applicable laws, including Chapter 5 (commencing with Section 66000) of Division 1. Any modification shall be subject to the protest procedures prescribed by paragraph (6). The resolution may provide for automatic periodic adjustment of fees based upon the California Construction Cost Index prepared and published by the Department of Transportation, without further action of the governing body, including, but not limited to, public notice or hearing. The apportioned fees shall be applicable to all property within the area of benefit and shall be payable as a condition of approval of a final map or as a condition of issuing a building permit for any of the property or portions of the property. Where the area of benefit includes lands not subject to the payment of fees pursuant to this section, the governing body shall make provision for payment of the share of improvement costs apportioned to those lands from other sources, but those sources need not be identified at the time of the adoption of the resolution.

(4) The ordinance provides that payment of fees shall not be required unless the major thoroughfares are in addition to, or a reconstruction or widening of, any existing major thoroughfares serving the area at the time of the adoption of the boundaries of the area of benefit.

(5) The ordinance provides that payment of fees shall not be required unless the planned bridge facility is an original bridge serving the area or an addition to any existing bridge facility serving the area at the time of the adoption of the boundaries of the area of benefit. Fees imposed pursuant to this section shall not be expended to reimburse the cost of existing bridge facility construction, unless these costs are incurred in connection with the construction of an addition to an existing bridge for which fees may be required.

(6) The ordinance provides that if, within the time when protests may be filed under its provisions, there is a written protest, filed with the clerk of the legislative body, by the owners of more than one-half of the area of the property to be benefited by the improvement, and sufficient protests are not withdrawn, so as to reduce the area represented to less than one-half of that to be benefited, then the proposed proceedings shall be abandoned, and the legislative body shall not, for one year from the filing of that written protest, commence or carry on any proceedings for the same improvement or acquisition under this

section, unless the protests are overruled by an affirmative vote of four-fifths of the legislative body.

Nothing in this section shall preclude the processing and recordation of maps in accordance with other provisions of this division if proceedings are abandoned.

Any protests may be withdrawn in writing by the owner who filed the protest, at any time prior to the conclusion of a public hearing held pursuant to the ordinance.

If any majority protest is directed against only a portion of the improvement then all further proceedings under the provisions of this section to construct that portion of the improvement so protested against shall be barred for a period of one year, but the legislative body shall not be barred from commencing new proceedings not including any part of the improvement or acquisition so protested against. Nothing in this section shall prohibit the legislative body, within the one-year period, from commencing and carrying on new proceedings for the construction of a portion of the improvement so protested against if it finds, by the affirmative vote of four-fifths of its members, that the owners of more than one-half of the area of the property to be benefited are in favor of going forward with that portion of the improvement or acquisition.

If the provisions of this paragraph (6), or provisions implementing this paragraph contained in any ordinance adopted pursuant to this section, are held invalid, that invalidity shall not affect other provisions of this section or of the ordinance adopted pursuant thereto, which can be given effect without the invalid provision, and to this end the provisions of this section and of an ordinance adopted pursuant thereto are severable.

(c) Fees paid pursuant to an ordinance adopted pursuant to this section shall be deposited in a planned bridge facility or major thoroughfare fund. A fund shall be established for each planned bridge facility project or each planned major thoroughfare project. If the benefit area is one in which more than one bridge or major thoroughfare is required to be constructed, a fund may be so established covering all of the bridge or major thoroughfare projects in the benefit area. Except as otherwise provided in subdivision (g), moneys in the fund shall be expended solely for the construction or reimbursement for construction of the improvement serving the area to be benefited and from which the fees comprising the fund were collected, or to reimburse the county or a city for the cost of constructing the improvement.

(d) An ordinance adopted pursuant to this section may provide for the acceptance of considerations in lieu of the payment of fees.

(e) The county or a city imposing fees pursuant to this section may advance money from its general fund or road fund to pay the cost of constructing the improvements and may reimburse the general fund or road fund from planned bridge facilities or major thoroughfares funds established to finance the construction of the improvements.

(f) The county or a city imposing fees pursuant to this section may incur an interest-bearing indebtedness for the construction of bridge facilities or major

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thoroughfares. The sole security for repayment of the indebtedness shall be moneys in planned bridge facilities or major thoroughfares funds. A city or county imposing fees pursuant to this section may enter into joint exercise of powers agreements with other local agencies imposing fees pursuant to this section, for the purpose of, among others, jointly exercising as a duly authorized original power established by this section, in addition to those through a joint exercise of powers agreement, those powers authorized in Chapter 5 (commencing with Section 31100) of Division 17 of the Streets and Highways Code for the purpose of constructing bridge facilities and major thoroughfares in lieu of a tunnel and appurtenant facilities, and, notwithstanding Section 31200 of the Streets and Highways Code, may acquire by dedication, gift, purchase, or eminent domain, any franchise, rights, privileges, easements, or other interest in property, either real or personal, necessary therefor on segments of the state highway system, including, but not limited to, those segments of the state highway system eligible for federal participation pursuant to Title 23 of the United States Code.

An entity constructing bridge facilities and major thoroughfares pursuant to this section shall design and construct the bridge facilities and major thoroughfares to the standards and specifications of the Department of Transportation then in effect, and may, at any time, transfer all or a portion of the bridge facilities and major thoroughfares to the state subject to the terms and conditions as shall be satisfactory to the Director of the Department of Transportation. Any of these bridge facilities and major thoroughfares shall be designated as a portion of the state highway system prior to its transfer. The participants in a joint exercise of powers agreement may also exercise as a duly authorized original power established by this section the power to establish and collect toll charges only for paying for the costs of construction of the major thoroughfare for which the toll is charged and for the costs of collecting the tolls, except that a joint powers agency, which is the lending agency, may, notwithstanding subdivision (c), make toll revenues and fees imposed pursuant to this section available to another joint powers agency, which is the borrowing agency, established for the purpose of designing, financing, and constructing coordinated and interrelated major thoroughfares, in the form of a subordinated loan, to pay for the cost of construction and toll collection of major thoroughfares other than the major thoroughfares for which the toll or fee is charged, if the lending agency has complied with all applicable laws, including Chapter 5 (commencing with Section 66000) of Division 1, and if the borrowing agency is required to pay interest on the loan to the lending agency at a rate equal to the interest rate charged on funds loaned from the Pooled Money Investment Account. Prior to executing the loan, the lending agency shall make all of the following findings:

(1) The major thoroughfare for which the toll or fee is charged will benefit from the construction of the major thoroughfare to be constructed by the borrowing agency or will benefit financially by a sharing of revenues with the borrowing agency.

(2) The lending agency will possess adequate financial resources to fund all costs of construction of existing and future projects that it plans to undertake

prior to the final maturity of the loan, after funding the loan, and taking into consideration its then existing funds, its present and future obligations, and the revenues and fees it expects to receive.

(3) The funding of the loan will not materially impair its financial condition or operations during the term of the loan.

Major thoroughfares from which tolls are charged shall utilize the toll collection equipment most capable of moving vehicles expeditiously and efficiently, and which is best suited for that purpose, as determined by the participants in the joint exercise of powers agreement. However, in no event shall the powers authorized in Chapter 5 (commencing with Section 31100) of Division 17 of the Streets and Highways Code be exercised unless a resolution is first adopted by the legislative body of the agency finding that adequate funding for the portion of the cost of constructing those bridge facilities and major thoroughfares not funded by the development fees collected by the agency is not available from any federal, state, or other source. Any major thoroughfare constructed and operated as a toll road pursuant to this section shall only be constructed parallel to other public thoroughfares and highways.

(g) The term "construction," as used in this section, includes design, acquisition of rights-of-way, and actual construction, including, but not limited to, all direct and indirect environmental, engineering, accounting, legal, administration of construction contracts, and other services necessary therefor. The term "construction" also includes reasonable general agency administrative expenses, not exceeding three hundred thousand dollars (\$300,000) in any calendar year after January 1, 1986, as adjusted annually for any increase or decrease in the Consumer Price Index of the Bureau of Labor Statistics of the United States Department of Labor for all Urban Consumers, Los Angeles-Long Beach-Anaheim, California (1967 = 100), as published by the United States Department of Commerce, by each agency created pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 for the purpose of constructing bridges and major thoroughfares. "General agency administrative expenses" means those office, personnel, and other customary and normal expenses associated with the direct management and administration of the agency, but not including costs of construction.

(h) Fees paid pursuant to an ordinance adopted pursuant to this section may be utilized to defray all direct and indirect financing costs related to the construction of the bridges and major thoroughfares by the joint powers agency. Because the financing costs of bridges and major thoroughfares for which a toll charge shall be established or collected represent a necessary element of the total cost of those bridges and major thoroughfares, the joint powers agency constructing those facilities may include a charge for financing costs in the calculation of the fee rate. The charge shall be based on the estimated financing cost of any eligible portion of the bridges and major thoroughfares for which tolls shall be collected. The eligible portion shall be any or all portions of the major thoroughfare for which a viable financial plan has been adopted by the joint powers agency on the basis of revenues reasonably expected by the joint powers agency to be available to the thoroughfare,

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after consultation with representatives of the fee payers. For purposes of calculating the charge, financing costs shall include only reasonable allowances for payments and charges for principal, interest, and premium on indebtedness, letter of credit fees and charges, remarketing fees and charges, underwriters' discount, and other costs of issuance, less net earnings on bridge and major thoroughfare funds by the joint powers agency prior to the opening of the facility to traffic after giving effect to any payments from the fund to preserve the federal income tax exemption on the indebtedness. For purposes of calculating the charge for financing costs in the calculation of the fee rate only, financing costs shall not include any allowance for the cost of any interest paid on indebtedness with regard to each eligible portion after the estimated opening of the portion to traffic as established by the joint powers agency. Any and all challenges to any financial plan or financing costs adopted or calculated pursuant to this section shall be governed by subdivision (k).

(i) Nothing in this section shall be construed to preclude the County of Orange or any city within that county from providing funds for the construction of bridge facilities or major thoroughfares to defray costs not allocated to the area of benefit.

(j) Any city within the County of Orange may require the payment of fees in accordance with this section as to any property in an area of benefit within the city's boundaries, for facilities shown on its general plan or the county's general plan, whether the facilities are situated within or outside the boundaries of the city, and the county may expend fees for facilities or portions thereof located within cities in the county.

(k) The validity of any fee required pursuant to this section shall not be contested in any action or proceeding unless commenced within 60 days after recordation of the resolution described in paragraph (3) of subdivision (b). The provisions of Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure shall be applicable to any such action or proceeding. This subdivision shall also apply to modifications of fee programs.

(l) If the County of Orange and any city within that county have entered into a joint powers agreement for the purpose of constructing the bridges and major thoroughfares referred to in Sections 50029 and 66484.3, and if a proposed change of organization or reorganization includes any territory of an area of benefit established pursuant to Sections 50029 and 66484.3, within a successor local agency, the local agency shall not take any action that would impair, delay, frustrate, obstruct, or otherwise impede the construction of the bridges and major thoroughfares referred to in this section.

(m) Nothing in this section prohibits the succession of all powers, obligations, liabilities, and duties of any joint powers agency created pursuant to subdivision (l) to an entity with comprehensive countywide transportation planning and operating authority which is statutorily created in the County of Orange and which is statutorily authorized to assume those powers, obligations, liabilities, and duties.

(Added by Stats.1984, c. 708, § 1, effective August 24, 1984. Amended by Stats.1985, c. 195, § 2, eff. July 10, 1985; Stats.1986, c. 839, § 1; Stats.1987, c. 1175, § 1, eff. Sept. 1987.)

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26, 1987; Stats.1987, c. 1349, § 4; Stats.1987, c. 1402, § 4, operative Jan. 1, 1988; Stats.1990, c. 1565 (S.B.1436), § 1; Stats.1990, c. 1566 (S.B.1435), § 1; Stats.1990, c. 1567 (S.B.1437), § 4.)

Historical and Statutory Notes

Section 2 of Stats.1984, c. 708, provides:

"The Legislature finds and declares that unique circumstances which exist in the County of Orange dictate the necessity of providing an alternative procedure for that county and the cities within that county, as set forth in Section 1 of this act, and that a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution."

Amendment of this section by §§ 2, 3, 4 of Stats.1987, c. 1175, failed to become operative under the provisions of § 5 of that Act.

Amendment of this section by §§ 5, 6, 7 of Stats.1987, c. 1349, failed to become operative under the provisions of § 9 of that Act.

Amendment of this section by §§ 1, 2, 3 of Stats.1987, c. 1402, failed to become operative under the provisions of § 5 of that Act.

Under the provisions of § 5 of Stats.1990, c. 1565, c. 1566, and c. 1567, were given effect and incorporated in the form set forth in § 4 of c. 1567. Amendments of this section by §§ 1, 2, and 3 of Stats.1990, c. 1567, failed to become operative under the provisions of § 5 of that Act.

Amendment of this section by §§ 2, 3, and 4 of Stats.1990, c. 1565, failed to become operative under the provisions of § 5 of that Act.

Effect of amendment of section by two or more acts at the same session of the legislature, see Government Code § 9605.

Cross References

Revenue bonds, issuance and sale at less than par, see Government Code § 6571.

Law Review and Journal Commentaries

California local initiatives and referenda: An argument for keeping progressive flame burning. Patrick J. Borchers, 21 Pac.L.J. 119 (1989).

Transportation congestion and growth management: Comprehensive approaches to resolv-

ing America's major quality of life crisis. Robert H. Freilich and S. Mark White, 24 Loy. L.A.L.Rev. 915 (1991).

Notes of Decisions

Approval by voters 2
Hearings 3
Validity 1

1. Validity

This section authorizing city councils in Orange County to impose development fees to fund construction of major thoroughfares does not violate the home rule or initiative and referendum provisions of the State Constitution even as interpreted as precluding use of initiative or referendum to enact ordinances limiting the power of the city councils to impose such fees. Committee of Seven Thousand v. Superior Court (City of Irvine) (1988) 247 Cal.Rptr. 362, 45 Cal.3d 491, 754 P.2d 708.

2. Approval by voters

This section granting authority to city councils in Orange County to impose development

fees to fund construction of major thoroughfares gave exclusive authority to the county board of supervisors and the city councils and did not permit initiative measure which would prohibit particular city council from imposing a new fee or tax for highway construction without submitting the issue to the voters. Committee of Seven Thousand v. Superior Court (City of Irvine) (1988) 247 Cal.Rptr. 362, 45 Cal.3d 491, 754 P.2d 708.

3. Hearings

Other than the requisite hearings held by the San Joaquin Hills Transportation Corridor Agency on its environmental impact report, there is no requirement the Agency hold meetings to specifically discuss the imposition of tolls or the proposed locations of toll booths on the highway. 77 Op.Atty.Gen. 94, 5-12-94.

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Div. 2

§ 66484.5. Groundwater recharge facilities; fees; requirements; protests; construction and operation of facilities; funds; expenditures; credits

(a) The legislative body of a local agency may adopt an ordinance requiring the payment of a fee as a condition of approval of a subdivision requiring a final or parcel map, or as a condition of issuing a building permit in an area of benefit under a groundwater recharge facility plan adopted as provided in this section, for the purpose of constructing recharge facilities for the replenishment of the underground water supply in that area of benefit. The ordinance may require payment of fees pursuant to this section if, at the time of payment, all of the following requirements are satisfied:

(1) A groundwater recharge facility plan for the area to be benefited has been adopted by the legislative body of the local agency. The legislative body shall not adopt the plan until it has given notice to, and consulted with, the water agency then obligated to furnish water to the area to be benefited and the water agency has formally and in writing approved the plan.

(2) The ordinance has been in effect for a period of at least 30 days prior to the filing of the tentative map, parcel map if no tentative map is required, or the application for a building permit.

(3) The ordinance provides that before any groundwater recharge facility plan is adopted there will be a public hearing held by the legislative body for the proposed area of benefit.

Notice of the hearing on a proposed area of benefit shall be given pursuant to Section 65091 and shall include preliminary information concerning the groundwater recharge facility plan, including the proposed boundaries of the area of benefit, the availability of surface water, the planned facilities for the area of benefit, estimated costs, and the proposed method of fee apportionment.

Written notice of the public hearing shall be given by personal service or mail to the water agency responsible for furnishing water to the area of benefit involved in the hearing prior to or at the time notice is given by mail or by publication and posting. The proposal contained in the mailed, published, or posted notice shall be jointly prepared and agreed upon by the local agency and the water agency before that notice is given. The water agency may participate in the hearings.

(4) The ordinance provides that the groundwater recharge facility plan shall be established at the public hearing and, if approved, adopted by the legislative body. The plan shall include the boundaries of the area of benefit, the availability of surface water, the planned facilities for the area of benefit and the estimated cost thereof, a fair method of allocating the cost within the area of benefit, and the apportionment of fees within the area. The plan, as adopted by the local agency and approved by the water agency, shall be incorporated in a resolution of the legislative body and a certified copy of the plan shall be recorded with the county recorder. The apportioned fees shall be applicable to all property within the area of benefit and shall be payable as a condition of

approval of a final map or a parcel map or as a condition of issuing a building permit for the property or portions of the property. Where the area of benefit includes lands not otherwise subject to the payment of fees pursuant to this section, the legislative body shall make provision for payment of the share of improvement costs apportioned to that land by other means.

(5) The ordinance provides that if, within the time when protests may be filed under the provisions of the ordinance, there is a written protest, filed with the clerk of the legislative body, by the owners of more than one-half of the area of the property to be benefited by the improvement, and sufficient protests are not withdrawn so as to reduce the area represented to less than one-half of the property to be benefited, then the proposed proceedings shall be abandoned, and the legislative body shall not, for one year from the filing of that written protest, commence or carry on any proceedings for the same improvement or acquisition under the provisions of this section.

(b) Any protests may be withdrawn in writing by the owner who made the protest, at any time prior to the conclusion of a public hearing held pursuant to the ordinance.

(c) If any majority protest is directed against only a portion of the improvement, then all further proceedings under this section as to that portion of the improvement so protested against shall be barred for a period of one year. The legislative body, however, may commence new proceedings which do not include the area, acquisitions, or improvements which were the subject of the successful protest. Nothing in this section prohibits the legislative body, within that one-year period, from commencing and carrying on new proceedings for that portion of the improvement so protested against if it finds, by the affirmative vote of four-fifths of its members, that the owners of more than one-half of the area of the property to be benefited are in favor of going forward with that portion of the improvement or acquisition.

(d) Nothing in this section precludes the processing and recordation of maps in accordance with other provisions of this division if proceedings are abandoned.

(e) Subsequent to the adoption of a plan, the local agency may itself construct, operate, and maintain the groundwater recharge facilities, or it may designate the water agency furnishing the water or designate or create another agency to do all or any one of these things as authorized by law. In the event any agency other than the local agency adopting such ordinances is so designated, the services so rendered shall be pursuant to a written agreement entered into between the local agency and the other agency.

(f) Fees paid pursuant to an ordinance adopted pursuant to this section shall be deposited in a planned recharge facility fund. A fund shall be established for each area of benefit. Money in the fund shall be expended solely for the construction or reimbursement for construction of the improvement serving the area to be benefited.

The fees shall not be expended to reimburse the cost of recharge facilities in existence prior to the adoption of the groundwater recharge facility plan for that area.

REQUIREMENTS

§ 66484.5

Div. 2

(g) An ordinance adopted pursuant to this section may provide for the acceptance of considerations in lieu of the payment of fees.

(h) A local agency imposing fees pursuant to this section may advance money from its general fund to pay the cost of constructing the improvements and may reimburse the general fund for those advances from planned recharge facility funds collected to finance the construction of these improvements.

(i) A local agency imposing fees pursuant to this section may incur an interest-bearing indebtedness for the construction of recharge facilities. However, the sole security for repayment of that indebtedness shall be money in planned recharge facility funds.

(j) Recharge facilities shall not be constructed unless the water agency approves the design of the facilities to be constructed and has reached an agreement with the local agency establishing the terms and conditions under which the water will be furnished. If the water agency finds that the facilities have been constructed in accordance with the approved design, the agency shall furnish water for the groundwater recharge facilities.

(k) If the water agency is an irrigation district or other entity obligated by law to apportion water among the landowners within the area of benefit, the water agency shall receive credit upon the obligation for any water delivered for groundwater recharge under the agreement and shall be relieved of any further obligation to deliver the amount of water for which it has received such credit to the landowners or lands within that area.

(l) Nothing contained in this section entitles a local agency to collect a fee from a landowner who presently receives and continues to receive and use the landowner's pro rata share of surface water from the agency responsible for that area or from a landowner who has not applied for approval of a final or parcel map or a building permit.

(m) A credit for fees paid as authorized by this section shall be applied against any assessment levied by the local agency to construct the planned recharge facilities.

(n) The term "construction," as used in this section, includes design, acquisition of land or easements, administration of construction contracts, and actual construction.

(o) The term "water agency," as used in this section, means the public or other entity that will furnish water for the operation and use of a recharge facility under a groundwater recharge facility plan adopted by a local agency pursuant to this section.

(p) Nothing in this section precludes a county or city from providing funds for the construction of recharge facilities to defray costs not allocated to the area of benefit.

(Added by Stats.1978, c. 620, p. 2071, § 1. Amended by Stats.1984, c. 1009, § 36.)

Historical and Statutory Notes

Legislative intent relating to Stats.1984, c. 1009, see note under Educ.C. § 39002.

Library References

Municipal Corporations ⇨43.
Zoning and Planning ⇨372.1.
WESTLAW Topic Nos. 268, 414.

C.J.S. Municipal Corporations §§ 83, 84.
C.J.S. Zoning and Land Planning § 191.

Article 6

REIMBURSEMENT

Section

- 66485. Improvements; supplementation; dedication to the public.
- 66486. Agreement to reimburse for improvements.
- 66487. Source of funds.
- 66488. Adoption of plan and map by local agency; charge on property benefited.
- 66489. Bridge or major thoroughfare; area of benefit; charge to reimburse subdivider.

Article 6 was added by Stats.1974, c. 1536, p. 3497, § 4, operative March 1, 1975.

§ 66485. Improvements; supplementation; dedication to the public

There may be imposed by local ordinance a requirement that improvements installed by the subdivider for the benefit of the subdivision shall contain supplemental size, capacity, number, or length for the benefit of property not within the subdivision, and that those improvements be dedicated to the public. Supplemental length may include minimum sized offsite sewer lines necessary to reach a sewer outlet in existence at that time.

(Added by Stats.1974, c. 1536, p. 3497, § 4, operative March 1, 1975. Amended by Stats.1983, c. 704, § 2.)

Forms

See West's California Code Forms, Government.

Cross References

Local ordinance, defined, see Government Code § 66421.
Subdivider, defined, see Government Code § 66423.
Subdivision, defined, see Government Code § 66424.

Library References

Municipal Corporations ⇨43.
Zoning and Planning ⇨11.5.
WESTLAW Topic Nos. 268, 414.

C.J.S. Municipal Corporations §§ 83, 84.
C.J.S. Zoning and Land Planning § 48.

§ 66486. Agreement to reimburse for improvements

In the event of the installation of improvements required by an ordinance adopted pursuant to Section 66485, the local agency shall enter into an agreement with the subdivider to reimburse the subdivider for that portion of the cost of those improvements, including an amount attributable to interest, in excess of the construction required for the subdivision.

(Added by Stats.1974, c. 1536, p. 3497, § 4, operative March 1, 1975. Amended by Stats.1983, c. 704, § 3.)

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Historical and Statutory Notes

Derivation: Bus. & Prof.C. former § 11543, added by Stats.1947, c. 811, p. 1925, § 1, amended by Stats.1953, c. 1094, p. 2583, § 2; Stats.1955, c. 703, p. 1188, § 1; Stats.1955, c. 1593, p. 2889, § 8; Stats.1970, c. 629, p. 1244, § 1.

Bus. & Prof.C. former § 11543.6, added by Stats.1965, c. 831, p. 2431, § 3, amended by Stats.1970, c. 629, p. 1246, § 3.

Bus. & Prof.C. former § 11548, added by Stats.1970, c. 663, p. 1292, § 2.

Notes of Decisions

In general 1

1. In general

Contract by which city and county, without statutory authority, agreed to collect fees from subdividers to reimburse prior subdividers for part of cost of constructing drainage facilities for disposal of surface water was not ratified by

subsequent amendments to Bus. & Prof.C. § 11543 (repealed) bringing such drainage facilities within scope of statutory authority of local governing body to collect charges for use of sewer facilities and reimburse subdivider for construction thereof, in absence of any language in amendments relating to ratification of contracts previously made. *Lawrence v. City of Concord* (App. 1958) 156 Cal.App.2d 531, 320 P.2d 215.

§ 66487. Source of funds

In order to pay the costs as required by the reimbursement agreement, the local agency may:

(a) Collect from other persons, including public agencies, using such improvements for the benefit of real property not within the subdivision, a reasonable charge for such use.

(b) Contribute to the subdivider that part of the cost of the improvements that is attributable to the benefit of real property outside the subdivision and levy a charge upon the real property benefited to reimburse itself for such cost, together with interest thereon, if any, paid to the subdivider.

(c) Establish and maintain local benefit districts for the levy and collection of such charge or costs from the property benefited.

(Added by Stats.1974, c. 1536, p. 3497, § 4, operative March 1, 1975.)

Historical and Statutory Notes

Derivation: Bus. & Prof.C. former § 11543.5, added by Stats.1959, c. 1920, p. 4505, § 1, amended by Stats.1961, c. 427, p. 1290, § 1; Stats.1965, c. 831, p. 2429, § 2; Stats.1967, c.

1248, p. 3028, § 1; Stats.1970, c. 206, p. 460, § 1; Stats.1970, c. 629, p. 1247, § 5; Stats. 1970, c. 1242, p. 2232, § 2.

Notes of Decisions

Special assessments 1

1. Special assessments

This section constitutes express legislative authorization for the cost of a storm drainage

improvement to be paid by a school district to a city for the reimbursement of a subdivider. 71 Op.Atty.Gen. 163, May 5, 1988.

§ 66488. Adoption of plan and map by local agency; charge on property benefited

Any local agency within a local drainage or sanitary sewer area may adopt the plan and map designated in Section 66483 and impose a reasonable charge

§ 66488

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on property within the area which, in the opinion of the legislative body, is benefited by such drainage or sanitary sewer facilities. The charge collected must be paid to the local agency or subdivider constructing such drainage or sanitary sewer facilities, and any local agency within the drainage or sanitary sewer area may enter into a reimbursement agreement with the subdivider. (Added by Stats.1974, c. 1536, p. 3498, § 4, operative March 1, 1975.)

Historical and Statutory Notes

Derivation: Bus. & Prof.C. former § 11543.6, added by Stats.1965, c. 831, p. 2431, § 3, amended by Stats.1970, c. 629, p. 1246, § 3.

Library References

Counties ☞14, 18.

Drains ☞12.

Municipal Corporations ☞43, 60.

WESTLAW Topic Nos. 104, 137, 268.

C.J.S. Counties §§ 22, 31 to 33.

C.J.S. Drains § 5.

C.J.S. Municipal Corporations §§ 83, 84, 142, 153.

§ 66489. Bridge or major thoroughfare; area of benefit; charge to reimburse subdivider

Any local agency may establish an area of benefit pursuant to Section 66484 and may impose a reasonable charge on property within the area which in the opinion of the legislative body, is benefited by the construction of the bridge or major thoroughfare. The charge collected shall be paid to the local agency or subdivider constructing the bridge, and any local agency having jurisdiction over any property which, in the opinion of the legislative body, is benefited by the construction of the bridge or major thoroughfare may enter into a reimbursement agreement with the subdivider.

(Added by Stats.1974, c. 1536, p. 3498, § 4, operative March 1, 1975.)

Historical and Statutory Notes

Derivation: Bus. & Prof.C. former § 11549, added by Stats.1970, c. 663, p. 1292, § 3.

Article 7

SOILS REPORT

Section

66490. Necessity.

66491. Waiver; soil investigation of each lot; review; corrective recommendations; local agency approval.

Article 7 was added by Stats.1974, c. 1536, p. 3498, § 4, operative March 1, 1975.

§ 66490. Necessity

A preliminary soils report, prepared by a civil engineer registered in this state, and based upon adequate test borings, shall be required for every

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subdivision for which a final map is required by this division and may be required by local ordinance for other subdivisions.

(Added by Stats.1974, c. 1536, p. 3498, § 4, operative March 1, 1975.)

Library References

Municipal Corporations ⇐43.
Zoning and Planning ⇐133.
WESTLAW Topic Nos. 268, 414.

C.J.S. Municipal Corporations §§ 83, 84.
C.J.S. Zoning and Land Planning §§ 12, 14,
16.

Notes of Decisions

Preparation of report 1

prepared under the direction of licensed architects. 66 Ops.Atty.Gen. 1, 1-26-83.

1. Preparation of report

Parcel maps, final maps, and soils reports specified in the Subdivision Map Act may not be

§ 66491. Waiver; soil investigation of each lot; review; corrective recommendations; local agency approval

With respect to the soils report, a local ordinance may provide that:

(a) The preliminary soils report may be waived if the local agency determines that, due to the knowledge it has as to the soils qualities of the soils of the subdivision, no preliminary analysis is necessary.

(b) The preliminary soils report may be submitted to the city engineer or county engineer for review. The city engineer or county engineer may review the preliminary soils report and may require additional information or reject the report if it is found to be incomplete, inaccurate, or unsatisfactory.

(c) If the preliminary soils report indicates the presence of critically expansive soils or other soils problems which, if not corrected, would lead to structural defects, a soils investigation of each lot in the subdivision may be required.

(d) If the preliminary soils report indicates the presence of rocks or liquids containing deleterious chemicals which, if not corrected, could cause construction materials such as concrete, steel, and ductile or cast iron to corrode or deteriorate, a soils investigation of each potentially affected lot in the subdivision may be required.

(e) Any soils investigation required pursuant to this section shall be done by a civil engineer registered in this state, who shall recommend the corrective action which is likely to prevent structural damage to each structure proposed to be constructed in the area where the soils problem exists.

(f) The local agency may approve the subdivision or portion thereof where soils problems described in subdivision (c) or (d) exist if it determines that the recommended action is likely to prevent structural damage to each structure to be constructed, and as a condition to the issuance of any building permit may require that the approved recommended action be incorporated in the construction of each structure.

(Added by Stats.1974, c. 1536, p. 3498, § 4, operative March 1, 1975. Amended by Stats.1989, c. 133, § 1; Stats.1991, c. 668 (S.B.440), § 1.)

Law Review and Journal Commentaries

Review of selected 1991 California legislation.
23 Pac.L.J. 745 (1992).

Article 8

TAXES AND ASSESSMENTS

Section

- 66492. Certificates or statements as to tax liens and assessments.
- 66493. Payment in full or security for payment; redemption; certificate of clerk of legislative body of assessment district; computation of amount.
- 66494. Delinquency; recovery from security; excess proceeds.
- 66494.1. Performance of clerk's duties by county officer.

Article 8 was added by Stats.1974, c. 1536, p. 3499, § 4, operative March 1, 1975.

§ 66492. Certificates or statements as to tax liens and assessments

Prior to the filing of the final map or parcel map with the legislative body, the subdivider shall, in accordance with procedures established by the county, file with the county recorder of the county in which any part of the subdivision is located, a certificate or statement from the official computing redemptions in any public agency in which any part of the subdivision is located, showing that, according to the records of that office, there are no liens against the subdivision or any part thereof for unpaid, state, county, municipal or local taxes or special assessments collected as taxes, except taxes or special assessments not yet payable.

This section shall not be applicable to amending maps filed in accordance with the provisions of Section 66469.

(Added by Stats.1974, c. 1536, p. 3499, § 4, operative March 1, 1975. Amended by Stats.1983, c. 1224, § 5; Stats.1985, c. 114, § 11, eff. June 28, 1985; Stats.1985, c. 1199, § 10; Stats.1987, c. 982, § 20; Stats.1993, c. 906 (A.B.557), § 8, eff. Oct. 8, 1993, operative Jan. 1, 1994.)

Historical and Statutory Notes

The 1983 amendment, in the first sentence, substituted "final map or parcel map" for "final map"; in the second paragraph, substituted "his or her estimate" for "his estimate"; and made nonsubstantive changes throughout the section.

The 1985 amendment by c. 114, in the first paragraph, substituted "file with the county recorder" for "file with the clerk of the board of supervisors"; and deleted the second paragraph, which had read:

"As to taxes or special assessments collected as taxes which are a lien but not yet payable, the subdivider shall file with the clerk of the board of supervisors a certificate by each prop-

er officer giving his or her estimate of the amount of taxes and assessments which are a lien but not yet payable."

The 1985 amendment by c. 1199 explicitly amended the section as amended by c. 114 of Stats.1985.

The 1985 amendment by c. 1199, near the beginning of the paragraph, inserted ", in accordance with procedures established by the county,".

The 1987 amendment substituted "a certificate or statement" for "a certificate".

Section 1 of Stats.1993, c. 906 (A.B.557), provides:

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"This act shall be known and may be cited as the Omnibus Local Government Act of 1993."

The 1993 amendment added the second paragraph relating to application of the section to amending maps filed in accordance with Section 66469.

Severability of provisions of Stats.1993, c. 906 (A.B.557), see Historical and Statutory Notes under Government Code § 17558.5.

Derivation: Bus. & Prof.C. former § 11600, added by Stats.1943, c. 128, p. 873, § 1.

Stats.1937, c. 670, p. 1869, § 14.

Stats.1939, c. 155, p. 1377, § 1.

Cross References

Certificates and security required under this section, transmittal of maps, see Government Code § 66464.

Installment payment agreement relating to past due property taxes and assessment liens on nonresidential subdivisions, as equivalent to certificate pursuant to this section, see Revenue and Taxation Code § 2823.

Redemption from lien, see Civil Code § 2903.

Subdivision, defined, see Government Code § 66424.

Tax limitations, see Const. Art. 13A, § 1 et seq.

Library References

Municipal Corporations ⇨43.

Zoning and Planning ⇨372.1.

WESTLAW Topic Nos. 268, 414.

C.J.S. Municipal Corporations §§ 83, 84.

C.J.S. Zoning and Land Planning § 191.

§ 66493. Payment in full or security for payment; redemption; certificate of clerk of legislative body of assessment district; computation of amount

(a) Whenever any part of the subdivision is subject to a lien for taxes or special assessments collected as taxes which are not yet payable, the final map or parcel map shall not be recorded until the owner or subdivider does both of the following:

(1) Files with the clerk of the board of supervisors of the county wherein any part of the subdivision is located a certificate or statement prepared by the appropriate state or local official giving his or her estimate of those taxes or assessments.

(2) Executes and files with the clerk of the board of supervisors of the county wherein any part of the subdivision is located, security conditioned upon the payment of all state, county, municipal, and local taxes and the current installment of principal and interest of all special assessments collected as taxes, which at the time the final map is recorded are a lien against the property, but which are not yet payable.

(b) If the land being subdivided is a portion of a larger parcel shown on the last preceding tax roll as a unit, the security for payment of taxes need be only for the sum which may be determined by the county to be sufficient to pay the current and delinquent taxes on the land being subdivided, together with all accrued penalties and costs if those taxes have been or are allowed to become delinquent. Separate assessor's parcel numbers shall be given to the portion of the larger parcel which is not within the proposed subdivision and to the parcel or parcels which are within the proposed subdivision.

If the land being subdivided is tax-defaulted, it may be redeemed without the redemption of the remainder of the larger parcel of which it is a part pursuant

to the Revenue and Taxation Code as if it were held in ownership separate from and other than the ownership of the remainder.

(c) Whenever land subject to a special assessment or bond which may be paid in full is divided by the line of a lot or parcel of the subdivision, that assessment or bond shall be paid in full; security shall be filed with the clerk of the board of supervisors, payable to the county as trustee for the assessment bondholders for the payment of the special assessment or bond; or the responsibility for payment of the assessment shall be certified as segregated pursuant to subdivision (d).

(d) Whenever land subject to a special assessment for payment of a bond would be divided by the line of a lot or parcel of a subdivision, and the special assessment is not paid in full or secured pursuant to subdivision (c), the final map or parcel map shall not be recorded until the owner or subdivider files with the clerk of the board of supervisors of the county a certificate prepared by the clerk of the legislative body that created the assessment district. The certificate shall certify that the legislative body has determined that provision has been made for segregation of the responsibility of each of the proposed new parcels for a portion of the assessment payment obligation in the manner provided in the statute pursuant to which the assessments were levied or to which the bonds were issued.

(e) In computing the amount of security for "taxes" in subdivision (a) or "current taxes" in subdivision (b), it shall only be necessary to consider amounts shown on the regular assessment roll or shown on any supplemental rolls prepared pursuant to Chapter 3.5 (commencing with Section 75) of Part 0.5 of Division 1 of the Revenue and Taxation Code.

(f) This section shall not be applicable to amending maps filed in accordance with Section 66469.

(Added by Stats.1974, c. 1536, p. 3499, § 4, operative March 1, 1975. Amended by Stats.1983, c. 498, § 131, eff. July 28, 1983; Stats.1983, c. 1224, § 6; Stats.1985, c. 114, § 12, eff. June 28, 1985; Stats.1986, c. 1420, § 3; Stats.1987, c. 982, § 21; Stats.1987, c. 1388, § 1.5; Stats.1989, c. 104, § 4; Stats.1993, c. 906 (A.B.557), § 9, eff. Oct. 8, 1993, operative Jan. 1, 1994.)

Historical and Statutory Notes

The 1983 amendment by c. 498 added subd. (d), relating to the amount of security for taxes or current taxes.

The 1983 amendment by c. 1224, in subd. (a), substituted "final map or parcel map" for "final map"; in subd. (b), added the second sentence relating to the creation of assessor's parcel numbers; and made nonsubstantive changes throughout the section.

The 1985 amendment rewrote subd. (a); and at the end of subd. (c), added "Division 10 (commencing with Section 8500) of the Streets and Highways Code". Prior to amendment, subd. (a) read:

"Whenever any part of the subdivision is subject to a lien for taxes or special assessments

collected as taxes which are not yet payable, the final map or parcel map shall not be recorded until the owner or subdivider executes and files with the clerk of the board of supervisors of the county wherein any part of the subdivision is located, security conditioned upon the payment of all state, county, municipal and local taxes and the current installment of principal and interest of all special assessments collected as taxes, which at the time the final map is recorded are a lien against the property, but which are not yet payable."

The 1986 amendment, in the second paragraph of subd. (b), substituted "If the land being subdivided is tax-defaulted, it may be redeemed without the redemption" for "If the land being

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Div. 2

subdivided is sold for taxes, it may be redeemed for the sale without the redemption".

Amendment of this section by § 22 of Stats. 1987, c. 982, failed to become operative under the provisions of § 25 of that Act.

Under the provisions of § 35 of Stats. 1987, c. 1388, the 1987 amendments of this section by c. 982 and c. 1388 were given effect and incorporated in the form set forth in § 1.5 of c. 1388. An amendment of this section by § 1.6 of Stats. 1987, c. 1388, failed to become operative under the provisions of § 35 of that Act.

The 1987 amendment by c. 1388, in subd. (a)(1), substituted "certificate or statement" for "certificate"; in subd. (c), deleted the second sentence; and made nonsubstantive changes throughout the section. Prior to amendment, the second sentence of subd. (c) read:

"This section does not apply to bonds issued under the Improvement Bond Act of 1915, Division 10 (commencing with Section 8500) of the Streets and Highways Code."

The 1989 amendment rewrote subd. (c); and in the first sentence of subd. (d), substituted "the special assessment is not paid" for "which is not paid". Prior to amendment, subd. (c) read:

"Whenever land subject to a special assessment or bond which may be paid in full is divided by the line of a lot or parcel of the

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Note 2

subdivision, that assessment or bond shall be paid in full, or security shall be filed with the clerk of the board of supervisors, payable to the county as trustee for the assessment bondholders for the payment of the special assessment or bond."

Section 1 of Stats. 1993, c. 906 (A.B.557), provides:

"This act shall be known and may be cited as the Omnibus Local Government Act of 1993."

The 1993 amendment added subd. (f), relating to application of the section to amending maps filed in accordance with Section 66469.

Severability of provisions of Stats. 1993, c. 906 (A.B.557), see Historical and Statutory Notes under Government Code § 17558.5.

Derivation: Bus. & Prof.C. former § 11601, added by Stats. 1943, c. 128, p. 873, § 1, amended by Stats. 1959, c. 1953, p. 4548, § 1.

Bus. & Prof.C. former § 11602, added by Stats. 1943, c. 128, p. 874, § 1, amended by Stats. 1970, c. 277, p. 548, § 1; Stats. 1971, c. 1045, p. 2001, § 1.

Bus. & Prof.C. former § 11603, added by Stats. 1943, c. 128, p. 874, § 1, amended by Stats. 1971, c. 1045, p. 2001, § 12.

Stats. 1937, c. 670, p. 1817, §§ 16, 17.

Stats. 1937, c. 670, p. 1863, § 16.1, added by Stats. 1941, c. 537, p. 1860, § 5.

Cross References

Certificates and security required under this section, transmittal of maps, see Government Code § 66464.

Improvement Bond Act of 1915, see Streets and Highways Code § 8500 et seq.

Property taxation, redemption, see Revenue and Taxation Code § 4101 et seq.

Tax limitations, see Const. Art. 13A, § 1 et seq.

Notes of Decisions

(App. 1 Dist. 1994) 35 Cal.Rptr.2d 233, 29 Cal. App.4th 1610, review denied.

Subdivision tax bond given to assure payment of property taxes on property described in tract of property taxes on property described in tract map of condominium project may not be enforced so long as property described in tract map is assessed as single parcel and remains blanketed tax lien, as bond serves to protect purchasers of individual lots from blanket tax lien. Metric Institutional Co-Investment Partners II v. Golden Eagle Ins. Co. (App. 1 Dist. 1994) 35 Cal.Rptr.2d 233, 29 Cal.App.4th 1610, review denied.

County was not entitled to recover on subdivision tax bond given to assure payment of property taxes on property described in tract map of condominium project, in absence of evidence that property owner satisfied statutory requirements for separate assessment of property or that county chose to separately assess individual units in tract. Metric Institutional Co-Invest-

Bond 2

Purpose 1

Release of bond 3

1. Purpose

Purpose of Bus. & Prof.C. § 11601 (repealed) was to protect individual lots against blanket tax lien for year in which tract map was recorded. Los Angeles County v. Hartford Acc. & Indem. Co. (App. 2 Dist. 1970) 83 Cal.Rptr. 740, 3 Cal.App.3d 809.

2. Bond

Liability of surety on subdivision tax bond given to assure payment of taxes on property described in tract map of condominium is conditioned on separate assessment of individual units in condominium. Metric Institutional Co-Investment Partners II v. Golden Eagle Ins. Co.

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ment Partners II v. Golden Eagle Ins. Co. (App. 1 Dist. 1994) 35 Cal.Rptr.2d 233, 29 Cal. App.4th 1610, review denied.

For year in which tract map for subdivision was filed, property was assessed as single parcel to record owner and protection of bond for that year's taxes was necessary because there were individual lots in existence even if there might not be any individual owners and bond protected individual lots from a blanket lien; for all following years such individual lots were protected by facts that they would be separately assessed. Los Angeles County v. Hartford Acc.

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& Indem. Co. (App. 2 Dist. 1970) 83 Cal.Rptr. 740, 3 Cal.App.3d 809.

3. Release of bond

In case of normal subdivision, fact that subdivider failed to actually sell any individual lots would not be reason to relieve surety on bond for taxes because purpose for which bond was required, to protect individual lots against blanket tax lien, was nevertheless present. Los Angeles County v. Hartford Acc. & Indem. Co. (App. 2 Dist. 1970) 83 Cal.Rptr. 740, 3 Cal. App.3d 809.

§ 66494. Delinquency; recovery from security; excess proceeds

(a) If the taxes or special assessments are allowed to become delinquent, the county shall recover from the security the principal sum of the security without proof of loss. The county shall apply the sum received in payment of any or all of such taxes or special assessments, including penalties and costs, if any, accruing thereto, to the proper state, county, municipal or district officers, for the satisfaction of the tax and special assessment liens and shall pay the balance, if any, over to the surety or depositor.

(b) If the taxes or special assessments are allowed to become delinquent and the security consists of a deposit of money, negotiable bond or instrument of credit, the clerk, subject to any rules of the board of supervisors with respect thereto, shall apply the proceeds thereof to the payment of such taxes and special assessments, including penalties and costs. Any excess proceeds shall be deposited in the county treasury for the benefit of the persons entitled thereto.

(c) If authorized by prior agreement with the subdivider or his or her sureties, when secured taxes become due the amount of taxes and special assessments may be paid to the county tax collector from the security deposit, or the negotiable paper or instrument of credit may be cashed and any excess proceeds placed in the county treasury subject to refund claim by the subdivider.

(Added by Stats.1974, c. 1536, p. 3500, § 4, operative March 1, 1975. Amended by Stats.1981, c. 392, § 1.)

Historical and Statutory Notes

The 1981 amendment added subd. (c).
Derivation: Bus. & Prof.C. former §§ 11604, 11605, added by Stats.1943, c. 128, p. 874, § 1.

Stats.1937, c. 670, p. 1871, §§ 18, 19.

Notes of Decisions

In general 1

1. In general

Where no condominium unit in fact had been sold, purpose for bond covering taxes did not

come into existence, and county would not be entitled to recover from surety on bond for unpaid taxes. Los Angeles County v. Hartford Acc. & Indem. Co. (App. 2 Dist. 1970) 83 Cal. Rptr. 740, 3 Cal.App.3d 809.

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§ 66494.1. Performance of clerk's duties by county officer

The board of supervisors may, by resolution, authorize any county officer to perform the duties required of the clerk of the board of supervisors under this article.

(Added by Stats.1984, c. 866, § 4.2.)

**Article 9
MONUMENTS**

Section

- 66495. Duty of engineer or surveyor.
- 66496. Interior monuments; certificate as to time to be set; security.
- 66497. Notice of setting final monuments; payment of engineer or surveyor.
- 66498. Death, disability, retirement, or refusal of engineer or surveyor; substitute; payment.

Article 9 was added by Stats.1974, c. 1536, p. 3500, § 4, operative March 1, 1975.

Cross References

Surveying of monuments by land surveyors, see Business and Professions Code § 8771 et seq.

§ 66495. Duty of engineer or surveyor

At the time of making the survey for the final map or parcel map unless the survey is not required pursuant to Section 66448, the engineer or surveyor shall set sufficient durable monuments to conform with the standards described in Section 8771 of the Business and Professions Code so that another engineer or surveyor may readily retrace the survey. He shall also set such additional monuments as may be required by local ordinance. The local agency shall require that at least one exterior boundary line of the land being subdivided be adequately monumented or referenced before the map is recorded.

(Added by Stats.1974, c. 1536, p. 3500, § 4, operative March 1, 1975. Amended by Stats.1976, c. 660, p. 1630, § 5; Stats.1977, c. 234, p. 1038, § 11, eff. July 7, 1977.)

Historical and Statutory Notes

Derivation: Bus. & Prof.C. former § 11566, added by Stats.1943, c. 128, p. 870, § 1, amended by Stats.1961, c. 1421, p. 3223, § 1; Stats. 1963, c. 1803, p. 3637, § 1.

Stats.1937, c. 670, p. 1868, § 12.

Cross References

Local agency, defined, see Government Code § 66420.

Library References

- Boundaries ⇨53.
- Municipal Corporations ⇨43.
- Zoning and Planning ⇨382.1.
- WESTLAW Topic Nos. 59, 268, 414.

- C.J.S. Boundaries § 86.
- C.J.S. Municipal Corporations §§ 83, 84.
- C.J.S. Zoning and Land Planning § 197.

Notes of Decisions

Fixed works 1

1. Fixed works

Within proposed subdivision for residential use, improvements for drainage, water supply, flood control, municipal improvements, highways, and sewerage as well as improvements of

a permanent and firm nature are both considered as fixed works under Professional Engineers Act. 58 Ops.Atty.Gen. 430, 6-18-75.

A grading plan is also a fixed work if it is executed in connection with an improvement which is a fixed work or, if, standing alone, it is of a permanent and firm nature. 58 Ops.Atty.Gen. 430, 6-18-75.

§ 66496. Interior monuments; certificate as to time to be set; security

Interior monuments need not be set at the time the map is recorded, if the engineer or surveyor certifies on the map that the monuments will be set on or before a specified later date, and if the subdivider furnishes to the legislative body security guaranteeing the payment of the cost of setting such monuments.

(Added by Stats.1974, c. 1536, p. 3500, § 4, operative March 1, 1975.)

Historical and Statutory Notes

Derivation: Bus. & Prof.C. former § 11566, added by Stats.1943, c. 128, p. 870, § 1, amended by Stats.1961, c. 1421, p. 3223, § 1; Stats. 1963, c. 1803, p. 3637, § 1.

Bus. & Prof.C. former § 11592, added by Stats.1943, c. 178, p. 873, § 1, amended by

Stats.1961, c. 1421, p. 3223, § 2; Stats.1963, c. 1803, p. 3637, § 2; Stats.1971, c. 539, p. 1047, § 1.

Stats.1937, c. 670, p. 1868, §§ 12, 13.

Stats.1941, c. 537, p. 1858, § 2.

§ 66497. Notice of setting final monuments; payment of engineer or surveyor

Within five days after the final setting of all monuments has been completed, the engineer or surveyor shall give written notice to the subdivider, and to the city engineer or the county surveyor or any other public official or employee authorized to receive these notices, that the final monuments have been set.

Upon payment to the engineer or surveyor for setting the final monuments, the subdivider shall present to the legislative body evidence of the payment and receipt thereof by the engineer or surveyor. In the case of a cash deposit, the legislative body shall pay the engineer or surveyor for the setting of the final monuments from the cash deposit, if so requested by the depositor.

If the subdivider does not present evidence to the legislative body that the engineer or surveyor has been paid for the setting of the final monuments, and if the engineer or surveyor notifies the legislative body that payment has not been received from the subdivider for the setting of the final monuments, the legislative body shall, within three months from the date of the notification, pay to the engineer or surveyor from any deposit the amount due.

(Added by Stats.1974, c. 1536, p. 3500, § 4, operative March 1, 1975. Amended by Stats.1985, c. 1504, § 7.)

Historical and Statutory Notes

Derivation: Bus. & Prof.C. former § 11592, added by Stats.1943, c. 128, p. 873, § 1, amended by Stats.1961, c. 1421, p. 3223, § 2; Stats.

1963, c. 1803, p. 3637, § 2; Stats.1971, c. 539, p. 1047, § 1.

Stats.1937, c. 670, p. 1868, § 13.

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Stats.1941, c. 537, p. 1858, § 2.

§ 66498. Death, disability, retirement, or refusal of engineer or surveyor; substitute; payment

In the event of the death, disability or retirement from practice of the engineer or surveyor charged with the responsibility for setting monuments, or in the event of his refusal to set such monuments, the legislative body may direct the county surveyor or city engineer, or such engineer or surveyor as it may select, to set such monuments. If the original engineer or surveyor is replaced by another, the former may, by letter to the county surveyor or city engineer, release his obligation to set the final monuments to the surveyor or engineer who replaced him. When the monuments are so set, the substitute engineer or surveyor shall amend any map filed pursuant to this division in accordance with the provisions of Sections 66469 to 66472, inclusive. All provisions of this article relating to payment shall apply to the services performed by the substituted engineer or surveyor.

(Added by Stats.1974, c. 1536, c. 3501, § 4, operative March 1, 1975. Amended by Stats.1978, c. 244, p. 516, § 1; Stats.1979, c. 383, p. 1444, § 5.)

Historical and Statutory Notes

Derivation: Bus. & Prof.C. former § 11592, added by Stats.1943, c. 128, p. 873, § 1, amended by Stats.1961, c. 1421, p. 3223, § 2; Stats.1963, c. 1803, p. 3637, § 2; Stats.1971, c. 539, p. 1047, § 1.

Stats.1937, c. 670, p. 1868, § 13.
Stats.1941, c. 537, p. 1858, § 2.

Chapter 4.5

DEVELOPMENT RIGHTS

Section

- 66498.1. Vesting tentative map; approval; conditions; final map approval.
- 66498.2. Amendment to vesting tentative map; application.
- 66498.3. Vesting tentative maps inconsistent with zoning ordinance; denial or conditional approval subject to zoning ordinance change.
- 66498.4. Departures from ordinances, policies and standards; local agency approval.
- 66498.5. Filing of vesting tentative map as prerequisite to approval of proposed subdivision.
- 66498.6. Effect of chapter on local agency development conditions.
- 66498.7. Application of chapter; time limit; differentiation in ordinances between residential and nonresidential developments.
- 66498.8. Implementation of chapter; ordinances and resolutions; collection of fees; information required.
- 66498.9. Legislative intent; objectives.

Chapter 4.5 was added by Stats.1984, c. 1113, § 8.

§ 66498.1. Vesting tentative map; approval; conditions; final map approval

(a) Whenever a provision of this division requires that a tentative map be filed, a vesting tentative map may instead be filed.

§ 66498.1

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(b) When a local agency approves or conditionally approves a vesting tentative map, that approval shall confer a vested right to proceed with development in substantial compliance with the ordinances, policies, and standards described in Section 66474.2. However, if Section 66474.2 is repealed, that approval shall confer a vested right to proceed with development in substantial compliance with the ordinances, policies, and standards in effect at the time the vesting tentative map is approved or conditionally approved.

(c) Notwithstanding subdivision (b), the local agency may condition or deny a permit, approval, extension, or entitlement if it determines any of the following:

(1) A failure to do so would place the residents of the subdivision or the immediate community, or both, in a condition dangerous to their health or safety, or both.

(2) The condition or denial is required, in order to comply with state or federal law.

(d) The rights conferred by this section shall expire if a final map is not approved prior to the expiration of the vesting tentative map. If the final map is approved, the rights conferred by this section shall be subject to the periods of time set forth in subdivisions (g) and (h) of Section 66452.6.

(e) Consistent with subdivision (b), an approved or conditionally approved vesting tentative map shall not limit a local agency from imposing reasonable conditions on subsequent required approvals or permits necessary for the development and authorized by the ordinances, policies, and standards described in subdivision (b).

(Added by Stats.1984, c. 1113, § 8, operative Jan. 1, 1986. Amended by Stats.1986, c. 613, § 1.5.)

Historical and Statutory Notes

Section 1 of Stats.1984, c. 1113, provides:

"By this enactment, the Legislature intends to accomplish all of the following objectives:

"(a) To establish a procedure for the approval of tentative maps that will provide certain statutorily vested rights to a subdivider.

"(b) To ensure that local requirements governing the development of a proposed subdivision are established in accordance with Section 66498.1 of the Government Code when a local agency approves or conditionally approves a vesting tentative map. The private sector should be able to rely upon an approved vesting tentative map prior to expending resources and

incurring liabilities without the risk of having the project frustrated by subsequent action by the approving local agency, provided the time periods established by this enactment have not elapsed.

"(c) To ensure that local agencies have maximum discretion, consistent with Section 66498.1 of the Government Code, in the imposition of conditions on any approvals occurring subsequent to the approval or conditional approval of the vesting tentative map, so long as that discretion is not exercised in a manner which precludes a subdivider from proceeding with the proposed subdivision."

Law Review and Journal Commentaries

Growth control by the ballot box: California's experience. Daniel J. Curtin, Jr. and M. Thomas Jacobson, 24 Loy.L.A.L.Rev. 1073 (1991).

Library References

Health and Environment ↻25.5(4).

Municipal Corporations ↻43.

DEVELOPMENT RIGHTS

Div. 2

Zoning and Planning ⇨ 382.1.
 WESTLAW Topic Nos. 199, 268, 414.
 C.J.S. Health and Environment §§ 91 et seq.,
 130, 132.

C.J.S. Municipal Corporations §§ 83, 84.
 C.J.S. Zoning and Land Planning § 197.

Notes of Decisions

Construction and application 3

Due process 1

Fees 4

Purpose 2

1. Due process

Vesting tentative map statute applies general notice requirement to local agency seeking to pass along fee increase imposed after developer's rights have vested; that is, ordinances, policies, and standards in effect when developer's vesting tentative map is deemed complete, must include not only general fee escalation provision but must also provide reasonable notice of nature of fee and manner of its calculation, as developer about to commit substantial time and resources to project should be able to predict with at least some degree of assurance what fee will be when time comes to pay it. *Kaufman & Broad Cent. Valley, Inc. v. City of Modesto* (App. 5 Dist. 1994) 30 Cal.Rptr.2d 904, 25 Cal.App.4th 1577, review denied.

Vesting tentative map statutes conferred on developer vested right to develop its subdivision subject only to capital facilities fees in effect when its vesting tentative map application was deemed complete, adjusted annually according to building cost index to reflect increases in cost of construction and, therefore, city could not attach fee escalator condition to its approval of developer's fee tentative map application which permitted imposition of fees in excess of those in effect when map application was deemed complete; city had no policy of charging capital facilities fees for anything other than specific improvements identified by infrastructure study committee, and city had no policy of increasing fees for any reason other than to adjust for increases in cost of construction. *Kaufman & Broad Cent. Valley, Inc. v. City of Modesto* (App. 5 Dist. 1994) 30 Cal.Rptr.2d 904, 25 Cal.App.4th 1577, review denied.

Due process notice requirements implicit in vesting tentative map statutes limit increases in developer's fees to those for which adequate

standards for determining scope and extent of fee increases are in place at time vesting tentative map is deemed complete. *Kaufman & Broad Cent. Valley, Inc. v. City of Modesto* (App. 5 Dist. 1994) 30 Cal.Rptr.2d 904, 25 Cal.App.4th 1577, review denied.

2. Purpose

Vesting tentative map statutes were intended to create vested right affording greater protection and arising earlier in development process than right available under common-law doctrine and effectively freeze in place ordinances, policies, and standards in effect at time vesting tentative map application is determined to be complete. *Kaufman & Broad Cent. Valley, Inc. v. City of Modesto* (App. 5 Dist. 1994) 30 Cal.Rptr.2d 904, 25 Cal.App.4th 1577, review denied.

3. Construction and application

City could not retroactively apply policy pursuant to which it sought to require developer, at its own expense, to "underground" existing off-site utilities fronting proposed subdivision, absent finding by city that condition promoted health and safety of city residents. *Bright Development v. City of Tracy* (App. 3 Dist. 1993) 24 Cal.Rptr.2d 618, 20 Cal.App.4th 783, as modified, review denied.

4. Fees

Capital facilities fees for housing units within proposed second phase of development would be limited to those in effect when vesting tentative map was deemed complete, plus subsequent increases adopted to reflect changes in building cost index; there was nothing in language of city resolution that provided any discernable standard which serves either to define or limit scope of future increases, and therefore resolution does nothing to overcome deficiencies in city's general fee escalation policy. *Kaufman & Broad Cent. Valley, Inc. v. City of Modesto* (App. 5 Dist. 1994) 30 Cal.Rptr.2d 904, 25 Cal.App.4th 1577, review denied.

§ 66498.2. Amendment to vesting tentative map; application

If the ordinances, policies, or standards described in subdivision (b) of Section 66498.1 are changed subsequent to the approval or conditional approval of a vesting tentative map, the subdivider, or his or her assignee, at any time prior to the expiration of the vesting tentative map pursuant to subdivisions (g) and (h) of Section 66452.6, may apply for an amendment to the vesting

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tentative map to secure a vested right to proceed with the changed ordinances, policies, or standards. An application shall clearly specify the changed ordinances, policies, or standards for which the amendment is sought.

(Added by Stats.1984, c. 1113, § 8, operative Jan. 1, 1986. Amended by Stats.1986, c. 613, § 2.)

Library References

Health and Environment ⇨25.5(4).
Municipal Corporations ⇨43.
Zoning and Planning ⇨382.1.
WESTLAW Topic Nos. 199, 268, 414.

C.J.S. Health and Environment §§ 91 et seq.,
130, 132.
C.J.S. Municipal Corporations §§ 83, 84.
C.J.S. Zoning and Land Planning § 197.

§ 66498.3. Vesting tentative maps inconsistent with zoning ordinance; denial or conditional approval subject to zoning ordinance change

(a) Whenever a subdivider files a vesting tentative map for a subdivision whose intended development is inconsistent with the zoning ordinance in existence at that time, that inconsistency shall be noted on the map. The local agency may deny a vesting tentative map or approve it conditioned on the subdivider, or his or her designee, obtaining the necessary change in the zoning ordinance to eliminate the inconsistency. If the change in the zoning ordinance is obtained, the approved or conditionally approved vesting tentative map shall, notwithstanding subdivision (b) of Section 66498.1, confer the vested right to proceed with the development in substantial compliance with the change in the zoning ordinance and the map, as approved.

(b) The rights conferred by this section shall be for the time periods set forth in subdivisions (g) and (h) of Section 66452.6.

(Added by Stats.1984, c. 1113, § 8, operative Jan. 1, 1986. Amended by Stats.1986, c. 613, § 3.)

Library References

Zoning and Planning ⇨382.1.
WESTLAW Topic No. 414.
C.J.S. Zoning and Land Planning § 197.

§ 66498.4. Departures from ordinances, policies and standards; local agency approval

Notwithstanding any provision of this chapter, a property owner or his or her designee may seek approvals or permits for development which depart from the ordinances, policies, and standards described in subdivision (b) of Section 66498.1 and subdivision (a) of Section 66498.3, and local agencies may grant these approvals or issue these permits to the extent that the departures are authorized under applicable law.

(Added by Stats.1984, c. 1113, § 8, operative Jan. 1, 1986. Amended by Stats.1986, c. 613, § 4.)

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§ 66498.5. Filing of vesting tentative map as prerequisite to approval of proposed subdivision

If a subdivider does not seek the rights conferred by this chapter, the filing of a vesting tentative map shall not be a prerequisite to any approval for any proposed subdivision, permit for construction, or work preparatory to construction.

(Added by Stats.1984, c. 1113, § 8, operative Jan. 1, 1986.)

Library References

Zoning and Planning ⇨382.1.
WESTLAW Topic No. 414.
C.J.S. Zoning and Land Planning § 197.

§ 66498.6. Effect of chapter on local agency development conditions

(a) This chapter does not enlarge, diminish, or alter the types of conditions which may be imposed by a local agency on a development, nor in any way diminish or alter the power of local agencies to protect against a condition dangerous to the public health or safety.

(b) The rights conferred by this chapter shall relate only to the imposition by local agencies of conditions or requirements created and imposed by local ordinances. Nothing in this chapter removes, diminishes, or affects the obligation of any subdivider to comply with the conditions and requirements of any state or federal laws, regulations, or policies and does not grant local agencies the option to disregard any state or federal laws, regulations, or policies.

(Added by Stats.1984, c. 1113, § 8, operative Jan. 1, 1986.)

Library References

Health and Environment ⇨25.5(4).
Statutes ⇨223.1.
WESTLAW Topic Nos. 199, 361.
C.J.S. Health and Environment §§ 91 et seq.,
130, 132.
C.J.S. Statutes § 365.

§ 66498.7. Application of chapter; time limit; differentiation in ordinances between residential and nonresidential developments

(a) Until December 31, 1987, this chapter shall apply only to residential developments.

(b) On and after January 1, 1988, an ordinance adopted pursuant to subdivision (g) of Section 66452.6 may differentiate between residential and nonresidential developments in prescribing the initial time period after which the rights conferred by a vesting tentative map shall expire. In no event, however, shall that period be less for residential developments than for nonresidential developments.

(Added by Stats.1984, c. 1113, § 8, operative Jan. 1, 1986. Amended by Stats.1985, c. 995, § 1.)

Library References

Statutes ⇨195.
WESTLAW Topic No. 361.
C.J.S. Statutes § 333.

§ 66498.8

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§ 66498.8. Implementation of chapter; ordinances and resolutions; collection of fees; information required

(a) On or before January 1, 1986, a city, county, or city and county shall adopt ordinances or resolutions necessary or appropriate for the implementation of this chapter.

(b) If a city, county, or city and county receives a written request to implement this chapter, it shall adopt any ordinances or resolutions it determines necessary or appropriate to implement this chapter. The city, county, or city and county shall adopt the ordinances or resolutions not more than 120 days from the date the request is made and any fee is paid to cover the direct expenses the city, county, or city and county determines it will incur in processing the ordinances or resolutions. The city, county, or city and county may arrange, with the person making the request, to collect fees from subdividers filing vesting tentative maps and to reimburse the person requesting the ordinance or resolution for any costs so advanced by that person.

(c) The local agency may charge subdividers who file vesting tentative maps a fee in an amount sufficient to recover the direct costs associated with establishing and adopting ordinances or resolutions pursuant to subdivision (a) or (b).

(d) No ordinances or resolutions adopted pursuant to subdivision (a) may require more information than that related to ordinances, resolutions, policies, or standards for the design, development, or improvement relating to the conferred rights, except where necessary:

- (1) To permit the public agency to make the determination required by Section 21080.1 of the Public Resources Code, as provided by Section 65941.
- (2) To comply with federal or state requirements.

(Added by Stats.1985, c. 249, § 2, eff. July 26, 1985. Amended by Stats.1989, c. 717, § 1.)

Historical and Statutory Notes

Section 3 of Stats.1985, c. 249, provides:
"Any city, county, or city and county that adopts an ordinance or resolution pursuant to subdivision (b) of Section 66498.8 of the Government Code, as amended by Section 2 of this act, prior to January 1, 1986, and any person affected by the ordinance or resolution, shall have all of the rights, powers, and duties accorded by Chapter 1113 of the Statutes of 1984 as if all of the provisions enacted by Chapter

1113 of the Statutes of 1984 were operative upon the effective date of the ordinance or resolution."

Former § 66498.8, added by Stats.1984, c. 1113, § 8, relating to similar subject matter, was repealed by Stats.1985, c. 249, § 1, eff. July 26, 1985. See this section.

Derivation: Former § 66498.8, added by Stats.1984, c. 1113, § 8.

Library References

Administrative Law and Procedure ¶381.
WESTLAW Topic No. 15A.

C.J.S. Public Administrative Law and Procedure §§ 87, 91.

§ 66498.9. Legislative intent; objectives

By the enactment of this article, the Legislature intends to accomplish all of the following objectives:

- (a) To establish a procedure for the approval of tentative maps that will provide certain statutorily vested rights to a subdivider.

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(b) To ensure that local requirements governing the development of a proposed subdivision are established in accordance with Section 66498.1 when a local agency approves or conditionally approves a vesting tentative map. The local agency approves or conditionally approves a vesting tentative map private sector should be able to rely upon an approved vesting tentative map prior to expending resources and incurring liabilities without the risk of having the project frustrated by subsequent action by the approving local agency, provided the time periods established by this article have not elapsed.

(c) To ensure that local agencies have maximum discretion, consistent with Section 66498.1, in the imposition of conditions on any approvals occurring subsequent to the approval or conditional approval of the vesting tentative map, so long as that discretion is not exercised in a manner which precludes a subdivider from proceeding with the proposed subdivision.

(Added by Stats.1986, c. 613, § 5.)

Notes of Decisions

Reliance 1

1. Reliance

Vesting tentative map statute requires prior notice, either actual or constructive, as condition to imposing ordinances, policies and standards upon developer/applicant who is entitled to rely on complete vesting tentative map. *Bright Development v. City of Tracy* (App. 3 Dist. 1993) 24 Cal.Rptr.2d 618, 20 Cal.App.4th 783, as modified, review denied.

Evidence did not support trial court's finding that developer, at time its vesting tentative map application was deemed complete, had notice of

city policy pursuant to which city sought to require developer, at its own expense, to "underground" existing off-site utilities fronting proposed subdivision and, thus, city could not impose such requirement; statement in transcript of development review commission meeting suggested, if anything, that no such ordinance, policy or standard was then in existence, and addition to city's design standards of resolution allegedly memorializing undergrounding policy suggested absence of any such preexisting policy outside minds of city employees. *Bright Development v. City of Tracy* (App. 3 Dist. 1993) 24 Cal.Rptr.2d 618, 20 Cal.App.4th 783, as modified, review denied.

Chapter 5

IMPROVEMENT SECURITY

Section

- 66499. Types of security; recordation; attachment of lien; release.
- 66499.1. Faithful performance bond; form.
- 66499.2. Bond for security of laborers and materialmen; form.
- 66499.3. Amounts.
- 66499.4. Attorneys' fees; costs; expenses.
- 66499.5. Reduction of bond by reason of other bonds furnished.
- 66499.6. Purpose of security; exemption from enforcement of money judgment.
- 66499.7. Release of security.
- 66499.8. Obligation subject to approval of another agency.
- 66499.9. Limitations on liability.
- 66499.10. Causes of action.

Chapter 5 was added by Stats.1974, c. 1536, p. 3501, § 4, operative March 1, 1975.

Cross References

California housing and infrastructure finance agency, authority to set aside security reserve in conjunction with construction loan in lieu of security otherwise required, see Health and Safety Code § 51054.

§ 66499

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§ 66499. Types of security; recordation; attachment of lien; release

(a) Whenever this division or a local ordinance authorizes or requires the furnishing of security in connection with the performance of any act or agreement, if the developer is not a nonprofit corporation described in subdivision (c) of Section 66499.3, the security shall be one of the following at the option of and subject to the approval of the local agency and if the developer is a nonprofit corporation described in subdivision (c) of Section 66499.3, the security shall be one of the following, subject to the approval of the local agency:

- (1) Bond or bonds by one or more duly authorized corporate sureties.
- (2) A deposit, either with the local agency or a responsible escrow agent or trust company, at the option of the local agency, of money or negotiable bonds of the kind approved for securing deposits of public moneys.
- (3) An instrument of credit from an agency of the state, federal, or local government when any agency of the state, federal, or local government provides at least 20 percent of the financing for the portion of the act or agreement requiring security, or from one or more financial institutions subject to regulation by the state or federal government and pledging that the funds necessary to carry out the act or agreement are on deposit and guaranteed for payment, or a letter of credit issued by such a financial institution.
- (4) A lien upon the property to be divided, created by contract between the owner and the local agency, if the local agency finds that it would not be in the public interest to require the installation of the required improvement sooner than two years after the recordation of the map.
- (5) Any form of security, including security interests in real property, which is acceptable to the local agency and specified by ordinance thereof.

(b) Any contract or security interest in real property entered into as security for performance pursuant to paragraph (4) or paragraph (5) of subdivision (a) shall be recorded with the county recorder of the county in which the subject real property is located. From the time of recordation of the written contract or document creating a security interest, a lien shall attach to the real property particularly described therein and shall have the priority of a judgment lien in an amount necessary to complete the agreed to improvements. The recorded contract or security document shall be indexed in the Grantor Index to the names of all record owners of the real property as specified on the map and in the Grantee Index to the local agency approving the map.

The local agency may at any time release all or any portion of the property subject to any lien or security interest created by this subdivision or subordinate the lien or security interest to other liens or encumbrances if it determines that security for performance is sufficiently secured by a lien on other property or that the release or subordination of the lien will not jeopardize the completion of agreed upon improvements.

(Added by Stats.1974, c. 1536, p. 3501, § 4, operative March 1, 1975. Amended by Stats.1978, c. 1105, p. 3364, § 1; Stats.1981, c. 323, § 1; Stats.1982, c. 657, § 1; Stats.1988, c. 1308, § 2.)

Historical and Statutory Notes

The 1978 amendment added subdivision designations; redesignated former subds. (a) to (c) to be pars. (1) to (3) of subd. (a); added pars. (4) and (5) to subd. (a); and added subd. (b).

The 1981 amendment added “, or a letter of credit issued by such a financial institution” at the end of subd. (a)(3).

The 1982 amendment deleted, from subd. (b), the word “written” from in front of “contract or security interest”; and added, to the same subdivision, the words “paragraph (4) or paragraph (5) of” before “subdivision (a)”.

The 1988 amendment rewrote the introductory paragraph of subd. (a) and paragraph (3) of subd. (a). Prior to amendment, these paragraphs read:

“(a) Whenever this division or a local ordinance authorizes or requires the furnishing of security in connection with the performance of any act or agreement, such security shall be one of the following at the option of and subject to the approval of the local agency:”

“(3) An instrument of credit from one or more financial institutions subject to regulation by the state or federal government and pledging that the funds necessary to carry out the act or agreement are on deposit and guaranteed for payment, or a letter of credit issued by such a financial institution.”

Section 1 of Stats.1988, c. 1308, provides:

“The Legislature finds and declares that non-profit housing organizations have played a key role in the development of new low- and moderate-income housing. The Legislature further finds and declares that these nonprofit organizations are unable to meet certain Subdivision Map Act requirements relating to security commonly imposed on for-profit developers because of the lack of collateral. The Legislature further finds that these nonprofit corporations generally fulfill all requirements because of concurrent supervision or assurances provided by public financing from government agencies. The Legislature finds that current flexibility provided by the Subdivision Map Act is inadequate to allow nonprofit corporations with public financing to develop housing without unreasonable bonding requirements, and that additional flexibility is required.”

Derivation: Bus. & Prof.C. former § 11612, added by Stats.1943, c. 128, p. 875, § 1, amended by Stats.1943, c. 668, p. 2426, § 6; Stats. 1955, c. 1145, p. 2142, § 1; Stats.1961, c. 600, p. 1748, § 1; Stats.1963, c. 340, p. 1130, § 2; Stats.1965, c. 602, p. 1935, § 1; Stats.1967, c. 63, p. 964, § 1.

Stats.1937, c. 670, p. 1871, § 20.

Forms

See West's California Code Forms, Government.

Law Review and Journal Commentaries

Acceptance of promissory note secured by deed of trust as constituting payment barring claim upon labor and material bond. (1969) 44 Cal.St.B.J. 540.

Background and general effect of 1963 amendment of Bus. & Prof.C. § 11612. (1963) 38 Cal.St.B.J. 626.

Library References

Municipal Corporations ¶43.
Zoning and Planning ¶372.1.
WESTLAW Topic Nos. 268, 414.

C.J.S. Municipal Corporations §§ 83, 84.
C.J.S. Zoning and Land Planning § 191.

Notes of Decisions

- Acceptance of bonds 2
- Completion of work 3
- Judgments 5
- Liability between parties 4
- Surety bonds, generally 1

Allied Canon Co. (App. 2 Dist. 1978) 149 Cal. Rptr. 711, 85 Cal.App.3d 648.

Broad holding of the *Milo Equipment Corp.* case, that bond and undertaking law is not restricted to bonds filed in court proceedings, but is applicable to bond or undertaking executed, filed, posted, furnished, or otherwise given as security pursuant to any statute, except to extent statute prescribes different rule or is inconsistent. 74 Op.Atty.Gen. 89, 6-6-91.

2. Acceptance of bonds

Where city or county has elected pursuant to Government Code to accept a surety bond to

1. **Surety bonds, generally**
Surety bonds issued under Bus. & Prof.C. § 11612 (repealed) with respect to a public works project inured to benefit of contractors or subcontractors providing materials or performing labor on project. *Sukut-Coulson, Inc. v.*

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secure faithful performance of actor or agreement of subdivider (such as construction of necessary public improvements), city or county has discretion to determine whether to accept or reject tendered bond absent fraud, arbitrary action or clear abuse of discretion. 74 Op.Atty.Gen. 89, 6-6-91.

City or county may not adopt policy of not accepting performance bonds from particular insurer on basis that insurer has resisted payment on an outstanding claim in favor of the local agency. 74 Op.Atty.Gen. 89, 6-6-91.

In determining whether to accept or reject security bonds tendered pursuant to Government Code, city or county may adopt financial size criteria for insurers with respect to performance bonds, and in doing so it may adopt financial size criteria established by nongovernmental insurance rating service or that established by federal government prepared by United States Treasury Department as acceptable sureties on federal contracts. 74 Op.Atty.Gen. 89, 6-6-91.

3. Completion of work

Where developer failed to file written application for partial acceptance at time it completed street improvement work, failed to then request county surveyor to issue certificate and failed even to contact board in such respect, court could not declare that portion of work was in and of itself completed unit and that developer had absolute right to have accepted, at time it completed that work, street work which was later rejected after it had deteriorated and after developer had completed water system. Kern County v. Edgemont Development Corp. (App. 5 Dist. 1963) 35 Cal.Rptr. 629, 222 Cal.App.2d 874.

4. Liability between parties

Bank was not liable to county on letter of credit which it executed to secure subdivider's

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faithful completion of improvements which subdivider agreed to make on tract pursuant to subdivision agreement, in absence of commencement of any development of tract or any construction of improvements, where purpose of instrument was to insure full completion of streets and drainage facilities in order to protect and serve public and parties' one mutual interest was in development of a residential subdivision, and under such circumstances, allowing county to recover would amount to illegal forfeiture. Yuba County v. Central Val. Nat. Bank, Inc. (App. 1 Dist. 1971) 97 Cal.Rptr. 369, 20 Cal.App.3d 109.

Payment by subdivider of contractor's claim for constructing subdivision street and drainage improvements was voluntary and did not entitle subdivider to reimbursement from purchaser of subdivision tract, though subdivider paid claim in belief that he was liable thereon under surety bond given county under Subdivision Map Act, Bus. & Prof.C. § 11500 et seq. (repealed) for faithful performance of written agreement with county to have street and drainage improvements constructed. Ragghianti v. Sherwin (App. 1 Dist. 1961) 16 Cal.Rptr. 583, 196 Cal.App.2d 345.

5. Judgments

Grading contractor, having sought in one action against subdivider and holder of first trust deed to recover sums due under construction contract and to foreclose its mechanics liens and in another action against sureties to recover on payment bonds for all grading and construction performed, was entitled to judgment against one or both sets of defendants and entitled to pursue on execution whichever set of defendants best served its interests. Sukut-Coulson, Inc. v. Allied Canon Co. (App. 2 Dist. 1978) 149 Cal.Rptr. 711, 85 Cal.App.3d 648.

§ 66499.1. Faithful performance bond; form

Except as provided in Section 66499.3, a bond or bonds by one or more duly authorized corporate sureties to secure the faithful performance of any agreement shall be in substantially the following form:

Whereas, The Board of Supervisors of the County of _____ (or the City Council of the City of _____), State of California, and _____ (hereinafter designated as "principal") have entered into an agreement whereby principal agrees to install and complete certain designated public improvements, which said agreement, dated _____, 19____, and identified as project _____, is hereby referred to and made a part hereof; and

Whereas, Said principal is required under the terms of said agreement to furnish a bond for the faithful performance of said agreement.

Now, therefore, we, the principal and _____, as surety, are held and firmly bound unto the County of _____, (or City of _____) hereinafter

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called ("_____"), in the penal sum of _____ dollars (\$_____) lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, successors, executors and administrators, jointly and severally, firmly by these presents.

The condition of this obligation is such that if the above bounded principal, his or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and provisions in the said agreement and any alteration thereof made as therein provided, on his or their part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meaning, and shall indemnify and save harmless _____, its officers, agents and employees, as therein stipulated, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

As a part of the obligation secured hereby and in addition to the face amount specified therefor, there shall be included costs and reasonable expenses and fees, including reasonable attorney's fees, incurred by county (or city) in successfully enforcing such obligation, all to be taxed as costs and included in any judgment rendered.

The surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the agreement or to the work to be performed thereunder or the specifications accompanying the same shall in anywise affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the agreement or to the work or to the specifications.

In witness whereof, this instrument has been duly executed by the principal and surety above named, on _____, 19__.

Appropriate modifications shall be made in such form if the bond is being furnished for the performance of an act not provided for by agreement. (Added by Stats.1974, c. 1536, p. 3501, § 4, operative March 1, 1975. Amended by Stats.1988, c. 1308, § 3.)

Library References

- Zoning and Planning ⇨167.
- WESTLAW Topic No. 414.
- C.J.S. Zoning and Land Planning § 80.

§ 66499.2. Bond for security of laborers and materialmen; form

A bond or bonds by one or more duly authorized corporate sureties for the security of laborers and materialmen shall be in substantially the following form:

Whereas, The Board of Supervisors of the County of _____ (or City Council of the City of _____), State of California, and _____ (hereinafter designated as "principal") have entered into an agreement whereby principal agrees to install and complete certain designated public improvements, which said agreement, dated _____, 19__, and identified as project _____, is hereby referred to and made a part hereof; and

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Whereas, Under the terms of said agreement, principal is required before entering upon the performance of the work, to file a good and sufficient payment bond with the County of _____ (or the City of _____) to secure the claims to which reference is made in Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code of the State of California.

Now, therefore, said principal and the undersigned as corporate surety, are held firmly bound unto the County of _____ (or the City of _____) and all contractors, subcontractors, laborers, materialmen and other persons employed in the performance of the aforesaid agreement and referred to in the aforesaid Code of Civil Procedure in the sum of _____ dollars (\$_____), for materials furnished or labor thereon of any kind, or for amounts due under the Unemployment Insurance Act with respect to such work or labor, that said surety will pay the same in an amount not exceeding the amount hereinabove set forth, and also in case suit is brought upon this bond, will pay, in addition to the face amount thereof, costs and reasonable expenses and fees, including reasonable attorney's fees, incurred by county (or city) in successfully enforcing such obligation, to be awarded and fixed by the court, and to be taxed as costs and to be included in the judgment therein rendered.

It is hereby expressly stipulated and agreed that this bond shall inure to the benefit of any and all persons, companies and corporations entitled to file claims under Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code, so as to give a right of action to them or their assigns in any suit brought upon this bond.

Should the condition of this bond be fully performed, then this obligation shall become null and void, otherwise it shall be and remain in full force and effect.

The surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of said agreement or the specifications accompanying the same shall in any manner affect its obligations on this bond, and it does hereby waive notice of any such change, extension, alteration or addition.

In witness whereof, this instrument has been duly executed by the principal and surety above named, on _____, 19____.

(Added by Stats.1974, c. 1536, p. 3502, § 4, operative March 1, 1975.)

§ 66499.3. Amounts

Security to guarantee the performance of any act or agreement shall be in the following amounts:

(a) An amount determined by the legislative body, not less than 50 percent nor more than 100 percent of the total estimated cost of the improvement or of the act to be performed, conditioned upon the faithful performance of the act or agreement; and

(b) An additional amount determined by the legislative body, not less than 50 percent nor more than 100 percent of the total estimated cost of the improvement or the performance of the required act, securing payment to the contrac-

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tor, to the subcontractors, and to persons furnishing labor, materials, or equipment to them for the improvement or the performance of the required act.

(c) Whenever an entity required to furnish security in accordance with subdivisions (a) and (b) is a California nonprofit corporation, funded by the United States of America or one of its agencies, or funded by this state or one of its agencies, the entity shall not be required to comply with subdivisions (a) and (b), if the following conditions are met:

(1) A letter or letters of credit are provided pursuant to paragraph (3) of subdivision (a) of Section 66499 for 100 percent of the contract of improvements or the contractor installing the improvements has bonded to the nonprofit corporation and the local agency as coobligee the amount of 100 percent of the contract for the faithful performance of the work, and has further bonded to the nonprofit corporation and the local agency as coobligee an amount of not less than 50 percent of the contract for the payment of labor and materials, and those bonds comply with the provisions of this chapter.

(2) All moneys under the control of the nonprofit corporation and payable to the contractor by the nonprofit corporation are deposited in a depository complying with the provisions of this chapter, and out of which moneys progress payments are conditioned upon:

(A) The contractor's certification to the nonprofit corporation that all labor performed in the work, and all materials furnished to and installed in the work, have been paid for in full to the date of the certification.

(B) The written approval of the nonprofit corporation.

(C) Review and approval of progress payment billings by local government.

(D) Final payment to the contractor not being made until 30 days shall have expired after the filing and recording of the notice of completion of the work and acceptance of the work by, and a waiver of lien rights provided by the contractor to, the local agency in writing.

(3) All certifications as to progress payments shall be delivered through the United States mail to the nonprofit corporation. The term "progress payments" means payments made in compliance with the schedule of partial payments agreed upon in the contract for the work. No less than 10 percent of the total contract price shall be retained for the 60 days following the filing of the notice of completion.

(d) Subject to the limitations of Section 66499.9, an amount determined by the legislative body necessary for the guarantee and warranty of the work for a period of one year following the completion and acceptance thereof against any defective work or labor done, or defective materials furnished.

(Added by Stats.1974, c. 1536, p. 3503, § 4, operative March 1, 1975. Amended by Stats.1982, c. 489, § 1, eff. July 10, 1982; Stats.1988, c. 1308, § 4.)

Historical and Statutory Notes

Derivation: Bus. & Prof.C. former § 11612.1, added by Stats.1965, c. 1484, p. 3467, § 1.

§ 66499.4

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§ 66499.4. Attorneys' fees; costs; expenses

As a part of the obligation guaranteed by the security and in addition to the face amount of the security, there shall be included costs and reasonable expenses and fees, including reasonable attorneys' fees, incurred by the local agency in successfully enforcing the obligation secured.

(Added by Stats.1974, c. 1536, p. 3504, § 4, operative March 1, 1975.)

Cross References

Local agency, defined, see Government Code § 66420.

Notes of Decisions

In general 1

1. In general

Award of \$57,210 as attorney's fees in suit to recover on a public works payment bond was not an abuse of discretion in view of length, complexity, and magnitude of case. *Sukut-Coulson, Inc. v. Allied Canon Co.* (App. 2 Dist. 1978) 149 Cal.Rptr. 711, 85 Cal.App.3d 648.

There was nothing in statutory language that operated to militate against recovery by grading

contractor of reasonable attorney's fees in its suit to recover against sureties on payment bond where language of bond did not purport to bind parties or set conditions precedent to liability not required by statute, but merely made payment of attorney's fees a matter of special damages that did not pertain to questions of general liability. *Sukut-Coulson, Inc. v. Allied Canon Co.* (App. 2 Dist. 1978) 149 Cal.Rptr. 711, 85 Cal.App.3d 648.

§ 66499.5. Reduction of bond by reason of other bonds furnished

If the required subdivision improvements are financed and installed pursuant to special assessment proceedings, the local agency at its option may provide by local ordinance that, upon the furnishing by the contractor of the faithful performance and labor and material bonds required by the special assessment act being used, the improvement security of the subdivider may be reduced by an amount corresponding to the amount of such bonds so furnished by the contractor.

(Added by Stats.1974, c. 1536, p. 3504, § 4, operative March 1, 1975.)

Historical and Statutory Notes

Derivation: Bus. & Prof.C. former § 11612, added by Stats.1943, c. 128, p. 875, § 1, amended by Stats.1943, c. 668, p. 2426, § 6; Stats. 1955, c. 1145, p. 2142, § 1; Stats.1961, c. 600, p. 1748, § 1; Stats.1963, c. 340, p. 1130, § 2; Stats.1965, c. 602, p. 1935, § 1; Stats.1967, c. 63, p. 964, § 1. Stats.1937, c. 670, p. 1871, § 20.

Cross References

Local ordinance, defined, see Government Code § 66421.

Subdivider, defined, see Government Code § 66423.

Subdivision, defined, see Government Code § 66424.

§ 66499.6. Purpose of security; exemption from enforcement of money judgment

Such money, negotiable bond or instrument of credit shall be a trust fund to guarantee performance and shall not be subject to enforcement of a money

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judgment by any creditors of the depositor until the obligation secured thereby is performed to the satisfaction of the local agency.

(Added by Stats.1974, c. 1536, p. 3504, § 4, operative March 1, 1975. Amended by Stats.1982, c. 497, § 120, operative July 1, 1983.)

Law Revision Commission Comment

1982 Amendment

Section 66499.6 is amended to conform to Title 9 (commencing with Section 680.010) of Part 2 of the Code of Civil Procedure (Enforcement of Judgments Law). See also Code Civ.Proc. § 487.020 (exemptions from attachment). [15 Cal.L.Rev.Comm.Reports 2001].

§ 66499.7. Release of security

The security furnished by the subdivider shall be released in whole or in part in the following manner:

(a) Security given for faithful performance of any act or agreement shall be released upon the performance of the act or final completion and acceptance of the required work, or the legislative body may provide for the partial release of the security upon the partial performance of the act or the acceptance of the work as it progresses, under rules established by the legislative body.

(b) Security securing the payment to the contractor, his or her subcontractors and to persons furnishing labor, materials or equipment shall, after passage of the time within which claims of lien are required to be recorded pursuant to Article 3 (commencing with Section 3114) of Chapter 2 of Title 15 of Part 4 of Division 3 of the Civil Code and after acceptance of the work, be reduced to an amount equal to the total claimed by all claimants for whom claims of lien have been recorded and notice thereof given in writing to the legislative body, and if no such claims have been recorded, the security shall be released in full.

The release shall not apply to any required guarantee and warranty period required by Section 66499.9 for the guarantee or warranty nor to the amount of the security deemed necessary by the local agency for such guarantee and warranty period nor to costs and reasonable expenses and fees, including reasonable attorneys' fees.

The legislative body may authorize any of its public officers or employees to authorize release or reduction of the security in accordance with the conditions hereinabove set forth and in accordance with such rules as it may prescribe.

(Added by Stats.1974, c. 1536, p. 3504, § 4, operative March 1, 1975. Amended by Stats.1982, c. 87, § 24, eff. March 1, 1982; Stats.1983, c. 1195, § 2; Stats.1988, c. 1308, § 5.)

Historical and Statutory Notes

Derivation: Bus. & Prof.C. former § 11612, added by Stats.1943, c. 128, p. 875, § 1, amended by Stats.1943, c. 668, p. 2426, § 6; Stats. 1955, c. 1145, p. 2142, § 1; Stats.1961, c. 600, p. 1748, § 1; Stats.1963, c. 340, p. 1130, § 2; Stats.1965, c. 602, p. 1935, § 1; Stats.1967, c. 63, p. 964, § 1. Stats.1937, c. 670, p. 1871, § 20.

§ 66499.7

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Cross References

Subdivider, defined, see Government Code § 66423.

Library References

Background and general effect of 1965 amendment of Bus. & Prof.C. § 11612.

Rev. of 1965 Code Leg. (Cont.Educ. of Bar, 1965) page 19.

Notes of Decisions

In general. 1

1. In general

Responsibility of developer's surety on faithful performance bond with respect to street and water system ended only when county itself had streets put into condition for acceptance, after

their deterioration over winter following their having initially been found satisfactory, and surety's liability was coextensive with liability of the developer, its principal, and did not terminate upon initial completion of the work. Kern County v. Edgemont Development Corp. (App. 5 Dist. 1963) 35 Cal.Rptr. 629, 222 Cal.App.2d 874.

§ 66499.8. Obligation subject to approval of another agency

In all cases where the performance of the obligation for which the security is required is subject to the approval of another agency, the local agency shall not release the security until the obligation is performed to the satisfaction of such other agency. Such agency shall have two months after completion of the performance of the obligation to register its satisfaction or dissatisfaction. If at the end of that period it has not registered its satisfaction or dissatisfaction, it shall be conclusively deemed that the performance of the obligation was done to its satisfaction.

(Added by Stats.1974, c. 1536, p. 3464, § 4, operative March 1, 1975.)

Cross References

Local agency, defined, see Government Code § 66420.

§ 66499.9. Limitations on liability

Any liability upon the security given for the faithful performance of any act or agreement shall be limited to:

(a) The performance of the work covered by the agreement between the subdivider and the legislative body or the performance of the required act.

(b) The performance of any changes or alterations in such work; provided, that all such changes or alterations do not exceed 10 percent of the original estimated cost of the improvement.

(c) The guarantee and warranty of the work, for a period of one year following completion and acceptance thereof, against any defective work or labor done or defective materials furnished, in the performance of the agreement with the legislative body or the performance of the act.

(d) Costs and reasonable expenses and fees, including reasonable attorneys' fees.

(Added by Stats.1974, c. 1536, p. 3504, § 4, operative March 1, 1975.)

REVERSIONS AND EXCLUSIONS

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Historical and Statutory Notes

Derivation: Bus. & Prof.C. former § 11612.1, added by Stats.1965, c. 1484, p. 3467, § 1.

Library References

Municipal Corporations ⇌281(1).
WESTLAW Topic No. 268.
C.J.S. Municipal Corporations §§ 1070 to 1072.

Background and general effect of 1965 addition of Bus. & Prof.C. § 11612.1. Rev. of 1965 Code Leg. (Cont.Educ. of Bar, 1965) page 19.

§ 66499.10. Causes of action

Where the security is conditioned upon the payment to the contractor, his subcontractors and to persons furnishing labor, materials or equipment to them for the improvement or the performance of an act and takes the form of a deposit of money or negotiable bonds, a suit to recover the amount due the claimant may be maintained against the holder of such deposit. Where the security takes the form of a surety bond, or surety bonds, the right of recovery shall be in a suit against the surety. Where the security takes the form of an instrument of credit, the cause of action shall be against the financial institution obligating itself on such instrument of credit.

(Added by Stats.1974, c. 1536, p. 3505, § 4, operative March 1, 1975.)

Historical and Statutory Notes

Derivation: Bus. & Prof.C. former § 11612.2, added by Stats.1965, c. 1484, p. 3467, § 2.

Library References

Background and general effect of 1965 addition of Bus. & Prof.C. § 11612.2. Rev. of

1965 Code Leg. (Cont.Educ. of Bar, 1965) page 19.

Chapter 6

REVERSIONS AND EXCLUSIONS

Article	Section
1. Reversion to Acreage	66499.11
2. Exclusions	66499.21

Chapter 6 was added by Stats.1974, c. 1536, p. 3505, § 4, operative March 1, 1975.

Article 1

REVERSION TO ACREAGE

Section

- 66499.11. Authorization.
- 66499.12. Initiation of proceedings.
- 66499.13. Petition; form and contents.
- 66499.14. Processing fee.

§ 66499.11

SUBDIVISIONS Title 7

Section

- 66499.15. Notice and hearing.
- 66499.16. Findings.
- 66499.17. Conditions.
- 66499.18. Effective date of reversion; effect on dedications and offers.
- 66499.19. Return of fees and deposits; release of security.
- 66499.20. Tax bond not required.
- 66499.20¼. Filing parcel maps; conditions; approval; effect; streets.
- 66499.20½. Merger and resubdivision; filing map; effect.
- 66499.20¾. Merger of contiguous parcels under common ownership; ordinance.

Article 1 was added by Stats.1974, c. 1536, p. 3505, § 4, operative March 1, 1975.

§ 66499.11. Authorization

Subdivided real property may be reverted to acreage pursuant to the provisions of this article.

(Added by Stats.1974, c. 1536, p. 3505, § 4, operative March 1, 1975.)

Historical and Statutory Notes

Derivation: Bus. & Prof.C. former § 11537, added by Stats.1943, c. 128, p. 868, § 1, amended by Stats.1955, c. 1593, p. 2889, § 7; Stats. 1963, c. 623, p. 1499, § 1; Stats.1967, c. 332, p. 1532, § 1.

Forms

See West's California Code Forms, Government.

Library References

Municipal Corporations ¶43.
WESTLAW Topic No. 268.
C.J.S. Municipal Corporations §§ 83, 84.

Notes of Decisions

Construction with other laws 1

1. Construction with other laws

Lot splits of less than five parcels and reversions to acreage may not be excluded from the

requirements of the California Environmental Quality Act on the basis that they are categorically exempt or are ministerial in nature. 60
Ops.Atty.Gen. 335, 9-30-77.

§ 66499.12. Initiation of proceedings

Proceedings for reversion to acreage may be initiated by the legislative body on its own motion or by petition of all of the owners of record of the real property within the subdivision.

(Added by Stats.1974, c. 1536, p. 3505, § 4, operative March 1, 1975.)

Historical and Statutory Notes

Derivation: Bus. & Prof.C. former § 11640, added by Stats.1959, c. 1956, p. 4561, § 1.

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§ 66499.13. Petition; form and contents

The petition shall be in a form prescribed by the local agency and shall contain the following:

- (a) Adequate evidence of title to the real property within the subdivision.
 - (b) Sufficient data to enable the legislative body to make all of the determinations and findings required by this article.
 - (c) A final map which delineates dedications which will not be vacated and dedications which are a condition to reversion.
 - (d) Such other pertinent information as may be required by the local agency.
- (Added by Stats.1974, c. 1536, p. 3505, § 4, operative March 1, 1975.)

Historical and Statutory Notes

Derivation: Bus. & Prof.C. former § 11640, added by Stats.1959, c. 1956, p. 4561, § 1.

§ 66499.14. Processing fee

The legislative body may establish a fee for processing reversions to acreage pursuant to this article in an amount which will reimburse the local agency for all costs incurred in processing such reversion to acreage. Such fee shall be paid by the owners at the time of filing the petition for reversion to acreage, or if the proceedings for reversion to acreage are initiated by the legislative body on its own motion shall be paid by the person or persons requesting the legislative body to proceed pursuant to this article before such initiation of proceedings.

(Added by Stats.1974, c. 1536, p. 3506, § 4, operative March 1, 1975.)

Historical and Statutory Notes

Derivation: Bus. & Prof.C. former § 11641, added by Stats.1961, c. 467, p. 1556, § 1.

§ 66499.15. Notice and hearing

A public hearing shall be held on the proposed reversion to acreage. Notice thereof shall be given in the time and manner provided in Section 66451.3.

(Added by Stats.1974, c. 1536, p. 3506, § 4, operative March 1, 1975.)

Historical and Statutory Notes

Derivation: Bus. & Prof.C. former § 11537, added by Stats.1943, c. 128, p. 868, § 1, amended by Stats.1955, c. 1593, p. 2889, § 7; Stats. 1963, c. 623, p. 1499, § 1; Stats.1967, c. 332, p. 1532, § 1.

Bus. & Prof.C. former § 11640, added by Stats.1959, c. 1956, p. 4561, § 1.
Stats.1937, c. 670, p. 1873, § 24.

§ 66499.16. Findings

Subdivided real property may be reverted to acreage only if the legislative body finds that:

§ 66499.16

SUBDIVISIONS

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(a) Dedications or offers of dedication to be vacated or abandoned by the reversion to acreage are unnecessary for present or prospective public purposes; and

(b) Either:

(1) All owners of an interest in the real property within the subdivision have consented to reversion; or

(2) None of the improvements required to be made have been made within two years from the date the final or parcel map was filed for record, or within the time allowed by agreement for completion of the improvements, whichever is the later; or

(3) No lots shown on the final or parcel map have been sold within five years from the date such map was filed for record.

(Added by Stats.1974, c. 1536, p. 3506, § 4, operative March 1, 1975.)

Historical and Statutory Notes

Derivation: Bus. & Prof.C. former § 11537, added by Stats.1943, c. 128, p. 868, § 1, amended by Stats.1955, c. 1593, p. 2889, § 7; Stats. 1963, c. 623, p. 1499, § 1; Stats.1967, c. 332, p. 1532, § 1.

Bus. & Prof.C. former § 11640, added by Stats.1959, c. 1956, p. 4561, § 1.

Stats.1937, c. 670, p. 1873, § 24.

Cross References

Termination, offers of dedication, exception under this section, see Government Code § 66477.2.

Law Review and Journal Commentaries

Forced dedications as a condition to subdivision approval. 9 San Diego L.Rev. 112 (1971).

§ 66499.17. Conditions

As conditions of reversion the legislative body shall require:

(a) Dedications or offers of dedication necessary for the purposes specified by local ordinance following reversion.

(b) Retention of all previously paid fees if necessary to accomplish the purposes of this division or local ordinance adopted pursuant thereto.

(c) Retention of any portion of required improvement security or deposits if necessary to accomplish the purposes of this division of local ordinance adopted pursuant thereto.

(Added by Stats.1974, c. 1536, p. 3506, § 4, operative March 1, 1975.)

Cross References

Termination, offer of dedication, exception under this section, see Government Code § 66477.2.

§ 66499.18. Effective date of reversion; effect on dedications and offers

Reversion shall be effective upon the final map being filed for record by the county recorder, and thereupon all dedications and offers of dedication not shown thereon shall be of no further force or effect.

(Added by Stats.1974, c. 1536, p. 3506, § 4, operative March 1, 1975.)

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Historical and Statutory Notes

Derivation: Bus. & Prof.C. former § 11537, added by Stats.1943, c. 128, p. 868, § 1, amended by Stats.1955, c. 1593, p. 2889, § 7; Stats. 1963, c. 623, p. 1499, § 1; Stats.1967, c. 332, p. 1532, § 1.

Bus. & Prof.C. former § 11640, added by Stats.1951, c. 1956, p. 4561, § 1.

Stats.1937, c. 670, p. 1873, § 24.

Cross References

Termination, offer of dedication, exception under this section, see Government Code § 66477.2.

§ 66499.19. Return of fees and deposits; release of security

When a reversion is effective, all fees and deposits shall be returned and all improvement security released, except those retained pursuant to Section 66499.17.

(Added by Stats.1974, c. 1536, p. 3464, § 4, operative March 1, 1975.)

Notes of Decisions

Exclusivity 1

1. Exclusivity

This act described exclusive means after recordation of final map for obtaining refund of

development fees imposed pursuant to the act upon condominium developer who desired to abandon project and obtain refund after city rezoned area. B & P Development Corp. v. City of Saratoga (App. 6 Dist. 1986) 230 Cal.Rptr. 192, 185 Cal.App.3d 949.

§ 66499.20. Tax bond not required

A tax bond shall not be required in reversion proceedings.

(Added by Stats.1974, c. 1536, p. 3506, § 4, operative March 1, 1975.)

Historical and Statutory Notes

Derivation: Bus. & Prof.C. former § 11537, added by Stats.1943, c. 128, p. 1593, § 1, amended by Stats.1955, c. 1593, p. 2889, § 7; Stats.1963, c. 623, p. 1499, § 1; Stats.1967, c. 332, p. 1532, § 1.

Stats.1937, c. 670, p. 1873, § 24.

Library References

Counties ☞18.

WESTLAW Topic No. 104.

C.J.S. Counties §§ 31 to 33.

§ 66499.20¼. Filing parcel maps; conditions; approval; effect; streets

A city or county may, by ordinance, authorize a parcel map to be filed under the provisions of this chapter for the purpose of reverting to acreage land previously subdivided and consisting of four or less contiguous parcels under the same ownership. Any map so submitted shall be accompanied by evidence of title and nonuse or lack of necessity of any public streets or public easements which are to be vacated or abandoned. Any public streets or public easements to be left in effect after the reversion shall be adequately delineated on the map. After approval of the reversion by the governing body or advisory agency the map shall be delivered to the county recorder. The filing of the map shall constitute legal reversion to acreage of the land affected thereby, and shall also

constitute abandonment of all public streets or public easements not shown on the map, provided however that written notation of each abandonment is listed by reference to the recording data creating those public streets or public easements and certified to on the map by the clerk of the legislative body or the designee of the legislative body approving the map. The filing of the map shall also constitute a merger of the separate parcels into one parcel for purposes of this chapter and shall thereafter be shown as such on the assessment roll subject to the provisions of Section 66445. Except as provided in subdivision (f) of Section 66445, on any parcel map used for reverting acreage, a certificate shall appear signed and acknowledged by all parties having any record title interest in the land being reverted, consenting to the preparation and filing of the parcel map.

(Formerly § 66499.20½, added by Stats.1974, c. 1538, p. 3524, § 2. Amended by Stats.1975, c. 24, p. 40, § 24, eff. April 4, 1975; Stats.1975, c. 201, p. 574, § 2; Stats.1975, c. 862, p. 1935, § 1, eff. Sept. 18, 1975, operative Jan. 1, 1976. Renumbered § 66499.20¼ and amended by Stats.1982, c. 87, § 25, eff. March 1, 1982. Amended by Stats.1993, c. 906 (A.B.557), § 10, eff. Oct. 8, 1993, operative Jan. 1, 1994.)

Historical and Statutory Notes

Section 3 of Stats.1974, c. 1538, provided:

"If this bill and Senate Bill No. 977 [Stats. 1974, c. 1536] are both chaptered, Section 11537.5, as added to the Business and Professions Code by Section 1 of this act shall not take effect, and Section 66499.20½, as added to the Government Code by Section 2 of this act shall take effect. If Senate Bill No. 977 is not chaptered, then Section 11537.5, as added to the Business and Professions Code by Section 1 of this act shall take effect, and Section 66499.20½, as added to the Government Code by Section 2 of this act, shall not take effect."

The 1975 amendment by c. 24, in the first sentence, substituted "A city or county" for "A county".

The 1975 amendment by c. 862, in the first sentence, substituted "filed" for "recorded"; in the fifth and sixth sentences, substituted "filing" for "recording"; and in the last sentence, substituted "filing" for "recordation".

The 1982 amendment and renumbering made no changes in the text of the section.

Section 1 of Stats.1993, c. 906 (A.B.557), provides:

"This act shall be known and may be cited as the Omnibus Local Government Act of 1993."

The 1993 amendment substituted "public streets or public easements" for "streets or easements" and inserted ", provided however that written notation of each abandonment is listed by reference to the recording data creating those public streets or public easements and certified to on the map by the clerk of the legislative body or the designee of the legislative body approving the map".

Severability of provisions of Stats.1993, c. 906 (A.B.557), see Historical and Statutory Notes under Government Code § 17558.5.

Section affected by two or more acts at the same session of the legislature, see Government Code § 9605.

§ 66499.20½. Merger and resubdivision; filing map; effect

Subdivided lands may be merged and resubdivided without reverting to acreage by complying with all the applicable requirements for the subdivision of land as provided by this division and any local ordinances adopted pursuant thereto. The filing of the final map or parcel map shall constitute legal merging of the separate parcels into one parcel and the resubdivision of such parcel, and the real property shall thereafter be shown with the new lot or parcel boundaries on the assessment roll. Any unused fees or deposits previously made pursuant to this division pertaining to the property shall be credited pro rata towards any requirements for the same purposes which are applicable at the time of resubdivision. Any public streets or public easements to be left in

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§ 66499.20½

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Note 4

effect after the resubdivision shall be adequately delineated on the map. After approval of the merger and resubdivision by the governing body or advisory agency the map shall be delivered to the county recorder. The filing of the map shall constitute legal merger and resubdivision of the land affected thereby, and shall also constitute abandonment of all public streets and public easements not shown on the map, provided that a written notation of each abandonment is listed by reference to the recording data creating these public streets or public easements, and certified to on the map by the clerk of the legislative body or the designee of the legislative body approving the map.

(Formerly § 66499.20¼, added by Stats.1977, c. 234, p. 1038, § 12, eff. July 7, 1977. Renumbered § 66499.20½ and amended by Stats.1982, c. 87, § 26, eff. March 1, 1982. Amended by Stats.1993, c. 906 (A.B.557), § 11, eff. Oct. 8, 1993, operative Jan. 1, 1994.)

Historical and Statutory Notes

The 1982 amendment and renumbering made no changes in the text of the section.

The 1993 amendment twice inserted "public" prior to "streets" and "public" prior to "easements" and inserted ", provided that a written notation of each abandonment is listed by reference to the recording data creating these public streets or public easements, and certified to on the map by the clerk of the legislative body or the designee of the legislative body approving the map".

Section 1 of Stats.1993, c. 906 (A.B.557), provides:

"This act shall be known and may be cited as the Omnibus Local Government Act of 1993."

Severability of provisions of Stats.1993, c. 906 (A.B.557), see Historical and Statutory Notes under Government Code § 17558.5.

Former § 66499.20½ was renumbered § 66499.20¼ and amended by Stats.1982, c. 87, § 25, eff. March 1, 1982.

Notes of Decisions

- Merge 2
- Original subdivision map 5
- Resubdivision 4
- Subdivided lands 1
- Subdividers 3

1. Subdivided lands

Patented lands were "subdivided lands," within meaning of statute providing that "subdivided lands" may be merged and resubdivided without reverting to acreage by complying with all applicable requirements for subdivision of land as described by Subdivision Map Act and any local ordinances adopted pursuant thereto. *Gomes v. County of Mendocino* (App. 1 Dist. 1995) 44 Cal.Rptr.2d 93, 37 Cal.App.4th 977.

2. Merge

Contiguous parcels held by the same owner "merge" for purposes of the Subdivision Map Act § 66410 et seq. if (1) a local ordinance has been adopted and the parcels come within the minimum size and development criteria, (2) the "reversion to acreage" provisions are followed, or (3) the general requirements of § 66426 et seq. for subdividing (resubdividing) property are satisfied. 64 Ops.Atty.Gen. 549, 7-3-81.

3. Subdividers

State and federal governments could be considered "subdividers," for purposes of Subdivi-

sion Map Act section stating that subdivided lands may be merged and resubdivided without reverting to acreage by complying with all applicable requirements for subdivision of land as provided by Act and any local ordinances adopted pursuant thereto. *Gomes v. County of Mendocino* (App. 1 Dist. 1995) 44 Cal.Rptr.2d 93, 37 Cal.App.4th 977.

4. Resubdivision

Subdivision of property into four parcels was "resubdivision of subdivided land" within meaning of statute providing that subdivided lands may be merged and resubdivided without reverting to acreage by complying with all applicable requirements for subdivision of land as provided by Subdivision of Map Act and any local ordinances adopted pursuant thereto; even though subdivision was created by unilateral agreement, not by filing of parcel map or final map, as filing of either final map, parcel map, or equivalent document required by local ordinance when parcel map is waived accomplishes merging of separate parcels and resubdivision. *Gomes v. County of Mendocino* (App. 1 Dist. 1995) 44 Cal.Rptr.2d 93, 37 Cal.App.4th 977.

Subdivision of property into four parcels was "resubdivision of subdivided land," and thus, present owner of one of those parcels was not

§ 66499.20¹/₂

Note 4

entitled to five certificates of compliance based on five old patents underlying his parcel, even though county never filed notice of merger for five patented parcels; general involuntary merger provisions were controlled by specific statute providing that subdivided lands may be merged and resubdivided without reverting to acreage by complying with all applicable requirements for subdivision of land as provided by Subdivision Map Act and any local ordinances adopted pursuant thereto. *Gomes v.*

SUBDIVISIONS Title 7

County of Mendocino (App. 1 Dist. 1995) 44 Cal.Rptr.2d 93, 37 Cal.App.4th 977.

5. Original subdivision map

This section did not govern filing of original subdivision map recorded in compliance with this division; therefore, filing of the map did not extinguish easement which was not delineated on the map. *Negron v. Dundee* (App. 2 Dist. 1990) 271 Cal.Rptr. 381, 221 Cal.App.3d 1502, review denied.

§ 66499.20³/₄. Merger of contiguous parcels under common ownership; ordinance

A city or county may, by ordinance, authorize the merger of contiguous parcels under common ownership without reverting to acreage. Such ordinance shall require the recordation of an instrument evidencing the merger.

(Added by Stats.1982, c. 87, § 27, eff. March 1, 1982.)

Historical and Statutory Notes

Former § 66499.20³/₄ was renumbered § 66499.20¹/₂ and amended by Stats.1982, c. 87, § 26, eff. March 1, 1982.

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EXCLUSIONS

Section

- 66499.21. Jurisdiction; power of court.
- 66499.22. Initiation of proceeding; petition.
- 66499.23. New map.
- 66499.24. Notice of filing petition; publication; contents; affidavit.
- 66499.25. Hearing in absence of objection; evidence; decree.
- 66499.26. Hearing of objection.
- 66499.27. Streets and highways; effect of exclusion of property or alteration of map.
- 66499.28. Recording copy of decree; notations on face of recorded map.
- 66499.29. New map; recording; filing with local agency; references to map.

Article 2 was added by Stats.1974, c. 1536, p. 3507, § 4, operative March 1, 1975.

§ 66499.21. Jurisdiction; power of court

The superior court of the county in which a subdivision is situated may cause all or any portion of the real property included within the boundaries of the subdivision to be excluded from such subdivision and the recorded map to be altered or vacated, in accordance with the procedures set forth in this article.

(Added by Stats.1974, c. 1536, p. 3507, § 4, operative March 1, 1975.)

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Historical and Statutory Notes

Derivation: Bus. & Prof.C. former § 11701,
added by Stats.1953, c. 67, p. 729, § 3.
Stats.1921, c. 369, p. 548, § 1.

Library References

Municipal Corporations ⇐43.
Zoning and Planning ⇐191.
WESTLAW Topic Nos. 268, 414.

C.J.S. Municipal Corporations §§ 83, 84.
C.J.S. Zoning and Land Planning §§ 84 to 93.

§ 66499.22. Initiation of proceeding; petition

A proceeding for exclusion shall be initiated by filing a petition therefor in the offices of the county surveyor and county clerk of the county in which the subdivision or the portion thereof sought to be excluded is situated. Such petition shall accurately and distinctly describe the real property sought to be excluded by reference to the recorded map or by any accurate survey, shall show the names and addresses of all owners of real property in the subdivision or in the portion thereof sought to be excluded as far as the same are known to the petitioners, and shall set forth the reasons for the requested exclusion. The petition shall be signed and verified by the owners of at least two-thirds of the total area of the real property sought to be excluded.

(Added by Stats.1974, c. 1536, p. 3507, § 4, operative March 1, 1975.)

Historical and Statutory Notes

Derivation: Bus. & Prof.C. former § 11702,
added by Stats.1953, c. 67, p. 730, § 3, amend-
ed by Stats.1961, c. 1316, p. 3096, § 1.

Stats.1921, c. 369, p. 548, § 2.

§ 66499.23. New map

The petition shall be accompanied by a new map showing the boundaries of the subdivision as it appears after the exclusion and alteration. The new map shall designate as numbered or lettered parcels those portions excluded and show the acreage of each parcel. If the map can be compiled from data available, an actual field survey shall not be required. If the map meets with the approval of the county surveyor, a statement by an engineer or surveyor shall not be required.

(Added by Stats.1974, c. 1536, p. 3507, § 4, operative March 1, 1975. Amended by Stats.1987, c. 982, § 23.)

Historical and Statutory Notes

The 1987 amendment made nonsubstantive changes throughout the section.

Section 24 of Stats.1987, c. 982, provides:

"The amendments to Section 66499.23 of the Government Code in Section 23 of this act shall not become operative if Senate Bill No. 654 of the 1987-88 Regular Session [SB No. 654 not

enacted in 1987] is enacted, becomes effective on or before January 1, 1988, and repeals Section 66499.23 of the Government Code."

Derivation: Bus. & Prof.C. former § 11703,
added by Stats.1953, c. 67, p. 730, § 3.

Stats.1921, c. 369, p. 548, § 2.5, added by
Stats.1939, c. 734, p. 2260, § 2.

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Notes of Decisions

In general 1

Whitney Sav. & Loan Ass'n, C.A.9 (Cal.)1993, 5
F.3d 347.

1. In general

Under California law, transfer without parcel map is "voidable" but not void. *Falk v. Mt.*

§ 66499.24. Notice of filing petition; publication; contents; affidavit

Upon the filing of a petition pursuant to this article, any judge of the superior court of the county in which the real property is situated shall make an order directing the clerk of the court to give notice of the filing of the petition. The notice shall be for once a week for a period of not less than five consecutive weeks and shall be given by publication in some newspaper of general circulation within the county, or if there is no newspaper published therein, by posting in three of the principal places in the county; provided, that if such real property or any portion thereof is situated within a city, the notice shall be given by publication in some newspaper of general circulation within the city, or if there is no newspaper published therein, by posting in three of the principal places in the city. Such notice shall contain a statement of the nature of the petition together with a direction that any person may file his written objection to the petition at any time before the expiration of the time of publication or posting. Upon expiration of the time of publication or posting, an affidavit showing such publication or posting shall be filed with the clerk of the court.

(Added by Stats.1974, c. 1536, p. 3507, § 4, operative March 1, 1975.)

Historical and Statutory Notes

Derivation: Bus. & Prof.C. former §§ 11704, 11705, added by Stats.1953, c. 67, p. 730, § 3, amended by Stats.1968, c. 464, p. 1096, § 1. Stats.1921, c. 369, p. 549, §§ 3, 4.

§ 66499.25. Hearing in absence of objection; evidence; decree

The court may, if no objection has been filed, proceed without further notice to hear the petition. If during the hearing the petitioners produce to the court satisfactory evidence of the necessity of the exclusion of the real property, that the owners of two-thirds of the area of the real property sought to be excluded are the petitioners, and that there is no reasonable objection to making such exclusion, the court may proceed to exclude the real property sought to be excluded by the petition, and order the alteration or vacation of the recorded map, and enter its decree accordingly.

(Added by Stats.1974, c. 1536, p. 3507, § 4, operative March 1, 1975.)

Historical and Statutory Notes

Derivation: Bus. & Prof.C. former § 11705, added by Stats.1953, c. 67, p. 730, § 3. Stats.1921, c. 369, p. 549, § 4.

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§ 66499.26. Hearing of objection

If objection is made to the petition which, in the judgment of the court is material, the court shall proceed to hear such objection and may adjourn the proceedings to such time as may be necessary upon proper notice to the petitioners and the objectors.

(Added by Stats.1974, c. 1536, p. 3508, § 4, operative March 1, 1975.)

Historical and Statutory Notes

Derivation: Bus. & Prof.C. former § 11706,
added by Stats.1953, c. 67, p. 730, § 3.

Stats.1921, c. 369, p. 549, § 5.

§ 66499.27. Streets and highways; effect of exclusion of property or alteration of map

The exclusion of any real property or the alteration or vacation of any recorded map pursuant to this article shall not affect or vacate the whole or any part of any public street or highway.

(Added by Stats.1974, c. 1536, p. 3508, § 4, operative March 1, 1975.)

Historical and Statutory Notes

Derivation: Bus. & Prof.C. former § 11707,
added by Stats.1953, c. 67, p. 730, § 3.

Stats.1921, c. 369, p. 549, § 6.

§ 66499.28. Recording copy of decree; notations on face of recorded map

A certified copy of the decree of the superior court excluding any real property or ordering the alteration or vacation of any recorded map pursuant to this article shall be recorded in the office of the county recorder of the county in which such real property is situated. The county recorder shall make upon the face of any such recorded map a memorandum stating briefly that such recorded map has been altered or vacated, whichever the case may be, and giving the date and reference of such decree.

(Added by Stats.1974, c. 1536, p. 3508, § 4, operative March 1, 1975.)

Historical and Statutory Notes

Derivation: Bus. & Prof.C. former § 11708,
added by Stats.1953, c. 67, p. 730, § 3, amend-
ed by Stats.1961, c. 265, p. 1295, § 1.

Stats.1921, c. 369, p. 549, § 6.

§ 66499.29. New map; recording; filing with local agency; references to map

At the time a certified copy of the decree of court is recorded, a copy of the new map required by Section 66499.23 shall be filed for record with the county recorder who shall file it in accordance with the provisions of Section 66466. A copy of the new map shall also be filed with the local agency. A reference to this map shall be sufficient identification of the real property for reassessment purposes.

(Added by Stats.1974, c. 1536, p. 3508, § 4, operative March 1, 1975.)

Historical and Statutory Notes

Derivation: Bus. & Prof.C. former § 11709, Stats.1921, c. 369, p. 548, § 2.5, added by added by Stats.1953, c. 67, p. 731, § 3, amend- Stats.1939, c. 734, p. 2260, § 2. ed by Stats.1961, c. 265, p. 1295, § 2.

Chapter 7

ENFORCEMENT AND JUDICIAL REVIEW

Article	Section
1. Prohibition and Penalty	66499.30
2. Remedies	66499.32
3. Judicial Review	66499.37

Chapter 7 was added by Stats.1974, c. 1536, p. 3508, § 4, operative March 1, 1975.

Article 1

PROHIBITION AND PENALTY

- Section**
66499.30. Prohibited transactions; tolling of limitations.
66499.31. Violations; punishment.

Article 1 was added by Stats.1974, c. 1536, p. 3508, § 4, operative March 1, 1975.

§ 66499.30. Prohibited transactions; tolling of limitations

(a) No person shall sell, lease, or finance any parcel or parcels of real property or commence construction of any building for sale, lease or financing thereon, except for model homes, or allow occupancy thereof, for which a final map is required by this division or local ordinance, until the final map thereof in full compliance with this division and any local ordinance has been filed for record by the recorder of the county in which any portion of the subdivision is located.

(b) No person shall sell, lease or finance any parcel or parcels of real property or commence construction of any building for sale, lease or financing thereon, except for model homes, or allow occupancy thereof, for which a parcel map is required by this division or local ordinance, until the parcel map thereof in full compliance with this division and any local ordinance has been filed for record by the recorder of the county in which any portion of the subdivision is located.

(c) Conveyances of any part of a division of real property for which a final or parcel map is required by this division or local ordinance shall not be made by parcel or block number, initial or other designation, unless and until the final or parcel map has been filed for record by the recorder of the county in which any portion of the subdivision is located.

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(d) Subdivisions (a), (b), and (c) do not apply to any parcel or parcels of a subdivision offered for sale or lease, contracted for sale or lease, or sold or leased in compliance with or exempt from any law (including a local ordinance), regulating the design and improvement of subdivisions in effect at the time the subdivision was established.

(e) Nothing contained in subdivisions (a) and (b) shall be deemed to prohibit an offer or contract to sell, lease, or finance real property or to construct improvements thereon where the sale, lease, or financing, or the commencement of construction, is expressly conditioned upon the approval and filing of a final subdivision map or parcel map, as required under this division.

(f) Nothing in subdivisions (a) to (e), inclusive, shall in any way modify or affect Section 11018.2 of the Business and Professions Code.

(g) For purposes of this section, the limitation period for commencing an action, either civil or criminal, against the subdivider or an owner of record at the time of a violation of this division or of a local ordinance enacted pursuant to this division, shall be tolled for any time period during which there is no constructive notice of the transaction constituting the violation, because the owner of record, at the time of the violation or at any time thereafter, failed to record a deed, lease, or financing document with the county recorder.

(Added by Stats.1974, c. 1536, p. 3508, § 4, operative March 1, 1975. Amended by Stats.1982, c. 87, § 28, eff. March 1, 1982; Stats.1987, c. 799, § 1.)

Historical and Statutory Notes

The 1982 amendment changed, in subd. (a), "offer to sell or lease, to contract to sell or lease, to sell or lease, or to finance" to "sell, lease or finance"; from the same sentence, deleted the word "to" before "commence" and "allow"; and added subds. (e) and (f).

Section 32 of Stats.1982, c. 87, provided:

"The amendments made to Section 66499.30 of the Government Code by this act are intended to overrule Attorney General's Opinion No. 80-407 (July 10, 1980) and to authorize a person to offer or contract to sell, lease, finance, or convey, or construct improvements on a parcel

of real property where the offer or contract is expressly conditioned upon the approval and filing of a final subdivision map or parcel map, as required by the Subdivision Map Act (Division 2 (commencing with Section 66410) of Title 7 of the Government Code)."

The 1987 amendment added provisions relating to the tolling of limitations and made non-substantive changes.

Derivation: Bus. & Prof.C. former §§ 11538, 11539, added by Stats.1943, c. 128, p. 868, § 1, amended by Stats.1955, c. 1593, p. 2889, § 7.

Stats.1937, c. 670, pp. 1865, 1867, §§ 4, 11.

Cross References

Local ordinance, defined, see Government Code § 66421.

Subdivision, defined, see Government Code § 66424.

Law Review and Journal Commentaries

Common law and statutory dedication in California. 53 Cal.L.Rev. 559 (1965).

Forced dedications as a condition to subdivision approval. 9 San Diego L.Rev. 112 (1971).

Library References

Zoning and Planning ⇄801.

WESTLAW Topic No. 414.

C.J.S. Zoning and Land Planning §§ 355, 357, 360.

California Practice Guide: Real Property Transactions, Greenwald & Asimow, see

Guide's Table of Statutes for chapter paragraph number references to paragraphs discussing this section.

Notes of Decisions

In general 1
Construction and application 2
Construction with other laws 3
Offers to sell or lease 4
Purchaser 5

1. In general

Until a local authority approves a subdivision map, no parcels may be sold or developed. *Simac Design, Inc. v. Alciati* (App. 1 Dist. 1979) 154 Cal.Rptr. 676, 92 Cal.App.3d 146.

2. Construction and application

Three parcels of land were created prior to enactment of any laws regulating creation of subdivisions, and thus had to be presumed to have been lawfully created, so as to have been excluded from requirement of compliance with Subdivision Map Act (SMA). *Lakeview Meadows Ranch v. County of Santa Clara* (App. 6 Dist. 1994) 32 Cal.Rptr.2d 615, 27 Cal.App.4th 593.

Lots 1, 2 and 3 did not constitute separate and distinct parcels of land legally subdivided within meaning of the state map act by prior United States Survey Map, and were not therefore exempt from regulation under the map act and local ordinances, and because the lots were not legal subdivisions prior to the map act, no merger issue was raised by common ownership of entire parcel. *John Taft Corp. v. Advisory Agency For Ventura County* (Ventura County) (App. 2 Dist. 1984) 207 Cal.Rptr. 840, 161 Cal.App.3d 749.

3. Construction with other laws

Parcels of land, each with a diminution or division through condemnation proceedings, may be individually sold if and only if a new parcel map is filed under § 66428, absent a

local ordinance waiving such map. 58 Ops. Atty.Gen. 593, 8-7-75.

Chapter 1446, Statutes of 1971, and subsequent legislation regarding land splits in part require that a property owner who divides his land into four or less parcels must submit a parcel map to or seek an exemption from the appropriate local governing body or advisory agency. 58 Ops.Atty.Gen. 393, 6-3-75.

Where binding land contracts have been entered into resulting in, or as a result of, a division of land into four or less parcels which division is in full compliance with applicable law prior to the effective date of Chapter 1446 or prior to the effective dates of subsequent legislation relating to land splits that chapter or subsequent legislation has no effect on the contracts. 58 Ops.Atty.Gen. 393, 6-3-75.

4. Offers to sell or lease

A person may not offer to sell or lease a parcel of real property for which final map is required under the Subdivision Map Act, which requires a subdivider of land divided into five or more parcels for purpose of sale or lease to file, secure approval of, and record a subdivision map, where such map has not been filed, even though the offer is expressly conditioned upon the map being approved and filed. 63 Ops.Atty. Gen. 601, 7-10-80.

5. Purchaser

Subdivision Map Act requiring subdivider of land divided into five or more parcels for purpose of sale or lease to file, secure approval of, and record subdivision map was designed to restrict activities of subdivider and applied only to affirmative act of selling or offering for sale and not to purchase and did not require innocent purchaser to suffer for violation by his grantor of which he had neither knowledge nor means of discovery. *Keizer v. Adams* (1970) 88 Cal.Rptr. 183, 2 Cal.3d 976, 471 P.2d 983.

§ 66499.31. Violations; punishment

Each violation of this division by a person who is the subdivider or an owner of record, at the time of the violation, of property involved in the violation shall be punishable by imprisonment in the county jail not exceeding one year or in the state prison, by a fine not exceeding ten thousand dollars (\$10,000), or by both that fine and imprisonment. Every other violation of this division is a misdemeanor.

(Added by Stats.1987, c. 799, § 3.)

Historical and Statutory Notes

Former § 66499.31, added by Stats.1974, c. 1536, § 4, relating to the punishment for violations of provisions of the division, was repealed by Stats.1987, c. 799, § 2. See this section.

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Derivation: Former § 66499.31, added by Stats.1937, c. 670, p. 1873, § 28. Stats.1974, c. 1536, § 4.

Bus. & Prof.C. former § 11541, added by Stats.1943, c. 128, p. 868, § 1, amended by Stats.1949, c. 672, p. 1170, § 2.

Cross References

Punishment for misdemeanor, see Penal Code §§ 19, 19.2.

Law Review and Journal Commentaries

Common law and statutory dedication in California. 53 Cal.L.Rev. 559 (1965).

Notes of Decisions

Subdivider 1

1. Subdivider

Subdivision Map Act does not require innocent purchaser to suffer for violation by his

grantor, but criminal sanctions may be imposed against subdivider and county or municipality may seek other legal, equitable or summary remedies against subdivider. *Scrogings v. Kovatch* (App. 1 Dist. 1976) 134 Cal.Rptr. 217, 64 Cal.App.3d 54.

Article 2

REMEDIES

Section

- 66499.32. Voidability of deeds or contracts violating division; actions for damages; limitation.
- 66499.33. Additional remedies; injunction.
- 66499.34. Denial of permit or approval of development in violation of law or contrary to public health or safety; conditions for issuance or approval; limitations.
- 66499.35. Certificate of compliance; conditions; effect.
- 66499.36. Notice of intent to record notice of violation; effect; meeting.

Article 2 was added by Stats.1974, c. 1536, p. 3509, § 4, operative March 1, 1975.

Law Review and Journal Commentaries

When governments become land developers. George Lefcoe, 51 S.Cal.L.Rev. 165 (1978).

§ 66499.32. Voidability of deeds or contracts violating division; actions for damages; limitation

(a) Any deed of conveyance, sale or contract to sell real property which has been divided, or which has resulted from a division, in violation of the provisions of this division, or of the provisions of local ordinances enacted pursuant to this division, is voidable at the sole option of the grantee, buyer or person contracting to purchase, his heirs, personal representative, or trustee in insolvency or bankruptcy within one year after the date of discovery of the violation of the provisions of this division or of local ordinances enacted pursuant to the provisions of this division, but the deed of conveyance, sale or

contract to sell is binding upon any successor in interest of the grantee, buyer or person contracting to purchase, other than those above enumerated, and upon the grantor, vendor, or person contracting to sell, or his assignee, heir or devisee.

(b) Any grantee, or his successor in interest, of real property which has been divided, or which has resulted from a division, in violation of the provisions of this division or of local ordinances enacted pursuant thereto, may, within one year of the date of discovery of such violation, bring an action in the superior court to recover any damages he has suffered by reason of such division of property. The action may be brought against the person who divided the property in violation of the provisions of this division or of local ordinances enacted pursuant thereto and against any successors in interest who have actual or constructive knowledge of such division of property.

The provisions of this section shall not apply to the conveyance of any parcel of real property identified in a certificate of compliance filed pursuant to Section 66499.35 or identified in a recorded final map or parcel map, from and after the date of recording.

The provisions of this section shall not limit or affect in any way the rights of a grantee or his successor in interest under any other provision of law. (Added by Stats.1974, c. 1536, p. 3509, § 4, operative March 1, 1975. Amended by Stats.1975, c. 24, p. 40, § 25, eff. April 4, 1975.)

Historical and Statutory Notes

The 1975 amendment deleted, from the third paragraph, the word "subdivision" following the word "final". Stats.1949, c. 672, § 1; Stats.1972, c. 706, p. 1290, § 5.

Derivation: Bus. & Prof.C. former § 11540, added by Stats.1943, c. 128, § 1, amended by

Cross References

Local ordinance, defined, see Government Code § 66421.

Law Review and Journal Commentaries

Land development and the environment: Subdivision Map Act. 5 Pac.L.J. 55 (1974).

Library References

Municipal Corporations ⇨43.
Zoning and Planning ⇨764.
WESTLAW Topic Nos. 268, 414.
C.J.S. Municipal Corporations §§ 83, 84.
C.J.S. Zoning and Land Planning §§ 334, 335.

California Practice Guide: Real Property Transactions, Greenwald & Asimow, see Guide's Table of Statutes for chapter paragraph number references to paragraphs discussing this section.

Notes of Decisions

Marketable title 2
Parcel map 1
Permit issuance 3

Remedies 4

1. Parcel map

There were genuine issues of material fact, precluding summary judgment for Federal Deposit Insurance Corporation (FDIC) as to whether reconveyance to vendor of mistakenly

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conveyed land was enforceable despite absence of required parcel map. *Falk v. Mt. Whitney Sav. & Loan Ass'n*, C.A.9 (Cal.)1993, 5 F.3d 347.

Under California law, transfer without parcel map is "voidable" but not void. *Falk v. Mt. Whitney Sav. & Loan Ass'n*, C.A.9 (Cal.)1993, 5 F.3d 347.

Conveyance of parcel that does not comply with California Subdivision Map Act (SMA) can result in rescission of transfer. *In re Van Ness Associates, Ltd.*, Bkrtcy.N.D.Cal.1994, 173 B.R. 661.

2. Marketable title

Where vendors were unaware of Subdivision Map Act violation when they purchased property, title to their property had not been rendered unmarketable because property had been subdivided in violation of such act, even though it may be necessary for vendors to comply with reasonable conditions with respect to their property as could have been required of grantor as a condition of subdividing latter's tract of land under provisions of act and any county ordinances, and thus vendors' complaint against title company for refusing to pay their claim made under policy insuring them against

loss incurred by reason of unmarketability of title of their property failed to state cause of action. *Nishiyama v. Safeco Title Ins. Co.* (Super. 1978) 149 Cal.Rptr. 355, 85 Cal.App.3d Supp. 1.

3. Permit issuance

Absent some deficiency in purchasers' building application other than fact that grantor did not file required subdivision map, officials were required to issue permit; purchasers were not limited to joining with other purchasers to obtain approval of subdivision map or to exercising statutory right to void purchase. *Keizer v. Adams* (1970) 88 Cal.Rptr. 183, 2 Cal.3d 976, 471 P.2d 983.

4. Remedies

Subdivision Map Act does not require innocent purchaser to suffer for violation by his grantor, but criminal sanctions may be imposed against subdivider and county or municipality may seek other legal, equitable or summary remedies against subdivider. *Scrogings v. Kovatch* (App. 1 Dist. 1976) 134 Cal.Rptr. 217, 64 Cal.App.3d 54.

§ 66499.33. Additional remedies; injunction

This division does not bar any legal, equitable or summary remedy to which any aggrieved local agency or other public agency, or any person, firm, or corporation may otherwise be entitled, and any such local agency or other public agency, or such person, firm, or corporation may file a suit in the superior court of the county in which any real property attempted to be subdivided or sold, leased, or financed in violation of this division or local ordinance enacted pursuant thereto is located, to restrain or enjoin any attempted or proposed subdivision or sale, lease, or financing in violation of this division or local ordinance enacted pursuant thereto.

(Added by Stats.1974, c. 1536, p. 3509, § 4, operative March 1, 1975. Amended by Stats.1982, c. 87, § 29, eff. March 1, 1982.)

Historical and Statutory Notes

The 1982 amendment added the words "or local ordinance enacted pursuant thereto" following "in violation of this division" in the body of the section and at the end of the section.

Derivation: Bus. & Prof.C. former § 11542, added by Stats.1943, c. 128, p. 869, § 1.

Stats.1937, c. 670, p. 1873, § 28.

Cross References

Injunction, see Code of Civil Procedure § 525 et seq.
Local agency, defined, see Government Code § 66420.
Preventive relief, see Civil Code § 3420 et seq.
Subdivision, defined, see Government Code § 66424.

Notes of Decisions

Discretion of court 1
Permit issuance 2

2. Permit issuance

Absent some deficiency in purchasers' building application other than fact that grantor did not file required subdivision map, officials were required to issue permit; purchasers were not limited to joining with other purchasers to obtain approval of subdivision map or to exercising statutory right to void purchase. *Keizer v. Adams* (1970) 88 Cal.Rptr. 183, 2 Cal.3d 976, 471 P.2d 983.

1. Discretion of court

Court was without discretion to decline to determine status of lands under subdivision map act for local ordinances and declaratory action wherein city alleged illegal division of certain property. *City of Tiburon v. Northwestern Pac. R. Co.* (App. 1 Dist. 1970) 84 Cal.Rptr. 469, 4 Cal.App.3d 160.

§ 66499.34. Denial of permit or approval of development in violation of law or contrary to public health or safety; conditions for issuance or approval; limitations

No local agency shall issue any permit or grant any approval necessary to develop any real property which has been divided, or which has resulted from a division, in violation of the provisions of this division or of the provisions of local ordinances enacted pursuant to this division if it finds that development of such real property is contrary to the public health or the public safety. The authority to deny such a permit or such approval shall apply whether the applicant therefor was the owner of record at the time of such violation or whether the applicant therefor is either the current owner of record or a vendee of the current owner of record pursuant to a contract of sale of the real property with, or without, actual or constructive knowledge of the violation at the time of the acquisition of his or her interest in such real property.

If a city or a county issues a permit or grants approval for the development of any such real property, it may impose only those conditions that would have been applicable to the division of the property at the time the applicant acquired his or her interest in such real property, and which has been established at such time by this division or local ordinance enacted pursuant thereto, except that where the applicant was the owner of record at the time of the initial violation of the provisions of this division or of local ordinances enacted pursuant thereto who, by a grant of the real property created a parcel or parcels in violation of this division or local ordinances enacted pursuant thereto, and such person is the current owner of record of one or more of the parcels which were created as a result of the grant in violation of the division or local ordinances enacted pursuant thereto, then the local agency may impose such conditions as would be applicable to a current division of the property, and except that if a conditional certificate of compliance has been filed for record under the provisions of subdivision (b) of Section 66499.35, only such conditions stipulated in that certificate shall be applicable.

The issuance of a permit or grant of approval for development of real property, or with respect to improvements that have been completed prior to the time a permit or grant of approval for development was required by local ordinances in effect at the time of the improvement, or with respect to improvements that have been completed in reliance upon a permit or grant of

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approval for development, shall constitute "real property which has been approved for development," for the purposes of subdivision (c) of Section 66499.35, and upon request by the person owning the real property or a vendee of such person pursuant to a contract of sale, the local agency shall issue a certificate of compliance for the affected real property.

(Added by Stats.1974, c. 1536, p. 3510, § 4, operative March 1, 1975. Amended by Stats.1976, c. 928, p. 2124, § 8; Stats.1977, c. 234, p. 1039, § 13, eff. July 7, 1977; Stats.1982, c. 87, § 30, eff. March 1, 1982; Stats.1984, c. 864, § 1.)

Historical and Statutory Notes

The 1976 amendment changed, in the second paragraph, "such additional conditions" to "those conditions" and "as would have been" to "that would have been"; and added "and which had been established at such time by this division or local ordinance enacted pursuant thereto, except that if a conditional certificate of compliance has been filed for record under the provisions of subdivision (b) of Section 66499.35 only such conditions stipulated in that certificate shall be applicable" to the end of the second paragraph.

The 1977 amendment changed in the second sentence of the first paragraph, "owner of the real property" to "owner of record", and changed "current owner of the real property" to "either the current owner of record or a vendee of the current owner of record pursuant to a contract of sale of the real property"; in the second paragraph, changed "the current owner of record" to "the applicant", changed "acquired the real property" to "acquired his interest", and, changed "had been established" to "has been established".

The 1982 amendment added, to the second paragraph, the word "only" after "impose"; and added, to the same paragraph, the first exception, relating to applicant record owners who create, by grant, parcels in violation, and who are record owners of parcels.

Section 33 of Stats.1982, c. 87, provided:

"Amendments made to Section 66499.34 by this act are intended to eliminate the statutory authorization whereby a person who divides real property in violation of the Subdivision Map Act (Division 2 (commencing with Section 66410) of Title 7 of the Government Code) or local ordinances enacted pursuant thereto is himself or herself entitled to obtain a permit to develop such property based solely on conditions which could have been imposed upon such person at the time of the unlawful division."

The 1984 amendment inserted "or her" near the end of the second sentence of the first paragraph and near the beginning of the second paragraph; and added the third paragraph.

Derivation: Bus. & Prof.C. former § 11538.1, added by Stats.1972, c. 706, p. 1287, § 2.

Library References

Municipal Corporations ☞43.
Zoning and Planning ☞372.1.
WESTLAW Topic Nos. 268, 414.

C.J.S. Municipal Corporations §§ 83, 84.
C.J.S. Zoning and Land Planning § 191.

Notes of Decisions

Public health 1

1. Public health

Creation of equitable servitude is not only means available to secure restrictions on land

use necessary to protect public health: another method is for public agency, such as planning commission, duly empowered by ordinance, to withhold its consent where development is attempted in violation of lawful regulation. *Scrogings v. Kovatch* (App. 1 Dist. 1976) 134 Cal.Rptr. 217, 64 Cal.App.3d 54.

§ 66499.35. Certificate of compliance; conditions; effect

(a) Any person owning real property or a vendee of that person pursuant to a contract of sale of the real property may request, and a local agency shall determine, whether the real property complies with the provisions of this division and of local ordinances enacted pursuant thereto. Upon making the determination, the city or the county shall cause a certificate of compliance to be filed for record with the recorder of the county in which the real property is

located. The certificate of compliance shall identify the real property and shall state that the division thereof complies with applicable provisions of this division and of local ordinances enacted pursuant thereto. The local agency may impose a reasonable fee to cover the cost of issuing and recording the certificate of compliance.

(b) If a local agency determines that the real property does not comply with the provisions of this division or of local ordinances enacted pursuant thereto, it shall issue a certificate of compliance or a conditional certificate of compliance. A local agency may, as a condition to granting a certificate of compliance, impose any conditions which would have been applicable to the division of the property at the time the applicant acquired his or her interest therein, and which had been established at that time by this division or local ordinance enacted pursuant thereto, except that where the applicant was the owner of record at the time of the initial violation of the provisions of this division or of local ordinances enacted pursuant thereto who by a grant of the real property created a parcel or parcels in violation of this division or local ordinances enacted pursuant thereto, and the person is the current owner of record of one or more of the parcels which were created as a result of the grant in violation of the division or local ordinances enacted pursuant thereto, then the local agency may impose any conditions which would be applicable to a current division of the property. Upon making the determination and establishing the conditions the city or county shall cause a conditional certificate of compliance to be filed for record with the recorder of the county in which the real property is located. The certificate shall serve as notice to the property owner or vendee who has applied for the certificate pursuant to this section, a grantee of the property owner, or any subsequent transferee or assignee of the property that the fulfillment and implementation of these conditions shall be required prior to subsequent issuance of a permit or other grant of approval for development of the property.

Compliance with these conditions shall not be required until the time which a permit or other grant of approval for development of the property is issued by the local agency.

(c) A certificate of compliance shall be issued for any real property which has been approved for development pursuant to Section 66499.34.

(d) A recorded final map, parcel map, official map, or an approved certificate of exception shall constitute a certificate of compliance with respect to the parcels of real property described therein.

(e) An official map prepared pursuant to subdivision (b) of Section 66499.52 shall constitute a certificate of compliance with respect to the parcels of real property described therein and may be filed for record, whether or not the parcels are contiguous, so long as the parcels are within the same section or, with the approval of the city engineer or county surveyor, within contiguous sections of land.

(f)(1) Each certificate of compliance or conditional certificate of compliance shall include information the local agency deems necessary, including, but not limited to, all of the following:

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- (A) Name or names of owners of the parcel.
- (B) Assessor parcel number or numbers of the parcel.
- (C) The number of parcels for which the certificate of compliance or conditional certificate of compliance is being issued and recorded.
- (D) Legal description of the parcel or parcels for which the certificate of compliance or conditional certificate of compliance is being issued and recorded.
- (E) A notice stating as follows:

This certificate relates only to issues of compliance or noncompliance with the Subdivision Map Act and local ordinances enacted pursuant thereto. The parcel described herein may be sold, leased, or financed without further compliance with the Subdivision Map Act or any local ordinance enacted pursuant thereto. Development of the parcel may require issuance of a permit or permits, or other grant or grants of approval.

(F) Any conditions to be fulfilled and implemented prior to subsequent issuance of a permit or other grant of approval for development of the property, as specified in the conditional certificate of parcel compliance.

(2) Local agencies may process applications for certificates of compliance or conditional certificates of compliance concurrently and may record a single certificate of compliance or a single conditional certificate of compliance for multiple parcels. Where a single certificate of compliance or conditional certificate of compliance is certifying multiple parcels, each as to compliance with the provisions of this division and with local ordinances enacted pursuant thereto, the single certificate of compliance or conditional certificate of compliance shall clearly identify, and distinguish between, the descriptions of each such parcel.

(Added by Stats.1974, c. 1536, p. 3510, § 4, operative March 1, 1975. Amended by Stats.1975, c. 24, p. 41, § 26, eff. April 4, 1975; Stats.1976, c. 928, p. 2125, § 9; Stats.1977, c. 234, p. 1039, § 14, eff. July 7, 1977; Stats.1982, c. 87, § 31, eff. March 1, 1982; Stats.1983, c. 677, § 1; Stats.1988, c. 1041, § 4; Stats.1993, c. 500 (S.B.121), § 3; Stats.1994, c. 655 (A.B.3353), § 2.)

Historical and Statutory Notes

The 1975 amendment deleted, from subd. (d), the word "subdivision" after "final".

The 1976 amendment rewrote subd. (b), which formerly read:

"(b) If a local agency determines that such real property does not comply with the provisions of this division or of local ordinances enacted pursuant thereto, it may, as a condition to granting a certificate of compliance, impose any of the conditions permitted under Section 66499.34. Such conditions may be fulfilled and implemented by the property owner who has applied for a certificate of compliance pursuant to this section or by a grantee of such property owner. If such conditions are not fulfilled or implemented by the applicant property owner or the grantee, the certificate of compliance

shall have no force or effect upon any subsequent transfer of the property and any subsequent transferee or assignee shall make a new application for a certificate of compliance pursuant to this section, and the city or county may impose such conditions as would have been applicable at the time such assignee or transferee acquired the property."

The 1977 amendment added, to the first sentence of subd. (a), "or a vendee of such person pursuant to a contract of sale of such real property"; in the first sentence of subd. (b), changed "current owner of record" to "applicant"; in the same sentence, changed "the property" to "his interest therein"; and in the third sentence of subd. (b), added the word "vendee".

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SUBDIVISIONS Title 7

The 1982 amendment added, in subd. (b), to the first sentence "shall issue a certificate of compliance or a conditional certificate of compliance"; made a second sentence to subd. (b), beginning with "A local agency may" from the former second clause of the first sentence of that subdivision; added, to this sentence, "or her"; and added to this sentence, the first exception, relating to applicant record owners who create, by grant, parcels in violation, and who are record owners of parcels.

Section 34 of Stats.1982, c. 87, provided:

"Amendments made to Section 66499.35 of the Government Code by this act are intended to eliminate the statutory authorization whereby a person who divides real property in violation of the Subdivision Map Act (Division 2 (commencing with Section 66410) of Title 7 of the Government Code) or local ordinances enacted pursuant thereto is himself or herself entitled to obtain a conditional certificate of compliance with regard to such property based solely on conditions which could have been imposed upon such person at the time of the unlawful division."

The 1983 amendment substituted "parcel map or official map" for "or parcel map" in subd. (d), and added subd. (e).

The 1988 amendment, in subd. (d), substituted "official map, or an approved certificate of exception" for "or official map"; added subd. (f), providing for the repeal of the section on Jan. 1, 1994; and made nonsubstantive changes throughout.

The 1993 amendment deleted subd. (f), providing for the repeal of the section on Jan. 1, 1994.

The 1994 amendment added subd. (f), requiring certain information be included in each certificate of compliance, as local agencies deem necessary, and allowing a single certificate for multiple parcels.

Section 3 of Stats.1994, c. 655 (A.B.3353), provides:

"This act is not intended to either enlarge or diminish the regulatory authority of a local agency, nor is this act intended to support or overrule the holding of the California Supreme Court in *Morehart v. County of Santa Barbara*, 7 Cal. 4th 725 (1994)."

Another § 66499.35, added by Stats.1988, c. 1041, § 5, operative Jan. 1, 1994, was repealed by Stats.1993, c. 500 (S.B.121), § 4.

Derivation: Bus. & Prof.C. former § 11538.3, added by Stats.1972, c. 706, p. 1290, § 4.

Cross References

Reference in real property sales contract to record of certificate, see Civil Code § 2985.51.

Library References

California Practice Guide: Real Property Transactions, Greenwald & Asimow, see Guide's Table of Statutes for chapter para-

graph number references to paragraphs discussing this section.

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certificate of compliance where compliance with Act is found. *Findleton v. Board of Sup'rs* (App. 3 Dist. 1993) 15 Cal.Rptr.2d 665, 12 Cal.App.4th 709.

Following their applications for certificates of compliance pursuant to Subdivision Map Act, property owners were statutorily entitled to receive certificates or conditional certificates of compliance, and thus, upon vote of county board of supervisors rejecting applications, property owners' entitlement to certificates was ripe for judicial review. *Hunt v. County of Shasta* (App. 3 Dist. 1990) 275 Cal.Rptr. 113, 225 Cal.App.3d 432, rehearing denied and modified.

County was required to issue certificates of compliance for 15 lots that were described on map properly recorded under predecessor statute to Subdivision Map Act, as well as local ordinance enacted thereunder, and certificates of compliance or conditional certificates of compliance for fractions of 17 other lots de-

1. Construction with other laws

Permit Streamlining Act (PSA) supplies strong remedy in form of automatic project approval to those discretionary acts of public agencies that are insulated from compulsion by way of mandamus. *Findleton v. Board of Sup'rs* (App. 3 Dist. 1993) 15 Cal.Rptr.2d 665, 12 Cal.App.4th 709.

2. Entitlement

Portion of Subdivision Map Act (SMA) governing issuance of certificates of compliance confers no discretion upon local agency to deny

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scribed on map, which fractions were subsequently created by metes and bound conveyances in which none of lots were identified or recognized. 74 Op.Atty.Gen. 149, 8-13-91.

3. Effect of certification

City's issuance of certificate of compliance regarding lot, thus certifying that division of lot into front and rear parcels was in accordance with applicable provisions of Subdivision Map Act and city's subdivision ordinance barred any claim by adjoining homeowners that rear and front parcels of lot merged so as to set aside conveyance of rear parcel to owners who planned to build two-story home in subdivision containing one-story homes. *Stell v. Jay Hales Development Co.* (App. 2 Dist. 1992) 15 Cal. Rptr.2d 220, 11 Cal.App.4th 1214, rehearing denied.

4. Exempt land

As Subdivision Map Act does not prohibit local agency from deciding whether division is exempt from requirement for certificate of compliance for having been separated into two or more contiguous parcels prior to Act's effective date, county board has authority, in interest of uniformity and predictability in land titles, to decide whether to issue certificate of compliance with respect to land claimed to be exempt. *Kirk v. San Luis Obispo County* (App. 2 Dist. 1984) 202 Cal.Rptr. 606, 156 Cal.App.3d 453.

5. Tax sale

When the tax collector sells a portion of a tax-deeded parcel at a tax sale the purchaser is entitled to a certificate of compliance as to such portion as provided in this section. 64 Ops. Atty.Gen. 814, 11-9-81.

6. Injunctions

Provisions of injunction effectively suspending county's ability to issue conditional certificates of compliance for property subdivided in violation of Subdivision Map Act was not overbroad where they were necessary feature of broad injunctive relief to maintain status quo until county had adopted valid general plan for physical development. *Camp v. Mendocino County Bd. of Sup'rs* (App. 1 Dist. 1981) 176 Cal.Rptr. 620, 123 Cal.App.3d 334.

7. Review

Trial court erred in applying independent-judgment test to review decision of county board of supervisors refusing to order issuance of a certificate of compliance for parcels created by grantors' gift deed conveyances to their children upon ground that grantors violated Subdivision Map Act and county ordinances in making the conveyances; rather, trial court should have upheld board's determination if it was supported by substantial evidence in light of the whole record. *Pescosolido v. Smith* (App. 5 Dist. 1983) 191 Cal.Rptr. 415, 142 Cal.App.3d 964.

§ 66499.36. Notice of intent to record notice of violation; effect; meeting

Whenever a local agency has knowledge that real property has been divided in violation of the provisions of this division or of local ordinances enacted pursuant to this division, it shall cause to be mailed by certified mail to the then current owner of record of the property a notice of intention to record a notice of violation, describing the real property in detail, naming the owners thereof, and stating that an opportunity will be given to the owner to present evidence. The notice shall specify a time, date, and place for a meeting at which the owner may present evidence to the legislative body or advisory agency why the notice should not be recorded. The notice shall also contain a description of the violations and an explanation as to why the subject parcel is not lawful under subdivision (a) or (b) of Section 66412.6.

The meeting shall take place no sooner than 30 days and no later than 60 days from date of mailing. If, within 15 days of receipt of the notice, the owner of the real property fails to inform the local agency of his or her objection to recording the notice of violation, the legislative body or advisory agency shall record the notice of violation with the county recorder. If, after the owner has presented evidence, it is determined that there has been no violation, the local agency shall mail a clearance letter to the then current owner of record. If, however, after the owner has presented evidence, the legislative body or advisory agency determines that the property has in fact been illegally divided,

the legislative body or advisory agency shall record the notice of violation with the county recorder. The notice of violation, when recorded, shall be deemed to be constructive notice of the violation to all successors in interest in such property. The county recorder shall index the names of the fee owners in the general index.

(Added by Stats.1974, c. 1536, p. 3511, § 4, operative March 1, 1975. Amended by Stats.1976, c. 928, p. 2125, § 10; Stats.1977, c. 234, p. 1040, § 15, eff. July 7, 1977; Stats.1983, c. 677, § 2; Stats.1984, c. 864, § 2.)

Historical and Statutory Notes

As enacted in 1974, the section read:

"Whenever a local agency has knowledge that real property has been divided in violation of the provisions of this division or of local ordinances enacted pursuant to this division, it shall cause to be filed for record with the recorder of the county in which the real property is located, a notice of violation, describing the real property in detail, naming the owners thereof, and describing the violation. Such notice, when recorded, shall be deemed to be constructive notice of the violation to all successors in interest in such property. The county recorder shall index the names of the fee owners in the general index."

The 1976 amendment added, to the first sentence, "tentative" before "notice"; at the end of the same sentence, added "and stating that an opportunity will be given to the owner to present evidence"; added the second and third sentences, which read: "At least 30 days prior to the recording of a final notice the owner of the real property shall be advised in writing of the intention to record a final notice and specifying a time, date and place at which the owner may present evidence to the legislative body or advisory agency why such notice should not be recorded. If, after the owner has presented evidence, it is determined that there has been no violation, the local agency shall file a release of the tentative notice with the county recorder"; and in the former second sentence, added "tentative or final" before "notice".

The 1977 amendment changed, in the first sentence, "a tentative notice" to "a notice of intention to record a notice"; added the second sentence, relating to mailing a copy of notice of intention to the owner; deleted from the third sentence, the words "At least 30 days prior to the recording of a final notice the owner of the real property shall be advised in writing of the intention to record a final notice and specifying", and substituted for the deletions, as a new beginning of the sentence, "The notice shall specify"; in the fourth sentence, changed "file" to "record"; in the same sentence, changed "tentative notice" to "notice of intention to record a notice of violation"; added the fifth sentence; and, at the beginning of the sixth sen-

tence, changed "Such tentative or final notice" to "The notice of intention to record a notice of violation and the notice of violation".

The 1983 amendment rewrote the section, which read:

"Whenever a local agency has knowledge that real property has been divided in violation of the provisions of this division or of local ordinances enacted pursuant to this division, it shall cause to be filed for record with the recorder of the county in which the real property is located, a notice of intention to record a notice of violation, describing the real property in detail, naming the owners thereof, and describing the violation, and stating that an opportunity will be given to the owner to present evidence. Upon recording a notice of intention to record a notice of violation, the local agency shall mail a copy of such notice to the owner of such real property. The notice shall specify a time, date, and place at which the owner may present evidence to the legislative body or advisory agency why such notice should not be recorded. If, after the owner has presented evidence, it is determined that there has been no violation, the local agency shall record a release of the notice of intention to record a notice of violation with the county recorder. If, however, after the owner has presented evidence, the legislative body or advisory agency determines that the property has in fact been illegally divided, or if within 60 days of receipt of such copy the owner of such real property fails to inform the local agency of his objection to recording the notice of violation, the legislative body or advisory agency shall record the notice of violation with the county recorder. The notice of intention to record a notice of violation and the notice of violation, when recorded, shall be deemed to be constructive notice of the violation to all successors in interest in such property. The county recorder shall index the names of the fee owners in the general index."

The 1984 amendment deleted "and describing the violation," following "thereof," in the first sentence of the first paragraph; and added the third sentence of the first paragraph.

Derivation: Bus. & Prof.C. former § 11538.2, added by Stats.1972, c. 706, p. 1289, § 3.

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Forms

See West's California Code Forms, Government.

Notes of Decisions

**In general 1
Construction and application 2**

2. Construction and application

1. In general

Subdivision Map Act does not require innocent purchaser to suffer for violation by his grantor, but criminal sanctions may be imposed against subdivider and county or municipality may seek other legal, equitable or summary remedies against subdivider. *Scrogings v. Kovatch* (App. 1 Dist. 1976) 134 Cal.Rptr. 217, 64 Cal.App.3d 54.

Lots 1, 2 and 3 did not constitute separate and distinct parcels of land legally subdivided within meaning of the state map act by prior United States Survey Map, and were not therefore exempt from regulation under the map act and local ordinances, and because the lots were not legal subdivisions prior to the map act, no merger issue was raised by common ownership of entire parcel. *John Taft Corp. v. Advisory Agency For Ventura County (Ventura County)* (App. 2 Dist. 1984) 207 Cal.Rptr. 840, 161 Cal.App.3d 749.

Article 3

JUDICIAL REVIEW

Section

66499.37. Time for judicial review; calendar precedence.

Article 3 was added by Stats.1974, c. 1536, p. 3511, § 4, operative March 1, 1975.

§ 66499.37. Time for judicial review; calendar precedence

Any action or proceeding to attack, review, set aside, void or annul the decision of an advisory agency, appeal board or legislative body concerning a subdivision, or of any of the proceedings, acts or determinations taken, done or made prior to such decision, or to determine the reasonableness, legality or validity of any condition attached thereto, shall not be maintained by any person unless such action or proceeding is commenced and service of summons effected within 90 days after the date of such decision. Thereafter all persons are barred from any such action or proceeding or any defense of invalidity or unreasonableness of such decision or of such proceedings, acts or determinations. Any such proceeding shall take precedence over all matters of the calendar of the court except criminal, probate, eminent domain and forcible entry and unlawful detainer proceedings.

(Added by Stats.1974, c. 1536, p. 3511, § 4, operative March 1, 1975. Amended by Stats.1980, c. 1152, p. 3799, § 14.)

Historical and Statutory Notes

Addition of this section by § 4.8 of Stats.1974, c. 1536, p. 3518, failed to become operative under the provisions of § 10.8 of that Act. The 1980 amendment substituted "90 days" for "180 days" in the first sentence.

ed by Stats.1953, c. 1566, p. 3245, § 1; Stats. 1965, c. 1180, p. 2980, § 4; Stats.1965, c. 1341, p. 3327, § 1; Stats.1972, c. 942, p. 1699, § 1. Bus. & Prof.C. former § 11525.1, added by Stats.1965, c. 1341, p. 3227, § 2.

Derivation: Bus. & Prof.C. former § 11525, added by Stats.1943, c. 128, p. 866, § 1, amend-

Law Review and Journal Commentaries

Land development and the environment: Subdivisions: Conditions imposed by local government. John Paul Hanna, 6 Santa Clara L.Rev. 172 (1966).
 Subdivision Map Act. 5 Pac.L.J. 55 (1974).

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Municipal Corporations ⇨43.
 Zoning and Planning ⇨584.
 WESTLAW Topic Nos. 268, 414.
 C.J.S. Municipal Corporations §§ 83, 84.
 C.J.S. Zoning and Land Planning § 302.
 California Practice Guide: Civil Procedure Before Trial, Weil & Brown, see Guide's
 Table of Statutes for chapter paragraph number references to paragraphs discussing this section.
 Report of Assembly Interim Committee on Municipal and County Government, 1963 to 1965, vol. 6, No. 21, p. 31. Vol. 1 of Appendix to Journal of Assembly, Reg.Sess., 1965.

Notes of Decisions

- In general 1
- Commencement of period 5
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proval and recordation, and resultant final validity of the map, did not per se moot appeal in action challenging tentative subdivision map. Kriebel v. City of San Diego, City Council (App. 4 Dist. 1980) 169 Cal.Rptr. 342, 112 Cal.App.3d 693.

3. Purpose

Ninety-day limitation for appealing decisions of legislative body concerning subdivisions is to ensure that judicial resolution of Subdivision Map Act disputes occur as expeditiously as is consistent with requirements of due process of law. Hunt v. County of Shasta (App. 3 Dist. 1990) 275 Cal.Rptr. 113, 225 Cal.App.3d 432, rehearing denied and modified.

4. Decision

Statute of limitations governing "[a]ny action or proceeding" challenging subdivision-related decision or any event preceding that determination applies whenever conduct of local agency under Subdivision Map Act is called into question, even where it has allegedly exercised no discretion under Act. Presenting Jamul v. Board of Sup'rs of San Diego County (App. 4 Dist. 1991) 282 Cal.Rptr. 564, 231 Cal.App.3d 665, review denied.

"Decision," within meaning of this section, included any product of local agency's decision making process that was final in sense that agency contemplated no further action that could be preempted by premature judicial review and did not mean only action by majority vote of all members of county board of supervisors. Hunt v. County of Shasta (App. 3 Dist. 1990) 275 Cal.Rptr. 113, 225 Cal.App.3d 432, rehearing denied and modified.

Omission from this section of provision setting forth statute of limitations in cases where no formal approval has been given by responsible agency did not compel conclusion that, for lack of vote by majority of entire county board of supervisors, period in which to seek judicial review of decision pursuant to Subdivision Map

1. In general

Any legislative inaction under Subdivision Map Act requires timely application for judicial review. Presenting Jamul v. Board of Sup'rs of San Diego County (App. 4 Dist. 1991) 282 Cal. Rptr. 564, 231 Cal.App.3d 665, review denied.

2. Construction with other laws

Common-law action for deceit against developer by neighboring homeowners was not barred by Planning and Zoning Law or Subdivision Map Act, which were legislative enactments covering governmental approval of real estate development, inasmuch as homeowners' action was not against either city review board or county planning commission for approving development, nor was complaint grounded on misrepresentations developer allegedly made to those bodies. Lacher v. Superior Court (Southwest Diversified, Inc.) (App. 4 Dist. 1991) 281 Cal.Rptr. 640, 230 Cal.App.3d 1038, review denied.

This section prevailed over more general statutes of limitations in Code of Civil Procedure. Hunt v. County of Shasta (App. 3 Dist. 1990) 275 Cal.Rptr. 113, 225 Cal.App.3d 432, rehearing denied and modified.

City council approval of and recordation of final map for subdivision simply confirmed fulfillment of tentative map conditions, and ap-

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Act should be unlimited. *Hunt v. County of Shasta* (App. 3 Dist. 1990) 275 Cal.Rptr. 113, 225 Cal.App.3d 432, rehearing denied and modified.

Where city ordinances provided that city council had authority to approve or disapprove subdivision plan map and that no map would have force or effect until it had been approved by city council, city council's approval of final subdivision map was a "decision" for purposes of this section and thus action which was filed within 180 days after city council's approval of final map was not barred, though filed more than 180 days after decision to approve tentative map, and despite contention that approval of final map was then only ministerial. *Save El Toro Ass'n v. Days* (App. 1 Dist. 1977) 141 Cal.Rptr. 282, 74 Cal.App.3d 64.

5. Commencement of period

Assuming that application for certificate of compliance with Subdivision Map Act would have been futile as of date when county denied landowner's application for sewer permit, thus excusing landowner from requirement of seeking certificate, the denial also triggered the 90-day period of limitations for judicial review of Subdivision Map Act controversies. *Hunt v. County of Shasta* (App. 3 Dist. 1990) 275 Cal. Rptr. 113, 225 Cal.App.3d 432, rehearing denied and modified.

Statute of limitation in this section for challenge to extension of tentative subdivision map begins to run when extension is granted; statute does not begin to run anew upon approval of final map. *Griffis v. Mono County* (App. 3 Dist. 1985) 209 Cal.Rptr. 519, 163 Cal.App.3d 414.

This section began to run on date of approval of conditions, and not on date of hearing on petitioner's applications for final maps when requirement that conditions be filled prior to final approval was first imposed; therefore, petitioner's challenge to validity of those conditions imposed in tentative map approval was time-barred. *Soderling v. City of Santa Monica* (App. 2 Dist. 1983) 191 Cal.Rptr. 140, 142 Cal. App.3d 501.

One-hundred-eighty-day statute of limitations applicable to action challenging constitutionality of city resolution adopting school impact fee policy commenced running at time city approved plaintiffs' subdivision maps which contained school impact fee conditions, not at the time of the later payment of such fees, and therefore, school district's complaint in intervention raising such statute of limitations stated a defense to plaintiffs' action. *Timberidge Enterprises, Inc. v. City of Santa Rosa* (App. 1 Dist. 1978) 150 Cal.Rptr. 606, 86 Cal.App.3d 873.

6. Forfeiture of rights

Any forfeiture of property owners' rights due to expiration of statute of limitations for appeal of decision of county board of supervisors pursuant to this section resulted not from strict construction of this section but from property owners' own tactical decision to forgo timely pursuit of judicial remedy in order to resolve matter by working through legislature to clarify existing statute. *Hunt v. County of Shasta* (App. 3 Dist. 1990) 275 Cal.Rptr. 113, 225 Cal. App.3d 432, rehearing denied and modified.

Where county board was within its authority in denying certificate of compliance to landowners who sought to subdivide property, landowner's failure to file petition for mandamus challenging board's action within 180 days after board's original denial operated as forfeiture of their right to challenge decision, notwithstanding that mandamus petition was filed within 180 days after denial of landowners' second application. *Kirk v. San Luis Obispo County* (App. 2 Dist. 1984) 202 Cal.Rptr. 606, 156 Cal. App.3d 453.

7. Extensions

Developer's suit seeking writ of mandate and declaratory relief from county board of supervisors' denial of developer's request to toll expiration date of tentative subdivision map was governed, and thus barred, by 90-day statute of limitations. *Presenting Jamul v. Board of Sup'rs of San Diego County* (App. 4 Dist. 1991) 282 Cal.Rptr. 564, 231 Cal.App.3d 665, review denied.

Resident and taxpayer was barred from attacking extension of subdivision map by 90-day statute of limitations even though action was filed within 90 days of approval of final map and even though attack on final map was based on grounds that extension was improperly granted, where action was brought more than 90 days after extension. *Griffis v. Mono County* (App. 3 Dist. 1985) 209 Cal.Rptr. 519, 163 Cal. App.3d 414.

8. Rent dispute

Ninety-day limitations of Subdivision Map Act for challenging a tentative map did not apply to rent increase dispute which followed failed attempt to convert mobile home park to resident ownership; city's approval of tentative map as part of failed conversion attempt was irrelevant to claim that city ordinance rather than state statute governed rent increases. *Donohue v. Santa Paula West Mobile Home Park* (App. 2 Dist. 1996) 55 Cal.Rptr.2d 282, 47 Cal.App.4th 1168.

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Note 9

9. Inverse condemnation

Action in inverse condemnation, whether or not joined with action in administrative mandamus challenging ordinance enacted pursuant to Subdivision Map Act or its application to owner's property, is governed by Act's 90-day limitations period for proceedings attacking decisions concerning subdivisions, unless action alleges existence of final judgment establishing that there has been compensable taking of owner's property. *Hensler v. City of Glendale* (1994) 32 Cal.Rptr.2d 244, 8 Cal.4th 1, 8 Cal.4th 440B, 876 P.2d 1043, modified on denial of rehearing, certiorari denied 115 S.Ct. 1176, 130 L.Ed.2d 1129.

10. Mandamus

Mandate proceeding brought by plaintiffs in which they alleged that county had no valid general plan and that therefore approval of subdivisions and any new zoning ordinance was necessarily invalid since they could not conform to a nonexistent plan, and in which they alleged that situation existed in which county had no discretion, but was required to disapprove subdivisions and to refrain from enacting any zoning ordinances, was traditional mandate proceeding to which 180-day limitations period provided in Subdivision Map Act was applicable rather than 90-day period provided for in C.C.P. § 1094.6 for administrative mandate actions, and thus since petition for writ of mandate was

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filed 147 days after county's determination, action was not barred. *Resource Defense Fund v. Santa Cruz County* (App. 1 Dist. 1982) 184 Cal.Rptr. 371, 133 Cal.App.3d 800.

11. Injunctions

Trial court in action regarding validity of general plan for physical development of county could not enjoin board of supervisors from approving final map found to be in substantial compliance with tentative map which it had approved before preliminary injunctions were issued and which had not subsequently been challenged in timely action or proceeding commenced pursuant to provision of this section governing challenge to such tentative map. *Camp v. Mendocino County Bd. of Sup'rs* (App. 1 Dist. 1981) 176 Cal.Rptr. 620, 123 Cal.App.3d 334.

12. Review

Issue of statute of limitations was properly before Court of Appeal, even though the relevant statute of limitations was not pled in defendants' answer, where defendants pled the defense of laches, where evidence of the relevant statute of limitations was adduced, where parties litigated the issue in the trial court as if properly joined, and where findings were made to which plaintiff did not object. *Griffis v. Mono County* (App. 3 Dist. 1985) 209 Cal.Rptr. 519, 163 Cal.App.3d 414.

Division 3

OFFICIAL MAPS

Section

- 66499.50. Applicability of division.
- 66499.51. Definitions.
- 66499.52. Preparation; city engineer or county surveyors; other surveyors or engineers.
- 66499.53. Compilation of maps; resurveys; renumbering; change of street names.
- 66499.54. Certification.
- 66499.55. Filing with recorder.
- 66499.56. Designation as official map; time.
- 66499.57. Description of lots or blocks by reference to map.
- 66499.58. Surveys and field notes; filing; public records.

Division 3 was added by Stats.1975, c. 24, p. 42, § 26.5, eff. April 4, 1975.

Cross References

Legal descriptions of lands for assessment purposes, official maps, see Revenue and Taxation Code § 325.
Maps, subdivisions, see Government Code § 66425 et seq.

OFFICIAL MAPS

Div. 3

§ 66499.50. Applicability of division

This division applies to all counties and, whether incorporated or not, to all cities, towns and villages in this state.

(Added by Stats.1975, c. 24, p. 42, § 26.5, eff. April 4, 1975.)

Historical and Statutory Notes

Derivation: Bus. & Prof.C. former § 11650, added by Stats.1943, c. 128, p. 877, § 1.

Pol.C. § 3658a, added by Stats.1903, c. 282, p. 408, § 1, amended by Stats.1935, c. 346, p. 1206, § 1; Stats.1939, c. 158, p. 1383, § 1.

§ 66499.51. Definitions

As used in this division:

(a) "City council or board of supervisors" includes the proper corresponding governing board and authority in each place where the division applies.

(b) "City engineer" and "county surveyor" includes the like or corresponding officer, subject to the direction of the corresponding governing board and authority in each place where the division applies.

(c) If there is no city engineer or county surveyor subject to such direction, the corresponding board and authority may employ competent engineers and surveyors to the extent necessary for the carrying out of the purposes of this division in the places subject to its jurisdiction, and the persons so appointed shall have the same authority and shall perform the same duties as are given and enjoined upon city engineers and county surveyors, respectively, in like cases. The services of engineers and surveyors so employed shall be contracted for, examined, passed upon, audited and paid as are other debts contracted by such governing boards and authorities.

(Added by Stats.1975, c. 24, p. 42, § 26.5, eff. April 4, 1975.)

Historical and Statutory Notes

Derivation: Bus. & Prof.C. former § 11650, added by Stats.1943, c. 128, p. 877, § 1.

Pol.C. § 3658a, added by Stats.1903, c. 282, p. 408, § 1, amended by Stats.1935, c. 346, p. 1206, § 1; Stats.1939, c. 158, p. 1383, § 1.

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Municipal Corporations ⇨42.
Zoning and Planning ⇨11.5.
WESTLAW Topic Nos. 268, 414.

C.J.S. Municipal Corporations §§ 83, 84.
C.J.S. Zoning and Land Planning § 48.

§ 66499.52. Preparation; city engineer or county surveyors; other surveyors or engineers

(a) Whenever any city, town or subdivision of land is platted or divided into lots or blocks, and whenever any addition to any city, town or subdivision is laid out into lots or blocks for the purpose of sale or transfer, the city engineer or the county surveyor, under the direction and with the approval of the city council or board of supervisors, may make an official map of the city, town or subdivision, giving to each block on the map a number, and to each lot or subdivision in the block a separate number or letter, and giving names to the