

# The Subdivision Map Act

Gateway to Development or  
Roadblock?

# I. Overview

## II. Preemption

# Preemption

- The Map Act is “not preemptive of all land use regulation.” *McMullan v. Santa Monica Rent Control Bd.*, 168 Cal. App. 3d 960, 963 (1985).
- The Map Act has been held not to preempt:
  - A city’s condominium conversion ordinance. *Griffin Dev. Co. v. City of Oxnard*, 39 Cal. 3d 256 (1985).
  - Local revenue taxes. *The Pines v. City of Santa Monica*, 29 9Cal. 3d 656 (1981).

# Preemption – continued

- A city may not regulate contrary to a specific Map Act provision.
- Therefore:
  - Local ordinance limiting the maximum duration of a map extension to one year not valid, since Map Act expressly allows for longer extensions. *Griffis v. County of Mono*, 163 Cal. App. 3d 414 (1985).
  - Local ordinance requiring merger under certain circumstances invalid because deemed to conflict with the merger provision of the Map Act. *Morehart v. County of Santa Barbara*, 7 Cal. 4<sup>th</sup> 725 (1994).

# Preemption By Other State Law

- Local subdivision ordinance cannot require the filing of a map for a parcel created as a probate homestead by the probate court.
- Probate law held to supersede local subdivision ordinance. *Wells Fargo Bank v. Town of Woodside*, 33 Cal. 3d 379 (1983).

# Subdivision Map Act v. Subdivided Lands Act

- *California Coastal Comm'n v. Quanta Inv. Corp.*, 113 Cal. App. 3d 579, 588 (1980): “. . . the subdivision of real property and the sale of subdivided lands involve two separate statutes.”
- Subdivision Map Act (Govt. Code § 66410 et seq.)
  - Provides for regulation of land divisions by a city;
  - Interpreted and enforced by the city.
- Subdivided Lands Act (Bus. & Prof. Code §§ 11000 et seq.)
  - Consumer protection statute intended to ensure adequate disclosures.
  - Regulates public offerings of land in subdivisions for sale or lease.
  - Interpreted and enforced by California Department of Real Estate (DRE).

**III. Subdivisions  
Covered  
By the Map Act**



# Subdivisions Covered By the Map Act

- 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 rolls as a unit or as contiguous units, for the purpose of lease, sale or financing, whether immediate or future.” Govt. Code § 66424.

# Division of units of land . . .

- Created when there is a right of exclusive occupancy.
- Division of “parcels” of airspace – fee title to a portion of land and defined space – constitutes division under Map Act. 39 Cal. Ops. Atty. Gen. 82 (1962).

# “Shown on latest equalized assessment roll . . . “

- Mechanism for identifying property being divided.
- Parcel designation does not convey rights to sell, lease or finance.

# “Purpose of sale, lease, or financing . . . “

- Partition of property pursuant to judicial action is considered a sale.
- Gifts can be considered a “sale.”
- Leases are determined by the intent of the parties and are created whenever one intends to divest the other of possession for period of time. *Robinson v. City of Alameda* (1997) 194 Cal. App.3d 1286.

# “Immediate or future . . .”

- If ultimate intent is to sell, fact that sale does not occur immediately after division does not avoid Map Act.
- Sale by an agent is considered sale for purposes of Map Act requirements.
- Theme of courts looking at the intent of the transaction. E.g., *Maaten Kalway v. City of Berkeley* (1st App. Dist. June 4, 2007) plaintiffs can't avoid the Map Act “by means of a paper transfer of ownership, inconsistent with the purposes of the Act.”

# What are “contiguous units” of land?

- Why important?

- If two parcels not contiguous, each can be divided into four parcels without the need for final map.
- If contiguous, then division of each into four parcels is considered a subdivision of eight parcels, requiring final map.

- “Property is contiguous even though separated by roads, streets, utility easements, or railroad rights of way.” Govt. Code § 66424.



# Gifts



- *Pescosolido v. Smith*, 142 Cal. App. 3d 964 (1983).
  - Pescosolidos convey parcels to children for college financing.
  - Pescosolidos testified they had no intent to sell the parcels to children, but recognized that it was likely at least one of the children would sell the parcel in near future.
  - Division held to be “for the purpose of sale . . . whether immediate or future.” Map Act compliance required.

# Leases, Permits, Licenses

- Nature of the transaction controls, not name appearing on document.
- Granting of exclusive right to occupy property for a determinate period of time will be considered a lease, regardless of the name given to the instrument.
  - 57 Ops. Cal. Atty. Gen. 556 (1974).



# Lease Exemptions

- Exempted from Map Act requirements are:
  - Agricultural leases.
  - Leases of space in apartment buildings, offices, stores.
  - Mineral, oil, and gas leases.
  - Financing/leasing of commercial and industrial buildings.
  - Second units & Granny units.

# Partition of Property

- *Pratt v. Adams*, 229 Cal. App. 2d 602 (1964).
  - 12 joint tenants owned 40,000 acres.
  - One tenant filed judicial action for partition.
  - Referee ordered division of land into undivided interests.
  - Each of the 12 then subdivided own parcel into four or fewer parcels, creating a total of 38 parcels.
  - County properly denied building permits to owners, as partition action cannot be used to circumvent Map Act requirements.

# Easements & Non-Possessory Interests

- Some non-possessory interests have been held not to be subject to the Map Act.
- *Robinson v. City of Alameda*, 194 Cal. App. 3d 1286 (1987).
  - A retained right to use portion of a sold-off parcel until grantors' death held not to be a lease or a sale. Not subject to Map Act.
- Leases or easement for wind generators and telecommunications infrastructure exempted by statute. Govt. Code § 66412(i), (j).

# IV. Map Act Exceptions and Exclusions

# Map Act Exceptions and Exclusions

- Lot Line Adjustments:
  - Can only be between four or fewer parcels.
  - Land taken from one parcel must be added to an adjoining parcel.
  - Must not create a greater number of parcels than originally existed. Govt. Code § 66412(d).

# Lot Line Adjustments - continued

- In considering lot line adjustment, local agency:
  - Must limit review and approval to determination of whether consistent with general plan, coastal plan, and zoning and building ordinances.
  - May not impose conditions or exactions on approval except to conform to such plans, to require payment of taxes, or facilitate relocation of facilities.

# Lot Line Adjustments - continued

- Deed of trust, mortgage, or lien should be amended to reflect new lot lines.
- Deed of trust language encumbering real property and “[a]ll replacements and additions” held sufficient to automatically add property acquired by lot line adjustment. *Hellweg v. Cassidy*, 61 Cal. App. 4<sup>th</sup> 806, 809 (1998).
- Map Act requires that adjustment shall be reflected in a recorded deed. Govt. Code § 66412(d).

# Other Map Act Exceptions

- Second Units & Granny Units.
  - Construction, financing or leasing excepted.
  - Sale or transfer not excepted.
  
- Conveyances to or from Public Entities & Public Utilities.
  - Only parcel maps excepted.
  - Divisions requiring final maps not exempted.



# Other Map Act Exceptions (continued)

- Financing and leasing of apartments, offices, stores, space in apartment buildings, industrial buildings, commercial buildings, mobile home parks, or trailer parks. Govt. Code 66412(a).
- Conversions of community apartment to condominium under limited circumstances (e.g. 75% owner occupied as of certain date; final or parcel map properly recorded after certain date).

# V. Types of Maps

# Types of Maps

- Tentative Map and Final Map required when subdivision creates:
  - 5 or more parcels;
  - 5 or more condominiums;
  - Community apartment with 5 or more parcels;
  - Conversion of stock cooperative containing 5 or more dwelling units.
  
- Parcel Map (and no Final Map) required for any other subdivision.

# Exceptions Allowing Parcel Maps for Five or More Parcels

## ■ Subdivision involves:

- Less than 5 acres, abuts public street, and no dedications or improvements required.
- Parcels of 20 acres or more with approved access.
- Land zoned industrial or commercial; approved access to public street; approval as to street alignments and widths.
- Parcels of not less than 40 acres or quarter-quarter section.
- Environmental subdivision. Govt. Code § 66418.2.

# Remainder Parcels

- Undivided portion of a parcel following subdivision.
- Remainder portion may not be divided for purpose of sale or financing immediately or in future.
- If area is greater than 5 acres, remainder may be omitted from map and included only in deed reference.

# Remainder Parcels (continued)

- Designated remainder not counted as a parcel when determining whether tentative/final map required.
- City may not generally require construction of improvements or payment of fees for improvements on remainder until permit or other approval for development of the remainder is issued.
- City may require construction of improvements within reasonable time after final map approval and prior to issuance of permit for remainder parcel if improvements necessary for public health and safety. Govt. Code § 66424.6(a).

# Conveyance of Remainder Parcel

- Remainder may be sold without any subsequent filing of parcel map or final map.
- City may require certificate or conditional certificate of compliance. Govt. Code 66424.6(d).

# Successive Divisions

- All previous subdivisions of piece of land by same subdivider are counted to determine whether final or parcel map required.
- *Bright v. Board of Supervisors*, 66 Cal. App. 3d 191 (1977).
  - Bright owned Parcel A and adjoining Parcel B.
  - Transferred portion of Parcel B to wife (creating Parcel C).
  - Applied for parcel map dividing Parcel A into four lots.
  - *Held*: Final map required.



# Illegal Quartering

- May not avoid tentative and final map requirements by subdividing one parcel four times, then repeating process again.
- Improperly circumvents more stringent requirements for final maps.
- *Pratt v. Adams*, 229 Cal. App. 2d 602 (1964):
  - Partition into 12 parcels among joint tenants.
  - Division of each parcel four or fewer times, resulting in 38 parcels.
  - Held to be improper scheme to multiply parcels.  
Requires tentative and final map.

# Map Waivers

City may require tentative map in lieu of parcel map required by Map Act. § 66428 et seq.

City must have ordinance providing for waiver of parcel map.

- may include condominium construction
- must require specified findings
- may require tentative map instead
- waiver required if intended conversion of mobile home park to resident ownership (petition of 2/3) unless certain conditions are present

# Maps of Condominium Projects

- Map of condominium project need not show buildings or manner in which buildings or airspace are to be divided.
- Map need not include condominium plans.
- Map Act does not limit the power of cities to regulate the design or location of buildings in a condominium. Govt. Code § 66427.

# VI. Tentative and Parcel Maps

# Tentative Map Process

- Who will act on the map?
  - Determined by local ordinance.
  - May be planning commission, city council, city official.
- Land use hierarchy: consistency required with general plan, specific plan, zoning.
- Compliance with CEQA.
  - Initial study
  - Mitigated Negative Declaration or Environmental Impact Report

# Map Approval

- Time limits on approval of the tentative map.
  - If “advisory agency” not authorized to approve map, then:
    - Advisory agency submits written report on map to legislative body within 50 days of filing of map.
    - At first regularly scheduled meeting after receiving report, legislative body must set hearing on map.
    - Hearing must be within 30 days after the meeting at which the date is set.
  - If “advisory agency” authorized to act on map itself, it shall take that action within 50 days of filing of map. Govt. Code § 66452.1
  - If no “advisory agency,” clerk must present map to legislative body at next regularly scheduled meeting. Map must be approved, conditionally approved, or denied within 50 days thereafter.

# Map Approval (continued)

- Permit Streamlining Act and CEQA set forth additional limits upon time to act on map. CEQA timelines are the critical triggers for the SMA and PSA timelines.
- PSA timelines do not apply if map approval is contingent upon general plan amendment, rezoning, or other land use legislation.

# Findings for Map Approval

- Findings show how the city progressed from facts presented to the decision made.
- *Topanga Ass'n for a Scenic Community v. County of Los Angeles*, 11 Cal. 3d 506 (1974). Purposes of findings:
  - Provide framework for principled decisions;
  - Facilitate orderly analysis;
  - Serve public relations function;
  - Enable parties to determine basis for judicial review;
  - Apprise reviewing court of basis for determination.



# Findings for Map Approval (continued)

- Required findings for approval of tentative maps include:
  - Consistency with general plan.
  - Consideration of effect upon housing needs of the region and balancing of those needs against public service needs of residents and available fiscal and environmental resources. Govt. Code § 66412.3
  - Future passive or natural heating or cooling opportunities made available. Govt. Code § 66473.1

# Denial of Map

- Determined with reference to those ordinances, policies and standards in effect at the time the map application deemed complete.
- Any of the following findings require disapproval:
  - Inconsistency with general or specific plan;
  - Site not physically suited for proposed type or density;
  - Design likely to cause substantial environmental damage;
  - Design conflicts with public easements.

# Water Supply Planning

- SB 610 – Water Supply Assessment (Water Code § 10910 et seq.)
  - Residential development of more than 500 units;
  - Done when city determines whether EIR required;
  - Ask each water system to indicate whether water available for 20-year period during normal, single-dry, and multiple-dry years.
- SB 221 – Water Supply Verification (Govt. Code § 66473.7)
  - Residential subdivisions of more than 500 units (with exceptions);
  - Required as condition of map approval;
  - Same substantive determination required.

# Parcel Maps

- City is more limited in imposing fees and exactions: rights-of-way, easements, and construction of reasonable on-site and off-site improvements.
- City may not require that improvements be completed until permit for development issued.
- Other approval criteria left up to local ordinance.

# Tentative Map Life - Extensions

- Initial Life = 2 years
  - Can be extended by up to 12 months
- Discretionary Extensions = Not to exceed 5 years.
- Extensions Through Phased Final Maps
  - Remainder of tentative map extended by 36 months upon filing of first phase final map (if improvements required outside tentative map boundary).
  - Series of 36 month extensions can extend life of tentative map up to 10 years after initial approval.

# Map Extensions (continued)

- Development moratorium -- Time periods for expiration do not include:
  - Water/sewer moratoria;
  - Actions by agencies that regulate land use, development, provision of services;
  - Delay in approval of map by agency with authority to approve.
  
- Lawsuit – Expiration of tentative map may be stayed pending litigation:
  - Application must be made to agency for lawsuit stay.
  - Agency has 40 days to decide on application.

# Ailanto Properties v. City of Half Moon Bay

- Issue: Does filing of a non-conforming phased FM extend a TM 36-months under Gov't C 66452.6(a)(1)
  - Holding: No. Delivery of a FM that does not conform to the TM does not extend the life of the TM under 66452.6(a)(1)
- Issue: Amt of time a TM may be extended under Gov't C 66452.6(b)(1) due to moratoria
  - Holding: Only 5 years. Not multiple 5 year periods for multiple moratoria

# Map Extensions

- One-time Legislative Extensions:
  - 1993: Extended by 24 months all approved tentative maps that had not expired as of September 13, 1993.
  - 1996: Extended by 12 months all approved tentative maps that had not expired as of May 14, 1996.
- Automatic; no required action by city.
- In addition to all other extensions.



# Order of Extensions

- Order of extensions – as between discretionary and mandatory – is unimportant.
- *California Country Club Homes Ass'n Inc. v. City of Los Angeles*, 18 Cal. App. 4<sup>th</sup> 1425 (1993).
  - Claim that statute allowing for maximum 10-yr mandatory extensions meant overall life could not exceed 10 years.
  - Court rejected this claim. Mandatory and discretionary extensions are additive.
- Aggregate: Map filed after 1996 has maximum life of 15 years:
  - Mandatory extensions of up to 10 years.
  - Discretionary extensions of up to 5 years.

# Development Agreements

- Tentative map on property subject to development agreement can extend for the period of time provided in the agreement.
- Duration of map life may not extend beyond duration of the agreement.

# Conditioning Extensions

- Discretion in determining whether to grant extension is limited to length of extension.
- *El Patio v. Permanent Rent Control Board*, 110 Cal. App. 3d 915 (1980).
  - Compliance with new rent control ordinance cannot be imposed as condition of extension of map.
- *Hafen v. County of Orange*, 128 Cal. App. 4<sup>th</sup> 133 (2005).
  - New requirement for site plan submission and permitting not considered a condition; deemed a zoning change.
  - Even property with approved map subject to change in zoning absent some vested rights.

# When is Final Map “Filed?”

- Expiration of tentative map terminates proceedings, so filing of final map before expiration.
- Delivery to Surveyor or Engineer: Constitutes “filing” of the map.
- Processing of Final Map: Subsequent actions by the agency, including processing, approving, and recording, can occur after the date of expiration of tentative map.
- What constitutes complete “filing” ensuring compliance?
  - Subject to local ordinance;
  - May include posting of bonds, improvement agreements, completed plan check, etc.

# VII. Effect of Annexation or Incorporation

# Annexation

- Where Final Map Approved By County:
  - Final map and any agreements related to the subdivision continue to govern the subdivision.
- Where Only Tentative Map Approved by County:
  - All city policies shall be deemed to commence as of effective date of annexation.
  - Map must comply with any applicable city requirements for approval.

# Annexation

- Alternative:
  - City may process, in its discretion, a map submitted to it for unincorporated territory adjacent to the city.
  - Approval must be conditioned on subsequent annexation. Govt. Code § 66454

# Incorporation

- A newly-formed city “shall” approve a final map if it meets all requirements of a tentative map that was approved by the County.
  - Developer must have applied to the County for its tentative map before the city’s incorporation petition was commenced.
  - Tentative map must have been approved by County prior to election on question of incorporation.



# VIII. Map Conditions

# Map Conditions

- Map Act vests cities with regulation and control of “design” and “improvement” of subdivisions. Govt. Code § 66411.
- Four sources of authority to impose conditions:
  - Specific statutory authorization contained in Map Act and related statutes;
  - CEQA environmental review process;
  - Police power to regulate “design” and “improvement;”
  - Power to implement general and specific plans.

# Conditions Imposed Via Map Act and Related Statutory Authority

- Parkland dedication	- Adequate water supply	- School site dedication
- Reservations	- Street & bicycle path dedication	- Local transit facility dedication
- Drainage and sewer fees	- Bridge and thoroughfare fees	- Groundwater recharge
- Reimburse agreements for improvements	- Soils investigations.	- Setting of monuments
Grading and erosion control	- Public access, easements along rivers & streams	- Energy conservation
- Solar access easements	- Indemnification	- Off-site improvements

# Conditions Imposed Through CEQA Compliance

- City shall deny subdivision if it would cause substantial environmental damage.
- City may therefore impose conditions to mitigate impacts identified in an EIR.
- Exception: SB 50 prohibits local agencies from imposing school impact mitigation fees in excess of a statutory maximum fee to be paid on a per-square-foot basis for new construction.

# Conditions Based on Map Act Expanded Definition of “Design” and “Improvement”

- City entitled to regulate “design” and “improvement” consistent with the City’s general or specific plan.
- General plans can therefore provide basis for conditions not specifically authorized elsewhere in the Map Act, such as:
  - Child day care centers;
  - Public art;
  - Police stations;
  - Libraries;
  - Affordable Housing;
  - Fire stations.

# Limitations on Conditioning Approvals

- Mitigation Fee Act. Govt. Code § 66000 *et seq.*
  - Fees or exactions shall not exceed the estimated reasonable cost of providing the service or facility.
  - City establishing, increasing, or imposing fee as condition of approval must:
    - Identify purpose;
    - Identify use to which fee will be put;
    - Establish reasonable relationship between fee's use and type of development project;
    - Establish reasonable relationship between need for the public facility and type of development project upon which imposed.

# Limitations on Conditioning Approvals

- The Constitutional “nexus” requirement:
  - *Nollan v. California Coastal Comm’n*, 483 U.S. 825 (1987).
  - Commission permit condition required dedicating lateral access along Nollans’ private beach.
  
  - Held:
    - There was not sufficient nexus must exist between burdens imposed and dedication condition;
    - Dedication therefore did not “substantially advance” a “legitimate state interest.”

# Limitations on Conditioning Approvals

- “Rough proportionality” of burden to the need created by the subdivision.
  - *Dolan v. City of Tigard*, 512 U.S. 374 (1994).
  - City conditioned development permit on dedication of land for improved storm drainage system and pedestrian/bicycle pathway.
  - Held:
    - City must demonstrate “required reasonable relationship” between the conditions and the development’s impact.
    - The required “rough proportionality” between the burden and dedication was not present here.



# Limitations on Conditioning Approvals – Impact Fees

- *Ehrlich v. City of Culver City*, 12 Cal. 4<sup>th</sup> 854 (1996).
- Considered whether imposition of impact fee (rather than land dedication) triggers the nexus and proportionality requirements set forth in *Nollan/Dolan*.
- Result:
  - Ad hoc fee (applied on individual basis) subject to heightened scrutiny of *Nollan/Dolan*.
  - Legislatively enacted fees applicable to general class not subject to *Nollan/Dolan*.

# Limitations on Conditioning Approvals

- Takings law constrains city's conditioning power.
- *Lingle v. Chevron*, 544 U.S. \_\_\_\_ (2005).
  - No taking established where regulation merely “does not substantially advance legitimate state interest.”
  - Only methods for challenging land use regulation as taking are:
    - Physical taking;
    - “Total” regulatory taking;
    - *Penn Central* taking;
    - Violation of nexus/rough proportionality test (*Nollan/Dolan*)

# Vague Conditions – Longer Statute of Limitations

- *Univill v. City of Los Angeles*, 124 Cal. App. 4<sup>th</sup> 537 (2004).
  - City imposed general and somewhat vague conditions regarding utility access.
  - City later interpreted condition to require specific fiber optic easement.
  - *Held:*
    - City's demand not supported by condition; therefore amounts to a physical taking.
    - Taking claim properly subject to 5-year statute of limitations, rather than 90 day statute for challenging condition.

# IX. Final Map Requirements

# Final Map - Ministerial

- Approval of final map is ministerial, provided that:
  - Final map conforms to a tentative map that was properly approved.
  - Subdivider has complied with all conditions of approval attached to the tentative map.

# Final Map – Ministerial (continued)

- *Youngblood v. Board of Supervisors*, 22 Cal. 3d 644 (1978).
  - County had approved tentative map for 1-acre lots (consistent with zoning in place at time).
  - Amendment to general plan reduces density to 1 unit per 2 acres.
  - Final map submitted in conformance with tentative map must be approved.

# Final Map – Delegation to Officials

- City Council may designate by ordinance authority to approve or disapprove final map to: city engineer, surveyor, or other designated official.
- Ordinance delegating authority must:
  - Require official to notify council map is under review;
  - Include specified time limits;
  - Provide notice of pending approval/disapproval by official;
  - State that official's decision appealable to council.
  - Require periodic legislative review of delegation.

# Offers of Dedication, Rejection, Later Acceptance

- Offers: Final map must include certificate containing statements of dedication for streets, utilities, or other public uses.
  
- Acceptance Procedure:
  - Reject initial offer when final map submitted;
    - Offer remains open;
    - Rescind rejection when improvements made.
  - Accept dedication subject to agreement to complete improvements.
    - Offer will terminate without action by City if no acceptance within 25 years.



# Improvement Agreements & Security

- Improvement agreements:
  - Subdivider bears ultimate responsibility:
    - Either agree to pay or build outright; or
    - Assessment district, with developer to assure completion.
- Security:
  - City can require by statute that subdivider post bonds, instruments of credit, or cash to secure completion of improvements.
- *City of Los Angeles v. Amwest Surety Ins. Co.*, 63 Cal. App. 4<sup>th</sup> 378 (1998).
  - Surety held liable after subdivider abandoned project;
  - Improvements were still needed; parcel was not expected to revert to acreage.

# Correction & Amendment of Maps

- **Errors & Omissions:** Amendments allowed:
  - Where error ascertainable from data on map; or
  - Where monuments to be placed after death or disability of engineer; or
  - To correct any error so long as no effect on property right.
- **Changed Circumstances:** Amendment allowed where:
  - Map condition no longer necessary; or
  - Modifications do not impose new burdens, alter property right.

# X. Locking in Entitlements

# Vested Rights Doctrine

- *Avco Community Developers v. South Coastal Regional Comm'n*, 17 Cal. 3d 785 (1976).
    - Avco had obtained zoning, tentative map, other approvals.
    - Had spent \$2 million on development-related activities.
    - Coastal zoning permit requirement put into place.
    - Held: Avco must comply with the new requirement.
- Rights to develop do not vest until:
- Building permit issued;
  - Substantial work and expense in reliance on that permit.

# Development Agreements

- Development agreement statute created in 1979 in response to *Avco*. Govt. Code § 65864 *et seq.*
- Typically:
  - Vest the developer into a certain set of regulations, ordinances, policies;
  - Vest the developer into a schedule of fees;
  - Allow the city to exact beyond what is allowed under “nexus” limitations.

# Enforcement of Vested Rights

- *Morrison Homes v. City of Pleasanton*, 58 Cal. App. 3d 724 (1976).
  - City had committed to provide sewer hookups.
  - Regional Water Quality Control Board had ordered halt to hookups until extra sewer capacity created.
  - City could be required to build the capacity and deliver the permits as provided in the Annexation Agreement.
  - No improper “contracting away” of police power.

# Use of Vesting Tentative Map

- Vesting Tentative Map provides:
  - The right to develop in substantial compliance with the ordinances, policies, and standards in effect at the time the application for approval of the vesting tentative map is deemed complete.
- Exception
  - Changes “in the pipeline.” Govt. Code § 66474.2(b).

# Use of Vesting Tentative Map

- *Bright Development v. City of Tracy*, 20 Cal. App. 4<sup>th</sup> 783 (1993)
  - VTM application deemed complete.
  - City passes requirement of undergrounding of all off-site utilities;
  - *Held*: City cannot impose the requirement on Bright's development.
- *Kaufmann & Broad Central Valley v. City of Modesto*, 25 Cal. App. 4<sup>th</sup> 1577 (1994)
  - City's "fee escalator" provision required payment of fee in place at time of building permit.
  - *Held*: Fee increase can be imposed only where standards for determining amount and scope in place at time VTM deemed complete



# VTM – Processing Requirements

- Display words “Vesting Tentative Map” on map itself.
- All processing requirements same as for tentative maps, except as specifically provided by Map Act or by local ordinance.
- Amendment of VTM:
  - Developer can seek to have a new ordinance or standard passed subsequent to VTM approval applied to project.

# XI. Enforcement

# Prohibitions

- Map Act prohibits:
  - Sale, lease, or financing of any parcels or commencement of construction before map is filed (except for model homes).
- Map Act does not prohibit:
  - Contract for sale conditioned upon approval and filing of map.

# Private Party Remedies Under Map Act

- Deed, sale, or contract in violation of Map Act is voidable at option of grantee, buyer, or purchaser for one year after discovery of violation.
- Deed, sale, or contract is binding on any successor in interest of grantee, buyer, or contracting party.
- However, successor in interest may sue for damages, unless certificate of compliance is issued.
- Any private party may sue to enjoin violation of Map Act.

# City Remedies for Violation of Map Act

- Suit for declaratory relief or to enjoin violation of Act.
- Request that criminal complaint be filed.
- Withhold permits and approvals necessary to develop violating property after finding that development is contrary to public health and safety.

# Notices of Violation

- City shall mail to current owner notice of intention to record notice of violation of Map Act.
- Notice shall specify:
  - Time, date, place for meeting at which owner may present evidence.
  - Description of alleged violations and explanation why parcel not lawful.

# Certificates of Compliance

- Owner or person contracting to acquire property may request certificate of compliance with Map Act requirements.
- Upon request, City *must* issue either:
  - Certificate of compliance; or
  - Conditional certificate of compliance, with conditions required to bring about compliance.
- If requesting party caused violation, conditional certificate may impose any conditions that would be applicable to current division of property.
- If requesting party did not cause violation, conditional certificate may impose only those conditions that could have been imposed at time requesting party acquired its interest.

# Fishback v. County of Ventura

- 1940 – 1941 conveyances purported to carve 14 parcels from a parent parcel
- 1943 one of the 14 is sold and then subdivided
- County refuses to issue certificate of compliance
- Holding: Further division of an illegal parcel cannot create a legal parcel
- Significance: Statewide, parcels created from further subdivision of a parcel illegally created in the '30s, 40's and 50's are illegal; do not issue C of Cs



# XII. Judicial Review

# Challenges to Approval or Disapproval of Map

- Exhaustion of remedies required:
  - Appeal decision to city council;
  - Raise all issues to be raised in court at all administrative levels.
- Time: Action to set aside subdivision approval to be brought (and summons served) within 90 days after date of decision.
- Administrative mandamus: Seeking an order requiring city to set aside its approval.

# Protesting Imposition of Subdivision Exactions

- Mitigation Fee Act. Govt. Code § 66000 *et seq.*
  - Payment under protest available for fees or dedications imposed as condition to particular development.
    - Due within 90 days of imposition of fee.
    - Action can then be filed within 180 days of imposition of fee.
    - Development can proceed; right to recover fees paid is protected.

# CEQA Challenge

- Initial Study – Environmental Review
- Agency certification of environmental document.
  - Notice of determination filed with any approval for which CEQA review was required.
  - Filed and posted.
- Time for challenge:
  - 30 days from date NOD was filed.
  - 180 days from date of approval, if no NOD filed (or if improperly filed or posted).

# XIII. Merger and Reversion to Acreage

# Types of Merger

- Filing of final or parcel map creating new subdivision with smaller number of lots.
- City adoption of ordinance permitting owner-initiated mergers.
- *De facto* merger using lot line adjustment procedure permitting lot lines to be moved to correspond to parcel lines.

# City-Initiated Mergers

- Map Act provides exclusive authority for merger of contiguous parcels initiated by City. Govt. Code § 66451.10.
  - Not effective until notice of merger is filed for record with the county recorder.
  - City shall send notice of intention to determine status.
  - Owner may request hearing on determination of status.

# OWNERSHIP

## ■ MAP ACT Section 66451.1

- Basic Requirement: Parcels must be contiguous and “held by the same owner”
- Ownership is determined “as of the date that notice of intention to determine status is recorded.”
- *Maarten Kalway v. City of Berkeley* (May 31, 2007, First Appellate District, Division One)
- Owners sought a writ compelling City to set aside a decision to merger two parcels.
- Conceded all elements except common ownership.
- Owner/Husband received advance notice of City’s intentions and conveyed one parcel to Wife.
- Conceded conveyance made to prevent merger.
- Court: Merger effective. Paper title only one indicator of “ownership” for these purposes.
- “Where two or more properties have the same owner in substance, even if not in form, they may be merged if the Act’s substantive conditions for merger exist and its procedural requirements are met.”



# Merger

- *Morehart v. County of Santa Barbara*, 7 Cal. 4<sup>th</sup> 725 (1994).
  - Local ordinance required merger of certain contiguous parcels in common ownership as prerequisite to development application for one of the parcels.
  - Map Act identifies specific and limited grounds for local agency to require merger of parcels (e.g. failure to meet standards for sewage disposal, water supply, etc.).
  - Ordinance was invalid because it went beyond these standards.

# XIV. Antiquated Subdivisions

# Post-1893 Subdivisions

- First Map Act in 1893.
- Validity of maps filed after that date determined by comparison to Map Act requirements in effect at the time map was filed. Govt. Code § 66451.10.

# Post-1893 Subdivisions (continued)

- 74 Cal. Ops. Atty. Gen. 149 (1991).
  - Parcels legal where described on a 1914 subdivision map recorded under the version of the Map Act then in effect.
  - Fractions of lots subsequently created by metes and bounds descriptions should be given conditional certificate of compliance.
- *Hays v. Vanek*, 217 Cal. App. 3d 271 (1989).
  - Lots shown on 1926 map were not legal because it did not comply with Map Act then in effect.
  - “Metes and bounds” exception allowed under subsequently-enacted versions of the Act were held not to apply.

# Pre-1893 Subdivisions

- *Gardner v. County of Sonoma*, 29 Cal. 4<sup>th</sup> 990 (2003).
  - Map recorded in 1865 showing 1,000 acre property divided into 90 lots.
  - Owner of 12 lots within the subdivision applied for certificate of compliance. County denied.
  - Map did not satisfy either condition under which pre-1893 map may establish legal subdivision:
    - No approval or exemption under a preexisting statute. There was no evidence the map had been approved pursuant to any Sonoma County ordinance governing subdivisions at the time.
    - No separate conveyance of the parcels. This may have made the parcels eligible for legal status as separate lots under the common law.

# Map Act Presumptions of Validity

- Any parcel created prior to March 4, 1972 is conclusively presumed to be legal parcel if:
  - Parcel resulted from division of land where fewer than five parcels were created;
  - No legal ordinances were in effect that regulated the division of land creating fewer than five parcels.
- Presumption exists for parcel created prior to March 4, 1972 if purchaser acquired for consideration without knowledge of violation of Map Act or local ordinance.
  - Owner must obtain certificate of compliance before developing.

# **XV. Reversions and Exclusions**

# Reversions

- Eliminate the subdivision entirely.
- Requires city approval after public hearing with findings that:
  - Dedications to be vacated are unnecessary;
  - Owners have consented and no improvements have been made (and no lots sold).
- Alternative: File new map over old map which merges and resubdivides.



# Exclusions

- Removes land from an existing subdivision.
- Requires judicial action:
  - Notice;
  - Court hearing;
  - Reasons for exclusion to the Court's satisfaction.
- *Van't Rood v. County of Santa Clara*, 113 Cal. App. 4<sup>th</sup> 549 (2003).