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MEMORANDUM OF LAW

DATE: May 14, 1999

TO: Stephen M. Haase, Acting Director
Planning and Development Review

FROM: City Attorney

SUBJECT: Condominiums and the Subdivision Map Act

QUESTIONS PRESENTED

1. Do the requirements of the Subdivision Map Act [SMA], apply to the construction of condominium projects?
2. May developers of condominium projects avail themselves of a waiver process?
3. In lieu of a waiver, what other relief may be available to developers of condominium projects?

SHORT ANSWERS

1. The SMA expressly includes condominium projects within the definition of subdivisions. As such, the SMA further requires the filing of a parcel, tentative, or final map, absent certain exceptions or waivers.
2. The SMA authorizes local jurisdictions to provide for a procedure, by ordinance, for waiving the requirement for a parcel map. The procedure may include provisions for waiving the requirement for a tentative and final map, if construction of a condominium project occurs on a single parcel. The ordinance shall require a finding by the decision maker that the proposed division of land complies with the requirements established by the relevant provisions of the SMA and the ordinance.

3. In limited circumstances, other relief may be available to the subdivider such as a Certificate of Compliance.

BACKGROUND

Over the years, this office has issued memoranda responding to particular questions regarding the Subdivision Map Act [SMA] as it relates to construction of condominium projects. Over time, City staff has interpreted these memoranda to allow for the waiver of filing parcel, tentative, or final maps through the issuance of a “waiver letter.”

It is our understanding that staff issues waiver letters on an administrative basis rather than through a formal hearing process. When issued, a waiver letter typically contains minimal details of the project and contains no time constraints, nor vesting requirements. The Office of the County Recorder does not record the waiver letter nor does City staff otherwise document the issuance of the waiver letters.

More recently, this office and Land Development Review staff have discussed the practice of issuing waiver letters for condominium projects and the need to formally meet SMA requirements. This memorandum serves to memorialize these discussions.

DISCUSSION

I. MAP ACT REQUIREMENTS

The purpose of the SMA is to establish statewide criteria for land development planning by establishing suitability, design, improvement, and procedural requirements for subdivisions. *The Pines v. City of Santa Monica*, 29 Cal. 3d 656, 659 (1981). The SMA further “allows local governments to impose supplemental requirements of the same kind.” *The Pines v. City of Santa Monica*, 29 Cal. 3d 656, 659 (1981). Overall, it seeks 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.” *Benny v. City of Alameda*, 105 Cal. App. 3d 1006, 1011 (1980).

Historically, the SMA was drafted to address the development of undeveloped land for single family dwellings. 65 Op. Cal. Att’y Gen. 101, 103, 104 (1982). As such, condominium projects may not necessarily fit within traditional land use regulations like the SMA. *See County of Los Angeles v. Hartford Accident & Indemnity Co.*, 3 Cal. App. 3d 809, 813-815 (1970); 65 Op. Cal. Att’y Gen. 101, 103 (1982).

Notwithstanding the potential for an imperfect fit, the California State Legislature has also deemed the regulation and control of condominium projects an important aspect of land development planning.

The legislature expressly included condominium projects within the regulatory scheme of the SMA. The SMA defines subdivision as ". . . the division, by any subdivider, of any unit or units of improved or unimproved land, or any portion thereof . . . for the purpose of sale, lease or financing . . . and includes a *condominium project*, as defined in subdivision (f) of Section 1351 of the Civil Code." Cal. Gov't Code § 66424 (emphasis added). The inclusion of condominium projects within the regulatory scheme is further evidenced by the tentative and final map requirements for all subdivisions creating five or more condominiums. Cal. Gov't Code § 66426. If less than five condominium units are contemplated, the SMA only requires the preparation of a parcel map. Gov't Code § 66428.

It has been suggested that it is unclear how the state legislature intended the SMA to apply to condominium projects, and that, therefore, local jurisdictions may exercise flexibility so long as they conform to the spirit of the SMA. The reasoning is that if City staff determines that adequate infrastructure exists for the proposed condominium project, the City need not require the filing of a new subdivision map. The proponents of such a view would assert that the waiver conforms to the spirit of the SMA. *See* Cal. Gov't Code § 66411.

Contrary to the suggestion that the legislature's intent is unclear, the legislature has clearly stated that subdivision maps are required for condominium projects. It has also expressly stated *how* and in *which circumstances* a waiver of those requirements may be granted. The words of a statute are given their usual, ordinary import, according significance to every possible word, phrase and sentence. *Moyer v. Workmen's Comp. Appeals Board*, 10 Cal. 3d 222, 230 (1973). Where the language of the statute is clear and unambiguous, there is no need to interpret beyond the plain meaning. *Delany v. Superior Court*, 50 Cal. 3d 785, 798 (1990). To suggest the SMA allows for "flexible" granting of waiver letters contradicts the clear legislative intent. Also, the unrestrained issuance of waiver letters runs the risk of inadequate community planning and of imposing undue burdens on taxpayers.

It has also been suggested that, based on the statutory definition of a condominium, a multi-unit residential project may be constructed without meeting SMA requirements. California Civil Code section 1351(f) provides, in part, that there can be no undivided interest in common (and thus by statutory definition there can be no condominium) until at least one unit has been sold by the subdivider. Using this definition, no subdivision map would be required to construct a condominium project.

The California Attorney General's Office squarely addressed this issue as it related to the proposed construction of a condominium project on a previously subdivided single parcel of property. The Attorney General opined that "[a]lthough eventually no sales of condominium units may take place, the requirements of the [SMA] would nonetheless be applicable to the *proposed* construction of a condominium project. Otherwise, the purposes of the [SMA] would be frustrated and the language of section 66424 and section 66426 would be rendered absurd." 65 Op. Cal. Att'y Gen. 101, 105 (1982) (emphasis added). We concur with the Attorney General; the requirements of the SMA apply to the proposed construction of any condominium project.

II. WAIVER OF MAP ACT REQUIREMENTS

Although the SMA provides no mechanism for the current method of granting waivers, the SMA does enable local jurisdictions to adopt a waiver procedure by ordinance.

In accordance with California Government Code section 66428, a local agency shall, *by ordinance*, provide a procedure for waiving the requirement for a parcel map, including the requirements for a parcel map imposed by California Government Code section 66426. The procedure may also include provisions for waiving the requirement for a tentative and final map for the construction of a condominium project on a single parcel. For a waiver to be granted, the legislative body or designated official/official body must make findings that "the proposed division of land complies with requirements established by [Division 2 of the SMA] or the local ordinance 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 [Division 2 of the SMA] or the local ordinance." Cal. Gov't Code § 66428. California Government Code section further states that where a map has been approved for a condominium project, certain types of additional development would not constitute a further subdivision under section 66424, if certain enumerated conditions have been satisfied.

Presently, our Municipal Code provides for minimal waiver authority. See San Diego Municipal Code section 102.0325 (conversion of mobile home park to condominium ownership on one parcel) and section 111.1003 (waiver of Parcel or Final Map requirements when submitting a Tentative Map). However, in light of Cal. Gov't Code section 66428, the City Council could amend the municipal code to provide for additional waiver procedures.

III. OTHER RELIEF

Under limited circumstances, the City may issue a certificate of compliance pursuant to California Government Code section 66499.35 and San Diego Municipal Code section 111.1005. In such an instance, the City must find that the property complies with applicable provisions of the SMA and local ordinances. Additionally, projects constructed prior to March 4, 1972, may be

afforded some relief under California Government Code sections 66412.6 and 66412.7. These projects should be evaluated on a case by case basis.

CONCLUSION

Neither the SMA nor the Municipal Code authorizes the issuance of waiver letters for the construction of condominium projects in the manner presently employed by City staff. Therefore, we recommend that staff modify its practices to conform to state law requirements.

Although the current waiver practices do not conform to state law requirements, the SMA does authorize the City to waive certain parcel map, as well as tentative and final map, requirements. To do so, the City Council must adopt legislation setting forth the procedures to waive those requirements.

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By

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