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MEMORANDUM OF LAW

DATE: March 17, 2004

TO: Lee Hennes, Senior Land Surveyor

FROM: City Attorney

SUBJECT: Authority to Grant a Conditional Certificate of Compliance Under the Subdivision Map Act Where City has Previously Provided a Waiver Letter for Condominium Conversion

BACKGROUND

Recently, staff has become aware of several condominium conversion projects in which the City has no record of a map approval or certificate of compliance, but the owner has provided some proof that the project is a condominium project, such as a Department of Real Estate [DRE] public report. You have stated that many owners of these projects have represented that the City previously issued a waiver letter exempting the project from the requirements of the Subdivision Map Act [SMA]. As you are aware, our office has previously opined that the City's former practice of granting waiver letters on an administrative basis rather than through a formal hearing process does not conform to state law requirements. City Att'y MOL No. 99-4 (May 14, 1999).

QUESTION PRESENTED

Does the City have the authority to issue a conditional certificate of compliance for condominium projects in which the City has previously issued a waiver letter exempting the project from SMA requirements?

SHORT ANSWER

Yes. Under the SMA and the San Diego Municipal Code, the City Manager has the authority to issue a conditional certificate of compliance to property which is not subdivided consistent with SMA requirements. The conditional certificate of compliance may be appropriately conditioned to address the equities and circumstances of the particular case.

ANALYSIS

Proof of compliance with the SMA may take the form of a legally recorded final map, parcel map, or certificate of compliance. Cal. Gov't Code § 66499.35. The SMA and the San Diego Municipal Code authorize the City Manager to issue a conditional certificate of compliance in accordance with Process One. Cal. Gov't Code §66499.35; San Diego Municipal Code §§ 125.0201-125.0250. Under this process, if the City determines that the property complies with the SMA, it shall cause a certificate of compliance to be filed. Cal. Gov't Code §66499.35(a). If the City determines that the property does not comply with the SMA, it shall issue a *conditional* certificate of compliance. Cal. Gov't Code §66499.35(b).

In issuing the conditional certificate of compliance, the City may impose any conditions applicable at the time the applicant acquired his or her interest, or, if the applicant was the owner at the time of the initial violation, the City may impose any conditions applicable to a current division of the property. *Id.* Additionally, the conditional certificate of compliance may be appropriately conditioned to address the equities and circumstances involved under the facts of a particular case.

CONCLUSION

Under the SMA and the San Diego Municipal Code, the City Manager has the authority to issue a conditional certificate of compliance for condominium projects when the City has previously issued a waiver letter exempting the project from SMA requirements. However, the conditional certificate of compliance may be appropriately conditioned to address the equities and circumstances of the particular case.

CASEY GWINN, City Attorney

By

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