

SUBDIVISION MAP ACT OVERVIEW AND PRACTICAL SUGGESTIONS FOR LOCAL ORDINANCES

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I. The Subdivision Map Act

A. State Subdivision Map Act (Govt. Code Sec. 66410-66499.58)¹

The purpose of the Map Act is to regulate and control design and improvement of subdivisions with proper consideration for their relation to adjoining areas; require subdividers to install streets and other improvements; prevent fraud and exploitation; and protect both the public and purchasers of subdivided lands. (Pratt v. Adams (1964) 229 Cal.App.2d 602.)

B. Local Ordinances (Sec. 66411)

1. *Under their police power (Cal. Const. Art. XI, sec. 7.) local governments have the authority to regulate and control the design and improvement of land; subdivision ordinances will be upheld unless they conflict with state law or occupy the field of regulation already occupied by state law. (Morehart v. Santa Barbara County (1994) 7 Cal.4th 725, 29 CR.2d 804.)*

2. Sample Ordinance from City of Berkeley (1)

II. When a Subdivision Map is required

A. Definition of a Subdivision (Sec. 66424)

1. *The division, by any subdivider, of any unit or units of improved or unimproved land, or any portion thereof, shown on the last equalized county assessment roll as a unit or as contiguous units, for the for the purpose of sale, lease or financing, whether immediate or in the future. (Section 66424.)*

2. The right to exclusive occupancy is indicative of a map act division.

3. Assessor's Parcels distinguished – 62 Cal.Ops.Atty.Gen. 147 (1979)

B. Exceptions to Map requirements (Sec. 66412)

1. Building leases

¹ All references herein will be to the Government Code unless expressly noted.

2. Lot line adjustments (Sample “Information Sheet”) (2)
 - a. No conditions or exactions
 - b. No record of survey required (77 Ops.Cal.Atty.Gen. 231 (1994).)
3. Agricultural leases
4. Telephone corporation uses of land

The Map Act is inapplicable to, “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.” (Sec. 66412(j).)

5. Court ordered divisions such as the creation of a homestead in bankruptcy. (Wells Fargo v. Town of Woodside (1983) 33 Cal.3d 379.)

III. Types of Maps

A. Parcel Maps (Four or less parcels)

1. Form of the map (Sample Parcel Map) (Sec. 66445) (3)
2. Approval process

B. Tentative Maps (Five or more parcels)

1. Form of the map (Sample “How to Apply for a Tentative Tract Map”) (4)
2. Notice and hearing (Secs. 66451, 66452)

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 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.

3. Life of a Tentative Map (Sec. 66452.6)

4. Conditioning Extensions

C. Final Maps (Five or more parcels)

1. Form of the map (Sample Final Tract Map) (5)

2. Approval process (Sample Approval; Improvement Agreement) (6)

Section 66458(d) effective 1/1/99 authorizes cities to adopt local ordinances that designate officials who can approve final maps and accept dedications. However, the ordinance must provide that:

- (1) the designated official shall notify the legislative body at its next regular meeting after the official receives the map that the official is reviewing the map for final approval,*
- (2) the designated official shall approve or disapprove the final map within 10 days following the meeting of the legislative body that was preceded by the notice in (4) below,*
- (3) the designated official's action may be appealed to the legislative body, (4) the clerk of the legislative body shall provide notice of any pending approval or disapproval by a designated official, which notice shall be attached and posted with the legislative body's regular agenda and shall be mailed to interested parties who request notice, and*
- (5) the legislative body shall periodically review the delegation of authority to the designated official. (Section 66458(d).)*

3. Improvement Agreements (Sec. 66462)

D. Vesting Tentative Maps (Sec. 66498.1)

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. (Section 66498.1(b).)

E. Permit Streamlining Act Effect on Map Approvals (Govt. Code sec.65920)

IV. Conditions of Approval of Maps: Dedications and Exactions

A. Conditions relating to parkland, schools, streets and bicycle paths, local transit facilities. (Secs. 66477, 66478, 66475, 66475.2)

1. Indemnification (Sec. 66474.9)

Agency may not require applicant to defend and indemnify for any claim resulting from action or inaction of agency in reviewing approving or denying the map. (Sec. 66474(a))

Agency may require applicant to defend and indemnify any action to set aside, void or annul an approval of the map by the agency (Sec. 66474(b))

2. Offsite improvements (Secs. 66462, 66462.5)

3. Standards for public improvements (65913.2)

B. Conditions under CEQA

A 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...(e) That the design of the subdivision or the proposed improvements are likely to cause environmental damage or substantially and avoidably injure fish or wildlife or their habitat. (Sec. 66474(e))

In mitigating or avoiding a significant effect of a project on the environment, a public agency may exercise only those express or implied powers provided by law other than this division. However, a public agency may use discretionary powers provided by such other law for the purpose of mitigating or avoiding a significant effect on the environment subject to the express or implied constraints or limitations that may be provided by law. (Public Resources Code Sec. 21004)

C. Development Fees

1. Drainage and sewer facilities (Sec. 66483)

2. Bridges and major thoroughfares (Sec. 66484)

D. Takings Considerations

1. Nexus requirement under Nollan

2. Rough proportionality standard of Dolan and Erlich

V. Approval or Denial of Maps (Secs. 66473.5, 66474)

- A. Findings required (Sample Findings and Conditions of Approval) (7)
- B. Appeals; by any interested person 10 days after decision (Sec. 66452.5)

VI. Judicial Review

- A. Statute of Limitations; 90 days after date of decision. (Sec. 66499.37)
- B. Standard of Review; Substantial Evidence (Pescosolido v. Smith (1983) 142 Cal.App.3d 964.)
- C. Attorney's Fees; CCP Sec. 1021.5 and "substantial benefit" theory in equity (Friends of "B" Street v. City of Hayward (1980) 106 Cal.App.3d 988, 165 Cal.Rptr. 766)

VII. Enforcement (Secs. 66499.30-66499.36)

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 [or parcel map] is required by this division or local ordinance, until the final map [or 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. (Section 66499.30)

A. City's remedies

- 1. Subdividers and owners of record subject to 1 year in jail and \$10,000 fine for violating the Map Act; all other violations are misdemeanors. (Sec. 66499.31)
- 2. Notice of Intention to Record Violation (Sec. 66499.36)

B. Private parties' remedies; Action to void conveyance or for damages (Sec. 66499.32)

C. Certificates of Compliance (Sample Certificate of Compliance and unpublished opinion Burger v. Berkeley) (Sec. 66499.35) (8)

VIII. Merger and Unmerger of Parcels (Sample "Information Sheet") (9)

- 1. Merger; Local ordinance required (Sec. 66451.11 copy included) (10)

- a. Notice and opportunity to be heard required; Agency must mail notice of intention to determine status to record owner (notice must be simultaneously recorded); owner may request hearing to challenge within 30 days of notice; hearing to be held within 60 days from receipt of request. (Secs. 66451.13, 66451.14, 66451.15.)
 - b. Agency must record determination of merger within 30 days from date of the hearing. (Sec. 66451.16.) Agency shall record release of notice of intention to determine status if it determines lots shall not be merged and must mail clearance letter to owner. (Sec. 66451.18)
 - c. If no hearing requested, Agency may make a determination of merger; Agency's determination must be recorded no later than 90 days after the date of mailing of the Notice. (Sec. 66151.17.)
2. Parcels deemed not to have merged (Sec. 66451.30; copy included) **(11)**
- a. If no notice of merger was recorded by Agency before January 1, 1984, parcels shall be deemed **not** to have merged if they meet all of the requirements of section 66451.30
 - b. Owners may apply to the local Agency for a determination as to whether parcels have merged or are deemed not to have merged. If the Agency determines that the parcels have not merged, it must issue a notice of status deeming them unmerged; if it determines that they have merged, it must record a notice of merger as set forth in Section 66412. (Secs. 66451.31, 66451.32)