

Tips for Using the Subdivision Map Act to Fight Bad Development

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In the early twentieth century, California adopted a statewide law requiring local governments to review and approve all land subdivisions. This law, called the Subdivision Map Act, has become one of the strongest tools for local governments and the public to regulate growth in their communities. This “Tips” article describes the statute’s requirements, the public’s role in the process, and two recent SMW cases where community group and non-profit clients have used the Map Act to ensure that development complies with the law.

Overview of the Subdivision Map Act

The Subdivision Map Act is a comprehensive, statewide statute governing the subdivision of land in California. See Gov’t Code § 66410 et seq. For decades, the Map Act has required that virtually every subdivision of land be approved by the city or county where the property is located. The purpose of this statutory requirement is to allow local governments to regulate their communities’ growth and ensure that necessary improvements are made before new developments are built.

Without this regulatory control, developments would pop up unchecked, consuming agricultural land and burdening taxpayer-funded infrastructure. To ensure that property owners comply with this regulatory requirement, the Legislature adopted severe penalties, including criminal sanctions, for violators.

The Map Act sets forth the approval process to subdivide land. Unless a specific exception or waiver applies, every subdivider must obtain city or county approval of a “final map” or a “parcel map depicting the proposed lot configuration and any improvements required to serve the subdivision (such as sidewalks, stormdrains, roads, etc.).

If the city or county determines that a proposed map is consistent with state and local laws, it approves the map, and the subdivider records it. The Map Act prohibits the sale, lease, or financing of any parcel of land for which a final or parcel map is required but has not been recorded.

Exceptions to these mapping requirements are few, narrow, and expressly set forth in the Map Act. The Map Act has special provisions for handling subdivisions that occurred before the mapping requirements were adopted. It also contains a process by which a landowner can obtain certification from the local government that a particular parcel was created in compliance with the Map Act (“certificates of compliance”). If a parcel was created illegally—e.g., by separate conveyance without prior map approval after 1972—the local government issues a “conditional certificate of compliance,” notifying subsequent purchasers that the parcel was not created in compliance with the Map Act and imposing conditions that must be satisfied prior to development.

The Public's Role

Members of the public have a number of opportunities to participate in the local government's review and approval of subdivisions. Approval of a parcel or final map is a discretionary action. As a result, subdivisions are "projects" requiring environmental review under the California Environmental Quality Act. Moreover, cities and counties must generally consider subdivision applications at public hearings.

Community members who are concerned about the potential environmental impacts of a subdivision should submit comments on the proposed project to the City Council or Board of Supervisors considering the application. These comments can address a range of issues. The most effective comments, however, will identify ways in which a subdivision is inconsistent with zoning requirements or general plan provisions, or flaws in the environmental analysis.

Because the standard procedures for obtaining approval of a subdivision can be quite time-consuming for the landowner, subdividers frequently look for short-cuts, exceptions, and end-runs around the Map

Act's requirements. As described below, courts have rejected such attempts to skirt state law. Concerned community members should be especially alert to these attempts and make sure that their representatives know what the law requires to subdivide land in California.

Case Studies

SMW has successfully represented environmental and community groups in several cases involving violations of the Subdivision Map Act. Two recent cases illustrate how enforcement of the Map Act can protect sound planning and the environment.

1. Antiquated maps

One of the most complicated areas of subdivision law that courts, landowners, and local governments wrestle with is what to do with old subdivision maps that were recorded before the modern mapping requirements were adopted. For example, what happens if a map was recorded in 1926, before most of the modern Map Act requirements were in place, showing a grid of tiny lots with no improvements or infrastructure? Is that subdivision "grandfathered" such that all subsequent owners have the right to develop according to the lot lines shown there?

In general, the Courts have found that maps recorded before 1915 are not grandfathered, unless there was a local regulation in effect at the time that regulated the design and improvement of subdivisions. There is still an open question about the effect of maps recorded between 1915 and 1929, when the first modern mapping requirements were adopted.

One recent case brought by SMW on behalf of a concerned community group explored this open question. In that case, Redwood City approved an application to develop sixteen single family homes on 16 “lots” owned by 14 different owners. The “lots” were extremely substandard under the City’s current zoning ordinance: because the land was steeply sloped, the minimum lot size under the municipal code was at least 30,000 square feet. The “lots” approved for development, however, averaged less than 10,000 square feet.

In approving the sixteen new houses, the City claimed that its hands were tied. The sixteen “lots” were shown on a subdivision map recorded in 1926, and most of the lots had been conveyed to separate owners over time. As a result, the City asserted that each of the small, steeply sloped lots was entitled to have a single residence built on it.

SMW’s client, a group called Save Laurel Way, objected. They noted that the City could not rely solely on a 1926 map to prove that the lots had been created legally, because the map was created before there were state or local laws in effect that regulated the design and improvement of subdivisions. Moreover, the group noted, several of the “lots” appear to have been always conveyed together, which means they were never “separately” conveyed as individual lots.

The trial court agreed with SMW’s legal position, noting that the City “took at face value” assertions that the lots were separate, legal lots, and that both the law and facts suggested otherwise. The court then stated that this false assumption had infected the City’s entire decisionmaking process, and thus ordered the City to rescind all project approvals and the certification of the Project’s environmental impact report.

2. Unwritten “Exceptions”

Because the Map Act provides such comprehensive oversight by local governments, not to mention environmental review and a public process, landowners will frequently go to great lengths to avoid its application. Such was the case in Contra Costa County in 2011. There, the owner of a large agricultural parcel filed an application with the County to subdivide the property into four lots. Because the subdivision would have permitted increased development on the property, Save Mount Diablo, a prominent conservation organization, commented on the application and urged the County to prepare an assessment of the environmental impacts of the proposed subdivision. The County agreed, and asked the landowner to supply a biological resources study.

Realizing that the subdivision process would not be quick and easy, the landowner abruptly changed course. He withdrew his application for a subdivision map and argued for the first time that his property had already been subdivided nearly fifteen years earlier when the Contra Costa Water District had condemned two strips of land in fee from the previous owner. These two strips of land crisscross the remaining property. Because the remaining pieces of the property no longer “touch,” the landowner argued that each separate “piece” was a legally distinct parcel under the Map Act, which the landowner could sell, finance or develop without the County’s

approval of a subdivision map. The County Board of Supervisors agreed, and issued the landowner four “certificates of compliance,” which certified that each of the four pieces of property were distinct parcels, created in compliance with the Subdivision Map Act.

Recognizing this approach for the end-run it was, Save Mount Diablo sued, alleging that the County’s issuance of four “certificates of compliance” violated the law and was an abuse of discretion. The group argued that there was absolutely no support for the landowner’s theory of “automatic” subdivision by condemnation in the text of the Map Act itself. Indeed, Courts have repeatedly recognized only two methods for creation of new parcels under the Map Act: approval of a subdivision map (either parcel or final) or separate conveyance of one piece of land separate from the rest. The lots claimed by the landowner had never been shown on an approved parcel map, nor had they ever been separately conveyed. As a result, there was no basis for the County to certify the property was four parcels instead of one.

The trial court agreed. The Court stated that neither the landowner nor the County had provided “any authority in the Map Act to support the contention that . . . [the] condemnation of two strips of land crossing the . . . property subdivided the non-condemned land.” Moreover, allowing the County to approve “automatic” subdivisions of properties left after condemnation of part of the property would “set a wide-ranging precedent” that could lead to dozens of subdivisions outside the Map Act’s purview.

The trial court’s ruling is now on appeal. However, if it is upheld, it will be one more in a long line of cases that reject attempts by landowners to sidestep the express requirements of the Map Act.

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