

5-15-1975

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Recommended Citation

James E. Erickson *Subdivision Regulation: Political Armageddon of Consumer, Property Owner and Environmental Rights*, 2 Pepp. L. Rev. Iss. 3 (1975)

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Subdivision Regulation: Political Armageddon of Consumer, Property Owner and Environmental Rights

JAMES E. ERICKSON*

RIGHTS IN CONFLICT

Subdivision regulation is one of the most significant governmental processes in which the conflicting rights of the public to environmental protection, the consumer to adequate housing, and the property owner to reasonable use will be resolved. It is the cambrian layer of resolution, compounded by the fact that it must be done within the political context of the governmental agency administering these regulations.

Public Rights to Environmental Protection

The State of California has found and declared it to be the policy of this State, as a matter of statewide concern, that every public agency regulating subdivisions shall give major consideration to preventing environmental damage and affirmatively contribute to

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the preservation and enhancement of the environment.¹ Furthermore, the Legislature has required these governmental agencies to develop standards and procedures necessary to protect environmental quality.² The Secretary for Resources also has adopted guidelines for these standards and procedures, which restate and implement these findings and this policy.³ This public policy is predicated on and patterned after the federal policy enunciated in the National Environmental Policy Act.⁴

Consumer Rights to Adequate Housing

Often in actual conflict and always in potential conflict with the state policy that the people of California have a right to environmental protection is an emerging body of law stating that the consumer has an equally valid right to have governmental regulations applied in a fashion that will insure adequate housing. Courts throughout the country have condemned the exclusionary practices of governmental agencies which prevent the development of adequate housing facilities within their boundaries.⁵ In one of the most recent and significant cases in this field, Justice Hall of the New Jersey Supreme Court, who wrote the often-cited dissenting opinion in *Vickers v. Township Committee of Gloucester*,⁶ stated in *Southern Burlington County NAACP et al. v. Lawrence, et al., v. Township of Mount Laurel*,⁷ that local government has an affirm-

1. California Environmental Quality Act, CAL. PUB. RESOURCES CODE §§ 21000 et seq. (West Supp. 1975).

2. CAL. PUB. RESOURCES CODE § 21001(f) and (g) (West Supp. 1975).

3. 14 CAL. ADM. CODE §§ 15010-15011 (1973).

4. 42 U.S.C. §§ 4231 et seq. (1970).

5. See e.g., *Oakwood at Madison, Inc. v. Township of Madison*, 128 N.J. Super. 438, 320 A.2d 223 (1974); *In re Girsh*, 437 Pa. 237, 263 A.2d 395 (1970); *National Land Inv. Co. v. Kohn*, 419 Pa. 504, 215 A.2d 597 (1966); *In re Kit-Mar Builders*, 439 Pa. 466, 268 A.2d 765 (1970). See also Clark and Grable, *Growth Control in California, Prospects for Implementation of Timing and Sequential Control of Residential Development*, 5 PACIFIC L.J. 570 (1974).

6. 32 N.J. Super. 232, 181 A.2d 129 (1962).

7. 67 N.J. 151, 336 A.2d 713 (1975).

The legal question before us, as earlier indicated, is whether a developing municipality like Mount Laurel may validly, by a system of land use regulation, make it physically and economically impossible to provide low and moderate income housing in the municipality for the various categories of persons who need and want it

ative obligation to respond to the regional housing needs of its area in terms of all of its land use policies, including even building codes. While this case must be considered carefully in light of its facts and the state law under which it was decided, the emerging judicial policy is clearly stated.

This is not to state that legitimate timing and sequential control of development cannot occur under proper circumstances.⁸ However, it is clear that there is a judicially recognized obligation of the governmental agency administering subdivision regulations not to exclude the reasonable right of housing consumers to adequate housing.

This right also has become a matter of state policy in the State of California. The mandatory housing element of the required general plan of all cities and counties of the state⁹ and the administrative regulations¹⁰ mandate all such governmental agencies to “. . . make adequate provision for the housing needs of all economic segments of the community.”¹¹ The Subdivision Map Act further

and thereby, as Mount Laurel has, exclude such people from living within its confines because of the limited extent of their income and resources. Necessarily implicated are the broader questions of the right of such municipalities to limit the kinds of available housing and of any obligation to make possible a variety and choice of types of living accommodations.

We conclude that every such municipality must, by its land use regulations, presumptively make realistically possible an appropriate variety and choice of housing. More specifically, presumptively it cannot foreclose the opportunity of the classes of people mentioned for low and moderate income housing and in its regulations must affirmatively afford that opportunity, at least to the extent of the municipality's fair share of the present and prospective regional need therefor. These obligations must be met unless the particular municipality can sustain the heavy burden of demonstrating peculiar circumstances which dictate that it should be not required so to do.

We reach this conclusion under state law and so do not find it necessary to consider federal constitutional grounds urged by plaintiffs. N.J., — — A.2d — — (1975) 336 A.2d 713 at 724-25.

8. See generally, Clark and Grable, *Growth Control in California, Prospects for Implementation of Timing and Sequential Control of Residential Development*, 5 PACIFIC L.J. 570 (1974).

9. CAL. GOV'T CODE § 65302(c) (West Supp. 1975).

10. CAL. HEALTH & SAFETY CODE § 37041 (West 1973).

11. CAL. GOV'T CODE § 65302(c) (West Supp. 1975). For further discussion of the housing element and the various interpretations of the word “community”, see Knight, *California Planning Law: Requirement for Low and Moderate Income Housing*, *infra* this issue at S159, *The Housing Element: How Can Its Adequacy Be Measured?*, *infra* this issue at S173; Hagman, *Hagman's Hallucinations: Some Predictions About Planning Law in California*, *supra* this issue at S1. The housing policy of the State of California is contained in Health and Safety Code, Chapter 6, Articles 1 and 2, Sections 37120-37135 (West 1973). Some of the more significant sections follow:
Section 37120.

The purpose of this chapter is to provide a statement of policy

to direct the efforts of California state and local governments, to the extent that they are regulated by or operate within the framework of state legislation, in their attempts to meet the need for shelter of the residents of this state. It is also the purpose of this chapter to reevaluate and declare legislative intent with respect to those housing-related activities by legislation in order to ensure proper coordination of those activities, and the consistency of their purpose, to provide every Californian with a decent home and a satisfying environment.

Section 37121.

The Legislature finds that the subject of housing is of vital statewide importance to the health, safety, morals and welfare of the residents of this state, for the following reasons:

(1) Decent housing is an essential motivating force in helping people achieve self-fulfillment in a free and democratic society.

(2) Unsanitary, unsafe, overcrowded, or congested dwelling accommodations constitute conditions which cause an increase in, and spread of, disease and crime.

(3) A healthy housing market is one in which residents of this state have a choice of housing opportunities and one in which the housing consumer may effectively choose within the free marketplace.

(4) A healthy housing market is fundamentally related to a healthy state economy and can contribute significantly to the employment factor of California.

Section 3714.

The Legislature also finds that the attainment of a national and state housing goal is complicated by a variety of continuing problems, not the least of which are the absence of a coherent state housing policy, the absence of a comprehensive framework outlining the dimensions of need, and obstacles preventing the fulfillment of such need, and the absence of effective private-public mechanisms designed to engender and facilitate a partnership approach to housing.

Section 37133.

The Department of Housing and Community Development shall develop, in cooperation with the private housing industry as well as regional and local housing and planning agencies, a California Statewide Housing Element, which shall consist of the following segments:

(1) An evaluation and summary of housing conditions throughout the State of California, with particular emphasis upon the availability of housing for all economic segments of the state. This evaluation shall include an analysis of each major metropolitan area and region within the State of California and of the existing geographic distribution of housing by type and cost, and of the existing geographic distribution of families by income, size and ethnic character.

(2) Housing development goals for the forthcoming year and projected five years ahead. These goals shall be established as those needed to house all residents of this state.

(3) An identification of market constraints and obstacles and specific recommendations for their removal.

(4) An analysis of state and local housing and building codes and their enforcement. This analysis shall include consideration of whether such codes contain sufficient flexibility to respond to new methods of construction and new materials.

provides that no local agency shall approve a map unless it finds the proposed subdivision, together with the provisions for its design and improvements, is consistent with the general plan.¹²

A similar policy also has been adopted by the federal government in its Housing and Community Development Act of 1974.¹³

Property Owner Rights to Reasonable Use

The conflict between these two categories of rights is compounded by still another category: the traditional rights of property owners to the reasonable use of their property. These rights are founded upon long established interpretations of the fifth and fourteenth amendments to the United States Constitution and article I, section 14 of the California Constitution.¹⁴ These rights currently are undergoing judicial modification in the context of various types of "growth control" regulations.¹⁵ However, Justice Compton, in a recent opinion of the Appellate Court of California, in the consolidated cases of *Vons Market Ltd. & HFH v. City of Cerritos*, now pending before the California Supreme Court,¹⁶ illustrated that this fundamental property right is still well recognized in our judicial system. Nevertheless, such reasonable use or deprivation thereof remains subject to judicial interpretation and, thus, continuously

(5) Recommendations which will contribute to the attainment of housing goals established for California.
Section 37134.

The California State Housing Element is intended to provide a framework and serve as a guide for the preparation and implementation of local housing elements as required by Section 65302 of the Government Code.

12. CAL. GOV'T CODE §§ 66473.5 and 66474(a) (West Supp. 1975).

13. 42 U.S.C. §§ 5301 *et seq.*, particularly § 5301(c) (1974). For more on this subject, see Haworth, *Title I of the 1974 Housing of Community Development Act and Its Impact on Local Communities*, *infra* this issue at S143.

14. See *Drakes Bay Land Co. v. U.S.*, 424 F.2d 574 (Ct. Claims 1970); *Peacock v. Sacramento County*, 271 Cal. App. 2d 845, 77 Cal. Rptr. 391 (1969). For more on this subject, see Clark and Kidman, *The Relationship of Just Compensation To The Land Use Regulatory Power: An Analysis and Proposal*, *infra* this issue at S79; *Zoning and the Vested Right to Use Property: There Ought To Be A Right*, *infra* this issue at S219.

15. See *Golden v. Planning Board of Town of Ramapo*, 30 N.Y.2d 359, 285 N.E.2d 291, 334 N.Y.S.2d 138 (1972), *appeal dismissed* 409 U.S. 100 (1972); Editor's Comment, *Golden v. Town of Ramapo: Establishing a New Dimension in American Planning Law*, 4 URB. LAW. ix-x (1972); Ragsdale and Clark, *Strategies for Metropolitan Stabilization*, 41 U. MO. K.C.L. REV. 1 (1972); see also Construction Industry Association of Sonoma County v. City of Petaluma, 375 F. Supp. 574 (N.D. Cal. 1974), *appeal docketed*, No. 742100 (9th Cir. 1974).

16. 41 Cal App. 3d 908, 116 Cal. Rptr. 436 (1974).

conflicts with the environmental protection and consumer rights noted above.

Therefore, our cities and counties that administer subdivision regulations are charged with the responsibility of preserving fundamental rights, each of which taken by itself is an absolute right, but when taken collectively are drastically conflicting rights. Moreover the reconciliation of these rights is not left entirely to the political ingenuity of the legislative bodies of these agencies. It is the subject of an astounding proliferation of statutes and administrative regulations.

STATUTES APPLIED TO CONFLICTING RIGHTS

The statutes and administrative rules that regulate subdivisions are found mainly in the first two categories of conflicting rights. They exist on both federal and state levels.

A number of these statutes and regulations address the environmental protection aspects of the subdividing of land. Since the subdivision is a "project" within the meaning of that term, as used in the California Environmental Quality Act,¹⁷ it is subject to the California Environmental Quality Act, Secretary for Resources Guidelines, and required local implementing regulations in the form of resolutions or ordinances of cities and counties.

If the subdivision lies within 1000 yards of the coast, it is subject to the California Coastal Zone Conservation Act of 1972,¹⁸ Proposition 20 in the 1972 general election of California, and requires a permit from the Regional Commission within which jurisdiction the subdivision is located, subject to appeal to the State Commission.

There are a variety of regional planning agencies to which the subdivision may also be subject. The general authority for such agencies is found in the District Planning Law¹⁹ which contains

17. CAL. PUB. RESOURCES CODE § 21065(c) (West Supp. 1975); 14 CAL. ADM. CODE § 15037 (1974); *Friends of Mammoth v. Supervisors of Mono County*, 8 Cal. 3d 247, 502 P.2d 1049, 104 Cal. Rptr. 761 (1972). For more on this subject, see S. Erickson, *NEPA and CEAQ—Euphemistic Environmental Eunuchs?*, *infra* this issue at S107.

18. CAL. PUB. RESOURCES CODE § 27000 *et seq.* (West Supp. 1975). For more on this subject, see Tester, *The California Coastal Zone Conservation Act of 1972: An Overview and Recent Developments*, *infra* this issue at S123.

19. CAL. GOV'T CODE §§ 66100 *et seq.* (West Supp. 1975).

the authority for and definition of the powers and duties of a district created by two or more counties.²⁰ Illustrations of special regional planning agencies created pursuant to similar acts are the San Francisco Bay Conservation and Development Commission²¹ and the California Tahoe Regional Planning Agency.²²

The Porter-Collogne Water Quality Control Act also imposes requirements upon the subdivision of land in California.²³

The Land Conservation Act of 1965²⁴ is an independent source of regulation of the use of land which can preclude or impose a penalty on the proposed subdivision of land. In addition, the Airport Land Use Commission created in each county²⁵ imposes a limitation upon the proposed subdivision of land if such a commission has adopted a comprehensive land use plan for areas surrounding civilian or military airports. It recently has been determined that these commissions must comply with the provisions of the California Environmental Quality Act.²⁶ If such a commission determines that a proposed development is in conflict with an adopted comprehensive land use plan, it requires a four-fifths vote of the legislative body of the local agency within which jurisdiction the proposed subdivision lies to overturn that decision.

On the federal level, the Clean Air Act²⁷ and the Clean Water Act,²⁸ administered by the Environmental Protection Agency, affect the subdivision processes. For example, the parking management plans that are slated to take effect June 30, 1975²⁹ will impose new requirements on certain types of subdivisions. The Clean Air Act indirect source regulations³⁰ can preclude placement of certain types of land uses in specific areas. Likewise the Clean Water Act³¹ mandates certain requirements regarding amounts and quality of discharge that various land uses can add to the waterways.

Protection of consumers is also addressed in the statutory and regulatory scheme controlling the subdividing of land. The sale

20. CAL. GOV'T CODE § 66140 (West Supp. 1975).

21. CAL. GOV'T CODE §§ 66600 *et seq.* (West Supp. 1975).

22. CAL. GOV'T CODE §§ 67040 *et seq.* (West Supp. 1975).

23. CAL. WATER CODE §§ 13000-13983 (1971).

24. CAL. GOV'T CODE §§ 51200 *et seq.* (West Supp. 1975).

25. CAL. PUB. UTILITIES CODE §§ 21670 *et seq.* (West Supp. 1975).

26. *See, Bozung et al. v. Local Agency Formation Commission of Ventura County et al.*, 13 Cal. 3d 263, 529 P.2d 1017, 118 Cal. Rptr. 249 (1975).

27. 42 U.S.C. §§ 1857 *et seq.* (1970).

28. 33 U.S.C. §§ 1151 *et seq.* (1972).

29. 40 C.F.R. §§ 52.22(b) and 52.251, *effective* June 30, 1975.

30. 40 C.F.R. 52.52(b).

31. 33 U.S.C. §§ 1151 *et seq.* (1972).

of subdivided parcels of land is subject to the investigation, regulation, and report of the California Real Estate Commissioner as set out in the Subdivided Lands Act.³² While the jurisdiction of the Commissioner under this Act applies to "subdivisions", that term is given a different definition in this act than that of the Subdivision Map Act.³³ Such differing definitions reflect the distinct purposes of the two Acts: the former is principally a disclosure requirement for the protection of the purchaser whereas the latter is a tool for land use regulation. There is also a federal counterpart of the Subdivided Lands Act, the Interstate Land Sales Act,³⁴ which is applicable to interstate sales of subdivided lands. This federal statute is administered by the Office of Interstate Land Sales Registration, a division of the Department of Housing and Urban Development.

Additionally, because of the adoption of Assemblyman McCarthy's bill, AB 1301,³⁵ it now is necessary to refer to the provisions of the California Planning and Zoning Law to determine the criteria for approval or disapproval of a subdivision. The material provisions of that bill now contained in California Government Code Sections 66473.5 and 66474.³⁶ Both require the proposed subdivision, including the proposed map and the design and improvement of the subdivision, to be consistent with the general plan required by Article V (commencing with California Government Code Section 65300)³⁷ and any specific plan adopted pursuant to Article VIII, (commencing with Section 65450 of the same code).³⁸ This is particularly significant in view of the definition of "design" and "improvement" in California Government Code Sections 66418 and 66419, respectively, in terms of virtually anything that "... may be necessary or convenient to insure conformity to or implementation of the general plan. . . ."³⁹

32. CAL. BUS. & PROF. CODE §§ 11000-11030 (West 1964); 10 CAL. ADM. CODE §§ 2790-2819 (1974).

33. CAL. GOV'T CODE §§ 66410-66499.37, particularly § 66424 (West Supp. 1975).

34. 15 U.S.C. §§ 1701-1720 (1968).

35. 1971 Stats. c. 1446 § 7 at 2856.

36. (West Supp. 1975).

37. (West Supp. 1975).

38. (West Supp. 1975).

39. (West Supp. 1975).

THE SUBDIVISION MAP ACT

Historical Perspectives:

The most significant statutes regulating the subdivision of land in California are those that comprise the Subdivision Map Act.⁴⁰ It has been evolving since the turn of the century, and has just recently been redrafted and recodified. Although it is the new Subdivision Map Act⁴¹ that is the major topic of this paper, some historical perspective is helpful in understanding the development of the current statutory scheme.

The first statute in California regulating subdivisions was enacted in 1907⁴² and imposed requirements for the mapping of subdivisions. Its basic purpose was to provide an easy description of divided parcels for purposes of sale, lease, or financing. It provided for submission of a subdivision map to local officials to check the accuracy of the map in order to insure good title to the resulting parcel and ease of description thereof. However, if a subdivider wished, he could convey portions of his land by metes and bounds descriptions without submitting such a map.

With the advent of planning and zoning in the 1920's, subdivision mapping began to assume importance as a planning tool. By 1929, local governments were authorized to require subdividers to improve dedicated streets; provide minimum lot sizes, setbacks, utility easements, streets and sidewalks widths and design; and conform subdivisions to major street or other plans.

In 1937, a subdivider could no longer convey by metes and bounds without filing a map. In 1943, the existing statutes were codified to form the first Subdivision Map Act.⁴³ That act was expanded over the course of years, by the engraving of uncoordinated amendments upon it, so that by the late 1960's it had become so complex and disorganized that the need for recodification was quite apparent. Consequently, in 1968 the League of California Cities and the County Supervisors Association of California formed a joint committee comprised of city and county attorneys, engineers, planners, and public works directors to redraft the act. After extensive conferences with representatives of affected interests and associations, the draft prepared by this committee was introduced in the

40. CAL. GOV'T CODE §§ 66410 *et seq.* (West Supp. 1975) *effective* March 1, 1975, *repealing* CAL. BUS. & PROF. CODE §§ 11500 *et seq.* (West 1964).

41. CAL. GOV'T CODE §§ 66410 *et seq.* (West Supp. 1975).

42. 1907 Stats. c. 231 at 290.

43. CAL. BUS. & PROF. CODE §§ 11500 *et seq.* (West 1964).

Legislature in 1971 as AB 1375.⁴⁴

Part of the purpose of that bill was to combine the real world of land use regulation, which had become an integral part of the subdivision process, with the statutory provisions for that process. This was accomplished in part by the adoption of AB 1301,⁴⁵ which provided for the first time specific grounds for approval and denial, based upon planning and environmental considerations independent of zoning regulations. With certain revisions AB 1375 was reintroduced as SB 1118 in 1972. After substantial revisions to this bill the measure was reintroduced again in 1973 as SB 977 and was enacted and signed into law as the session drew to a close in 1974.⁴⁶ A "clean-up bill", SB 39, was signed by the Governor on April 4, 1975 as an urgency measure and has now become Chapter 24 of the Statutes of 1975.

Purposes of the New Subdivision Map Act

One of the purposes of the new act was to underscore the evolution of the Subdivision Map Act from a narrow technical law to a broad land use regulation by its relocation from the California Business and Professions Code to the Planning and Land Use title of the California Government Code. (Hereinafter all references to code sections in the text refer to the California Government Code unless otherwise stated.)

Of course, there was also the underlying purpose of securing what was hoped to be a comprehensive, internally consistent scheme of regulation of subdivisions throughout the state. This scheme of regulation would provide for state-wide uniformity of procedures, while retaining the maximum local option regarding the establishment of standards for subdivision design and improvements by local ordinance.

The new Subdivision Map Act (hereinafter the Act)⁴⁷ also was

44. After revisions, the measure was reintroduced, enacted and signed into law at the close of the 1974 legislative session. See note 46, *infra*.

45. 1971 Stats. c. 1446 § 5 at 2981. Assemblyman Leo McCarthy represents the 18th Assembly District. For the effect of AB 1301 on CAL. GOV'T CODE § 65860, see DiMento, *Looking Back: Consistency in Interpretation of and Response to the Consistency Requirement*, *infra* this issue at S196.

46. 1974 Stats. c. 1536 § 4 at 456.

47. CAL. GOV'T CODE §§ 66410 *et seq.* (West Supp. 1975).

intended to continue to provide an easy means of property description and to secure the necessary improvements to serve that subdivision, with some expansion of the latter purpose.

An additional intent of the Act was to protect the public and the purchaser from fraud and exploitation. It contains a number of enforcement provisions concerning compliance with the Subdivision Map Act and local ordinances pursuant thereto, recordation of violations, avoidance of sales of illegally divided parcels, authorization of damage actions by grantees or their successors in interest against illegal subdividers, and misdemeanor consequences of violations.⁴⁸

Significant Definitions

The Act contains some definitions that deviate significantly from those contained in the old Subdivision Map Act,⁴⁹ including the basic term "subdivision." The term now includes all divisions of land, whether improved or unimproved, shown on the last equalized county assessment roll as a unit or contiguous unit, for the purpose of sale, lease or financing, whether immediate or future. The former distinction between a "division of land" and a "subdivision," the latter, generally, being a division into five or more parcels, has been eliminated.⁵⁰ The only distinction now is in the type of map required and the possible exercise of waiver options by the local agency. The definition in the new Act includes a condominium project as defined in Section 1350 of the California Civil Code,⁵¹ a Community Apartment Project as defined in Section 11004 of the California Business and Professions Code,⁵² and a "land project" as defined in Section 11000.5 of that latter Code.⁵³

The definition of "subdivision" also is made inapplicable to a number of land uses under the Act. Although not excluded from the definition, the Act is made inapplicable to the financing or leasing of apartments, offices, stores, or similar space within apartment buildings, industrial buildings, commercial buildings and mobile home or trailer parks. It is likewise inapplicable to oil or gas leases, land dedicated for cemetery purposes, and short term leases of railroad right-of-way land.⁵⁴

48. See *Pratt v. Adams*, 229 Cal. App. 2d 602, 605-606, 40 Cal. Rptr. 505, 508 (1964); CAL. GOV'T CODE §§ 66499.30-66499.35 (West Supp. 1975).

49. CAL. BUS. & PROF. CODE §§ 11501-11512 (West 1964).

50. CAL. GOV'T CODE § 66424 (West Supp. 1975).

51. (West Supp. 1975).

52. (West 1964); CAL. GOV'T CODE § 66424 (West Supp. 1975).

53. (West 1964); CAL. GOV'T CODE § 66474.5 (West Supp. 1975).

54. CAL. GOV'T CODE § 66412 (West Supp. 1975).

Different types of subdivisions have significantly different procedures applied to them, thus making the various definitions of "subdivision" within the Act important. A final map is required for all subdivisions creating five or more parcels, five or more condominiums, or a community apartment project containing five or more parcels, with the following exceptions:

- (a) The land before division contains less than five acres, each parcel created by the division abuts upon a maintained public street or highway and no dedications or improvements are required by the legislative body; or
- (b) Each parcel created by the division has a gross area of twenty acres or more and has an approved access to a maintained public street or highway; or
- (c) The land consists of a parcel or parcels of land having approved access to a public street or highway which comprises part of a tract of land zoned for industrial or commercial development, and which has the approval of the governing body as to street alignments and widths; or
- (d) Each parcel created by the division has a gross area of forty acres or more, or each of which is a quarter-quarter section or larger, or such other amount, up to sixty acres, as may be specified by local ordinance.⁵⁵

The regulation and control of the "design" and "improvement" of subdivisions are vested in the legislative bodies of local agencies, subject to the requirement that each such local agency adopt an implementing ordinance.⁵⁶ The definitions of "design" and "improvement" are extremely broad. The reference in both definitions to essentially anything that is "... necessary or convenient to insure conformity to or implementation of the general plan. . ."⁵⁷ includes nearly everything the mind of man can conceive and the English language express when considered in the context of the mandatory and permissive elements of a general plan.⁵⁸ Thus it would seem that more specific definition is left to local legislative bodies through their implementing ordinances adopted pursuant to the Act.

Procedures and Processes For Tentative Maps

Since the old Subdivision Map Act was repealed and the new

55. CAL. GOV'T CODE § 66426 (West Supp. 1975).

56. CAL. GOV'T CODE §§ 66418 and 66419, respectively (West Supp. 1975).

57. CAL. GOV'T CODE §§ 66418 and 66419 (West Supp. 1975).

58. CAL. GOV'T CODE §§ 65302 and 65303 (West Supp. 1975).

Act effective as of March 1, 1975, considerable question has been raised as to which would apply to approved tentative maps for which no final map had been approved. While the usual rule that intervening procedural legislation is applicable but intervening substantive legislation is not^{58a} should have been applied, that is not the case. A "grandfather clause" now is included in the new Act by virtue of SB 39.⁵⁹ This bill adds to the provisions of the Act a section that makes the old Subdivision Map Act applicable to tentative maps approved prior to March 1, 1975; other maps shall be governed by the new Act. Thus, until the expiration of the section added by SB 39, on March 1, 1976, there are two sets of rules governing current subdivision processes. However, it is the procedures pursuant to the new Act that principally are under consideration here.

A tentative map is required in every instance in which a final map is required by the Act,⁶⁰ and absent any preliminary requirements, filing of such a map is the first step. However, most cities and counties have "pre-filing" requirements, such as submittal to a subdivision committee review prior to filing. After such committee consideration, if it is required, the tentative map must be filed with the clerk of the appropriate local body. This would be either the designated advisory agency,⁶¹ e.g. Planning Commission, or the legislative body, e.g. City Council or Board of Supervisors, as determined by local ordinance.⁶² It should be noted that the term "filed" presumes full compliance with the procedures therefor required by the Act and any implementing local ordinances. Tentative maps may be approved either by an advisory agency designated by local ordinance or by the legislative body.⁶³

In the event that the advisory agency is authorized by local ordinance to approve, conditionally approve, or disapprove the tentative map, the Act gives the subdivided the right to appeal to either an appeal board or to the legislative body, as determined by

58a. *Enyeart v. Bd. of Supervisors*, 66 Cal. 2d 728, 427 P.2d 509, 58 Cal. Rptr. 733 (1967).

59. 1975 Stats. c. 24.

60. CAL. GOV'T CODE § 66426 (West Supp. 1975).

61. CAL. GOV'T CODE § 66415 (West Supp. 1975):

"Advisory agency" means a designated official or an official body charged with the duty of making investigations and reports on the design and improvement of proposed divisions of real property, the imposing of requirements or conditions thereon, or having the authority by local ordinance to approve, conditionally approve or disapprove maps.

62. CAL. GOV'T CODE § 66452 (West Supp. 1975).

63. CAL. GOV'T CODE §§ 66452.1 and 66452.2 (West Supp. 1975).

local ordinance,⁶⁴ should he be dissatisfied with the decision of that body. Formerly, this right of appeal was limited to the subdivider. However, many agencies followed the practice of permitting others to appeal, despite the questionable validity of this procedure.

The new Act formalizes that which had been done by these agencies in the past. It authorizes the local implementing ordinance to provide for "any interested person adversely affected by a decision" to file a "complaint" with the governing body. However, the governing body has discretion as to whether or not to hear such "complaint."⁶⁵

In addition, if the authority to make the various findings required for approval, such as general plan consistency, suitability for the type and density of the development, environmental and health effect, consistency of land projects with specific plans, and effect of discharging of community sewer system⁶⁶ have been assigned to an advisory agency or appeal board, "any interested person" whether or not "adversely affected by a decision" is given the right to appeal the decision on such findings.⁶⁷

The practice of cities and counties has been for a majority to combine the two provisions for appeal and the provision for "complaint" into one provision of the subdivision ordinance which allows "any interested party" to file an appeal from any decision of the advisory agency or appeal board, incorporating the broadest parameter of these three provisions of the Act.

The local agency is required to make specific findings on each of the grounds for approval or disapproval contained in the Act. The grounds for denial of a map now are specifically provided. The

64. CAL. GOV'T CODE § 66452.5 (West Supp. 1975). For case law supporting the proposition that such right, although limited by statute to subdividers, could be extended to others by local ordinance, see *Friends of Lake Arrowhead v. Board of Supervisors of Riverside County*, 38 Cal. App. 3d 497, 113 Cal. Rptr. 539 (1974).

65. CAL. GOV'T CODE § 66452.5(d) (West Supp. 1975).

66. CAL. GOV'T CODE §§ 66473.5, 66474, 66474.1, and 66474.6 (West Supp. 1975).

67. CAL. GOV'T CODE § 66474.7 (West Supp. 1975). See also *Woodland Hills Residents Ass'n v. City Council*, 44 Cal. App. 3d 825, 118 Cal. Rptr. 856 (1975); 58 OPS. CAL. ATT'Y GEN. 21 (1975); 58 OPS. CAL. ATT'Y GEN. 41 (1975).

map must be denied approval if any of the following findings are made:

- (a) That the proposed map is not consistent with applicable general and specific plans.
- (b) That the design or improvement of the proposed subdivision is not consistent with applicable general and specific plans.
- (c) That the site is not physically suitable for the type of development.
- (d) That the site is not physically suitable for the proposed density of development.
- (e) That the design of the subdivision or the proposed improvements are likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat.
- (f) That the design of the subdivision or the type of improvements is likely to cause serious public health problems.
- (g) That the design of the subdivision or the type of improvements will conflict with easements, acquired by the public at large, for access through or use of, property within the proposed subdivision. . . ."⁶⁸

Also, denial of approval is authorized in the event that the proposed waste discharge would result in or add to violation of the requirements of the California Regional Water Quality Control Board, enacted pursuant to Section 13000 *et seq.* of the California Water Code. Upon receipt of such advice from the Board, the local agency may disapprove the map.⁶⁹

In the event the proposed subdivision is a "land project" as defined in Section 11000.5 of the California Business and Professions Code,⁷⁰ denial is required unless the local agency has adopted a specific plan and the proposed land project is consistent with that specific plan.⁷¹

An alternative action which a local agency may take on a proposed subdivision, and the most frequent, is that of "conditional approval". The courts have held that the power to deny approval of a subdivision for a given factor implies the power to approve with conditions obviating that factor.⁷²

In order to avoid any surprises to the subdivider, the Act requires any report or recommendation on a tentative map by the staff of the local agency to be in writing, with a copy "served" on the sub-

68. CAL. GOV'T CODE § 66474 (West Supp. 1975).

69. CAL. GOV'T CODE § 66474.6 (West Supp. 1975); CAL. WATER CODE §§ 13000 *et seq.* (West 1971).

70. (West Supp. 1975).

71. CAL. GOV'T CODE § 66474.6 (West Supp. 1975).

72. *City of Buena Park v. Boyar*, 186 Cal. App. 2d 61, 8 Cal. Rptr. 674 (1960).

divider at least three days prior to any hearing or action on the proposed subdivision.⁷³ Presumably, however, this would not preclude any oral testimony by the staff at the time of such hearing or action, assuming that it does not change the prior report or recommendation substantially. If it does, it appears as though that hearing or action must be continued to allow a new report or recommendation to be written and served prior to the conclusion of the hearing or taking action on the subdivision.

There are numerous other time limits provided in the Act that affect the tentative map approval process. The consequences of the local agency failing to act within the time limits are that the proposed subdivision "shall be deemed to be approved or conditionally approved as last approved or conditionally approved", but only insofar as it complies with the applicable requirements of the Act and implementing local ordinance.⁷⁴

Further, these time limits may be extended by mutual consent of the subdivider and local agency,⁷⁵ and may be extended unilaterally for a maximum period of 15 days to allow review of the environmental impact report required under the California Environmental Quality Act by the Office of Intergovernmental Management.⁷⁶

The time within which the advisory agency must take its action, whether or not that is final, subject to appeal, or merely a recommendation subject to final action by the legislative body, is 50 days after the date of filing of the map.⁷⁷ If there is no advisory agency at all, the legislative body must take action on the map within the same 50 day time period.⁷⁸ If there is an advisory agency, but it is not authorized to take final action, the legislative body must take final action within 30 days after its next regular meeting following the filing with it of the report of the advisory agency.⁷⁹

As previously stated, if no action is taken within the time limits

73. CAL. GOV'T CODE § 66452.3 (West Supp. 1975).

74. CAL. GOV'T CODE § 66452.5(c) (West Supp. 1975).

75. CAL. GOV'T CODE § 66451.1 (West Supp. 1975).

76. CAL. GOV'T CODE § 66452.7 (West Supp. 1975).

77. CAL. GOV'T CODE § 66452.1 (West Supp. 1975).

78. CAL. GOV'T CODE § 66452.1(b) (West Supp. 1975).

79. CAL. GOV'T CODE § 66452.2(a) (West Supp. 1975).

specified, the matter is deemed to be approved insofar as it complies with all the requirements of the Act and local implementing ordinances.

If an "appeal" or "complaint" is authorized or required, that appeal or complaint must be filed within 15 days after the action subject to the appeal or complaint.⁸⁰ The hearing on the appeal or complaint must be held within 30 days after the date of filing.⁸¹ There is a difference, however, in the period within which action must be taken following the conclusion of the hearing. In the event of an "appeal", that action must be taken within 10 days. In the event of a "complaint", the action must be taken within 7 days.⁸²

Maps sometimes are required to be reviewed concurrently by other agencies. When they are, strict time limits are imposed by the Act on these additional review processes as well.

Another local agency within three miles of the boundaries of the local agency through which the map is being processed may request the opportunity to make recommendations. If it does so, it must receive a copy of the map within 5 days after "receipt" of the tentative map, and it has 15 days thereafter within which to make its recommendation.⁸³ If the State Department of Public Works files a map with the local agency having jurisdiction over the processing of the map of territory within one mile of state highway routing, the local agency must transmit a copy of the tentative map of the subdivision within the boundaries of such map within 3 days after receipt thereof. The Department thereafter has 15 days within which to make its recommendations.⁸⁴

If a subdivision is a "land project" as defined in Section 11000.5 of the California Business and Professions Code,⁸⁵ the local agency is required to submit the map to the Office of Intergovernmental Management, pursuant to Section 12037 of the California Government Code⁸⁶ for an evaluation of the environmental impact. If the subdivision is not a "land project", the local agency still may make such a submittal.⁸⁷ When it is required to make this submittal or

80. CAL. GOV'T CODE §§ 66452.5(a) and (d) and 66474.7 (West Supp. 1975).

81. CAL. GOV'T CODE § 66452.5(b) (West Supp. 1975).

82. CAL. GOV'T CODE §§ 66452.5(b) and (d), respectively (West Supp. 1975).

83. CAL. GOV'T CODE § 66453 (West Supp. 1975).

84. CAL. GOV'T CODE § 66455 (West Supp. 1975).

85. (West Supp. 1975).

86. (West Supp. 1975).

87. CAL. GOV'T CODE § 66455.5 (West Supp. 1975).

when it exercises its option to do so, and there is no advisory agency, the time limits for action are extended for a maximum of 15 days.⁸⁸

If the proposed subdivision falls within the Coastal Zone as defined in California Public Resources Code Section 27100,⁸⁹ the Subdivision Map Act now contains a specific requirement that the local agency transmit copies of the proposed subdivision maps to California Coastal Zone Conservation Commission within 3 days after receipt for review and recommendation regarding the effect of the proposed subdivision upon the initial California Coastal Zone Conservation Plan. The section does not exempt any such subdivision from the permit requirements of the Commission,⁹⁰ and remains in effect only until January 1, 1977,⁹¹ the expiration date of the Commission.

An agency outside the local jurisdiction is also involved where the land sought to be subdivided lies outside its boundaries in an unincorporated area. A subdivider may file a tentative map with a city for territory in the unincorporated area adjacent to such city which may process the map as in all other instances. However, the effectiveness of the city approval or conditional approval is contingent upon the annexation of the property to the city within such a period of time as the city specified.⁹² Thus the Local Agency Formation Commission influences the processes of such a subdivision since that body must approve annexations.

Since the criterion for approving a final map is whether or not the "... final map is in substantial compliance with the previously approved tentative map,"⁹³ there are a number of other factors that must be covered at the tentative map stage.

Special provisions are made in the Act for the submittal of a preliminary soils report in every tentative subdivision map unless waived under the conditions specified in the Act.⁹⁴ This require-

88. CAL. GOV'T CODE § 66452.7 (West Supp. 1975).

89. (West Supp. 1975).

90. CAL. PUB. RESOURCES CODE §§ 27400 *et seq.* (West Supp. 1975).

91. CAL. GOV'T CODE § 66455.6 (West Supp. 1975).

92. CAL. GOV'T CODE § 66454 (West Supp. 1975).

93. CAL. GOV'T CODE § 66474.1 (West Supp. 1975).

94. CAL. GOV'T CODE §§ 66490 and 66491 (West Supp. 1975).

ment encompasses consideration of both environmental protection and consumer protection.

Additionally, these concerns for consumers and the environment can be seen in the exaction process. The basis of subdivision exactions is founded in the exercise of the police power, as contrasted to the eminent domain power. The validity of exactions, when reasonably related to the needs that will be generated by a proposed subdivision is well established in the law.⁹⁵

It is the subdivider who is seeking to acquire the advantages of a subdivision. Thus, he has the duty to comply with reasonable conditions to ease the burden on the community. In the *Associated Home Builders*⁹⁶ case, the following points of general application were made:

- (1) The exaction is valid although it incidentally benefits the public other than those in the subdivision.
- (2) The purpose of the exaction may be to meet the needs of future as well as present population.
- (3) Since high density development may put more demand on public open space than low density development, a classification resulting in a greater exaction on the high density developer is proper.

However, there are limitations applicable to this test of reasonableness. Exactions that benefit the public in general and are not directly related to the proposed subdivision are invalid. There are also Equal Protection considerations that have been found to be applicable in certain instances.⁹⁷

95. *Ayres v. City of Los Angeles*, 34 Cal. 2d 31, 207 P.2d 1 (1949); *Associated Home Builders of the Greater East Bay, Inc. v. City of Walnut Creek*, 4 Cal. 3d 633, 484 P.2d 606, 94 Cal. Rptr. 630 (1971); *Selby Realty Company v. City of San Buenaventura et al.*, 10 Cal. 3d 110, 514 P.2d 111, 109 Cal. Rptr. 799 (1973); *Miller v. Board of Public Works*, 195 Cal. 477, 234 P. 381 (1925); *Berman v. Parker*, 348 U.S. 26 (1954); *Aunt Hack Ridge Estates, Inc. v. Planning Commission of the City of Danbury et al.*, 160 Conn. 109, 273 A.2d 880 (1970); *Jordan v. Village of Menomonee Falls*, 28 Wis. 2d 608, 137 N.W.2d 442 (1965). See also, *Forced Dedications in California*, 20 HASTINGS L.J. 735 (1969); *Subdivision Exactions in California: Expansion of Municipal Power*, 23 HASTINGS L.J. 403 (1972); *Van Alosty, Taking or Damaging by Police Power: The Search for Inverse Condemnation Criteria*, 40 S. CAL. L. REV. 1 (1971); D. Hagman, *California Zoning Practice (C.E.B.)*, *Public Control of California Land Development* (Supp. § 3.46 at 35-39, 1973).

96. *Associated Home Builders of the Greater East Bay, Inc. v. City of Walnut Creek*, 4 Cal. 3d 633, 644, 484 P.2d 606, 615, 94 Cal. Rptr. 630, 639 (1971).

97. See *Santa Clara County Contractors & Home Builders Ass'n v. Santa Clara*, 232 Cal. App. 2d 564, 43 Cal. Rptr. 86 (1967); *Newport Building Corp. v. Santa Ana*, 210 Cal. App. 2d 771, 26 Cal. Rptr. 797 (1962); *Midway Cabinet Fixtures Mfg. Co. v. County of San Joaquin*, 257 Cal. App. 2d 181, 65 Cal. Rptr. 37 (1967).

Exactions are expressed in the subdivision process through the medium of conditions that are required to be met prior to approval of the tentative map.

The validity of conditions is limited to the provisions of the Subdivision Map Act and its implementing local ordinances.⁹⁸ It has often been argued, in the context of preemption and "municipal affairs doctrines" that the power of local agencies is not limited by the Subdivision Map Act. However, in the new Act, it was the intent of the drafters to provide for the maximum possible procedural preemption. Furthermore, in view of the broad language of the Act, e.g., definition of "design" and "improvement", it seems now to be largely an academic issue.

There are several significant provisions in the Act relating to permissible conditions of approval. Initially there is a distinction between improvements that can be required for subdivisions of less than five lots and other subdivisions. Improvement regulations for the former are required to be limited to the dedication of right-of-way, easements and the construction of reasonable off-site and on-site improvements for the parcels being created.⁹⁹ This appears to be a limitation upon the authorization for the local agency to otherwise require improvements "... for the benefit of property not within the subdivision".¹⁰⁰

The Act now specifically authorizes local agencies to require improvements to be installed by the subdivider containing "... supplemental size, capacity or number for the benefit of property now within the subdivision"¹⁰¹ Previously, this had been widespread practice but was based solely upon policy. There is a qualification, however, in this authorization in that it is limited to the requirements imposed by local ordinance. Therefore, if the local ordinance does not impose such requirements, they do not exist. Although the effective date of the new Act was March 1, 1975, many local agencies have not yet adopted the implementing ordinance,

98. See *Kelber v. Upland*, 155 Cal. App. 2d 631, 318 P.2d 561 (1956); *Evola v. Wendt Const. Co.*, 170 Cal. App. 2d 21, 338 P.2d 498 (1959); *Wine v. City Council of the City of Los Angeles*, 177 Cal. App. 2d 157, 2 Cal. Rptr. 94 (1960).

99. CAL. GOV'T CODE § 66411 (West Supp. 1975).

100. CAL. GOV'T CODE § 66485 (West Supp. 1975).

101. CAL. GOV'T CODE § 66485 (West Supp. 1975).

which leaves their ability to make this type of requirement in doubt.

There is a corollary provision to the authorization to require the supplemental size, capacity or number of improvements. In the event that this authorization is implemented by a local ordinance, the local agency is required to enter into an agreement with the subdivider to reimburse him for that portion of the cost equal to the difference between the amount it would have cost the subdivider to install such improvements to serve the subdivision only and the actual cost of such improvements.¹⁰² Various methods are provided in the Act for the funding of these reimbursement agreements: a user charge, a city contribution recaptured by a "charge upon the real property", and the establishment and maintenance of "local benefit districts."¹⁰³

The former provisions authorizing the adoption of master plans, and acreage charges for master plan size, drainage and sanitary sewer facilities have been continued in the new Act. The implementing ordinance imposing the requirement of payment of these acreage fees, however, must have been in effect for a period of at least 30 days prior to the "filing" of a tentative map or parcel map. The general premise that subdivision regulations must be consistent with the general plans is continued by the requirement that these master plans must be in conformity with applicable county-wide or district general plans as they relate to drainage and sanitary sewer facilities.¹⁰⁴

The fees are required to be apportioned, either on the basis of "benefits conferred" or "need for such facilities created by the proposed subdivision."¹⁰⁵ This apportionment, further, is required to be on a uniform per-acre basis. However, there is nothing in the statute or case law that would require this uniformity to exclude areas already developed.¹⁰⁶

The Act also contains special provisions which authorize the payment of a fee as a condition of approval of not only a subdivision map, but also a building permit, for the purpose of defraying the actual or estimated cost of constructing bridges and "major thoroughfares".¹⁰⁷ The provisions regarding major thoroughfares are new in the Act. Again, the ordinance must have been adopted

102. CAL. GOV'T CODE § 66486 (West Supp. 1975).

103. CAL. GOV'T CODE § 66487 (West Supp. 1975).

104. CAL. GOV'T CODE § 66483(a)-(c) (West Supp. 1975).

105. CAL. GOV'T CODE § 66483(d) (West Supp. 1975).

106. CAL. GOV'T CODE § 66483(e) (West Supp. 1975).

107. CAL. GOV'T CODE § 66484 (West Supp. 1975).

pursuant to provisions of the general plan.¹⁰⁸ However, there is no requirement that the ordinance be in effect 30 days prior to the filing of a subdivision map. Instead, it is required that the applicable provisions of the general plan have been adopted 30 days prior to the filing of the subdivision map or application for a building permit.¹⁰⁹

The method of collecting and funding these types of improvements is essentially the same as that for an improvement or assessment district. A local agency may establish an "area of benefit" pursuant to public hearings, protests and overriding by the legislative body.¹¹⁰ The possibility of utilizing a funded master plan approach to the financing of major thoroughfares is one of the most significant provisions of the new Act.

The Act also contains a number of provisions concerning dedication or reservation of land within the subdivision for specific public purposes. One of these special provisions, known as the "Quimby Act", authorizes the dedication of land, the payment of fees in lieu thereof, or a combination of both, for park or recreational purposes as a condition to approval of a map. This provision, like that for drainage and sanitary sewer facilities, requires the implementing ordinance to be in effect for a period of 30 days prior to the filing of the tentative map or the parcel map. It also requires the ordinance standards to be consistent with the provisions of the recreational element of the General Plan of the local agency.¹¹¹

Special provisions also are contained in the Act to insure public access to public water resources, such as a public waterway, river or stream,¹¹² the "coastline or shoreline,"¹¹³ and public lakes or reservoirs.¹¹⁴ Essentially these provisions require dedication of "reasonable public access".¹¹⁵

108. CAL. GOV'T CODE § 66484(a) (West Supp. 1975).

109. CAL. GOV'T CODE § 66484(a) (West Supp. 1975).

110. CAL. GOV'T CODE §§ 55484 and 66489 (West Supp. 1975).

111. CAL. GOV'T CODE §§ 66477 and 66479 (West Supp. 1975), *effective* March 1, 1975, *repealing* CAL. BUS. & PROF. CODE §§ 11546 and 11547 (West 1964).

112. CAL. GOV'T CODE §§ 66478.1, 66478.4-66478.10 (West Supp. 1975).

113. CAL. GOV'T CODE § 66478.11 (West Supp. 1975).

114. CAL. GOV'T CODE § 66478.12 (West Supp. 1975).

115. CAL. GOV'T CODE § 66478.13 (West Supp. 1975).

Reservations of sites for various facilities are also required under the Act. While the language of the Act uses the term "dedication", in fact, "reservation" of sites for schools is authorized, in the event that a subdivision is located within a district maintaining an elementary school. The local agency has to deem the reservation of the school site to be necessary to "assure the residents of the subdivision adequate public school service."¹¹⁶ There are several limitations upon the use of this action. For example, no reservation of a site can be made which would make development of the remaining land held by the subdivider "economically unfeasible";¹¹⁷ the ordinance cannot be applicable to a subdivider who has owned the land for more than ten years prior to the filing of the map; and, the offer of dedication terminates within 30 days after the imposition of the requirement as a condition of approval of the tentative map if the school district does not enter into a binding commitment to purchase the site.¹¹⁸

This section has proved entirely unworkable, and virtually no cities or counties have implemented it. The reason is that the computation of the purchase price is not equivalent to "fair market value." It consists of "original costs" plus any subsequent improvements, taxes, maintenance and interest costs.¹¹⁹

Similar provisions for the reservation of recreational facilities, fire stations, parks, libraries or other public uses are found in the Act.¹²⁰ These appear to be workable. There are similar limitations upon the utilization of these sections, except for the exclusion of subdividers who have owned the land for ten years prior to subdivision.¹²¹ However, the acquisition agreement, required to be entered into at the time of approval of the final map sets a purchase price which is predicated on "market value thereof at the time of the filing of the tentative map" plus taxes and other holding costs,¹²² rather than "original costs", as in the case of school site reservations.

Parcel Maps

A parcel map is required for all subdivisions for which a tentative and final map is not required including those listed in the four

116. CAL. GOV'T CODE § 66478 (West Supp. 1975).

117. CAL. GOV'T CODE § 66478 (West Supp. 1975).

118. CAL. GOV'T CODE § 66478 (West Supp. 1975).

119. CAL. GOV'T CODE §§ 66478(a) - (c) (West Supp. 1975).

120. CAL. GOV'T CODE §§ 66479-66482 (West Supp. 1975).

121. CAL. GOV'T CODE §§ 66479(a) and (d) (West Supp. 1975).

122. CAL. GOV'T CODE § 66480 (West Supp. 1975).

specific exceptions to the requirement in Section 66426 of the Act.¹²³ This requirement of a parcel map, however, may be waived by local ordinance based upon required findings that the proposed subdivision complies with “. . . requirements 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 this division [Act] or local ordinance enacted pursuant thereto”¹²⁴

In practice this waiver is most often exercised in a subdivision resulting in four or less parcels. It is not common practice, however, for local agencies to waive this requirement in the more highly urbanized areas.

Specific provisions regarding the form and content of parcel maps are provided by the Act. This no longer is a matter of local option as it was in the recent “divisions of land” or “lot splits” ordinances in the past.¹²⁵

Final Maps

As previously stated, if a final map is in substantial compliance with the tentative map that has already been approved, the final map also will be approved. The wording of the Act, however, has given rise to a considerable difference of opinion on this subject.

123. CAL. GOV'T CODE § 66426 (West Supp. 1975) excepts the following from tentative and final map requirements but not from a parcel map requirement:

(a) the land before division contains less than five acres, each parcel created by the division abuts upon a maintained public street or highway and no dedications or improvements are required by the legislative body, or

(b) each parcel created by the division has a gross area of 20 acres or more and has an approved access to a maintained public street or highway, or

(c) the land consists of a parcel or parcels of land having approved access to a public street or highway, which comprises part of a tract of land zoned for industrial or commercial development, and which has the approval of the governing body as to street alignment and width, or

(d) each parcel created by the division has a gross area of 40 acres or more or each of which is a quarter-quarter section or larger, or such other amount up to 60 acres as may be specified by local ordinance.

124. CAL. GOV'T CODE § 66428 (West Supp. 1975).

125. CAL. GOV'T CODE §§ 66444-66450 (West Supp. 1975).

Section 66474¹²⁶ makes the grounds for disapproval applicable to "final or tentative" maps.¹²⁷ However, it is the opinion of this author that substantial compliance with the approved tentative maps is the actual criterion for final map approval.

Under the new Act, as it was under the old, authorization is given for the subdivider to file a final map on a portion of the area within an approved tentative map.¹²⁸ The procedure for filing final maps, whether for part or all of the area covered by the tentative map follows.

The legislative body, i.e. the City Council or Board of Supervisors, must approve final maps unless responsibility for such approval is assigned to an advisory agency or an appeal board, pursuant to an ordinance which allows any interested person to appeal to the legislative body.¹²⁹

The time limits within which approval must be given to a final map is 10 days after filing or the date of the next regular meeting after the meeting at which the map is received by the governing body, advisory agency, or appeal board.¹³⁰ If the final map is not approved within that time or any extension thereof mutually consented to by the subdivider and the body, agency or board required to act,¹³¹ the map is deemed to be approved. However, it is deemed to be approved only if it conforms to all the requirements of the Subdivision Map Act and any local ordinance applicable at the time of approval or conditional approval of the tentative map and any rulings made thereunder.¹³²

At the time the legislative body approves the final map, it has the option of accepting or rejecting any offer of dedication.¹³³ However, subject to some exceptions, even if the legislative body rejects the offer of dedication, it remains open, and the legislative body may by resolution at a later date rescind its action and accept the dedication.¹³⁴ The time for such legislative mind changing is limited to a three year period in the case of offers of dedication of public access routes to the ocean, coastline, or bay shoreline;

126. (West Supp. 1975).

127. Emphasis added.

128. CAL. GOV'T CODE § 66456 (West Supp. 1975) effective March 1, 1975, formerly CAL. BUS. & PROF. CODE § 11554 (West 1964).

129. CAL. GOV'T CODE §§ 66473.5, 66474, 66474.1 and 66474.6 (West Supp. 1975).

130. CAL. GOV'T CODE § 66458(a) (West Supp. 1975).

131. CAL. GOV'T CODE § 66458(b) (West Supp. 1975).

132. CAL. GOV'T CODE § 66458 (West Supp. 1975).

133. CAL. GOV'T CODE § 66477.1 (West Supp. 1975).

134. CAL. GOV'T CODE § 66477.2(a) (West Supp. 1975).

public waterway; river or stream; or public lake or reservoir.¹³⁵

In the case of final maps, dedications or offers of dedications are required to be made by a certificate on the final map. In addition to the certificates and acknowledgments required by the Act, there is authority for the local subdivision ordinance to contain further requirements of certificates and acknowledgments.¹³⁶ In a situation which requires a parcel map, dedications or offers of dedications are controlled by local ordinance and may be made either by certificate on the parcel map or by separate instrument.¹³⁷

In the event that the improvements required as a condition of approval of the map are not installed at the time of approval of the final or parcel map, which is almost universally the case, the subdivider is required either to enter into an agreement thereafter to complete such improvement at his own expense or to enter into an agreement to initiate and consummate proceedings under an appropriate special assessment act. The virtually uniform custom, however, is to enter into a Subdivision Improvement Agreement.¹³⁸

Whichever type of agreement is entered into, it is required to be guaranteed by the subdivision improvement security defined in Section 66499 *et seq.* of the Act.¹³⁹ The form of the improvement security may be either a corporate surety bond, a deposit of cash or negotiable bonds or an instrument of credit, at the option of and subject to the approval of the local agency.¹⁴⁰ In the event that a corporate surety bond is used, the Act requires the bond to be substantially in the form provided by the Act.¹⁴¹ The amount of the bond is between fifty and one hundred percent of the total estimated cost of the improvements, as determined by the legislative body,¹⁴² plus an amount determined by the legislative body to be necessary to guarantee the work on the improvements against

135. CAL. GOV'T CODE § 66477.2(b) (West Supp. 1975).

136. CAL. GOV'T CODE §§ 66439 and 66443 (West Supp. 1975).

137. CAL. GOV'T CODE § 66447 (West Supp. 1975).

138. CAL. GOV'T CODE § 66462(a) (1) and (2) (West Supp. 1975).

139. CAL. GOV'T CODE § 66462(c) (West Supp. 1975).

140. CAL. GOV'T CODE § 66499 (West Supp. 1975).

141. CAL. GOV'T CODE §§ 66499.1 and 66499.2 (West Supp. 1975).

142. CAL. GOV'T CODE §§ 66499.1 and 66499.2 (West Supp. 1975), faithful performance and labor and material bonds, respectively.

142. CAL. GOV'T CODE § 66499.3(a) and (b) (West Supp. 1975).

any defective work or labor done, or defective materials furnished for a period of one year following acceptance.¹⁴³

A new provision of the Act requires that the cost and reasonable expenses and fees, including attorneys' fees incurred by the local agency in successfully enforcing these bonds, be included as part of the obligation.¹⁴⁴ The obligation also includes liability for changes or alterations provided that they do not exceed ten percent of the original estimated cost of the improvements.¹⁴⁵

The security may be released in whole or in part, as the work progresses and as the improvements are accepted, subject to the special provisions therefor in the Act. The faithful performance security may be released upon acceptance of the work, and if the legislative body establishes rules therefor, it may be partially released as the work is performed.¹⁴⁶ The labor and materials security, however, cannot be released until six months after acceptance of the work.¹⁴⁷

In the case of the labor and materials security, an amount determined to be necessary to cover the guarantee and warranty period of one year must be retained until the end of that year after acceptance of the improvements.¹⁴⁸ Furthermore, such security may not be reduced to an amount less than the total of all claims filed and notice given in writing to the legislative body.¹⁴⁹

In all cases, when the performance of the obligation for which the security is required is subject to the approval of another agency, it may not be released until the other agency is satisfied with the work. The other agency has two months after completion of the performance to register its dissatisfaction.¹⁵⁰

Reversion to acreage and exclusion provisions are substantially unchanged, except in form, but now combine some of the former provisions.¹⁵¹

143. CAL. GOV'T CODE § 66499.3(c) (West Supp. 1975).

144. CAL. GOV'T CODE § 66499.4 (West Supp. 1975).

145. CAL. GOV'T CODE § 66499.9(b) (West Supp. 1975).

146. CAL. GOV'T CODE § 66499.7(a) (West Supp. 1975).

147. CAL. GOV'T CODE § 66499.7(b) (West Supp. 1975).

148. CAL. GOV'T CODE § 66499.7(b) (West Supp. 1975).

149. CAL. GOV'T CODE § 66499.7(b) (West Supp. 1975).

150. CAL. GOV'T CODE § 66499.8 (West Supp. 1975).

151. CAL. GOV'T CODE §§ 66499.11-66499.20½ (West Supp. 1975), *effective*, March 1, 1975, *repealing* CAL. BUS. & PROF. CODE §§ 11537, 11640 and 11641 (West 1964) regarding reversion to acreage; CAL. GOV'T CODE §§ 66499.21-66499.29 (West Supp. 1975), *effective* March 1, 1974, regarding exclusions.

When the final map, in the form prescribed by the Act¹⁵² has been approved by a local agency, it may be recorded after certain certificates and acknowledgments are obtained. Generally, subject to listed exceptions, a certificate must be secured from all parties having any "record title interest" in the real property subdivided, consenting to the recordation.¹⁵³ Another condition precedent to the ultimate recordation of the Map is the deposit of security for the payment of taxes and assessment which are a lien on some part of the subdivision, but which are not due and payable.¹⁵⁴

While the ultimate recordation of a final or parcel map finally determines the validity of such map and imparts constructive notice thereof,¹⁵⁵ the Act impliedly prohibits the recordation of a final or parcel map that does not meet the requirements of the Act and any implementing local ordinance.¹⁵⁶

Even after the final map has been filed for recordation, it may be amended by a "Certificate of Correction" to correct any minor errors such as courses, distances, property descriptions and the setting or location of monuments, upon certification of the county surveyor or city engineer, depending on whether the property is located within incorporated or unincorporated territory.¹⁵⁷

Enforcement of the Act

The new Subdivision Map Act provides a variety of methods of enforcement. Some are unchanged from the old Act, while others have been altered, expanded or added.

A local agency is prohibited from issuing any permit or granting any approval necessary to develop property which has been illegally divided, if it finds that such development is "contrary to the public health or the public safety."¹⁵⁸ This sanction applies whether or not the current owner was the owner of the property at the time of violation, or whether or not the current owner had knowledge of the violation at the time of acquisition.¹⁵⁹

152. CAL. GOV'T CODE § 66434 (West Supp. 1975).

153. CAL. GOV'T CODE § 66436 (West Supp. 1975).

154. CAL. GOV'T CODE § 66464(c) (West Supp. 1975).

155. CAL. GOV'T CODE § 66468 (West Supp. 1975).

156. CAL. GOV'T CODE § 66467 (West Supp. 1975).

157. CAL. GOV'T CODE §§ 66469-66472 (West Supp. 1975).

158. CAL. GOV'T CODE § 66499.34 (West Supp. 1975).

159. CAL. GOV'T CODE § 66499.34 (West Supp. 1975).

Furthermore, if a local agency does issue a permit or grant approval for development, it may impose such additional conditions as would have been applicable to the subdivision at the time the current owner of record acquired the property.¹⁶⁰

If the local agency has knowledge of a violation, it shall cause to be filed for record a "Notice of Violation."¹⁶¹ The misdemeanor consequences of offering to sell or lease, to contract for sale or lease, to sell or lease or to finance any parcel or parcels of real property, or to commence construction of any building for sale or lease or financing thereon, except for model homes, or to allow occupancy thereof, until a map has been filed for record and compliance with the Subdivision Map Act and any implementing local ordinances is continued.¹⁶²

The purchaser of an illegally divided parcel also is given significant protection. He may void the conveyance within the period of one year after the date of discovery of the violation, rather than from the previous date of the illegal division. Furthermore, this remedy is available also to heirs, personal representatives, or trustees in insolvency or bankruptcy.¹⁶³ This is a considerable expansion of the terms of the old Act both in terms of extending the time to void the conveyance and in terms of the people to whom this right to avoid runs.

Additionally, a purchaser may request a Certificate of Compliance from a local agency to determine whether or not he would be exposed to the imposition of conditions in order to develop the land. If the local agency determines compliance with the Act and any local implementing ordinances, it shall cause a Certificate of Compliance to be recorded.¹⁶⁴ If the local agency determines that the real property does not comply, it may, as a condition to granting a Certificate of Compliance, impose any conditions permitted under Section 66499.34 necessary to bring the land into compliance.¹⁶⁵ If the conditions necessary for compliance are not met, any Certificate of Compliance that has been filed has no effect and a subsequent purchaser or grantee who wishes to develop must obtain a new such certificate.¹⁶⁶

It is further provided in the new Act that any grantee of a parcel

160. CAL. GOV'T CODE § 66499.34 (West Supp. 1975).

161. CAL. GOV'T CODE § 66499.36 (West Supp. 1975).

162. CAL. GOV'T CODE §§ 66499.30 and 66499.31 (West Supp. 1975).

163. CAL. GOV'T CODE § 66499.32 (West Supp. 1975).

164. CAL. GOV'T CODE § 66499.35(a) (West Supp. 1975).

165. CAL. GOV'T CODE § 66499.35(b) (West Supp. 1975).

166. CAL. GOV'T CODE § 66499.35(b) (West Supp. 1975).

divided in violation of the Act or any local implementing ordinance, or his successor in interest, may bring an action to recover damages within one year of the date of discovery of said violation.¹⁶⁷ Thus the grantee who does not wish to void the conveyance but must meet conditions in order to develop his land is authorized to file an action for damages to recover his expenditures occasioned by the violation.

The foregoing enforcement procedures are not exclusive. The Act specifically states that they do not prohibit any legal, equitable or summary remedies to which local agencies, other public agencies, individuals, firms, or corporations otherwise may be entitled. Further, any of the above bodies, individuals, or entities is given the right to file an action in the superior court in the county in which the land is located to ". . . restrain or enjoin any attempted or proposed subdivision or sale, lease or financing in violation of this division".¹⁶⁸

Judicial review of decisions regarding subdivisions is given court calendar preference over most other matters. Additionally, the Act imposes a 180 day statute of limitations on "[a]ny action or proceeding to attack, review, set aside, void or annul . . ." any decision of a local agency regarding a subdivision, including proceedings, acts, or determinations prior to such decision or as to the reasonableness or validity of conditions required in the subdivision process.¹⁶⁹ This statute of limitations is somewhat different than most, in that it runs to the service of summons, not just filing of the action.

CONCLUSION

While the Subdivision Map Act and its corollary plethora of statutory and administrative regulations of the subdivision process provide a forum within which the competing rights of the public to environmental protection, the consumer to adequate housing, and the property owner to reasonable use are required to be weighed and balanced, they do not provide a ready formula for reaching

167. CAL. GOV'T CODE § 66499.32(b) (West Supp. 1975).

168. CAL. GOV'T CODE § 66499.33 (West Supp. 1975). *See also*, *City of Tiburon v. Northwestern Pac. R.R. Co.*, 4 Cal. App. 3d 160, 178-181, 84 Cal. Rptr. 469, 480-483 (1970).

169. CAL. GOV'T CODE § 66499.37 (West Supp. 1975).

a conclusion as to what the appropriate balance should be. This conclusion will be reached after weighing these interests in the political cauldron of the governmental agencies charged with responsibility of their administration. The champions of each of these categories of rights have become more vocal, the conflict more apparent and the need for resolution more compelling.

This cauldron could produce a conflict of Armageddon proportions in which one category of rights could prevail to the exclusion of the others. However, the history of local government in this state is that such issues are resolved pragmatically with a weighing of equities. The rule of non-equity, sometimes stated as "It's everyone for himself, said the elephant as he danced among the chickens", will not work. None of the champions of these competing rights should be allowed to throw their weight around, but it is not likely that any of them will be "chicken" either.

What we have in California is a comprehensive, although very complex, scheme of statutory and administrative regulation which affords local government a very real opportunity to weigh, balance and preserve these important rights.