

Dividing Land and Air: The Impact of the California Subdivision Map Act

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I. INTRODUCTION

This article discusses the impact of the California Subdivision Map Act, Cal. Gov't Code Sections 66410 - 66499.58 ("SMA"), through two illustrations—the conversion of a mobile home park into condominiums, and a court of appeal decision that deemed a contract void for violation of the SMA. These illustrations are real-life scenarios that demonstrate the ways in which the SMA encourages and facilitates orderly community development, coordinates planning for the community pattern established by local authorities, and assures proper improvements, so as not to unduly burden the taxpayers and to protect the public and individual transferees from fraud and exploitation.¹ Such situations have led to a heightened interest in the effect of the Subdivision Map Act (SMA) and to corresponding ordinances that implement the SMA locally.

In the first scenario, a representative of owners in a mobile home park desires a majority of the owners to convert their rental mobile home park to resident ownership. The residents already own their individual manufactured homes, but they rent the space upon which their homes are located. The mobile home park is owned by a separate business entity that is willing to sell. However, the park owner has also been approached by parties wishing to convert the park into airspace condominium units to sell to the residents or members of the public. The city where the park is located is interested in facilitating the sale of the park using bond financing under government programs with the local government directing the sale of the park, not to the residents, but to a non-profit organization.

In the second scenario, the California Court of Appeal in *Black Hills Investments, Inc. v. Albertson's Inc.*, 146 Cal App 4th 883 (2007), reaffirmed the importance of compliance with the SMA in drafting real estate contracts, and held that a contract was void, not merely voidable, where the parties entered into a deed of conveyance, sale, or contract to sell a subdivided portion of certain real property prior to recordation of the parcel map. The resulting division was in violation of the SMA.

These scenarios illustrate that real property practitioners are well advised to gain a clear understanding of how the SMA impacts their transactions.

II. AN OVERVIEW OF THE SUBDIVISION MAP ACT

The SMA contains seven chapters, each broken down into various articles.²

Generally, the SMA requires a land subdivider to obtain subdivision approval from the local government entity, typically a city or county. Anyone who offers to sell or lease any part of a "subdivision," as defined, without complying with the SMA, is subject to civil or criminal sanctions.³

With certain exceptions, the SMA requires a subdivider to: (1) design the subdivision in conformity with the local general or specific plans; (2) construct public purpose improvements such as streets and sewers; and (3) donate land or money for public uses such as parks and schools.⁴ The primary purpose of the SMA is to facilitate orderly community development and to protect the public from fraud and exploitation.⁵

The SMA relates generally to the regulation and control of the design and improvements of "subdivisions" and vests power and responsibility for enforcement in the legislative bodies of local agencies. Under the SMA's enabling provision,⁶ each local agency must regulate and control the initial design and improvement of "common interest developments" as defined in section 1351(c) of the California Civil Code.⁷ Furthermore, a local government agency can impose its own conditions on a subdivision in cases where the SMA is silent but a local government agency cannot override an express SMA provision or act contrary to the SMA.⁸

The SMA came into effect on March 1, 1975 and does not apply to maps approved prior to that date. Local agency control was authorized by a 1988 amendment to the statute effective January 1, 1989, under section 66411 of the California Government Code. Prior to March 1, 1975, the law governing divisions of land was found in section 11500 *et seq.* of the California Business and Professions Code, under the topic "Subdivision Maps."⁹

A. The Subdivided Lands Act (SLA) Distinguished

The law regarding the subdivision of land must be clearly distinguished from the law regarding the sale of subdivided lands. Particularly in cases of common interest developments for residential or mixed-use housing projects where there is a corresponding interest in the application of another state with a similar name, but with a different purpose. The Subdivided Lands Act (SLA), found in California Business and Professions Code Sections 11000-11023, requires the developer to notify the California Department of Real Estate ("DRE") and obtain a public report before offering to sell or lease most subdivided lands, condominiums, planned development lots, time-share units, stock cooperative apartments, or tenant-in-common units. The SLA is a consumer protection statute requiring full disclosure of all material facts prior to such offerings to the public. It is administered and controlled by the DRE.¹⁰

B. Exemptions under the SMA

Although all divisions of real property that fall under the definition of "subdivision" are covered under the SMA, there are certain specifically exempted subdivisions that are not required to follow the SMA.¹¹ The more frequently used exemptions are for:

1. Financing or leasing of apartments, offices, stores, industrial or commercial buildings, mobile home parks, or trailer parks.
2. Mineral, oil, or gas leases.
3. Cemetery land.
4. Lot line adjustments between four or fewer adjacent parcels or boundary line exchanges, effective January 1, 1977, but subject to other local rules.

5. Conversion of a community apartment project or a stock co-operative to a condominium, subject to enumerated requirements.
6. Leasing of or the granting of an easement to, a parcel of land or any portions thereof, in conjunction with a windpowered electrical generation device on the land.
7. 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 exclusively for the placement and operation of cellular radio transmission facilities.
8. Leases of agricultural land for agricultural purposes.

C. Definitions.

To fully understand the SMA, some definitions are in order. A "subdivider" is defined as "a person, firm, corporation, partnership, or association who proposes to divide, divides, or causes to be divided, real property into a subdivision for himself or for others. Employees and consultants of such persons or entities, while acting in such capacity, are not 'subdividers.'"¹²

A "subdivision" is defined as "the division, by any subdivider, of any unit or units of improved or unimproved land, or any portion thereof, shown on the latest equalized county assessment roll as unit or as contiguous units, for the purpose of sale, lease, or financing, whether immediate or future. Property shall be considered as contiguous units, even if it is separated by roads, streets, utility easement, or railroads rights-of-way."¹³

"Subdivision" also includes "Common Interest Developments" which under the Davis-Stirling Common Interest Development Act¹⁴ includes a community apartment project, a condominium project, a planned development, or a stock cooperative.

A "Division for Financing" can occur when several deeds of trust record encumbering various portions of the real property.¹⁵ Such financing constitutes a division for the purpose of financing. A legally valid financing subdivision requires the processing and filing of a financing parcel or subdivision map.¹⁶ Creating blanket financing for real property can create a SMA violation should the lender/trustee issue partial reconveyances of portions of the real property prior to the recordation of a final subdivision or parcel map.¹⁷

In addition, an "Environmental Subdivision"¹⁸ can be created for biotic and wildlife purposes but there are no current requirements for either tentative or final maps.

Conveyances to or from governmental agencies including any conveyance of land to or from a governmental agency, public entity, public utility, or subsidiary of a public utility (to such public utility for rights-of-way), are not considered a division of land for purposes of computing the number of parcels for a parcel map.¹⁹ Moreover, a parcel map is not required for land conveyed to or from a governmental agency, public entity, public utility, or its subsidiaries unless a showing is made in individual cases, upon substantial evidence, that public policy necessitates a parcel map.²⁰ Typically, a governmental agency will hold a public hearing to

determine whether public policy requires a parcel map.²¹ This exemption is only from the parcel map requirement; tentative and final maps must be prepared under the SMA.²²

III. PARCEL MAPS, TENTATIVE MAPS, FINAL MAPS, & CONDO MAPS

The SMA identifies four categories of subdivision maps: Parcel Maps, Tentative Subdivision Maps, Final Subdivision Maps, and Condominium, Community Apartment, Stock Cooperative Maps.²³

A. General Mapping Requirements

As a general rule, the SMA requires the filing of a final subdivision or parcel map, as applicable, in all transactions falling under its purview. In the case of the proposed filing of a final subdivision map, the SMA requires that a tentative map or vesting tentative map²⁴ be filed for all subdivisions creating five or more parcels, and for condominium units,²⁵ community apartment units, or dwelling units converted to a stock cooperative, except when:

1. The land, prior to division, contains less than five acres and abuts upon a maintained public road;
2. Each parcel has gross area of more than 20 acres with approved access to a maintained public road;
3. The land consists of a parcel or parcels with approved access to a public road which comprises part of a tract of land zoned for commercial or industrial development with governmental approved street alignments and widths; or when
4. Each parcel created by the division has a gross area of a minimum 40 acres, or not less than a quarter of a quarter section.²⁶

B. Parcel Maps

When possible under SMA or local rules, subdividers usually prefer filing a parcel map²⁷ to filing a final subdivision map. Local agencies generally have lower fees and have fewer overall requirements to issue a parcel map; processing a parcel map is typically less complicated overall and issuing a final parcel map takes less time.

Parcel maps are required where there is no mandated tentative or final subdivision map rule per local ordinances. The requirement for a parcel map may not be waived without an ordinance providing such waiver under certain limited services.²⁸

Local government ordinances provide a procedure, mandated by the SMA, for waiving the parcel map requirement.²⁹ The ordinance must be based on a finding by the legislative body or advisory agency that the proposed division of land complies with the requirements established by the ordinance as to area, improvement and design, floodwater drainage control, appropriate improved public roads, sanitary disposal facilities, water supply availability, environmental protection, and other requirements of the SMA. It is good practice, and one often mandated by

title companies, that under these facts, a certificate of compliance be obtained in order to rely on statutory protections.³⁰

C. Tentative Subdivision Maps

The first step a subdivider needs to take when planning a subdivision that requires a final subdivision map is to create a tentative map.³¹ Tentative maps are intended to reflect the design and improvements for a proposed subdivision and in so doing, disclose the existing conditions affecting the project. There is no requirement that a tentative map be based upon an accurate or detailed final survey. Generally, however, a tentative map can be waived only if a parcel map is required. However, it is advisable to confirm the availability of such a waiver by verifying local ordinance requirements.

1. When Tentative Maps Are Required

Tentative maps are always required when a final map is required unless local ordinances permit a waiver, such as for the construction of condominiums on single parcels. Tentative maps expire generally within 24 months following approval or conditional approval by the local agency³² plus an additional 36 months if the subdivider must construct public improvements of a certain minimum amount.³³ Additional extensions may be granted by the local agency pursuant to development agreements³⁴, discretionary extensions,³⁵ and possible subsequent statutory extensions. Extension periods are rolled in the event the local agency issues a development moratorium or, if the local agency grants it, where a lawsuit is pending.³⁶

2. Review of Tentative Subdivision Maps by Other Agencies

Additionally, neighboring local agencies are entitled to receive a "territorial map" where such adjoining city or unincorporated area of a country is within the planning area of the requesting local agency. Such local agency is allowed 15 days after receipt of a copy of a tentative subdivision map to submit recommendations concerning the proposed subdivision.³⁷

3. CalTrans Review

The State Department of Transportation (CalTrans) has the right to file a "Territorial Map" of any territory within one mile on either or both sides of a State Highway where CalTrans believes that subdivisions would have an effect upon either an existing State Highway or a future State Highway the route of which has been adopted by the California Transportation Commission. One copy of each tentative map must be transmitted to CalTrans' district office in which the proposed subdivision is located. CalTrans has 15 days within receipt of the map to make recommendations to the local agency concerning the proposed subdivision.³⁸

4. School Districts Review

The clerk of a local agency must submit a notice of the tentative map filing to the governing board of any elementary, high school, or unified school district within the boundaries of the proposed subdivision within 10 days of the filing of the tentative map, together with information relevant to the affected school district. Failure of the affected school district to submit written

recommendations within 20 days of the notice being mailed is deemed to be approval of the proposed subdivision.³⁹

D. Vesting Tentative Maps

Chapter 4.5 of the SMA, "Development Rights" was added to the SMA in 1984 by the Legislature to establish a vesting tentative map for subdivisions that would confer a "vested right" to proceed with a development in substantial compliance with ordinances, policies, and standards in effect at the date of application approval and the map would be deemed to be complete.⁴⁰

A vesting tentative map generally serves the same purpose as a tentative map, i.e. to show design and improvements, as well as conditions in and around the proposed subdivision. It must be labeled with the words: "Vesting Tentative Map" and procedures often differ from those of tentative maps.⁴¹ Additionally, the SMA allows procedures that are different than those of a tentative map.⁴²

E. Final Subdivision Maps

A final subdivision map must embody the detail and meet the requirements imposed on the tentative map, and is generally prepared when the tentative map is both approved by the local government agency, and the requirements imposed on the developer by the local government agency are completed.⁴³

Under the SMA, the final subdivision map is very detailed and must comply with precise engineering and survey standards. If the final map is filed, as required, prior to the expiration of the tentative map, then the local government agency is prohibited from denying approval of that final map where the agency has approved the tentative map for the proposed subdivision and has made a finding that the final map is in substantial compliance with all of the approved tentative map conditions.

The final subdivision map must meet the SMA's requirements as to form and content, and conform to the Professional Land Surveyor's Act requirements. It must be prepared by or under the direction of a Licensed Land Surveyor or Registered Civil Engineer, but may not be prepared under the direction of a licensed architect alone.⁴⁴

F. Condominium Subdivision Map⁴⁵ and Condominium Plan⁴⁶

Subdividers who are constructing condominium projects generally file both a final subdivision map and a condominium plan.⁴⁷ The final subdivision map is required for projects of five or more condominiums and typically subdivides the property and describes the land parcel where the project is located. Most often the final map does not indicate the location and dimensions of buildings or units insofar as these details are reserved for the condominium plan. However, there are two different approaches. First, the subdivider can prepare a map that identifies the property where the project is located and the location and dimensions of each condominium unit for the project.⁴⁸ A second approach is the more traditional method of filing a final map that subdivides the property and which describes the parcel of land where the condominium is located.⁴⁹

Local government agencies have the power to regulate the design or location of condominium buildings through their ordinances. Absent such an ordinance, a subdivider could file a separate condominium plan, particularly where the final map indicates that it was being subdivided for condominium purposes and it would not constitute a further subdivision.

A "Condominium Plan," which is often recorded as a separate document from the final subdivision map, is defined in part, as:

- "(1) A description or survey map of a condominium project, which shall refer to or show monumentation on the ground;
- (2) a three-dimensional description of a condominium project, one or more dimensions of which may extend for an indefinite distance upwards or downwards, in sufficient detail to identify the common areas and each separate interest; and
- (3) a certificate consenting to the recordation of the condominium plan pursuant to this title signed and acknowledged ..."⁵⁰

If a subdivider files a condominium plan, it must meet all of the following requirements:

- (1) The total number of units established is not increased above the number authorized by the local government agency in approving the parcel map or final map;
- (2) A perpetual estate or an estate for years in the remainder of the property is held by the condominium owners in undivided interests in common, or by an association (section 1351(a) of the California Civil Code) and the duration of the estate in the remainder of the property is the same as the duration of the estate in the condominiums; and
- (3) The three-dimensional portion or portions of property are described on a condominium plan or plans.⁵¹

H. Airspace Condominiums⁵²

In 1992 the Attorney General issued an opinion affirming the legality of air space condominiums.⁵³ The opinion considered whether, in the absence of a tentative and final map, creating a three-dimensional division of airspace that is not coupled with any ownership interest in the earth underlying that airspace, and the filing of a condominium plan, would violate the SMA.⁵⁴ The Attorney General opined that an undivided interest in common, in a condominium building that has been severed in ownership from the underlying earth, would constitute "land" and "real property" under the statutory definitions of those terms contained in sections 658 and 659 of the California Civil Code. Such an interpretation is consistent with the authorizing provisions for formation of a condominium project set forth in the Davis-Stirling Common Interest Development Act (the "Development Act").⁵⁵ Although a three-dimensional air cube is created legally, compliance with the SMA is necessary for any further divisions within the air cube not previously approved. Thus, in the absence of a parcel map for four or fewer divisions of airspace, or a tentative and final map for a condominium project consisting of five or more divisions of airspace, a condominium plan for a three-dimensional airspace division which is

then severed from any ownership interest in the underlying earth would violate the provisions of the SMA.

An airspace condominium purchaser will receive title to a "unit" which is an undivided interest in a building airspace envelope that includes no land. Title to all of the land located in the project, including the exterior of the building structures is held by the Homeowner's Association and will not be included in the definition of a unit acquired by purchasers.⁵⁶

A condominium plan, usually found on a one lot subdivision, must contain accurate dimensions of the exterior of the buildings, including walls, roofs, and foundations. Additionally, the condominium plan will further identify the outside horizontal dimensions, the vertical dimensions, and locations of the boundary line between the building and the separate common area. A common area may include air, earth, water, or any combination thereof. Common areas are often found to be located in a "cloud" drawn above the structure of the building. The division of airspace to create this "airspace common area" complies with the statutory requirements that there be a common area, and "air", being an element of land, can be used for that purpose.⁵⁷

1. Homeowner Liability Issues

Using an airspace corridor as the designated common area for condominium projects was developed, in part, to address concerns of individual homeowner liability arising from tort allegations such as a personal injury case.⁵⁸ Section 1365.9 of the California Civil Code limits tort actions against owners in condominium projects and prescribes insurance requirements, and provides some limitation on the property owner's exposure to personal injury claims. Using an airspace common area creates further protections. For example, if there is a slip and fall incident on a sidewalk or stairway in an airspace condominium project, the sidewalk will be located on association property and the association will be protected by general liability insurance policy coverage, at least up to policy limits. Individual homeowners and their lenders will not be parties to any subsequent litigation related to such a slip and fall event.

IV. VIOLATIONS OF THE SUBDIVISION MAP ACT, CIVIL AND CRIMINAL

A. Notice of Violation

Once a local government agency becomes aware that land has been divided in violation of the SMA, or local ordinance, the agency is mandated to send a notice of potential violation of the SMA to the record owner by certified mail.⁵⁹ The notice must advise the owner of the agency's intent to file a notice of violation and must provide the owner the opportunity to present evidence at a hearing as to why the notice should not be recorded. The notice must also set forth a specific date, time, and place for the hearing and contain an explanation of the basis upon which the local government agency believes the parcel was not legally created.⁶⁰ If the owner fails to advise the local government agency of his objection to the planned notice of violation within 15 days after receipt of the notice, the owner fails to preserve his/her right to a hearing.

The hearing regarding the alleged violation must occur within 30 to 60 days from the date of the notice was mailed. The owner can present evidence to argue that no violation exists and if the owner's argument prevails, the owner is entitled to receive a Clearance Letter from the local agency. If a violation of the SMA or local ordinance is found, the local agency is obligated to

record a Notice of Violation. A recorded Notice of Violation prohibits a local government agency from issuing any building or development permit, or grant of approval necessary for development. This prohibition runs with the land and applies to successors in title with or without knowledge of the alleged violation.

B. Criminal Violations of the Subdivision Map Act

The Government Code sets forth the acts that constitute SMA violations. These include the sale, lease, or finance; or the construction of any building for sale, lease, or finance, other than a model home or homes; or the occupancy of any parcel in a subdivision without the recordation of a required final subdivision map or parcel map.⁶¹ Criminal liability for a violation of the SMA can result in a misdemeanor conviction involving jail time and or fines.⁶²

1. Additional Related Felony Allegations

It is not uncommon where an SMA or local ordinance violation occurs, for a local District Attorney's office to hand down indictments alleging felony violations of the SMA, together with a count alleging felony conspiracy. In almost every case, more than one person is involved in the actions that lead to such indictment. If the facts presented justify multiple indictments, it is not uncommon to see more than one defendant named in the criminal action. Such defendants would likely include parties that provided knowledgeable assistance to the subdivider. Indictment under the criminal statutes for SMA does not preclude further allegations under other applicable criminal statutes.

2. District Attorneys Offices Real Estate Fraud Units

Most California jurisdictions now include a division of the local District Attorney's Office dedicated to prosecuting real estate related crimes. The State Attorney General's Office also includes knowledgeable real estate crimes prosecutors. The prosecution of real estate crimes is in part funded through fees paid at the time certain documents are recorded at the County Recorders Offices.

C. Civil Remedies re Violations of the Subdivision Map Act

Civil remedies to cure an SMA Violation include injunction, rescission, contract actions for damages, and tort remedies.⁶³ A local government agency may use a civil action in conjunction with criminal proceedings to obtain an injunction to prevent public harm caused by an SMA violation.

A grantee of a land parcel that was conveyed in violation of the SMA or local ordinance may seek rescission on the grounds that the transaction was voidable. Similarly, the action might seek contract damages due to the alleged breach of contract.⁶⁴

Should a subdivider obtain all proper permits, file the final map or parcel map to properly proceed with the approved project only to have an injunctive order imposed, the subdivider/defendant can request the Court impose a bond on the plaintiff.⁶⁵ Per statute the liability of the plaintiff to defendant for costs and damages related to the plaintiffs furnishing a bond shall not exceed \$500,000.⁶⁶

D. Certificate of Compliance

Under the SMA, any person who is the owner of real property, or vendee under a contract of sale, has standing to apply to the local government agency for a Certificate of Compliance.⁶⁷ If the property is in compliance, an "Unconditional Certificate of Compliance" will be issued. For a parcel not in compliance, the local agency may issue a "Conditional Certificate of Compliance" imposing the conditions that would have otherwise been required at the time the owner had acquired the land. If the person who violated the SMA or local ordinance is the applicant for the Certificate of Compliance, the local government agency may impose the current conditions in effect at the time of the application. Once a Certificate of Compliance has been issued, whether conditional or unconditional, it enables the owner to sell, lease or finance a parcel without further compliance beyond any stated conditions. Once a final map records, it also constitutes a Certificate of Compliance.

V. APPLICATION OF SMA

This discussion began by examining two SMA scenarios: a proposed mobile home park conversion, and the *Black Hills Investment* holding that failure to comply with the SMA can void a real estate sales contract. Assuredly there are many more such situations in the complex area of the SMA. Hopefully, further examination of the examples cited will tie together many of the issues addressed in this discussion.

A. Conversion of a Mobile Home Park

In our introductory hypothetical scenario, the individual homeowners live in a typical mobile home park and own their individual manufactured homes, all of which are on foundations. The homeowners rent the underlying land upon which their homes are located. They have contacted representatives of the property owner seeking to acquire full ownership of their individual home sites.

The question is whether SMA applies to this situation and if SMA applies, then how must it be used? The answer depends on the approach taken, and in its applicability, as well as on the structure of local government ordinances that apply. As discussed above, there are several alternative approaches to this issue.

The first approach is for the mobile home park owners to convert the park into "Airspace Condominiums"⁶⁸ and a traditional condominium. The subdivider must give the required statutory notices to the park residents. The conversion is generally accomplished by overlaying a condominium plan on a one-lot tract map of the mobile home park. Each individual owner of an existing home would have the opportunity to purchase the newly created condominium unit. If they opt out, they would be compelled to move. The rules governing condominium conversions apply to mobile home park conversions as well, but with special issues applicable to mobile home parks.⁶⁹

A second approach is to convert the park to a "Planned Unit Development"⁷⁰ ("PUD") by filing a tentative or parcel map for a subdivision to be created from the conversion of a mobile home park to another use. It is important to note, however, that the Code provisions governing

PUD's are not applicable to a subdivision that is created from the conversion of a rental mobile home park to resident ownership.⁷¹

As discussed above, the California Government Code exempts financing or leasing transactions involving mobile home parks or trailer parks.⁷² The Code provides that when at least two-thirds of the mobile homeowners, who are tenants in a mobile home park, sign a petition indicating their intent to purchase the mobile home park for purposes of converting it to resident ownership, and a field survey is performed, the requirement for a parcel map or tentative and final map shall be waived unless several conditions exist.⁷³ The map requirement will not be waived where: (1) there are design or improvement requirements for health and safety reasons; (2) the local agency has determined there is an exterior boundary discrepancy; (3) existing parcels were not created by a recorded parcel or final map; and (4) new additional units or interests are created by the conversion.⁷⁴

In the last part of the mobile home park scenario, the local agency wanted to facilitate the sale of the park to a non-profit organization. Under this scenario, the SMA is inapplicable. The California Business and Professions Code⁷⁵ provides that the normal requirement for a Public Report, under the Subdivided Lands Act (SLA) is inapplicable where the park is conveyed to a non-profit corporation, provided however, that; (1) the majority of the shareholders or members of the non-profit constitute a majority of the homeowners of the mobile home park; (2) all members of the corporation are residents of the mobile home park; (3) a permit to issue securities per section 25113 of the California Corporations Code is obtained; and (4) an escrow is established for deposit of all tenant funds for the purchase and for mobile home park costs until the documents transferring title from the mobile home park to the nonprofit are recorded.

In addition, the California Health and Safety Code⁷⁶ provides that the registered owner of a manufactured home or mobile home in a mobile home park, converted or proposed to be converted to a resident-owned subdivision, cooperative, condominium, or nonprofit corporation, formed pursuant to section 11010.8 of the California Business and Professions Code, may, if the registered owner is also a participant in the resident ownership, apply for voluntary conversion of the manufactured home or mobile home to a fixture and improvement to the underlying real property without compliance with section 18551 of the California Health and Safety Code. So, where the city facilitates mobile home park conveyance from the property owner to a non-profit entity that obtains, through the city, bond financing to provide affordable housing, the California Health and Safety Code encourages the conversion of mobile home parks to resident ownership.⁷⁷ This approach is advocated by local communities that receive credits for affordable housing, but unfortunately it does not work if the individual wants to own land upon which the manufactured home is located.

B. Black Hills Investments, Inc. v. Albertson's, Inc., 146 Cal. App. 4th 883 (2007)

In *Black Hills Investments, Inc. v. Albertson's Inc.*, 146 Cal App 4th 883 (2007), the court voided a contract for the sale of illegally subdivided property where the subdivision had not been recorded as required by the SMA. *Black Hills* stands for the proposition that a real property contract that violates the SMA is void. In this case, Black Hills entered into two separate, but virtually identical, contracts with Albertson's to purchase separate parcels both located in a proposed shopping center development not yet subdivided at the time the parties executed the

contracts. The contracts provided that Albertson's, as seller, had the right to terminate if Albertson's failed to obtain "all governmental approvals relating to any lot split...subdivision prior to the closing date."

Interestingly, Albertson's did record a parcel map that divided the shopping center into four parcels, including the two being purchased by Black Hills; however the recording *failed* to cure the defect as the contracts were void as structured.

Black Hills terminated the contracts and demanded return of its deposit. Albertson's declined and litigation ensued. Black Hills contended that the two contracts were void under the SMA. The trial court granted summary judgment to Black Hills and the Court of Appeals unanimously affirmed. The Court found that the contracts were void for violating the Government Code⁷⁸ because they: 1) permitted the sale of land prior to the recordation of a Parcel Map required by the SMA; (2) permitted the seller (Albertson's) to waive the contract condition that a Parcel Map be recorded prior to the close of escrow, thus rendering the contract void; (3) the SMA remedy of set aside⁷⁹ was not available because the contracts involved property not yet subdivided; and (4) recording the parcel map prior to the scheduled close did not cure the contracts or the SMA violation because the contracts were illegal and void at the time they were executed.

VI. CONCLUSION

The Subdivision Map Act was created with the intent of recognizing the critical importance of an orderly process for land divisions. The SMA has evolved over the years to accommodate changes in the development climate and new forms of dividing land and airspace, be it for mobile home park conversions or for real property sales contracts. The statutes and case law highlight how important it is to maintain a complete framework for consistent development while encouraging local control that complies with SMA standards. The two examples discussed in this article hopefully have illustrated the complexity and diversity of the SMA.

ENDNOTES

¹ 61 Ops. Cal. Atty. Gen. 299, 301 (1987); 77 Ops. Cal. Atty. Gen. 185 (1994).

² The seven Chapters are as follows: Division 2. Subdivisions: Chapter 1: §§ 66410-66424.6 General Provisions and Definitions; Chapter 2: §§ 66425-66450 Maps; Chapter 3: §§ 66451-66472.1 Procedure; Chapter 4: §§ 66473-66498 Requirements; Chapter 4.5: §§ 66498.1-66498.9 Development Rights; Chapter 5: §§ 66499-66499.10 Improvement Security; Chapter 6: §§ 66499.11-66499.29 Reversions and Exclusions; Chapter 7: §§ 66499.30-66499.37 Enforcement and Judicial Review; Division 3. Official Maps. Sections 66499.50 - 66499.58.

³ CAL. GOV'T CODE §§ 66499.30, 66499.31; *Bright v. Board of Supervisors*, 66 Cal. App. 3d 191, 193-194 (1977)(commenting, "Anyone who offers to sell or lease any part of a subdivision without complying with the act is subject to criminal sanctions.").

⁴ CAL. GOV'T CODE §§ 66439, 66474-66478; 61 Ops. Cal. Atty. Gen. 114. (1978).

⁵ *S. Cent.l Coast Reg'l Comm. v. Charles R. Pratt Constr. Co.*, 128 Cal. App. 3d 830, 844-55 (1982) (holding that a subdivider has a vested right to an exemption from the coastal act only when the subdivider has met all the conditions under the tentative map approval and is entitled to record a final map under the SMA).

⁶ CAL. GOV'T CODE § 66411.

⁷ CAL. GOV'T CODE § 1351(c) reads as follows: (c) "Common interest development" means any of the following: (1) A community apartment project. (2) A condominium project. (3) A planned development. (4) A stock cooperative.]", and for subdivisions which require a tentative and final map, or parcel map.

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- ⁸ *C.f. Soderling v. City of Santa Monica*, 142 Cal. App. 3d 501 (1983) (A city's imposition of conditions requiring the installation of smoke detectors is a valid condition of a tentative map under the SMA.); and *Shelter Creek Dev. Corp. v. City of Oxnard*, 34 Cal. 3d. 733 (1983) (City ordinance inapplicable where the conversion of an apartment complex to a stock cooperative was subject to the SMA's grandfather clause).
- ⁹ On a practical note, the *California Real Property Journal*, Vol. 24, No 4, 2006, includes an article on the legal effect of older Subdivision Maps. The article is entitled, "Breathing New Life into Old Maps: The Validity of Pre-1929 Subdivision Maps in a Post Gardner World," by Matthew D. Francois and Michael D. Cling. The article discusses a trial court ruling, *Assoc. of Spreckels Residents v. County of Monterey*, *Monterey County Sup. Ct.* Case no. M69751, which upheld the validity of lots depicted on a 1907 subdivision map. The discussion provides excellent guidance as to the validity of subdivision maps recorded between 1893 and 1929 and addresses questions that were not addressed by the California Supreme Court in its holding in *Gardner v. County of Sonoma* 29 Cal. 4th 990 (2003).
- ¹⁰ For additional discussion of the distinction between the SLA and the SMA, see *Cal. Coastal Comm'n v. Quantana Inv. Corp.*, 113 Cal. App. 3d 579,588 (1980).
- ¹¹ CAL. GOV'T CODE §§ 66412 *et seq.*
- ¹² CAL. GOV'T CODE § 66423.
- ¹³ CAL. GOV'T CODE § 66424. Included under this definition are: condominium projects (CAL. CIV. CODE § 1351(f)); community apartment projects (CAL. CIV. CODE § 1351(d)); and stock co-op conversions of five or more existing units (CAL. CIV. CODE § 1351 (m)).
- ¹⁴ CAL. CIV. CODE § 1350(c) *et seq.*
- ¹⁵ CAL. GOV'T CODE § 66424.
- ¹⁶ See 58 Op. Atty. Gen. 408 (1975) for a discussion regarding multiple deeds of trust upon different portions of a parcel or unit of land.
- ¹⁷ Local governments may, by ordinance, expand the definition of a subdivision. For example, it is common to see a local government ordinance that broadens its definition of a subdivision as: "any conveyance for the purpose of sale, lease, finance," and add the phrase "or for any other purpose." This expanded definition would include a conveyance for the purpose of a gift. An example might be a person who has a large land holding and donates a portion of that land parcel to charity prior to implementing a sale of the remainder of the land. The gift conveyance, while laudatory in purpose, may have violated the local ordinance exposing the donor to civil and possible criminal sanctions, including conspiracy and felony violation of the SMA.
- ¹⁸ CAL. GOV'T CODE § 66418.2.
- ¹⁹ CAL. GOV'T CODE § 66426.5.
- ²⁰ CAL. GOV'T CODE § 66428(a)(2).
- ²¹ "Conveyance" includes fee, leasehold, easement, and license interests. CAL. GOV'T CODE §§ 66426.5, 66428(a)(2).
- ²² There may possibly be an exemption from the SMA when state agencies are performing official functions. See 75 Ops. Cal. Atty. Gen. 98 (1992).
- ²³ Respectively, CAL. GOV'T CODE §§ 66444 *et seq.* (parcel maps); §§ 66425 *et seq.* (tentative subdivision maps); §§ 66433, *et seq.* (final subdivision maps); §§ 66427 *et seq.* (condominium, community apartment, stock cooperative).
- ²⁴ CAL. GOV'T CODE § 66426.
- ²⁵ CAL. GOV'T CODE § 783.
- ²⁶ CAL. GOV'T CODE § 66426.
- ²⁷ CAL. GOV'T CODE § 66428.
- ²⁸ CAL. PUB. UTIL. CODE § 230; CAL. GOV'T CODE § 66428(a)(1); CAL. GOV'T CODE § 66428(a)(2).
- ²⁹ CAL. GOV'T CODE § 66426.
- ³⁰ CAL. GOV'T CODE 66428. See CAL. GOV'T CODE § 66499.35 regarding certificates of compliance with SMA.
- ³¹ CAL. GOV'T CODE § 66452.
- ³² CAL. GOV'T CODE § 66452.6(a).
- ³³ CAL. GOV'T CODE § 66452.6.

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- ³⁴ CAL. GOV'T CODE § 66452.6(a).
- ³⁵ CAL. GOV'T CODE § 66452.6(e).
- ³⁶ See generally CAL. GOV'T CODE § 66452.6.
- ³⁷ CAL. GOV'T CODE § 66453.
- ³⁸ CAL. GOV'T CODE §§ 66453, 66455.
- ³⁹ CAL. GOV'T CODE § 66455.7.
- ⁴⁰ CAL. GOV'T CODE §§ 66498.1-66498.9.
- ⁴¹ CAL. GOV'T CODE § 66452(c).
- ⁴² Despite the "vested right" terminology in the SMA, if a local government has commenced proceedings to change its general or specific plan, zoning, or subdivision ordinances, by ordinance, resolution or motion with notice of the proposed change having been published; or, if the subdivider submits change requests for the project, the local government may apply its new standards to any map which has not been deemed complete (CAL. GOV'T CODE § 66472(b),(c)). Further, local governments are limited to assessing fees in effect at the time the Vesting Tentative Map is deemed complete. In *Kaufman & Broad Cent. Valley, Inc., v. City of Modesto*, 25 Cal. App. 4th 1577 (1994), the court ordered the City of Modesto to refund the difference between fees in effect at the deemed complete date for the vesting tentative map vs. much higher fees later assessed by the City.
- ⁴³ CAL. GOV'T CODE §§ 66433, 66456.
- ⁴⁴ There are differences in the requirements between Licensed Surveyors and Civil Engineers. E.g., not all Civil Engineers can act as Land Surveyors until they have passed a second licensing exam for land surveying. CAL. BUS & PROF CODE §§ 8726, 6731.1, set forth the distinction between land surveying and civil engineering requirements respectively. The authority of either a Licensed Surveyor or a Registered Civil Engineer to prepare, sign, issue, stamp, seal, or approve any map, plat, report, description, or other documents shall be consistent with that person's authority to practice land surveying (CAL. BUS & PROF CODE § 8761.1).
- ⁴⁵ CAL. GOV'T CODE § 66426.
- ⁴⁶ Conversions from community apartment projects to condominiums may be exempt from the SMA under limited circumstances but local agencies may have additional requirements. See CAL. GOV'T CODE § 66412(g).
- ⁴⁷ CAL. CIV. CODE § 1351.
- ⁴⁸ For example, the City and County of San Francisco previously required this combined map and condo plan approach, but amendments to the SMA effective January 1, 2004 made this approach optional by the subdivider.
- ⁴⁹ From time to time, local governments have encountered some confusion and perhaps frustration with CAL. GOV'T CODE § 66427 which provides that final subdivision maps of condominium projects and community apartment and stock cooperative projects, are not required by California law to reflect the design and location of the buildings or the division of airspace.
- ⁵⁰ CAL. CIV. CODE § 1351(e).
- ⁵¹ *Id.*
- ⁵² CAL. GOV'T CODE § 66427; 73 Ops. Cal. Atty. Gen. 312 (1990); CAL. CIV. CODE §§ 658, 659.
- ⁵³ 73 Ops. Cal. Atty. Gen. 312 (1990).
- ⁵⁴ CAL. GOV'T CODE § 66426.
- ⁵⁵ CAL. CIV. CODE §§ 1350 et seq.
- ⁵⁶ CAL. CIV. CODE § 1351(a).
- ⁵⁷ CAL. CIV. CODE § 1351(f).
- ⁵⁸ CAL. CIV. CODE § 1365.9.
- ⁵⁹ CAL. GOV'T CODE § 66499.36.
- ⁶⁰ *Id.*
- ⁶¹ CAL. GOV'T CODE § 66499.30.
- ⁶² Each violation of this division by a person who is the subdivider, or the owner of record, at the time of the violation, of property involved in the violation shall be punishable by imprisonment in the county jail not exceeding one year or in the state

prison, by a fine not exceeding then thousand dollars (\$10,000), or by both that fine and imprisonment. Every other violation of this division is a misdemeanor. CAL. GOV'T CODE § 66499.31.

⁶³ CAL. GOV'T CODE §§ 66499.32, 66499.33.

⁶⁴ The statute of limitations is one year under CAL. GOV'T CODE § 66499.32 (a), (b) for damages or rescission actions.

⁶⁵ CAL. CODE OF CIV. PROC. § 529.1(a).

⁶⁶ CAL. CODE OF CIV. PROC.. § 529.1 (b).

⁶⁷ CAL. GOV'T CODE § 66499.35.

⁶⁸ CAL. GOV'T CODE § 66427.1.

⁶⁹ In *El Dorado Palm Springs, Ltd v. City of Palm Springs*, 96 Cal. App. 4th, 1153 (2002), the owner of a mobile home park filed a petition for writ of mandate to compel the city's approval of its application for a subdivision map, but without the three conditions imposed by the city. Those conditions were: retention of rent control for residents until completion of sale of a certain proportion of the lots; determination of a lot sale price by an appraisal firm at the expense of the subdivider; and a requirement that the subdivider provide financial assistance to park tenants to assist the purchase of their lots. The subdivider lost in the trial court but prevailed on appeal, holding that the city exceeded its authority in imposing the listed conditions. The Court issued a writ of mandate reversing the city's imposition of the three conditions. The Court held that the city was limited to the issue of compliance with CAL. GOV'T CODE § 66427.5 (d) relating to conditions for avoidance of economic displacement of tenants.

⁷⁰ CAL. GOV'T CODE § 66427.4

⁷¹ CAL. GOV'T CODE § 66427.4(e).

⁷² CAL. GOV'T CODE § 66412.

⁷³ CAL. GOV'T CODE §§ 66428.1 *et seq.*

⁷⁴ It should be noted that CAL. GOV'T CODE § 66428.1 does not apply to a mobile home park that was acquired through the use of a metes and bounds legal description and where no parcel or final map applies.

⁷⁵ CAL. BUS & PROF CODE §§ 11000 *et seq.*

⁷⁶ CAL. HEALTH & SAFETY CODE § 18555.

⁷⁷ CAL. HEALTH & SAFETY CODE § 50780 *et seq.*

⁷⁸ CAL. GOV'T CODE § 66499.30(b),(e).

⁷⁹ CAL. GOV'T CODE § 66499.32.

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