

# 17 Subdivisions and Other Public Controls

If communities were allowed to grow without public controls, development would likely be accompanied by many problems: improper lot design and physical improvements; inadequate streets and parking facilities; insufficient water supplies; lack of adequate police and fire protection; deterioration of air quality; excessive noise; and inadequate utility services.

Through state laws, local master plans, zoning laws and building codes, cities and counties strive to achieve livability and protection of land values.

This chapter discusses the subdivision laws and related controls.

## BASIC SUBDIVISION LAWS

The two basic California subdivision laws are the Subdivision Map Act (Government Code Sections 66410, et seq.) and the Subdivided Lands Law (Sections 11000 - 11200 of the Business and Professions Code; hereinafter, the Code).

### *Subdivision Map Act*

The Subdivision Map Act sets forth the conditions for approval of a subdivision map and requires enactment of subdivision ordinances by which local governments have direct control over the types of subdivision projects to be undertaken and the physical improvements to be installed. This act has two major objectives:

1. To coordinate a subdivision's design (lots, street patterns, rights-of-way for drainage and sewers, etc.) with the community plan; and
2. To insure that the subdivider will properly complete the areas dedicated for public purposes, so that they will not become an undue burden upon the taxpayers of the community.

The Subdivision Map Act is discussed in detail later in this chapter.

### *Subdivided Lands Law*

The Real Estate Commissioner (hereinafter, the Commissioner), administers the Subdivided Lands Law to protect purchasers from fraud, misrepresentation, or deceit in the initial sale of subdivided property.

With a few important exceptions, no subdivision can be offered for sale in California until the Commissioner has issued a subdivision public report. A public report includes important information and disclosures concerning the subdivision offering.

The Commissioner does not issue the final public report until the subdivider has met all statutory requirements, including financial arrangements to assure completion of improvements and facilities included in the offering and a showing that the lots, units, or parcels can be used for the purpose for which they are being offered.

## SUBDIVISION DEFINITIONS

There are some differences and some similarities between the concept "subdivision" under the Subdivided Lands Law and the Subdivision Map Act. The common part of the definition for "subdivision" is "division of improved or unimproved land for the purpose of sale or lease or financing whether immediate or future."

The main differences or similarities are:

<i>Subdivided Lands Law</i>	<i>Subdivision Map Act</i>
5 or more lots, units, or parcels.....	2 or more lots, units, or parcels
improved standard residential subdivisions within city limits exempted.....	included
a “proposed division” is included .....	“proposed division” not included
no contiguity requirement.....	land must be contiguous units
160 acre and larger parcels designated as such by government survey are excepted.....	no exception for 160 acre and larger parcels
community apartments included.....	same
condominiums included.....	same
stock co-operatives included.....	not included unless 5 or more existing dwelling units converted
leasing of apartments, offices, stores or similar space in apartment building, industrial building or commercial building excepted .....	same
long term leasing of spaces in mobilehome parks or trailer parks generally included.....	leasing or financing of mobilehome parks or trailer parks not included
undivided interests may be included.....	not included
expressly zoned industrial or commercial subdivisions are exempt.....	included
agricultural leases included.....	not included
limited-equity housing cooperatives, with some exemptions, per Section 11003.4 of the Code .....	not included

**FUNCTIONS IN LAND SUBDIVISION**

This section discusses the functions of various agencies and individuals important to the subdivision process.

***Private Professional Services***

Typically, a subdivider will employ a team of specialists (market research analyst, tax planner, land planner, engineer, land surveyor, architect, attorney, and real estate broker) to provide valuable assistance in cost analysis, feasibility, and determination of the appropriateness of the intended land use and physical design.

***Planning Commission***

The California Government Code provides that the legislative body of each city and county shall, by ordinance, assign responsibility for the jurisdiction’s planning program to the legislative body itself, the planning commission, the planning department, or some combination of these. Typically, local governments have, in addition to their legislative council or board, a planning department and a planning commission. Creation of a planning commission is required of counties, but is optional for cities.

Most of a planning commission’s work is related to developing and maintaining the jurisdiction’s general plan and reviewing and making recommendations to the legislative body on zoning and development proposals.

The planning commission’s responsibility for maintenance of the general plan is underscored by the state requirement that the commission consider any general plan proposal or modification prior to action by the legislative body. By local ordinance, the planning commission reviews and makes recommendations to the legislative body on zoning proposals, subdivision and parcel maps, use permits, variances, and other development permits in furtherance of the general plan goals and policies.

Subdivision regulation is one of the major legislative and administrative tools for implementing the general plan. Government Code Section 66473.5 bars local agencies from approving a tentative map where the subdivision has been found inconsistent with the adopted general plan or any specific plan. In 1975, the Attorney General interpreted this requirement to mean that any city or county that had not adopted a general plan including the required elements set forth below could not approve subdivision maps. Other findings required by the law relate to the site's suitability, wildlife habitat and public health. The governing body may also deny approval of a map if it finds that waste discharges would exceed requirements established by the appropriate regional water quality control board.

Another major tool for implementing the local general plan is zoning. By law, the adoption and implementation of a zoning ordinance must be consistent with the adopted general plan. Charter cities are exempted from this consistency requirement although, in many instances, individual city charters include a similar stipulation.

By statute, a general plan must include the following seven elements: land use; circulation pattern; housing; conservation; open space; noise; and safety.

### ***Lending Agencies***

Because of the vital role played by financing in the success of a subdivision, the subdivider will endeavor to include the proper safeguards to insure appropriate financing. The subdivider and the engineer must be just as familiar with the requirements of the lending agencies as with those of local, state and federal control agencies. General requirements and land development standards of the FHA are described in detail in data sheets and bulletins, which offer a great deal of valuable information about proper standards of design. Also, they usually contain special notes relating to local conditions and requirements. A copy may be obtained from the appropriate area office. Offices are located in Sacramento, San Francisco, Los Angeles, San Diego and Santa Ana.

### ***Title Company***

After the land to be subdivided has been acquired, the title company will issue a preliminary guaranty showing the names of the persons required to sign the subdivision map as specified by the Subdivision Map Act. The title company also provides the preliminary report required by the Department of Real Estate (DRE).

One of the main services offered by many title companies is subdivision processing for a subdivision public report. They will develop much of the documentation DRE requires, notable exceptions being management documents and the homeowner association budget.

In addition to the standard title policy coverage, many lenders require affirmative insurance on encroachments, priority over possible mechanics' liens, and certain possessory and survey matters. Most California land title companies make these coverages available, but arrangements should be made before work on the subdivision is started.

## **COMPLIANCE AND GOVERNMENTAL CONSULTATION**

Subdividers and their professional consultants must be thoroughly familiar with the state laws and also with the subdivision control ordinance in the particular community. Numerous differences exist in the various local subdivision ordinances because of a great diversity in types of communities and conditions throughout the state.

To be fully aware of the current requirements of the Commissioner, a subdivider should consult with DRE during the planning stage of a subdivision.

The federal government plays an important role in the financing of home building through its mortgage insurance program. If a developer wants a subdivision offering to include government insured or guaranteed financing, timely consultations may be necessary with the Federal Housing Administration, the Veterans Administration and any other appropriate agencies.

## **TYPES OF SUBDIVISIONS**

### ***Standard***

A standard subdivision is a subdivision with no common areas. Also, subdivisions that have reciprocal easement rights appurtenant to the separate interests along with a homeowner's association that can enforce an assessment lien in accordance with Civil Code Section 1367 or 1367.1 would not be a standard subdivision.

***Common Interest***

Purchasers in a common interest subdivision own or lease a separate lot, unit, or interest, along with an undivided interest or membership interest in at least a portion of the common area of the entire project. Normally, an association of the owners manages the common area. Condominiums, planned developments, stock cooperatives, and community apartment projects are the four types of common interest subdivisions.

A **condominium** consists of an undivided interest in common in a portion of real property coupled with a separate interest in space called a unit, the boundaries of which are described on a recorded final map, parcel map, or condominium plan in sufficient detail to locate all boundaries thereof. The area within these boundaries may be filled with air, earth, or water, or any combination thereof, and need not be physically attached to land except by easements for access and, if necessary, support. The description of the unit may refer to: (i) boundaries described in the recorded final map, parcel map, or condominium plan; (ii) physical boundaries, either in existence, or to be constructed, such as walls, floors, and ceilings of a structure or any portion thereof; (iii) an entire structure containing one or more units; or (iv) any combination thereof. The portion or portions of the real property held in undivided interest may be all of the real property, except for the separate interests, or may include a particular three-dimensional portion thereof, the boundaries of which are described on a recorded final map, parcel map, or condominium plan. The area within these boundaries may be filled with air, earth, or water, or any combination thereof, and need not be physically attached to land except by easements for access and, if necessary, support. An individual condominium may include, in addition, a separate interest in other portions of the real property. A condominium may, with respect to the duration of its enjoyment, be (1) an estate of inheritance or perpetual estate; (2) an estate for life; or (3) an estate for years, such as a leasehold or a subleasehold.

Typically, an owner of a condominium owns in fee simple the air space in which the particular unit is situated and an undivided interest in common in certain other defined portions of the whole property involved. An association and its elected governing board perform the management functions.

A **planned development** is defined in Civil Code Section 1351 (b) and (k) as consisting of lots or parcels owned separately and lots or areas owned in common and reserved for the use of some or all of the individual lot owners. Generally, an owner's association provides management, maintenance and control of the common areas and has the power to levy assessments and enforce obligations which attach to the individual lots.

A **stock cooperative** is defined in Section 1351 (m) of the Civil Code as a corporation which is formed or availed of primarily for the purpose of holding title to improved real property, either in fee simple or for a term of years. All or substantially all of the shareholders receive a right of exclusive occupancy of a portion of the real property, which right is transferable only concurrently with the transfer of the share(s) of stock.

Most stock cooperative projects are of the apartment house type, operated by a board of directors and including community recreation facilities. The homeowners' governing association is usually a nonprofit mutual benefit corporation.

A **limited equity housing cooperative** is a corporation which meets the criteria of a stock cooperative and complies with the requirements of Section 33007.5 of the Health and Safety Code. To assure that limited equity housing cooperatives provide decent housing for low and moderate income families, the Health and Safety Code mandates the following conditions:

1. The corporation holds title as a nonprofit public benefit corporation pursuant to the Corporations Code **OR** the corporation holds title (or a leasehold of at least 20 years) subject to conditions which will result in reversion to a public or charitable entity upon dissolution/termination.
2. Any resale of a unit shall not exceed the sum of the original consideration paid by the first occupant, the value of any authorized improvement to the unit and an increment based upon an inflation factor, not to exceed 10% per year.
3. The "corporate equity" can only be applied for the benefit of the corporation or a charitable purpose.
4. The management documents for the corporation can be amended only by a vote of at least 2/3 of the owners.

Section 11003.4 (b) of the Code exempts a limited equity housing cooperative from the requirements of the Subdivided Lands Law under the following conditions:

1. At least 50% of the development cost (or \$100,000, whichever is less) is financed singly or in combination by governmental agencies listed in Section 11003.4 (b)(1) **OR** the property was purchased from the Department of Transportation for development of the cooperative and is subject to a regulatory agreement approved by the Department of Housing and Community Development for the term of the permanent financing, whatever the source of the financing.
2. No more than 20% of the total development cost of a limited equity mobilehome park (or 10% of any other type of limited equity housing cooperative) is provided by purchasers.
3. A regulatory agreement provides for: (a) assurances of completion of common areas and facilities; (b) governing instruments for the organization and operation of the cooperative by the members; (c) an adequate budget for maintenance and management of the cooperative; (d) distribution of a report to any prospective purchaser, detailing the financial status of the cooperative and the rights and obligations of members.
4. The agency which signs the regulatory agreement is satisfied that the governing documents [as specified in Section 11003.4 (b)(4)] provide adequate protection for the rights of cooperative members.
5. The attorney for the recipient of the financing or subsidy shall provide to the agency signing the regulatory agreement a legal opinion that the cooperative meets the requirements of Section 817 of the Civil Code and the conditions for exemption set forth in Section 11003.4 (b) of the Code.

Residents sometimes form a limited equity housing cooperative to purchase a mobilehome park.

In a **community apartment project**, as defined by Civil Code Section 1351 (d) a purchaser receives an undivided interest in the land coupled with the right of exclusive occupancy of an apartment located thereon. The owners elect a governing board which operates and maintains the project.

#### ***Undivided Interest***

A partial/fractional interest in an entire parcel of land is called an undivided interest. The land itself has not been divided, but its ownership has been divided.

The creation, for sale, lease, or financing, of five or more undivided interests in land, whether or not improved, constitutes a subdivision and a public report is required prior to marketing the interests. Section 11000.1(b) of the Code provides for several exemptions, including purchase of the undivided interests by people related by blood or marriage or by ten or fewer persons who: are informed concerning the risks of ownership; are not purchasing the property for resale; and waive the protections offered by the Subdivided Lands Law.

### **COMPLIANCE WITH THE SUBDIVIDED LANDS LAW**

The Subdivided Lands Law is designed to protect purchasers from misrepresentation, deceit and fraud in subdivision sales. This is accomplished in two ways: by making it illegal to commence sales until DRE determines that the offering meets certain affirmative standards and issues a public report; and by disclosing in the public report pertinent facts about the property and the terms of the offering.

#### ***Affirmative Standards***

Affirmative standards deal with two major aspects of the proposed subdivision offering:

1. suitability for intended use; and
2. fair dealing regarding the sale or lease of the offering.

The Subdivided Lands Law requires that the Commissioner deny issuance of a public report if the offering is not suitable for the use proposed by the subdivider. The suitability test is, of course, paramount in residential offerings. These must include vehicular access, a potable water source, available utilities, offsite improvements, etc.

To insure fair dealing and receipt of the subdivision interest for which the purchaser has bargained, the affirmative standards include: the security of buyer's deposit money; satisfactory arrangements to clear

mechanic's liens; release of the interest from any blanket encumbrance (mortgage lien); and conveyance of proper title.

### ***Disclosures in Public Report***

The public report discloses significant information about the subdivision. Disclosures in the public report may alert consumers to any negative aspects of the offering (e.g., unusual present or future costs; hazards or adverse environmental factors; unusual restrictions or easements; necessary special permits for improvements; unusual financing arrangements).

### ***Filing Notice of Intention/Application***

Before subdivided land can be offered for sale or lease, a Notice of Intention must be filed with the Commissioner. The Notice of Intention is combined with a Questionnaire and Application and must be completed on forms provided by DRE. The questionnaire is specifically designed to obtain pertinent details about all aspects of the offering.

Usually, the owner files the application for public report. Anybody filing on behalf of the owner must furnish DRE with the owner's written authorization to do so.

### ***Use of Public Report***

A copy of the public report must be delivered to a prospective purchaser, who must have time to read the report before any offer is made to purchase or lease a lot or interest covered by the report. The prospective purchaser will sign a receipt for the report on a form approved by the Commissioner. The subdivider must retain the receipt for three years for the Commissioner's inspection.

As stated in a notice required to be posted in the sales office, the subdivider must, upon request, give a copy of the public report to any member of the public.

### ***Violations - Penalties***

In addition to disciplinary actions which may be imposed by the Commissioner against licensees for violations of the Subdivided Lands Law, anyone who willfully violates or fails to comply with Sections 11010, 11010.1, 11010.8, 11013.1, 11013.2, 11013.4, 11018.2, 11018.7, 11019 or 11022 of the Code shall be guilty of a public offense punishable by a maximum fine of not to exceed \$10,000, or up to one year's confinement in county jail or in state prison or by both fine and imprisonment.

The district attorney of each county in the state is charged with prosecuting violators.

### ***Questionnaire Requirements***

DRE has developed questionnaires to elicit subdivision information. Some responses to a questionnaire will be in the form of documentation. Other information can be filled in from the subdivider's records.

### ***Subdivision Filing Fees***

Maximum fees for filing applications under the Subdivided Lands Law are prescribed by statute. The Commissioner may, by regulation, prescribe fees lower than the statutory maximums when it has been determined that the lower fees are sufficient to offset costs and expenses to administer the Subdivided Lands Law. The Commissioner must hold a hearing at least once each year to consider subdivision filing fees.

A person interested in current fees should contact either the Sacramento or Los Angeles Subdivision Office.

### ***Where to File***

Subdivision filings must be made at the Department of Real Estate district office responsible for the area where the subdivision is located. There are subdivision offices in Sacramento and Los Angeles.

Filings for undivided interest subdivisions, certain qualified limited-equity housing cooperatives and time-share offerings must be made at the Sacramento office.

### ***Questionnaire Forms - Contents***

DRE has developed different questionnaires for standard subdivisions, common interest subdivisions, time-shares, and stock cooperatives.

Some of the areas common to the questionnaires are:

1. on- or off-site conditions which may affect the intended use of the land;

2. provisions for essential utilities, such as water, electricity, and sewage disposal;
3. on-site improvements, existing or proposed;
4. the condition of title, including any restrictions or reservations affecting building, use or occupancy;
5. the terms and conditions of sales or lease;
6. the ability of the subdivider to deliver the interest contracted for;
7. the method of conveyance; and
8. any representations of “guarantees” or “warranties” made as part of a sales program.

### ***Exceptions***

A Notice of Intention and Application is not required for a standard subdivision within city limits if the lots are to be sold improved with completed residential structures and other improvements necessary for occupancy, or with financial arrangements, satisfactory to the city, to secure completion of those other improvements, provided the subdivider has complied with Sections 11013.1, 11013.2 and 11013.4 of the Code.

Also excepted are:

- subdivisions limited in use to commercial and industrial purposes; by zoning or by a declaration of covenants, conditions and Restrictions.
- subdivided land offered for sale or lease by a state agency, including the University of California, a local agency, or other public agency.

### ***Filing Packages***

When filing for a final public report, a subdivider may choose one of three methods, each relating to the level of completeness of the filing package.

**Minimum filing package method.** This is the basic method. This filing must meet all the minimum requirements itemized in the questionnaire, including payment of the appropriate fee and appending of the supporting documents. If a package submitted fails to satisfy the minimum filing requirements, the application, package and fee are returned to the applicant with no processing by DRE. Satisfying the minimum requirements enables DRE to: (a) process the filing for issuance of a “normal” preliminary public report, if requested to do so; and (b) within 15 days after receipt of the filing package, notify the subdivider whether (1) the filing also satisfies *Substantially Complete Filing Package* requirements or (2) will be held in a pending file until the filing is made substantially complete by additional information or documentation listed on the Quantitative Deficiency Notice.

**Substantially complete application method.** This method requires the applicant to satisfy all quantitative requirements for the Minimum Filing Package plus furnish virtually all other documentation needed to issue the final public report, except the recorded map, recorded CC&Rs, certain bonds, etc. Once the filing is substantially complete, qualitative processing begins and DRE must, within 20 days for a standard subdivision or 60 days for a common interest subdivision, provide the applicant with a Qualitative Deficiency Notice listing any substantive corrections to be made in the filing package.

**Totally complete filing method.** This method requires that the initial package submitted be certified by the subdivider to be complete and correct as originally filed. If it is, DRE can expedite issuance of the final public report.

### ***Preliminary Public Report***

A subdivider wishing to begin a marketing effort prior to the issuance of a final public report may request a preliminary public report based on the submission of a qualifying minimum application filing package. A preliminary public report does not provide the same disclosures as a final report and only allows the subdivider to accept reservations from potential purchasers. Reservation money must be fully refundable and kept in an escrow.

Preliminary public reports have a one-year term and may be renewed.

***Amended Public Report***

If during the life (five years) of a final public report, the subdivision offering undergoes a “material change” (e.g., change of ownership, change in purchase money handling procedure, change in use, etc.), the subdivider must apply for an amended public report.

***Renewed Public Report***

If at the end of five years the subdivision is not sold out, the subdivider can apply for a renewal of the final public report for an additional five-year term.

***Interim Public Report***

An interim public report is a special type of amended public report. It permits the subdivider to only take nonbinding reservations until a regular amended public report is issued reflecting material changes in the offering. An interim public report can only be applied for in conjunction with or after filing an application for an amended or renewed public report, and is valid for one year but expires upon issuance of the amended public report.

***Conditional Public Report***

An applicant for an original, renewed, or amended final public report may also apply for a conditional public report authorizing the subdivider to enter into binding contracts for the sale of lots or units even though the project has not yet completely qualified for issuance of a final public report. DRE may issue a conditional public report under the circumstances described in Section 11018.12 of the Code and Commissioner’s Regulation 2790.2.

**HANDLING OF PURCHASERS’ DEPOSIT MONEY**

Common to all types of subdivision filings are the requirements for the handling of the purchasers’ deposit money as set forth in Sections 11013, 11013.1, 11013.2 and 11013.4 of the Code.

***Blanket Encumbrance***

A blanket encumbrance exists when more than one lot, unit, or interest in a subdivision is made security for the payment of a trust deed note or other lien or encumbrance.

When, as is usually the case, there is no agreement for unconditional release of individual parcels from a blanket encumbrance, the owner or subdivider must comply with one of the following conditions:

1. Impoundment of the purchase money, in an escrow depository acceptable to the Commissioner, until a proper release is obtained from the blanket encumbrance or one of the parties defaults and there is a determination as to disposition of the money or the owner or subdivider orders the return of the money to the purchaser or lessee.
2. Title is placed in trust, under an agreement acceptable to the Commissioner, until a proper release from the blanket encumbrance is obtained and the trustee conveys title to the purchaser. This alternative is no longer considered practical by the subdivision industry.
3. The subdivider furnishes a bond to the State of California in an amount and subject to such terms as the Commissioner may approve. The bond must provide for the return of purchase money if a proper release from the blanket encumbrance is not obtained.

The Commissioner may approve other methods which protect purchasers’ payments until receipt of title or other interest contracted for.

***No Blanket Encumbrance***

Even if a subdivision is not subject to a blanket encumbrance, the deposit money of the purchaser must be impounded in an escrow or trust account unless the subdivider elects an acceptable alternative method.

The most common alternative to impounding is an acceptable bond to the State of California to assure return of the deposit money if the seller does not deliver title within the time specified in the contract. Note that a bond cannot be used to secure reservation deposits taken under a preliminary public report or with deposit money taken under a conditional public report.



As in the case of a subdivision subject to a blanket encumbrance, the Commissioner is given discretionary power to approve alternative plans submitted by subdividers which assure adequate protection of purchasers' deposits.

***Impound Requirements - Real Property Sale Contracts***

A real property sales contract is defined in Section 2985 of the California Civil Code as an agreement wherein one party agrees to convey title to real property to another party upon the satisfaction of specified conditions and which does not with certain exceptions require conveyance of title within one year from the date of formation of the contract.

When lots in a subdivision are to be sold using contracts of sale, the subdivider will usually convey the subdivision in trust as detailed in Commissioner's Regulation 2791.9. This is an acceptable alternative under Section 11013.2(d) or Section 11013.4(f) of the Code.

**COVENANTS, CONDITIONS, AND RESTRICTIONS**

Subdividers, mortgage lenders, government agencies, and home buyers need a means of assurance that the nature of a subdivision will remain unchanged. The mechanism most commonly used in California to assure this essentially protection is a document known as the Declaration of Covenants, Conditions, and Restrictions, (CC&Rs). Conveyances are made subject to CC&Rs.

The traditional purpose of deed restrictions has been to control land use by requiring structures to be a certain size, or by restricting types of use.

The importance of restrictions has shifted to a broader purpose as the number of common interest developments has increased. CC&Rs are used not only to control land use, but to prescribe the very nature of the common interest subdivision; to provide for maintenance of the project; to set down rules for behavior of persons; and as a vehicle for raising money for maintenance, repair and replacement of the project's components.

Restrictions may be set out in the deed to the land, which is frequently the case when the restrictions are quite simple. When the CC&Rs are complex, as they usually are for a common interest subdivision, they are best set out in a separate document. There are technical requirements to be met if the CC&Rs are to be effective. Therefore, developers usually hire experienced lawyers to draft CC&Rs.

Common interest subdivisions almost invariably have a homeowners' association to carry out the mandates of the CC&Rs. Pursuant to the Subdivided Lands Law, the Commissioner has adopted regulations that require reasonable arrangements in CC&Rs and the other governing instruments for a common interest subdivision.

Often, a title report will disclose that a parcel of land is subject to restrictions recorded years before. An attorney should examine them to discover whether their provisions will hinder the intended development. There are frequently set-back provisions, limits on density and other provisions which cannot be eliminated.

**ADDITIONAL PROVISIONS**

***Material Changes***

Any material change in the subdivision itself, or in the program for marketing the subdivision interests, or its handling after the filing of the Application and Questionnaire is made or the public report is issued must be reported to the Commissioner. This not only includes physical changes, such as changing the lot or street lines, but any new condition or development which may affect the utility or value of the subdivision or the terms of the offering. Basically, a material change is anything that results in the public report or questionnaire not reflecting the true facts/conditions of the subdivision offering.

Changes in contracts, deeds, etc., used in the sale of lots or units in a subdivision may constitute a material change to be reported to the Commissioner. The purpose of reporting is to enable the Commissioner to revise the public report and to set forth the true conditions existing in the subdivision after any material change has occurred or take other action as warranted.

For a limited time after subdivision sales begin, amendments to the management documents of common interest subdivisions are invalid without the prior written consent of the Commissioner, if the change would affect an owner's rights to ownership, possession or use in any material way. (Code Section 11018.7)

The owner of a (non-exempt) subdivision must report to the Commissioner the sale of five or more parcels or units to a single purchaser.

Failure to report material changes not only violates the law but may also furnish a basis for rescission of purchases through court action.

### ***Special Districts***

If the subdivision lies wholly or partially within a special district such as a community services district, resort improvement district, county water district or similar public or semi-public district, which has the power to tax, issue general obligation bonds, and raise money by other means, for the purpose of financing, acquiring, constructing, maintaining or operating improvements for the subdivision or for the purpose of extending public or other services to this subdivision, the subdivider will submit a Special Assessment District and Special Improvement District Questionnaire identifying the district, the amount and term of indebtedness, the effect on the tax rate and the total assessment and annual assessment per lot, unit or parcel in the subdivision. This same questionnaire elicits similar information about districts empowered to levy "special taxes." The inquiry is not concerned with school districts, irrigation districts, fire protection districts or similar districts *not* formed for the particular purpose of providing services to this and connected projects.

### ***Special Regulations for Common Interest Subdivisions***

A number of regulations specify the documents and statements required for a planned development, community apartment, stock cooperative, or condominium project. These requirements are set forth in Sections 2792.1 through Section 2792.33 of the Commissioner's Regulations. Examples include "reasonable arrangements" for:

1. levying regular and special assessments against each owner;
2. the governing body's distribution of annual financial and budget information to all members;
3. members' meetings, voting rights, governing body powers, inspection of the association's books and records; and,
4. establishing maintenance and reserve funds.

### ***Environmental Impact Reports***

An environmental impact report (EIR) may be required by local government prior to approval of the map for the subdivision.

A subdivision developer should determine as early as possible (preferably prior to filing a tentative map) whether an EIR will be required for the project.

### ***The California Coastal Act***

The California Coastal Act allows local governments to adopt programs for coastal conservation. Generally, the Coastal Zone runs the length of the state from the sea inland about 1,000 yards, with wider spots in coastal estuarine, habitat and recreational areas. A subdivider planning to develop a tract of land within the Coastal Zone must obtain a coastal development permit or an exemption.

### ***Mineral, Oil and Gas Subdivisions***

The definition of mineral, oil and gas subdivisions covers division of land into parcels of any size, even when each parcel created is 160 acres or more in size. No public report on a mineral, oil or gas subdivision has been issued for a number of years.

### ***Advertising Criteria***

Guidelines for subdividers in the advertising and promotion of subdivisions are contained in Section 2799.1 of the Commissioner's Regulations. These guidelines are applicable in determining whether advertising for sale or lease of subdivision interests is false or misleading within the meaning of those terms defined in Business and Professions Code Sections 10140, 10177(c), 11022 and 17500 of the Code.

Nothing contained in these standards limits the authority of the Commissioner to take formal action against an owner, subdivider or agent for the use of false or misleading advertising of a type not specifically described in these guidelines.

The DRE publication *Guidelines for Subdivision Advertising* (RE 631) contains advertising requirements and prohibitions. RE 631 may be obtained from the DRE's Sacramento Subdivision Office

***Desist and Refrain Orders***

If the Commissioner finds that a person is violating any provision of the Subdivided Lands Law or the pertinent regulations or if the further sale or lease of lots in a given subdivision would constitute grounds for denial of the issuance of a public report, the Commissioner may order the immediate cessation of such violations or the immediate termination of selling or leasing of the property by the issuance of an Order to Desist and Refrain (D & R) from such activity.

When the Commissioner issues a D & R, the person named therein has the right, within 30 days after its receipt, to file a written request for a hearing to contest the order. The Commissioner must assign the request to conduct a hearing to the Office of Administrative Hearings. If the hearing is not commenced within 15 days after receipt of the request or on the date to which it is continued by mutual agreement, or if the decision of the Commissioner is not rendered within 30 days after completion of the hearings, the D & R is deemed vacated.

***Out-of-State Subdivisions***

A developer who wishes to offer in California subdivision interests (other than in a time-share) located outside of California but within the United States must register the project with DRE and include certain disclaimers in advertising and sales contracts.

A developer who wishes to offer in California subdivision interests located outside the United States is not required to register with DRE but must include a disclaimer in advertising and sales contracts.

Basically, the disclaimers mentioned above state that DRE has not examined the offering and urge a prospective purchaser to seek the advice of an attorney who is familiar with real estate and development law in the state or country where the subdivision is located.

**GROUNDINGS FOR DENIAL OF PUBLIC REPORT**

If grounds exist, the Commissioner will deny issuance of a public report and no offerings or sales can be made until the subdivider has remedied the unsatisfactory conditions and the report is issued.

The grounds for denial are listed in Section 11018 of the Code.

Section 11018.5 applies only to common interest subdivisions and lists standards which, if met, mandate issuance of the public report if there are no other grounds for denial. Grounds for denial include the failure to meet these standards.

A subdivider objecting to an order of denial may request a hearing pursuant to Section 11018.3 of the Code.

**SUBDIVISION MAP ACT**

The following is a discussion of the requirements of the Subdivision Map Act (Government Code Section 66410, et seq.).

A "subdivision" is, with a few exceptions, any division of contiguous land for the purpose of sale, lease or financing. Condominium projects, community apartments, and the conversion of five or more existing dwelling units to a stock cooperative are included.

Generally, the subdivider must prepare a map for approval by the local government agency.

**PRELIMINARY PLANNING CONSIDERATIONS**

The local jurisdiction, usually through its planning department, must find that a proposed subdivision is in conformance with the applicable general and specific plans for the area. The local agency must deny approval of a subdivision project if it finds that the site is not physically suitable for the proposed development. Water, drainage, soil and sewerage problems can limit the feasibility of a subdivision.

***Natural Features***

The subdivider and local agency must consider the impact of the proposed subdivision on trees, streams, lakes, ponds and views. Potential for significant adverse effects on the environment will occasion review of the project under the Environmental Quality Act.

***Soils Report***

A preliminary soils report, prepared by a registered California civil engineer and based upon adequate test borings, is required for every subdivision for which a final map is required, and may be required by local ordinance for other subdivisions. The law does provide for a waiver by the city or county under certain conditions. When a soils report has been prepared, that fact should be noted on the final map with the date of the report and the name of the engineer.

***Neighboring Property***

The local agency must disapprove a subdivision if it finds that the subdivision or the improvements are likely to cause serious public health problems. Undesirable surroundings can also be detrimental to the success of a new residential subdivision. If the adjacent site is a residential development, planners must study its general character and design. The design characteristics, building techniques, and street layout should blend and be compatible with those planned for the new subdivision. Noxious industrial uses, 24-hour factory operations, noises, fumes, railroad yards, and similar factors render a residential subdivision on the adjoining property highly undesirable. Cemeteries, penal institutions, mental institutions, dairy farms, fuel storage tanks, and many other types of land use may also render a neighboring site undesirable for residential development.

The developer should check with the local planning commission, the California Department of Transportation, the Federal Aviation Agency, and the California Division of Aeronautics regarding location of proposed industries, factories, freeways, or airport facilities.

***Drainage***

Local jurisdictions have adopted master plans for drainage and requirements for grading of subdivisions and installation of drainage facilities to protect purchasers from the hazards of uncontrolled runoff of storm waters, erosion, deposits of silt and debris, and flooding. The developer must consider the cost and feasibility of these measures.

The local agency may issue a flood hazard and drainage report on any subdivision proposed within its jurisdiction.

***Flood Hazard***

When a flood hazard is found to exist, the flood hazard report will describe the degree and the frequency of flood hazard using the following terminology:

**1. Degree of Hazard**

*Inundation:* Ponded water, or water in motion, of sufficient depth to damage property due to the mere presence of water or the depositing of silt.

*Flood:* Flowing water having sufficient velocity to transport or deposit debris, to scour the surface soil, or to dislodge or damage buildings. It also indicates erosion of the banks of watercourses.

*Possible Flood:* Possible flood hazard of uncertain degree.

*Sheet Overflow:* Overflow of water in minor depths, either quiescent or flowing, at velocities less than those necessary to produce serious scour. This type of overflow is a nuisance rather than a menace to the property affected.

*Ponding of Local Storm Water:* Standing water in local depressions. Originates on or in the vicinity of the property and due to the condition of the ground is unable to reach a street or drainage course.

**2. Frequency**

*Frequent:* Flooding which may occur, on average, more than once in 10 years.

*Infrequent:* Flooding which may occur once in 10 years or more.

*Remote:* Flooding which is dependent upon conditions which do not lend themselves to frequency analysis, such as break of levee, obstruction of a channel, etc.

***Alquist-Priolo Earthquake Fault Zoning Act***

This law (Public Resources Code Sections 2621, et seq.) is designed to control development in the vicinity of hazardous earthquake faults.

On official maps, the State Geologist delineates earthquake fault zones around traces of potentially active faults. The zones are usually one quarter of a mile in width.

The maps may be consulted at the California Department of Conservation or at the county assessor or recorder's office.

Real estate licensees who are involved in property transactions located near special studies zones should obtain information about that zone.

Section 2621.9 of the Public Resources Code provides that any person who is acting as an agent for a seller of real property which is located within a delineated earthquake fault zone, or the seller if acting without an agent, shall disclose to any prospective purchaser the fact that the property is located within a delineated earthquake fault zone.

The developer of a subdivision lying within a delineated earthquake fault zone and subject to the Subdivision Map Act must obtain special approval by a city or county in accordance with policies and criteria established by the State Mining and Geology Board.

### ***Sewage Disposal***

County and/or city engineers will determine if it is feasible to connect the proposed subdivision to existing sewage facilities. This will depend mainly on the capacity, location, and the type of disposal used. If there is no existing system, the developer must plan for an alternative: typically septic tank systems approved by the local health officer or by the State Department of Health Services if there is no health officer. The subdivision engineer must conduct careful soil analysis and percolation tests.

### ***Water Supply***

For a residential subdivision, the subdivider must ascertain the feasibility of connecting to an existing public water supply. Normally, the utility company determines the required size of connections to supply an area and to provide for future extensions.

The developer must consider the quantity of water needed for a given site, the population served and average daily use for all purposes, along with maintenance of pressure at fire hydrants.

If there is no local water company, the subdivider must investigate alternate sources. The creation of a special water district is one possibility.

Water quality must meet the standard of the local health department or the State Department of Health Services.

In response to concern for the quality, conservation, control, and utilization of the state's water resources, the Legislature enacted the *Porter-Cologne Water Quality Control Act* (Water Code Sections 13000 et seq.), which is administered by nine regional control boards within the State Water Quality Control Board. The following provision (Section 13266 of the Water Code) is of particular importance to subdividers:

Pursuant to such regulations as the regional board may prescribe, each city, county, or city and county shall notify the regional board of the filing of a tentative subdivision map, or of any application for a building permit which may involve the discharge of waste, other than discharges into a community sewer system and discharges from dwellings involving five-family units or less.

### ***Other Utilities***

The developer must arrange telephone, gas, and electricity service to the site.

The developer should consult with the city or county engineer and with the power company regarding the necessity or desirability of a street lighting system.

The Public Utilities Commission has mandated that undergrounding be used for all extensions of electricity and telephone service in residential subdivisions.

### ***Dedication of Streets and Easements***

The local government may require the dedication of sufficient land in the subdivision for streets, alleys, public utility easements, drainage easements, access easements (e.g., for public access to adjacent shoreline) and bicycle paths.

***Public Parks and Recreational Facilities***

The governing body of a city or county may enact ordinances requiring the subdivider to make contributions for public parks or recreational facilities. The contributions may be in the form of land or money. If the subdivision contains fifty or fewer parcels or units, the subdivider may be required to pay a dollar amount proportionate to the number of parcels in the proposed tract.

If there are more than fifty parcels in the subdivision, the local ordinance may require dedication of a portion of the property for public use as a park or other recreational facility. There is no provision for reimbursement to the subdivider for the cost of acquisition or improvements to the parcel or parcels dedicated for public use. Industrial subdivisions are exempt from these requirements.

***Dedication of School Sites***

Under the provisions of the Map Act and the School Facilities Act, the local ordinance may require dedication of land for public schools. The requirement for dedication must be imposed at the time of approval of the tentative map. The school district must, within 30 days after the requirement has been imposed, agree to accept the dedication. Absent timely agreement, the requirement terminates automatically.

The school district accepting dedication of the land pays for it at its original cost to the subdivider, plus the sum of the cost of improvements, interest, taxes and any other costs which had been incurred in maintenance of the site.

An ordinance of this nature is applicable only to a subdivider who has owned the land for less than ten years prior to filing a tentative map.

***Airport within Subdivision***

A developer may consider including aircraft landing facilities, particularly in a remote planned development. Under certain conditions, the Division of Aeronautics may not require a permit but the facility must still meet certain minimum standards. The developer should contact the Division of Aeronautics at the beginning of project planning.

***Preapplication Conferences***

The developer and the planning commission technical staff may consider the above items in conferences *before* preparation of a tentative map. Obviously, a coordinated beginning will save time in securing subdivision approval and may avoid costly changes in the subdivision set-up.

**BASIC STEPS IN FINAL MAP PREPARATION AND APPROVAL**

1. Feasibility analysis of subdivision, based on economics, location and physical survey.
2. Preliminary discussions to learn requirements of agencies having jurisdiction over the project.
3. Preparation of tentative map (copy sent to coastal commission if project is in coastal zone).
4. Tentative map submitted to local jurisdiction (e.g., planning commission, city clerk) and, if applicable, government loan agency (e.g., FHA).
5. Copy of approved tentative map sent to DRE with application for public report.
6. Preparation and signing of final map.
7. Final map submitted to planning commission and government loan agency.
8. Approved final map recorded.
9. Copy of approved final map sent to DRE.

**TYPES OF MAPS**

For the most part, the Subdivision Map Act requires tentative and final maps for subdivisions which create five or more parcels, five or more condominiums, a community apartment project containing five or more interests, or the conversion of a dwelling into a stock cooperative of five or more dwelling units. The exceptions are included in Government Code Section 66426.

Generally, the Subdivision Map Act requires a parcel map if a final map is not required. Government Code Section 66428 includes exceptions and waivers to the parcel map requirement.

### **TENTATIVE MAP PREPARATION**

A tentative map usually shows the design of the proposed subdivision and the existing topographic conditions. Design includes street alignment, proposed grades and widths, alignment and widths of easements and rights-of-way for drainage and sanitary sewers, and minimum lot area and width. To the extent possible, the design of the subdivision must also provide for future passive (i.e., natural) heating and cooling. This requirement does not apply to condominiums converted from existing structures. Many jurisdictions require that a tentative map be based upon an accurate or final survey by a registered civil engineer, licensed land surveyor, or professional planner. (The survey for a *final* map must be the product of either a registered civil engineer or licensed surveyor.)

The local subdivision ordinance usually stipulates that the tentative map contain:

1. A legal description sufficient to define the boundaries of the proposed tract;
2. The locations, names, and existing widths of all adjoining highways, streets, and ways;
3. The proposed use of the property;
4. The width and proposed grades of all highways, streets and ways within the proposed subdivision;
5. The width and approximate location of all existing and proposed easements for roads, drainage, sewers and other public utility purposes;
6. The tentative lot layout and dimensions of each lot;
7. The approximate locations of all areas subject to inundations or storm water overflow and the locations, widths, and direction of flow of all watercourses;
8. The source of water supply;
9. The proposed method of sewage disposal;
10. The proposed public areas, if any; and
11. The approximate contours when topography controls street layout.

### **TENTATIVE MAP FILING**

#### ***Processing the Map***

After preparing a tentative map and meeting pre-filing requirements, a subdivider files the map with the planning department, the clerk of the city council or the board of supervisors, as the particular jurisdiction requires. Typically, a large jurisdiction will have a planning department which will study the map and report on the design and improvements of the proposed tract. The road department, health department, flood control district, parks and recreation department, the local school authority and the city or county surveyor will also review the map. A city or county adjacent to the area in which the proposed tract is located may desire to make recommendations regarding map approval. If the tract is bounded or traversed by a state highway, the District Engineer of the Division of Highways of the State Department of Transportation will also review the map. If the subdivision lies in the Coastal Zone, as defined in Section 30103 of the Public Resources Code, the local jurisdiction will send a copy of the tentative map to the California Coastal Commission. The notified officials study the map with regard to their special concerns and report their findings to the planning department. The reports may recommend approval, conditional approval, or disapproval. The subdivider may meet with representatives of all interested departments to discuss the proposed tract and the conditions recommended for approval. After review by its technical staff, the local jurisdiction schedules a public hearing on the map.

#### ***Basis for Approval or Denial***

The local jurisdiction will not normally approve a tentative map unless the proposed design and improvements conform to the applicable general and specific plans, including acceptable population density, physical

suitability, and health and environmental considerations. In many cases, approval is conditioned upon changes to the development plan.

### ***Appeal***

The subdivider has 10 days from the date of any adverse action with respect to a tentative map to file an appeal.

Upon the filing of an appeal, the local jurisdiction must set the matter for a hearing to be held within 30 days after the appeal is filed and render its decision within 10 days after the hearing.

If the legislative body fails to act on the appeal within the time periods mentioned above, the tentative map is deemed approved insofar as it complies with the Subdivision Map Act and the local ordinance. However, the local ordinance may give interested persons the right to file a complaint and have it heard by the governing body.

### ***Vesting Tentative Maps and Development Agreements***

Section 66498.1 of the Government Code provides that a subdivider can obtain approval of a *vesting* tentative map with certain rights to proceed with development in substantial compliance with specified ordinances, policies and standards in effect at the time that map is approved.

Another way to secure development rights is by agreement between the developer and the local jurisdiction (Government Code Sections 65864, et seq.). Entering into a development agreement is a discretionary act.

## **FINAL MAP**

Prior to expiration of a tentative map, a subdivider must prepare and record a final map.

### ***Taxes and Assessments***

Before filing a final map, a subdivider must file with the clerk of the governing body a certificate showing that no liens against the tract exist for unpaid state, county, municipal, or local taxes or special assessments collected as taxes. Taxes or special assessments which are a lien that are not yet payable are excepted but the developer must file a certificate showing an estimate of the amount of these taxes or special assessments and a bond or cash deposit to insure payment.

### ***Improvements***

Prior to approval of a final map, the subdivider must improve or agree to improve portions of land to be used for public or private streets, highways, and easements necessary for vehicular traffic and drainage. The developer must secure with a bond or cash deposit any agreement to make these improvements. The developer and the local jurisdiction may contract to begin proceedings for creation of a special assessment district for the financing and construction of the improvements. The developer must secure the contract with a performance bond or cash deposit.

### ***Final Map Filing***

A developer may file a final map for approval after meeting all conditions and having all certificates signed.

Provided a final map meets the requirements of the Map Act and of the local subdivision ordinance, the local jurisdiction will approve it at its next meeting after the filing unless the subdivider and the governing body agree to a time extension for some final corrections to the map.

### ***Final Map Recordation***

After the local jurisdiction approves a final map, it is accepted for recordation. A copy is transmitted by the clerk of the appropriate governing body to the recorder. At the time of recordation, the subdivider must furnish a certificate of title establishing that the parties consenting to recordation are those having record title interest in the land.

## **PARCEL MAP**

A parcel map, prepared by or under the direction of a registered civil engineer or licensed land surveyor, must include:

1. the boundaries of the land included within the subdivision;
2. the location of streets;



3. each parcel, numbered or otherwise designated;
4. a certificate, signed and acknowledged by all parties having any record title interest in the real property subdivided, consenting to the preparation and recordation of the parcel map.

A parcel map must satisfy any additional requirements of the local subdivision ordinance.

### **OTHER PUBLIC CONTROLS**

The basic regulation of the housing and construction industries is accomplished by three laws: the State Housing Law (Health and Safety Code Section 17910, et seq.); local building codes; and the Contractors' State License Law (Business and Professions Code Section 7000, et seq.).

#### ***State Housing Law***

The State Housing Law, administered by the Codes and Standards Division of the Department of Housing and Community Development, provides minimum construction and occupancy requirements for dwellings.

Construction regulations under this statewide act are handled by local building inspectors, while occupancy and sanitation regulations are enforced by local health officers. Typical procedure for new construction or building alterations requires initial application to the local building inspector for a building permit.

The application must be accompanied by plans, specifications, and plot plan. After examination of the application and accompanying exhibits and revision where necessary, the corrected application is approved and a building permit is issued. No construction or alterations can be commenced prior to issuance of a building permit.

#### ***Local Building Codes***

In 1970, the Legislature amended the State Housing Law to make the Uniform Housing Code, Uniform Building Code, Uniform Plumbing Code, Uniform Mechanical Code, and National Electric Code applicable in lieu of local building codes. The law now provides that the Regulations of the Commission of Housing and Community Development under the State Housing Law shall impose substantially the same requirements as the most recent edition of these codes. Local government retains only the power to determine local use zoning requirements, local fire zones, building setback, side and rear yard requirements and property line requirements. (Health and Safety Code Section 17922(b)). Local variances are permitted only if based on an express finding that local conditions make them reasonably necessary. Materials and design which comply with the uniform codes but are determined in fact to be unsafe (for example "pigtailling" copper to aluminum wire) may be prohibited by the local authorities.

In 1969, by the California Factory Built Housing Law (Health & Safety Code Section 19960 et seq.), the Legislature provided for regulation of factory built housing by the Department of Housing and Community Development. The standards must be reasonably consistent with the most recent editions of the uniform codes mentioned above. Local governments may elect by ordinance to take over the function of in-plant inspections within their territorial limits in accordance with the standards set by the commission.

Local government supervises on-site installation of factory built housing.

#### ***Contractors' State License Law***

Under the Contractors' State License Law, every person who engages in the business of a contractor in this state must be licensed by the Contractors' State License Board. Licensing exemptions exist only for public entities, public utilities, oil and gas operations, certain construction operations related to agriculture, minor work not exceeding \$500, and an owner's own work unless the owner intends to offer the property for sale within one year of completion.

Contractors must meet certain experience and knowledge qualifications and must post a bond or cash deposit to the State of California for the benefit of persons damaged by the contractor.

A contractor is subject to being disciplined by the Contractors' State License Board, which may result in the suspension or revocation of the license. Grounds for discipline include: abandoning a project; diverting funds to a different project or for a different purpose; departing from plans and specifications; violation of work safety provisions or of building laws and regulations; and a material breach of contract.

Note: Various FHA, VA or Cal-Vet requirements regulate housing and construction. These programs require, as a prerequisite to participation, that the house involved meet elaborate Minimum Property Requirements (MPRs). In some instances, MPRs are more demanding than either the State Housing Law or local building codes.

### HEALTH AND SANITATION

The sanitary condition of all housing is subject to control by health authorities. While the State Department of Public Health controls statewide enforcement of health measures, the local health officer actually enforces state and local health laws and uses the Department of Public Health as an advisory agency.

Proper drainage, sewage disposal, and water supply are crucial health and sanitation considerations. The local health officer may stop a development if there are problems in these areas.

### EMINENT DOMAIN

The power of eminent domain permits the government to take private property for public use. The United States and California Constitutions require “just compensation” for such a taking. Not all government activity which may reduce or entirely destroy the value of property is a “taking.” For example, zoning or health regulations which prohibit an owner from using a property for a certain purpose or in a certain manner may make the property much less valuable but, usually, no compensation is paid. Where governmental regulation or impositions on the use or development of land denies all economically beneficial or productive use of the land, the regulatory action constitutes a taking requiring compensation.

The federal government, states, cities, counties, improvement districts, public utilities, public education institutions, and similar public and semi-public bodies may all exercise the power of eminent domain and almost always have the power to obtain the property in question for fair market value. The government can take property within several weeks of advance notice, before any price is paid or even determined, upon depositing an estimated price in court and getting a court order.

Examples of public uses are streets, irrigation, railroads, electric power, public housing, and off street parking.

#### ***Compensation***

The use of the power of eminent domain is often referred to as condemnation. The main issue in almost all condemnation cases is the amount of “just compensation.” Most courts have ruled that fair market value is just compensation.

#### ***Severance Damage***

Condemnation of a *portion* of a parcel of land may result in a loss in value of the remaining parcel. Normally, the government must compensate the owner for this severance damage.

Benefits affected by severance are either general or special. A highway benefits all who use it, including the condemnee. This general benefit is not an offset against severance damages. Conversion of the remainder of an agricultural parcel to commercial usage because the severed portion is used for a government office building is an example of a special benefit/increase in value which may be an offset against severance damages due from the government.

#### ***Procedure***

Negotiations with the property owner usually precede formal condemnation action by a public body. If negotiations are successful, the property is purchased rather than condemned. If negotiations are unsuccessful, the public body files a formal proceeding in court against the property owner.

If the government abandons a condemnation action, the property owner may recover legal expenses reasonably and necessarily incurred, including attorney fees, appraisal fees, and fees for the service of other experts.

#### ***Inverse Condemnation***

If a public work results in damage to property, the owner may initiate a suit as an inverse condemnation action. An inverse condemnation action may also result if a public entity, having commenced an eminent domain proceeding, does not diligently attempt to serve the complaint and the summons within 6 months.

***Inverse Condemnation for Governmental Regulation***

Government regulation of the use and development of real estate does not usually result in the “taking” or condemnation of the real estate by the government without compensation as inverse condemnation. However, in certain instances, where the governmental regulation is excessive in nature, the land owner may have an action against the government for inverse condemnation. Where governmental regulation or impositions on the use or development of land denies all economically beneficial or productive use of the land, the regulatory action constitutes a taking that would require payment of compensation. However, it is the rare instance that all of the legal factors result which legally establish that a government regulatory action constitutes such a taking. There are also many procedural requirements that must be met before a landowner can validly assert that a governmental regulation actually constitutes such a taking without compensation.

**WATER CONSERVATION AND FLOOD CONTROL**

California law provides that an individual’s water rights do not exceed the amount reasonably required for beneficial use.

The courts refer water rights litigation to the State Water Resources Control Board for investigation, report, and/or hearing and preliminary determination, subject to final court decision. (Water Code Section 2000, et seq.)

Surface water rights are dependent to some extent upon whether or not the surface water is flowing in a defined channel. A defined channel is any natural watercourse, even though dry during a good portion of the year. If water flows across the surface of the earth without being contained within any defined channel, the landowner below may not obstruct it in such a manner as to flood the owner above. Also, a landowner above may not divert or concentrate such waters upon the landowner below by artificial structures, such as ditches or streets in a subdivision.

Again, if water is flowing in a defined channel, a landowner may not obstruct or direct such water. A local flood control district, however, may grant a permit for such diversion if properly approved disposal methods are provided. Waters overflowing a defined channel are considered floodwaters and a landowner may protect property by reasonable methods.

Cities, counties and specially created districts may incur indebtedness for the construction of flood control works. Assessments on the parcels within the area will repay the indebtedness.

***Mutual Water Company***

Water users may organize a mutual water company in order to secure an ample water supply at a reasonable cost. The company must file articles of incorporation with the Secretary of State.

In most cases, the stock is made appurtenant to the land; that is, each share of stock is attached to a particular portion of land and cannot be sold separately. This enables the company to plan its distribution more easily and prevents speculation in shares.

No cash dividends are declared by these companies, but credits are given to water users if surpluses occur. On the other hand, assessments may be levied if operating revenues are not sufficient or special improvements are voted by the directors. Directors are elected by stockholders. The directors usually employ one paid officer, the secretary, who supervises the clerical help and advises stockholders regarding their water problems.

If the domestic water supply for a subdivision is to be provided by a mutual water company, the application for a public report on the subdivision must include the information, representations and assurances prescribed by Corporations Code Section 14312 on a form prescribed by the Real Estate Commissioner.

***Public Utilities***

Public utilities are corporations which have powers of a public nature, such as the power of condemnation, to enable them to discharge their duties for the public benefit. They are subject to the regulations and control of the Public Utilities Commission.

***Special Water Districts***

Water districts, while state agencies, are not part of the state government as such. Such districts have been historically divided into two groups: (1) those which protect or reclaim the land from water; and (2) those which

bring water to the land. Some districts of each type have been given powers of the other type. Water districts may also be classified as existing under general or special laws, the former typically being an enabling act for the voluntary formation of districts and their government, while the latter either create or provide for the creation of one district and its government.

Sometimes the district law, though general in form, is so modeled to fit a particular situation that it may be said to be special in fact. This is true of the Metropolitan Water District Act, originally enacted in 1927, under which only the Metropolitan Water District of Southern California operates, and of the County Water Authority Act, originally enacted in 1943, under which only the San Diego County Water Authority operates. Both acts contemplate the wholesaling of water to cities and districts included in either a metropolitan water district or a county water authority.

Among the types of districts are:

- California water districts,
- California water storage districts,
- County water districts,
- County waterworks districts,
- Drainage districts,
- Irrigation districts,
- Public utility districts, and
- Reclamation districts.

### ***Water Pollution Control***

Water pollution control for the State is governed by the Porter-Cologne Water Quality Control Act (Water Code Section 13000 et seq.). This act establishes a State Water Resources Control Board and nine regional water quality control boards. This act provides a comprehensive scheme for controlling discharge of effluents which may affect the quality of water. This regulation has frequently involved property owners in regulation or clean up of spills from septic tanks, underground oil and gasoline storage tanks and other sources which leach materials into the groundwater.

### **INTERSTATE LAND SALES FULL DISCLOSURE ACT**

Subdividers of large subdivisions to be sold interstate should contact HUD's Office of Interstate Land Sales Registration (OILSR) for a determination as to whether they are subject to OILSR jurisdiction.