

DATE ISSUED:

REPORT NO. PC-06-230

ATTENTION:

Planning Commission, Agenda of August 10, 2006

SUBJECT:

DEFERMENT OF PHYSICAL IMPROVEMENTS ON  
CONDOMINIUM CONVERSION PROJECTS

SUMMARY:

THIS IS AN INFORMATION ITEM ONLY. NO ACTION IS REQUIRED ON THE PART OF THE PLANNING COMMISSION.

BACKGROUND

For all tentative maps, conditions of approval must be satisfied or be assured to the satisfaction of the City Engineer prior to the recordation of the final map. Typical conditions may include the construction of various public improvements including streets, sidewalks, storm drains and the payment of certain fees. As a voluntarily accepted condition of the tentative map approvals for condominium conversions, subdividers have agreed to complete physical improvements to their project sites in addition to the typical public improvements. These voluntarily accepted conditions are outlined as recommendations in a building conditions report for the proposed site and as elements of an adopted landscape concept plan.

Some subdividers have expressed a desire to obtain a final map while deferring the voluntarily accepted physical improvements until the time that the project site is renovated for the sale of units. This deferment raises issues as to how the City will ensure that the voluntarily accepted conditions for physical improvements are satisfied. This issue also arises regarding the physical improvements required under the condominium conversion regulations recently adopted by the City Council.

DISCUSSION

For tentative map conditions requiring the construction of public infrastructure (streets, storm drains, etc.), the actual improvements may be constructed and accepted by the City prior to recordation of the final map. More typically, the subdivider obtains a surety to cover the estimated cost of the improvements. The City Engineer prepares a Subdivision Improvement Agreement and approves the surety in consideration of the construction documents and cost estimates that are prepared for the required public improvements. The surety must be satisfactory to the City Engineer, and may be in the form of cash, a letter of credit, or a performance bond. The surety is released upon completion of the improvements.

The cost estimates are based on the construction of standard public improvements. The City maintains a unit price list for these improvements and updates the list from time to

time. Consequently, the City has a reasonable idea of the accuracy of the cost estimates that may be submitted for the surety of public improvements. Also, the City, as the permitting authority, is reasonably assured of the adequacy of the design and construction of the standard public improvements.

The voluntarily accepted improvements that are outlined as recommendations in a building conditions report, or as elements of an adopted landscape concept plans are not standard public improvements. The City does not maintain a list of the unit prices for the improvements that typically are covered in the scope of these voluntarily accepted improvements. Calculating a reasonable surety for their completion would be somewhat speculative. Moreover, while the City has permitting authority for certain improvements that require a building permit, there are various improvements (e.g., painting, fixture replacement, appliance replacement) that generally do not require permits. In these cases, the City cannot assure the adequacy of the design and construction of the improvements, nor reasonably identify an adequate surety amount as it does for public improvements.

After the recordation of the final map, the City has limited authority in the further review of subdivided land. Once the City has approved the final map for condominium conversions, there is no established mechanism to enforce further conditions that might have been required. For the City to ensure the completion of voluntarily accepted conditions after recordation of the final map, the City would have to undertake a new monitoring obligation.

Another approach to ensure the completion of any deferred, voluntarily accepted physical improvements is through the imposition of a “restrictive covenant, lien not to convey.” This lien would be recorded with the final map and would require the completion of the voluntarily accepted conditions prior to conveyance of any units created by the final map. The lien would be disclosed to prospective buyers through the property’s title report. The provisions of the lien would be enforceable through litigation initiated by a future buyer, should the buyer find that the physical improvements which were voluntarily agreed to as tentative map conditions were not satisfied.

## CONCLUSION

Currently, the City Engineer has the discretion to evaluate whether any tentative map condition has been satisfied. Fulfillment of the conditions is determined by actual completion of the improvements, or by having a surety to provide for the fulfillment of the condition. The City Engineer has required the fulfillment of the voluntarily accepted tentative map conditions prior to the recordation of a final map. The restrictive covenant has not been allowed by the City Engineer as a surety mechanism. The Planning

Commission may evaluate the merits of the restrictive covenant and provide policy recommendations for allowance of this mechanism or others as an option for condominium conversions.

Respectfully submitted,

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