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OFFICE OF THE ATTORNEY GENERAL
State of California

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OPINION	:	No. 81-1012
	:	
of	:	<u>AUGUST 24, 1982</u>
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THE HONORABLE CAROL HALLETT, MEMBER OF THE CALIFORNIA ASSEMBLY, has requested an opinion on the following question:

May the county recorder lawfully charge a fee to record at the request of a city a planned unit development permit issued by the city?

CONCLUSION

The county recorder may not lawfully charge a fee to record at the request of a city a planned unit development permit issued by the city.

ANALYSIS

We are advised that a city zoning ordinance provides for "planned unit developments." The ordinance provides that such development may be authorized by

permits approved by the planning commission and issued by the city council upon terms and conditions specified in the permit. We are further advised that standard terms and conditions of the permit include authorization to build in accordance with attached site and building plans, requirements as to occupancy and use, architectural design, public improvements, utilities, fire protection, parking, landscaping, site maintenance, trash disposal, fencing, exterior lighting and signs. Standard conditions of such permits also include (1) "This permit shall run with the land and all terms and conditions herein shall be considered conditions of any subsequent sale or lease . . . ;" (2) the permit shall be filed for record with the county recorder; and (3) the permit shall not be effective until the owners signify their acceptance of the permit and their agreement to its terms and conditions in writing following the mayor's signature on the permit.

We are asked whether the city must pay a fee to the county recorder in order to have such a planned unit development recorded at the city's request. We assume, without expressing any opinion thereon, that the permit containing the owners acceptance and agreement to its terms and conditions is an instrument which the law authorizes to be recorded.¹

Section 27201 provides that "[t]he recorder shall not record any instrument . . . until the fees prescribed by law are, if demanded, paid or tendered." Section 27360 et seq. prescribes the required recording fees. This brings us to the specific question presented for our opinion. When the city presents a planned unit development permit for recording may the county recorder charge the city a recording fee? Our attention is specifically directed to section 27383 which provides:

"No fee shall be charged by the recorder for services rendered to the state, to any municipality, county in the state or other political subdivision thereof, except for making a copy of a paper or record."

In 27 Ops.Cal.Atty.Gen. 402 we concluded that to the extent that section 27383 conflicts with the more general governmental fee exemption provision of section 6103, section 27383 prevails. In 26 Ops.Cal.Atty.Gen. 49, 51 we indicated our view that the state may not properly request the county recorders to record documents without fee where such recordation is exclusively for the benefit of a private person. Nevertheless, we

¹ We are aware of no law which authorizes the recording of a planned use development permit as such but the agreement of the owners incorporating its terms and conditions, if acknowledged by them, may constitute an instrument affecting the title to or possession of real property entitling it to be recorded. (See Gov. Code, §§ 27280, 27287, 27320; *Hoag v. Howard* (1880) 55 Cal. 564; *Hale v. Pendergrast* (1919) 42 Cal.App. 106; *Barbieri v. Ongaro* (1962) 208 Cal.App.2d 753, 757; *Brown v. Johnson* (1980) 98 Cal.App.3d 844, 849.)

concluded in that opinion that where the state also derives a substantial benefit from the recording of a document it is entitled to have the document recorded without fee under section 27383.

The agreement of the parcel owners to comply with the terms and conditions of a planned use development permit for that parcel issued by the city is made for the direct benefit of the city. The city would therefore derive substantial benefit from the recording of that agreement. We conclude that the city is entitled to have such an agreement recorded without fee under the provisions of section 27383 if the agreement meets the requirements of the recording laws.
