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OPINION	:	No. 81-1107
	:	
of	:	<u>JANUARY 29, 1982</u>
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THE HONORABLE JAMES H. ANGELL, COUNTY COUNSEL, RIVERSIDE COUNTY, has requested an opinion on a question we have rephrased as follows:

Are the requirements of the Subdivision Map Act applicable to a proposed construction of a condominium project on a previously subdivided, single parcel of property?

CONCLUSION

The requirements of the Subdivision Map Act are applicable to a proposed construction of a condominium project on a previously subdivided, single parcel of property.

ANALYSIS

The ownership of airspace in a building is not a new historical concept, but it has recently become popular in the United States and particularly California. (See *California Coastal Com. v. Quanta Investment Corp.* (1980) 113 Cal.App.3d 579, 589-590; Ross, *Condominium in California - The Verge of An Era* (1963) 35 Co.Cal.L.Rev. 351; Wenig & Schulz, *Government Regulation of Condominium in California* (1963) 14 Hastings L.J. 222; Borgwardt, *The Condominium* (1963) 38 State Bar J. 603; Comment, *Fee in Condominium* (1964) 37 Co.Cal.L.Rev. 82; Comment, *The Condominium as a Subdivision* (1963) 14 Hastings L.J. 302.)

In 1963 the Legislature enacted Civil Code sections 1350-1370 to regulate certain aspects of condominium ownership. Under the legislative scheme, a condominium is described as follows:

"A condominium is an estate in real property consisting of an undivided interest in common in a portion of a parcel of real property together with a separate interest in space in a residential, industrial or commercial building on such real property, such as an apartment, office or store. A condominium may include in addition a separate interest in other portions of such real property.

"Such estate may, with respect to the duration of its enjoyment, be either (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." (Civ. Code. 783; see Civ. Code. 1350.)

The question presented for analysis concerns a proposed construction of a 14-unit condominium project (created under the Civil Code provisions) on a previously subdivided, single parcel of property. We are asked whether the requirements of the Subdivision Map Act (Gov. Code, §§ 66410-66499.37)¹ (hereafter "Act") would be applicable to such a project. We conclude that they would be.

The Act requires, with certain exceptions, that a subdivider of property (1) design the subdivision in conformity with applicable general and 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. (See §§ 66439, 66474-66478; Longtin, *Cal. Land Use Regulations* (1977) § 10.03, pp. 562-563; 3 Witkin, *Summary of Cal. Law* (2d ed. 1973) Real Property, § 22-24, pp. 1788-1792; 2 Ogden's Revised Cal. Real Property

¹ All section references hereafter are to the Government Code unless otherwise indicated.

Law (1975) §§ 25.1-25.2, pp. 1204-1206; Comment, *Land Development and the Environment: The Subdivision Map Act* (1974) 5 Pacific L.J. 55, 86-87.)

While the Act establishes general statewide criteria for land development planning, it delegates to local agencies the authority to regulate the details of proposed subdivisions. (§§ 66411, 66420, 66473-66479; *Simac Design, Inc. v. Alciati* (1979) 92 Cal.App.3d 146, 157.) "It sets suitability, design, improvement, and procedural requirements (e.g., § 66452 et seq., § 66473 et seq., § 66478.1 et seq.) and allows local governments to impose supplemental requirements of the same kind. (E.g., § 66475 et seq., § 66479 et seq.)" (*The Pines v. City of Santa Monica* (1981) 29 Cal.3d 656, 659.)

The requirements of the Act and local ordinances enacted thereunder are enforced by criminal sanctions in connection with a procedure involving the filing of required subdivision maps. In general terms, the filing of a tentative map and a final map is mandatory for divisions into five parcels or more, while the filing of a parcel map is required for divisions into four or fewer parcels. (See §§ 66426, 66428; 4 Miller & Starr, *Current Law of Cal. Real Estate* (1977) §§ 24:33-24:35, pp. 60-68; 9 Hagan & Volpert, *Cal. Real Estate Law & Practice* (1977) §§ 290.20-290.24, pp. 290:12-290:35.) A subdivider must obtain local government approval of the appropriate map before the subdivided parcels may be offered for sale, lease or be financed. (§§ 66499.30, 66499.31; *Bright v. Board of Supervisors* (1977) 66 Cal.App.3d 191, 193-194; Comment, *Review of Selected 1974 California Legislation* (1975) 6 Pacific L.J. 125, 357, 360.)

The basic purposes of the Act are "to coordinate planning with the community pattern laid out by local authorities, and to assure proper improvements are made to the area does not become an undue burden on the taxpayer. [Citation.]" (*Benny v. City of Alameda* (1980) 105 Cal.App.3d 1006, 1011.)

In determining whether the construction of a condominium project on a single parcel of land comes within the purview of the Act, we first note that such a project does not represent the traditional concept of real property ownership in this country. Indeed, the ownership of stacked cubes of space is a decided departure from the usual maxim of *cujus est solum, ejus est usque ad coelum et ad inferos* [to whomsoever the soil belongs, he owns also the sky and to the depths].

As a consequence, condominium projects do not fit neatly within traditional land regulatory laws such as the Act. (See *County of Los Angeles v. Hartford Acc. & Indem. Co.* (1970) 3 Cal.App.3d 809, 813-815; 17 Ops.Cal.Atty.Gen. 79,80-81 (1951); 13 Biel & Seneker, *Cal. Real Estate Law & Practice* (1981) § 471.05, pp. 471:15-471:16.) In 58 Ops.Cal.Atty.Gen. 41, 44 (1975), we observed that the "features of the Map Act have not been particularly well tailored to the vertical, 'high-rise' version of the condominium,

since the Map Act originally was drafted to deal with the undeveloped land being prepared for single family dwellings. [Citation.]"

Nevertheless, we have little difficulty in reaching the general conclusion that the requirements of the Act are applicable to the proposed construction of a condominium project on a single parcel of property. Section 66424, the basic operative provision of the Act, defines "subdivision" not only in the classical sense ["the division . . . of any unit or units of improved or unimproved land . . . shown on the latest equalized county assessment roll as a unit . . . for the purpose of sale, lease or financing . . ."] but also specifically as "a condominium project, as defined in Section 1350 of the Civil Code" ² Section 66426 expressly requires a tentative and final map "for all subdivisions creating five or more parcels, five or more condominiums as defined in Section 783 of the Civil Code" (See *Benny v. City of Alameda*, *supra*, 105 Cal.App.3d 1006, 1009; *Norsco Enterprises v. City of Fremont* (1976) 54 Cal.App.3d 488, 492; *County of Los Angeles v. Hartford Acc. & Indem. Co.*, *supra*, 3 Cal.App.3d 804, 814; 62 Ops.Cal.Atty.Gen. 410, 411-413 (1979).

It has been suggested that not all the requirements of the Act would or should be applicable to the construction of a condominium project on a single parcel of land. This argument is based on the language of section 66427, which provides:

"A map of a condominium project . . . need not show the buildings or the manner in which the buildings or the airspace above the property shown on the map are to be divided, nor shall the governing body have the right to refuse approval of a parcel, tentative or final map of such a project on account of design or location of buildings on the property shown on the map not violative of local ordinances or on account of the manner in which airspace is to be divided in conveying the condominium. Fees and lot design requirements shall be computed and imposed with respect to such maps on the basis of parcels or lots of the surface of the land shown thereon as included in the project. Nothing herein shall be deemed to limit the power of the legislative body to regulate the design or location of buildings in such a project by or pursuant to local ordinances."

When this language was first added to the Act in the form of its predecessor statute, one commentator stated,

² Under Civil Code section 1350, a condominium project is "the entire parcel of real property divided, or to be divided into condominiums [as defined in Civil Code section 783], including all structures thereon."

"Under the existing Subdivision Map Act questions have arisen as to whether a condominium is, or is not, a subdivision for which a map must be filed, and if so, what control local governing bodies may exercise over design of the condominium project. This section settles these questions while leaving to building codes and zoning ordinances the question of propriety of proposed building design and use. It is intended to prevent the use of the condominium form of ownership to achieve subdivisions of the familiar horizontal kind, involving division of the surface of the land into parcels to be occupied by separate owners, without compliance with the Subdivision Map Act. *Local governing bodies passing upon subdivision maps will have no requirements to impose with respect to a typical single structure apartment house located on an existing city lot.* Developments consisting of small dwellings scattered about over a large area, and including in the condominium owner's separate interest parcels of the surface of the land, however, would be subject to the same treatment as horizontal subdivisions." (Gregory, *The California Condominium Bill* (1963) 14 Hastings L.J. 189, 207-208, fn. omitted, italics added.)

More recently, it was stated, "The purpose of [Section 66427's predecessor] is to prevent horizontal subdivision by use of the condominium form without compliance with the Map Act." (Merritt, Cooper & Papell, *An Overview of California Condominium Law* (1974) 6 SW.U.L.Rev. 487, 500.)

In *County of Los Angeles v. Hartford Acc. & Indem. Co.*, *supra*, 3 Cal.App.3d 809, 814, footnote 3, the Court of Appeal stated, "The purpose of this provision is to 'exempt condominium projects from certain technical requirements of the Subdivision Map Act not appropriate to "vertical subdivisions.'" (38 State Bar J. 644, 646.)"

We do not believe such broad generalizations are appropriate. Rather, the prohibition contained in section 66427 merely reflects the usual circumstance of local building and zoning ordinances controlling building design and location. (See § 65860; *O'Loane v. O'Rourke* (1965) 231 Cal.App.2d 774, 780; Longtin, *supra*, § 2.01, 2.72, pp. 73, 139-143; 2 Ogden's, *supra*, § 24.6, p. 1176; 8 Hagman & Volpert, *supra*, § 261.65, pp. 261:56-261:63.) It does not affect the basic requirements of the Act or local ordinances enacted thereunder; it does not remove from the local agencies the opportunity to review a proposed development in light of the Act's objectives.

Finally, we note the statements in *County of Los Angeles v. Hartford Acc. & Indem. Co.*, *supra*, 3 Cal.App.3d 809, 814, the "[u]nlike a normal subdivision, however, the mere recording of the final tract map [of a condominium project] does not automatically convert the single parcel of land into as many separate condominium units as appear on the

tract map" and that under Civil Code section 783, "[t]here can be no undivided interest in common (and thus by statutory definition there can be no condominium) until at least one condominium unit has been conveyed by the subdivider." Although eventually no sales of condominium units may take place, as in the *Hartford* case, the requirements of the Act would nonetheless be applicable to the proposed construction of a condominium project. Otherwith, the purposes of the Act would be frustrated (see *People v. Davis* (1981) 29 Cal.3d 814, 828) and the language of sections 66424 and 66426 would be rendered absurd (see *Fields v. Eu* (1976) 18 Cal.3d 322, 328).

In answer to the question presented, therefore, we conclude that the requirements of the Act are applicable to the proposed construction of a condominium project on a previously subdivided, single parcel of property.
