

**SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

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FROM: TLMA - Transportation Department

SUBMITTAL DATE:
August 24, 2009

SUBJECT: Adoption of Ordinance 460.150 Regulating the Division of Land of the County of Riverside

RECOMMENDED MOTION: That the Board of Supervisors introduce and adopt, on successive weeks, Ordinance 460.150, amending Ordinance No. 460, Article XVII relating to Security for Improvements on Land Divisions.

BACKGROUND: At the Board's direction, the Development Streamlining Task Force has worked with the Building Industry Association ("BIA") to streamline the development review process and reduce or defer costs wherever possible, without undermining public service and infrastructure, in an attempt to help stimulate the local economy. One of the requests raised by the BIA is to allow the use of a lien upon a subject land division for the purpose of providing the security needed to record a final map. The Subdivision Map Act identifies liens as an

Departmental Concurrence

George A. Johnson
TLMA Director

Juan C. Perez
Director of Transportation

(Continued On Attached Page)

FINANCIAL DATA	Current F.Y. Total Cost:	\$ 0	In Current Year Budget:	N/A
	Current F.Y. Net County Cost:	\$ 0	Budget Adjustment:	N/A
	Annual Net County Cost:	\$ 0	For Fiscal Year:	N/A

SOURCE OF FUNDS: N/A	Positions To Be Deleted Per A-30	<input type="checkbox"/>
	Requires 4/5 Vote	<input type="checkbox"/>

C.E.O. RECOMMENDATION:

APPROVE

BY:
Tina Grande

County Executive Office Signature

FORM APPROVED COUNTY COUNSEL
BY:
TIFFANY N. NORTH
DATE: 8/12/09

- Policy
- Policy
- Consent
- Consent
- Dep't Recomm.:
- Per Exec. Ofc.:

Prev. Agn. Ref. | District: All | Agenda Number:

3.123

The Honorable Board of Supervisors

RE: Adoption of Ordinance 460.150 Regulating the Division of Land of the County of Riverside
August 24, 2009

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acceptable form of security. Liens would replace bonds (which we hear from the BIA are increasingly difficult to obtain and more costly in this tight credit market) if certain specific circumstances are met that provide the County with sufficient security. The intent is to only use the liens while the Map is in a "dormant" state, and to replace it with bonds when construction activity begins which may require the County to access the funds to make improvements to protect public health, safety and welfare.

This amendment to Ordinance 460 will add Section 17.3, entitled "Lien Agreement as Security" into the Ordinance and outline the restrictions and requirements for entering into a lien agreement as security. The amendment will only be applicable to Schedule "A" or Schedule "B" residential subdivisions as defined in Ordinance 460 (residential tracts with more than 5 lots, up to a maximum lot size of 2 acres); and Schedule "E" commercial or industrial subdivision maps, which will assist in developing job generating projects. It applies only to subdivisions where construction on the improvements has not commenced and is not expected to start sooner than two (2) years from the date of recordation.

The amendment will not allow a lien agreement to be used as security for improvements if any individual lots have been sold, if the property has been encumbered with other primary financial obligations that would reduce the liens' effectiveness, if any permits have been issued on the property, or if construction of any of the required improvements has begun. The exception is that the Ordinance allows the use of liens, at the County's discretion, when grading has occurred provided that it will not have an adverse effect on existing roads or adjacent properties. The lien agreement will require that the land divider substitute an alternate form of security for the lien agreement and commence construction of the required improvements within two years, subject to three one-year extensions as may be approved by the Director of Transportation, and other additional extensions at the Board's discretion.

County Counsel has advised and the ordinance requires that the lien agreement will be recorded on the property. From the time of recordation of the lien agreement, a lien will attach to the property and will constitute a judgment lien in an amount necessary to complete the required improvements. Since it is a judgment lien, the County will not be able to initiate foreclosure proceedings on the property and can only demand payment of the lien amount. Judgment liens are only paid at the time of sale of the property and, in the case of multiple liens, are paid in the order that they are recorded. While the lien agreement is in place, no individual lots may be sold. Further, the amendment requires that the land divider also provide a \$12,000 cash deposit to be used for the County to process a reversion to acreage in the event that the land divider breaches the terms of the lien agreement and other cures aren't acceptable to the County.

This Ordinance also amends Subsection C of Section 17.1 to grant the Director of Transportation the authority to extend bonds (agreements and security) on an annual basis in order to streamline their approval and reduce administrative costs.

It is recommended that the Board adopt this amendment at the next regularly scheduled meeting.

- 1 A. The land divider may, in lieu of posting a security described in Section
2 17.1, enter into an agreement with the County to construct the required
3 improvements in the future, securing such performance by granting the
4 County a lien on the real property to be divided. Such agreements shall be
5 known as 'lien agreements.' The use of lien agreements shall only be
6 allowed if all requirements of this Section are satisfied.
- 7 B. Government Code section 66499(a)(4) authorizes the County to enter into
8 lien agreements if it is found by the County that it would not be in the
9 public interest to require the installation of the required improvements
10 sooner than two years after the recordation of the map.
- 11 C. Where the County finds that it would not be in the public interest to require
12 the installation of the required improvements sooner than two years after
13 recordation of the map, the land divider may execute a lien agreement with
14 the County at the time the land divider enters into an agreement with the
15 County to construct required improvements pursuant to Article X of this
16 Ordinance.
- 17 D. A lien agreement may be used to substitute an existing security which was
18 furnished under Section 17.1; provided, however, that use of a lien
19 agreement as substitution for an existing security shall be at the County's
20 sole discretion. The County will not accept a lien agreement from any land
21 divider, either at the time of execution of the agreement to construct
22 improvements, or as a substitute for existing security, if any individual lots
23 have been sold, if any construction permits, including but not limited to any
24 grading or building permits, have been issued on any of the property, or if
25 construction of any of the required improvements has begun.
26 Notwithstanding the above, the County may accept a lien agreement from
27 any land divider as a substitute for existing security if grading has
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1 commenced on the land to be divided so long as the grading is in strict
2 accordance with a valid grading permit and all the following are met:

- 3 1. There is no need for the County to construct the required
4 improvements if the land divider's project is abandoned or delayed for any
5 period of time or for any other reason;
- 6 2. The grading has no effect on the use, operation and maintenance of
7 existing streets or highways, public or private;
- 8 3. The grading has not caused the modification or closure of any public
9 access points, existing streets or highways, public or private;
- 10 4. Additional drainage improvement and/or erosion controls are not
11 necessary and/or installed in the road right-of-way due to the grading;
- 12 5. Delay of the construction of the land divider's required
13 improvements do not affect or delay the improvements of an adjacent land
14 divider who has already commenced work on his or her required
15 improvements.

16 E. Lien agreements shall:

- 17 1. Be allowed only for Schedule "A", "B" and "E" maps.
- 18 2. Be allowed only where the land divider provides a title insurance
19 policy and current title report from a title company approved by the County
20 that documents that the land divider is the record owner of the real property
21 to be divided and the real property to be divided is not subject to any
22 mortgages, deeds of trust, or judgment liens. The title insurance policy and
23 title report shall be issued within the 60 days prior to the execution of the
24 lien agreement.
- 25 3. Be in a form acceptable to and approved by County Counsel.
- 26 4. Be used to secure future improvements that would be required for
27 Schedule "A", "B" and "E" maps.

1 5. Be used only when a land divider would be required by Article X of
2 this Ordinance to construct or agree to construct the required improvements.

3 6. Contain an itemization of the required improvements and an
4 estimate of costs approved by the Director of Transportation and shall
5 specify that the land divider's or subsequent owner's obligation extends to
6 the actual cost of construction of the required improvements if such costs
7 exceed the estimate.

8 7. Be recorded with the County Recorder. The recorded lien
9 agreement shall be indexed in the Grantor Index to the names of all record
10 owners of the real property as specified on the map and in the Grantee Index
11 to the County.

12 8. Be approved concurrently with the approval of the final map with a
13 note of the lien agreement's existence placed on the map, except where the
14 lien agreement is being substituted after final map approval for other
15 security previously deposited pursuant to Section 17.1, in which case the
16 lien agreement shall be signed and acknowledged by all parties having any
17 record title interest in the property, as prescribed by Government Code
18 Section 66436, consenting to the subordination of their interests to the lien
19 agreement.

20 F. From the time of recordation of the lien agreement, a lien shall attach to the
21 property and shall have the priority of a judgment lien in an amount
22 necessary to complete the required improvements. Under no circumstances
23 shall the County agree to subordinate the lien.

24 G. The lien agreement shall provide that the land divider shall substitute
25 acceptable security for the lien agreement and commence to construct the
26 improvements required pursuant to Article X of this Ordinance within three
27 years following recordation of the map, or in the case of a lien agreement
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1 which has been substituted for existing security pursuant to Section 17.1
2 within three years following recordation of the lien agreement.

3 H. The time for substitution of acceptable security and commencement of
4 construction of the required improvements in Subsection G. above, may be
5 extended up to three times, by the Director of Transportation only upon
6 forms and terms approved by the Board of Supervisors. Each extension
7 shall be for a period not to exceed one year. However, the Board of
8 Supervisors may grant additional time extensions, as it deems appropriate,
9 for substitution of acceptable security and commencement of construction
10 of the required improvements pursuant to agreements secured either by (i)
11 lien agreements executed at the time of recordation of the map, or (ii) lien
12 agreements substituted for an existing security furnished under Section
13 17.1. For each extension of time under this subsection, the land divider
14 shall provide a title insurance policy and current title report from a title
15 company approved by the County that documents that the land divider is the
16 record owner of the real property to be divided and the real property to be
17 divided is not subject to any mortgages, deeds of trust, or judgment liens.
18 The title insurance policy and title report shall be issued within the 60 days
19 prior to request for an extension of time.

20 I. No individual lots may be sold while the lien agreement is in place.
21 However, fee title to the entire property encumbered by the lien agreement
22 or to all lots designated on any individual final map which is encumbered
23 by the lien agreement, may be sold in the aggregate to a single purchaser,
24 provide that the proposed purchaser must, prior to assuming title to the
25 property, either (i) execute a new lien agreement in a form acceptable to the
26 County which will encumber the property to be conveyed, specifying the
27 respective obligations of the owners of property subject to the original and
28 new lien agreement, or (ii) provide acceptable alternative security for the

1 required improvements to be constructed as a condition to development of
2 the property conveyed, pursuant to Section 17.1. Any new lien agreement
3 must require that acceptable security be substituted therefore, and the
4 improvements secured thereby commenced by the same date provided in
5 the lien agreement with the original owner, unless such date shall be
6 extended by the Board of Supervisors as provided in subsection H. above.

7 J. At the time the Board of Supervisors approves a lien agreement, the land
8 divider shall provide a cash deposit in the amount of \$12,000.00 to the
9 County for the purpose of reverting the property to acreage if the land
10 divider breaches the terms of the lien agreement. In addition, at such time
11 as title to any property subject to a lien agreement shall be conveyed, the
12 transferee thereof, if such transferee executes a new lien agreement to
13 secure construction of the improvements imposed upon such property as
14 described in Subsection I. above, shall provide a substitute cash deposit in
15 the amount of \$12,000.00 to the County for the purpose of reverting the
16 property to acreage if the land divider breaches the terms of the lien
17 agreement. Any unused portion of any such deposit shall be refunded to the
18 land divider following completion of such reversion. If the costs of
19 reverting the property to acreage exceed \$12,000.00, the land divider shall
20 pay such additional costs to the County prior to recordation of the reversion
21 to acreage map.

22 K. The lien agreement shall only be released upon substitution of acceptable
23 security for the lien agreement under Section 17.1 in order begin
24 construction of the required improvements, or upon recordation of a
25 reversion to acreage map.

26 L. In no instances shall the lien agreement compel the County to construct the
27 required improvements.”

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Section 4. This ordinance shall take effect thirty (30) days after its adoption.

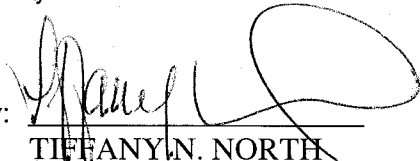
BOARD OF SUPERVISORS OF THE COUNTY
OF RIVERSIDE, STATE OF CALIFORNIA

By: _____
Chairman

ATTEST:
CLERK OF THE BOARD

By: _____
Deputy
(SEAL)

APPROVED AS TO FORM
August 13, 2009

By: 
TIFFANY N. NORTH
Deputy County Counsel

TNN:mdk
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