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ADOPTED BY THE BOARD OF
PUBLIC WORKS OF THE CITY
of Los Angeles, California

AND COMR. BURNETT ASSIGNED
AS BOARD HEARING OFFICER.

Department of Public Works

SEP - 8 1997

Bureau of Engineering
Report No. 3

James J. [Signature]
Secretary

September 8, 1997

CD Nos. All

**REVISED PROCEDURES FOR REQUESTING AND PROCESSING IMPROVEMENT BONDS AND
DELEGATION OF AUTHORITY TO THE CITY ENGINEER TO WORK DIRECTLY WITH THE CITY
ATTORNEY TO DEFAULT DELINQUENT BONDS**

RECOMMENDATIONS

1. Endorse the procedures outlined in the discussion that will modify how the Bureau of Engineering processes and defaults improvement bonds.
2. Delegate to the City Engineer the authority to process improvement bond defaults directly to the City Attorney with the provision that the Bureau of Engineering provides the Board with a semi-annual report on bond default activities.
3. Designate a member of the Board as the Hearing Officer to resolve controversial bond defaults.

DISCUSSION

This report has been developed by Bureau staff working in close consultation with Commissioner Burnett. Public Works improvements (streets, sewers, storm drains, etc.) are constructed throughout the City in many cases as requirements of the following actions:

1. Subdivision Maps (tract and parcel maps).
2. Private Street Applications.
3. City Planning Cases (zone changes, conditional uses, zone variances, etc.).
4. Street Vacations (streets, alleys, walks, etc.).
5. Highway Dedication Ordinance (Section 12.37 L.A.C.M.C.).
6. Voluntary Improvements.

The State Subdivision Map Act (Chapter 5, Section 66499) and the City Municipal Code (Sections 12.37D and 17.08G) allow these improvements to be suitably guaranteed by one of the following, at the option of, and subject to the approval of the City:

1. A surety bond or bonds payable to the City; or
2. A deposit of cash; or
3. A deposit of negotiable United States Treasury bonds or notes; or
4. A deposit of fully insured certificates of deposit issued by a financial institution.

Section 91.109.3 of the Los Angeles Municipal Code further strengthens the improvement guarantees by requiring the City Engineer to certify that all required public works improvements are completed before the Department of Building and Safety (B&S) can issue a Final Certificate of Occupancy. However, the City Engineer can approve a Temporary Certificate of Occupancy if it has been determined that no unsafe conditions exist.

Currently, the Bureau of Engineering, in most cases, requests a guarantee at a very early stage of a project (i.e., filing of a subdivision map or obtaining a Design Permit). This can create two problems for the City that can initiate misleading bond defaults. First, the entire development project may be canceled by the owner/subdivider negating the need for the public improvements. Second, if a long time period has passed since the bond was required, the bond amount posted is probably inadequate due to inflation. Furthermore, the unnecessary early posting of a guarantee increases the developer's up front costs and may be seen as being "business unfriendly." The adoption of this report will help in re-engineering a very old and time-consuming process that has led to the loss of some required public works improvements for the City and will also save the development community unnecessary bonding costs and time delays.

The following are the proposed new rules and procedures that, if implemented, will simplify and streamline our improvement bond posting and defaulting processes. The implementing actions needed are shown in italics after each proposal.

Timing Changes

1. For Subdivision Maps

- a. For all tract maps and for parcel maps filed on property that adjoin or include **unimproved** (unpaved) streets (either existing or proposed street dedications), the required improvements shall be constructed or suitably guaranteed with the recordation of the map. The construction requirements are deemed necessary for either of the following reasons: (a) public health and safety, or (b) a prerequisite to the orderly development of the surrounding area. The improvements must be completed prior to the issuance of a Certificate of Occupancy. *No changes are needed to existing laws or codes, but internal Bureau of Engineering procedures must be outlined in a Special Order.*
- b. For all parcel maps filed on property that adjoin or include **improved** (paved) streets only, the required improvements shall be constructed or suitably guaranteed prior to the issuance of a Building Permit. A covenant and agreement which states this requirement will be required with the recordation of the parcel map. The improvements must be completed prior to the issuance of a Certificate of

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Occupancy. No changes are needed to existing laws or codes, but internal Bureau of Engineering procedures must be outlined in a Special Order.

If an application has expired or has been terminated at the request of the applicant or the City, the improvement security shall be released to the subdivider/owner. In certain situations where the subdividers have not developed their property in accordance with the recorded subdivision map, none of the parcels or lots have been sold to individual owners, and the required public works improvements have been guaranteed but not constructed, the City Council, on its own motion or by petition of all of the owners of record of the real property within the subdivision, may initiate proceedings for reversion to acreage of the subdivided real property. If and when a reversion becomes effective, all fees and deposits shall be returned and all improvement security released, except those retained that were necessary to accomplish the purposes of the processing of the reversion to acreage.

2. For Private Street Applications

The required improvements shall be constructed or suitably guaranteed prior to the issuance of a Building Permit. A covenant and agreement which states this requirement will be required for the clearance of the private street application. The improvements must be completed prior to the issuance of a Certificate of Occupancy. No changes are needed to existing laws or codes, but internal Bureau of Engineering procedures must be outlined in a Special Order.

3. For City Planning Cases

The required improvements shall be constructed or suitably guaranteed prior to the issuance of a Building Permit except for zone change cases that require the "T" Tentative classification be removed by the recordation of a final tract map. A covenant and agreement which states this requirement will be required for the clearance of the City Planning Case. The improvements must be completed prior to issuance of a Certificate of Occupancy. No changes are needed to existing laws or codes, but internal Bureau of Engineering procedures must be outlined in a Special Order.

4. For Street Vacations

The required improvements shall be constructed or suitably guaranteed prior to the preparation of the final resolution to vacate. If a Building Permit is issued on the subject

property, the improvements must be completed prior to the issuance of a Certificate of Occupancy. No changes are needed to existing laws, codes or procedures.

5. For Highway Dedication Ordinance

- a. For major work requiring a "B" Permit, the improvements shall be constructed or suitably guaranteed prior to issuing a clearance on the Building Permit to the Department of Building and Safety. The improvements must be completed prior to the issuance of a Certificate of Occupancy. No changes are needed to existing laws, codes or procedures.
- b. No guarantees will be required for minor improvements that can be constructed under an "A" Permit. No changes are needed to existing laws or codes, but internal Bureau of Engineering procedures must be outlined in a Special Order.

6. For Voluntary Improvements

- a. For minor improvements done under an "A" Permit, guarantees are not required. No changes are needed to existing laws, codes or procedures.
- b. For major improvements done under a "B" Permit, guarantees will be required prior to the issuance of a "B" Permit which covers construction. No changes are needed to existing laws, codes or procedures.

The following outlines the timing changes being proposed:

Procedure	Existing	Proposed
Tract Maps	No change	No change
Parcel Maps (unimproved sts.)	No change	No change
Parcel Maps (improved sts.)	Construct or guarantee with recordation of map	Construct or guarantee prior to issuance of bldg. permit
Private Streets	Construct or guarantee prior to clearance to Planning	Construct or guarantee prior to issuance of bldg. permit

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Procedure	Existing	Proposed
City Planning Cases	Construct or guarantee prior to clearance to Planning	Construct or guarantee prior to issuance of bldg. permit
Street Vacations	No change	No change
Highway Dedication Ord. (Major work)	No change	No change
Highway Dedication Ord. (Minor work)	Construct or guarantee prior to clearance to B&S	No guarantees required
Voluntary Improvements	No change	No change

Foreclosure Timing

The present practice is to give a two year time limit on Subdivision Bonds and one to one and one-half year time limit on all other bonds. If an extension of time bond rider is not submitted, foreclosure proceedings are initiated three to three and one-half years after the expiration date. This is based upon the four year statutory time limit to receive judgement.

We now propose that all bonds have a time limit of **two years** unless a bond rider is executed in a timely manner, or until the expiration of the Building Permit, whichever occurs first. **The foreclosure process will be started immediately upon expiration of the bond.** The later process start date should give the developer sufficient time to complete required improvements, and if a problem occurs a bond rider can be obtained.

Foreclosure Costs

Section 66499.4. of the State Subdivision Map Act reads as follows:

"Bond to cover enforcement costs - As a part of the obligation guaranteed by the security and in addition to the face amount of the security, there shall be included costs and reasonable expenses and fees, including reasonable attorneys fees, incurred by the local agency in successfully enforcing the obligation secured."

This section of the Map Act gives us the right to add the legal and administrative cost of defaulting a bond or returning a subdivision to acreage to the bond amount. We are now analyzing these costs and will include this amount in future estimates guaranteed by the security.

Authority Delegation

The second part of this report concerns the delegation of authority to the City Engineer to work directly with the City Attorney on bond defaults. Current practice is to write a detailed report to the Board for every bond default for subsequent forwarding to the City Attorney. The research, writing, checking and processing time for these reports can delay needed information reaching the City Attorney in a timely manner. The Bureau of Engineering proposes that the Board delegate the authority to the City Engineer to initiate defaults per the details contained in this report. The City Attorney has endorsed the idea of working directly with the Bureau of Engineering. A simplified "fill in the answers" fact sheet is presently being developed with the City Attorney that gives the City Attorney all the information necessary to initiate bond default proceedings.

It is proposed that the Board designate a member to act as Hearing Officer to resolve controversial bond defaults. The Bureau of Engineering would inform the Hearing Officer immediately of any controversial defaults. The first notice to the developer informing them that a bond rider is needed or that default proceedings will begin, will give the developer the opportunity to schedule a hearing before the Board's Hearing Officer. If this option is taken, then a full report would be presented for the specific case in question. If this delegation recommendation is adopted, the Bureau of Engineering would prepare a semi-annual report to the Board summarizing all bond default proceedings.


(HMM JMF BMS)

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Respectfully submitted,

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