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OPINION	No. 01-615
of	May 15, 2003
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THE HONORABLE JAMES A. CURTIS, COUNTY COUNSEL, COUNTY OF SIERRA, has requested an opinion on the following questions:

1. Where (1) a public agency used its power of eminent domain in 1965 to acquire most of a 640-acre parcel of land for the creation of a reservoir, which left two remaining parcels of land physically separated by 700 feet of water and (2) the county's subdivision ordinance in effect at the time did not regulate divisions of land creating four or fewer parcels, were the remaining two parcels of land legally created as separate parcels for purposes of the Subdivision Map Act?

2. Was the legal status of the two remaining separate parcels affected when an owner of the parcels subsequently obtained a timberland production zone classification for both parcels, which zoning required that the parcels be managed as contiguous parcels?

CONCLUSIONS

1. Where (1) a public agency used its power of eminent domain in 1965 to acquire most of a 640-acre parcel of land for the creation of a reservoir, which left two remaining parcels of land physically separated by 700 feet of water and (2) the county's subdivision ordinance in effect at the time did not regulate divisions of land creating four or fewer parcels, the remaining two parcels of land were legally created as separate parcels for purposes of the Subdivision Map Act.

2. The legal status of the two remaining separate parcels was not affected when an owner of the parcels subsequently obtained a timberland production zone classification for both parcels, which zoning required that the parcels be managed as contiguous parcels.

ANALYSIS

We are advised that in 1965, an irrigation district commenced eminent domain proceedings, seeking condemnation of most of a 640-acre parcel of land for the creation of a reservoir. Two remainder parcels of land, of approximately 10 acres and 100 acres, resulted from the condemnation action.[1] The new parcels are separated by 700 feet of water and have been assigned separate parcel numbers by the county assessor. There is no road access around the reservoir between the two parcels.

1. Creation of Legal Parcels

We are first asked to determine whether the eminent domain proceedings instituted by the irrigation district resulted in the lawful creation of two remainder parcels of land for purposes of the Subdivision Map Act (Gov. Code, §§ 66410-66499.37; "Act").[2] We conclude that two legal remainder parcels resulted from the condemnation action for purposes of the Act.

We are concerned here with the creation of remainder parcels by a physical division of land in 1965 that resulted in the granting of a deed of property from the owner to the irrigation district. Subdivision (a) of section 66412.6 is the governing statutory provision, and it states:

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[1] A third parcel of land remained after creation of Jackson Meadows Reservoir but it is located in an adjoining county. We are not concerned in this opinion with the legal status of this third remainder parcel.

[2] All further statutory references are to the Government Code.

> "For purposes of [the Subdivision Map Act] or of a local ordinance enacted pursuant thereto, any parcel created prior to March 4, 1972, shall be conclusively presumed to have been lawfully created if the parcel resulted from a division of land in which fewer than five parcels were created and if at the time of the creation of the parcel, there was no local ordinance in effect which regulated divisions of land creating fewer than five parcels."

Accordingly, under the directive of section 66412.6, it is conclusively presumed that a parcel is lawfully created if it was the result of a division of the land prior to March 4, 1972, that created fewer than five parcels and the division was not regulated by a local subdivision ordinance then in effect.[3] We are given that the local subdivision ordinance in effect at the time of the condemnation proceedings did not impose requirements upon divisions of land into four or fewer parcels.

In 58 Ops.Cal.Atty.Gen. 593, 594 (1975) we observed with respect to whether a condemnation action resulted in a division of land for purposes of the Act: "There can be no question but that condemnation of a part of a parcel results in a 'division' of land." For purposes of the Act, "the fact that a division of land has occurred is not disregarded." (*Id.* at pp. 594-595.)

Here, as the result of the eminent domain proceedings, most of the 640-acre parcel of land was deeded by the owner to the irrigation district for a reservoir. The two parcels of land retained by the owner are separated by 700 feet of the district's property. There was an actual physical division of land in 1965 pursuant to court order resulting in two new remainder parcels of land created by the recording of a deed and transfer of ownership. (See *Oakland v. Pacific Coast Lumber etc. Co.* (1915) 171 Cal. 392, 398; *Stell v. Jay Hales Development Co.* (1992) 11 Cal.App.4th 1214, 1223-1227; *People v. Bowers* (1964) 226 Cal.App.2d 463, 466; 58 Ops.Cal.Atty.Gen., *supra,* at pp. 594-595.) For purposes of the Act, these two separate remainder parcels were lawfully created in 1965 by the condemnation proceedings as conclusively presumed under the mandate of section 66412.6. (See *Gardner v. County of Sonoma* (2003) 29 Cal.4th 990, 1001-1003; *Lakeview Meadows Ranch v. County of Santa Clara* (1994) 27 Cal.App.4th 593, 596-599.)[4]

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[3] The Act placed no requirements upon the division of land into four or fewer parcels prior to 1972. (See 74 Ops.Cal.Atty.Gen. 149, 152, fn. 4 (1991); Curtin & Merritt, *Cal. Subdivision Map Act and the Development Process* (Cont.Ed.Bar 2d ed. 2001, § 1.3, p. 5.)

[4] The owner of the parcels would be entitled to a "certificate of compliance" for each parcel under the terms of section 66499.35, subdivision (a), that "the real property complies with the provisions of [the Act] and of local ordinances enacted pursuant to [the Act]." (See *Gardner v. County of Sonoma, supra,* 29 Cal.4th

We specifically reject the suggestion that the language of section 66424 has any application in the circumstances presented. Section 66424 states:

> " 'Subdivision' means the division, by any subdivider, of any unit or units of improved or unimproved land, or any portion thereof, shown on the latest equalized county assessment roll as a unit or as contiguous units, for the purpose of sale, lease or financing, whether immediate or future. Property shall be considered as contiguous units, even if it is separated by roads, streets, utility easement or railroad rights-of-way. . . ."

The Act is "the primary regulatory control" governing the subdivision of real property in California. (*Hill v. City of Clovis* (2000) 80 Cal.App.4th 438, 445; see *Gardner v. County of Sonoma, supra,* 29 Cal.4th at pp. 996-997, 1005; *Gomes v. County of Mendocino* (1995) 37 Cal.App.4th 977, 985.) Generally speaking, a tentative map and final map are required for subdivisions creating five or more parcels (§ 66426) and a parcel map is required for subdivisions creating four or fewer parcels (§ 66428). (See *Gardner v. County of Sonoma, supra,* 29 Cal.4th at p. 997; *John Taft Corp. v. Advisory Agency* (1984) 161 Cal.App.3d 749, 755.) Section 66424 describes when a "subdivision" is created with respect to a "unit or units of . . . land" for purposes of triggering the Act's requirements. (See 61 Ops.Cal.Atty.Gen. 299, 300-303 (1978); 58 Ops.Cal.Atty.Gen., *supra*, at pp. 594-595.)[5]

Section 66424 is thus irrelevant here since no "subdivision" is being proposed by the owner. (See *Lakeview Meadows Ranch v. County of Santa Clara, supra,* 27 Cal.App.4th at pp. 596-599.) The "division" in question took place in 1965 when the owner's two new parcels of land were physically created by court order and the recording of a deed. If the filing of a subdivision map had been required at that time and no map had been filed, the parcels would not have been "lawfully" created for purposes of the Act. (See 74 Ops.Cal.Atty.Gen., *supra*, at p. 152.) However, we are given that the land division in 1965 complied with all requirements of the Act and local subdivision ordinances due to the "four or fewer" exemption. Nothing contained in section 66424 may alter the legal status

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at p. 998; *Stell v. Jay Hales Development Co., supra,* 11 Cal.App.4th at pp. 1227-1229.)

[5] We note that a parcel map is currently not required for "[l]and conveyed to or from a governmental agency, public entity, public utility, or for land conveyed to a subsidiary of a public utility for conveyance to that public utility for rights-of-way, unless a showing is made in individual cases, upon substantial evidence, that public policy necessitates a parcel map" (§ 66428, subd. (a)(2)), and "[a]ny conveyance of land to a governmental agency, public entity, public utility or subsidiary of a public utility for conveyance to that public utility for rights-of-way shall not be considered a division of land for purposes of computing the number of parcels" (§ 66426.5). Of course, new parcels that are created but not conveyed to a governmental agency must comply with any applicable requirements of the Act. (See 58 Ops.Cal.Atty.Gen., *supra*, at pp. 594-595.)

of the two parcels in 1965 or thereafter, even if the provisions of section 66412.6 did not exist.

Finally, we note that in eminent domain proceedings, the property owner is not only entitled to "the fair market value of the property taken" (Code Civ. Proc., § 1263.310) but also to "compensation . . . for the injury, if any, to the remainder" when "the property acquired is part of a larger parcel" (Code Civ. Proc., § 1263.410, subd. (a)). The statutory term "larger parcel" has been construed by the courts to allow parcels that are adjoining or separated from each other to be aggregated for purposes of compensation in limited circumstances. (See *San Diego v. Neumann* (1993) 6 Cal.4th 738, 745-755; *City of Los Angeles v. Wolfe* (1971) 6 Cal.3d 326, 330-336.) Such aggregation is only for purposes of possible compensation and not for other purposes, i.e., what constitutes a "parcel" or a "division" under the terms of section 66412.6 and the Act. In each of the cases where multiple parcels were considered to be part of the "remainder parcel," the parcels were not merged for any other purpose but remained distinct separate parcels. (See, e.g., *City of San Diego v. Neumann, supra,* 6 Cal.4th at pp. 745-755.)

We thus conclude in answer to the first question that where (1) a public agency used its power of eminent domain in 1965 to acquire most of a 640-acre parcel of land for the creation of a reservoir, which left two remaining parcels of land physically separated by 700 feet of water and (2) the county's subdivision ordinances in effect at the time did not regulate divisions of land creating four or fewer parcels, the remaining two parcels of land were legally created as separate parcels for purposes of the Act.

2. Effect of Subsequent Zoning

Pursuant to the provisions of the California Timberland Productivity Act of 1982 (§§ 51100-51155), a property owner may be granted a reduction in assessed property taxes if the property is zoned for growing and harvesting timber and compatible uses. One of the criteria for eligibility may include that the land "be comprised of single or contiguous parcels of a certain number of acres . . . ." (§ 51113, subd. (d)(1).) We are asked whether the zoning of the two remainder parcels in question as a timberland production zone in 1977 affected the legal status of the two parcels for purposes of section 66412.6. We conclude that it did not.

The conclusive presumption contained in section 66412.6, that two remainder parcels were legally created by the 1965 court order and recording of a deed, is not dependent upon a subsequent zoning classification. Whatever conditions were imposed to obtain the timberland production zone classification would not affect a physical division of property that occurred 12 years earlier as the result of eminent domain proceedings with respect to the Act's requirements. We apply the terms of section 66412.6 according to the

statute's express language. (See *Curle v. Superior Court* (2001) 24 Cal.4th 1057, 1063; *Wilcox v. Birtwhistle* (1999) 21 Cal.4th 973, 977; *California Teachers Assn. v. Governing Bd. of Rialto Unified School Dist.* (1997) 14 Cal.4th 627, 633; *Wells Fargo Bank v. Superior Court* (1991) 53 Cal.3d 1082, 1097.) No zoning exceptions are contained therein.

Moreover, section 51113 does not require the property in question to be a single parcel but permits "contiguous parcels" to be granted a reduction in property taxes. The term "contiguous" may vary in its interpretation and application. (See *City of San Diego v. Neumann, supra,* 6 Cal.4th at p. 747; *City of Los Angeles v. Wolfe, supra,* 6 Cal.3d at p. 338; 61 Ops.Cal.Atty.Gen., *supra,* at p. 301.) Here, the Legislature has provided the following definition of "contiguous" for purposes of qualifying as a timberland production zone:

> " 'Contiguous' means two or more parcels of land that are adjoining or neighboring or are sufficiently near to each other, as determined by the board or council, that they are manageable as a single forest unit." (§ 51104, subd. (b).)

A board or council may determine that two parcels 700 feet apart "are sufficiently near to each other" to be "manageable as a single forest unit." In any event, a single parcel is not required and separate parcels need not be "adjoining" to be eligible for a timberland production zone classification.

We conclude in answer to the second question that the legal status of the two remaining separate parcels was not affected when an owner of the parcels subsequently obtained a timberland production zone classification for both parcels, which zoning required that the parcels be managed as contiguous parcels.

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