

California Attorney General's Opinions

- a. Bill Lockyer, 86 Ops.Cal.Atty.Gen 70,
May 15, 2003
- b. Evelle J. Younger, 58 Ops.Cal.Atty.Gen
593, August 7, 1975

Opinion of the Attorney General

Bill Lockyer

86 Ops.Cal.Atty.Gen 70

May 15, 2003

TO BE PUBLISHED IN THE OFFICIAL REPORTS

OFFICE OF THE ATTORNEY GENERAL
State of California

BILL LOCKYER
Attorney General

OPINION	:	No. 01-615
	:	
of	:	May 15, 2003
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BILL LOCKYER	:	
Attorney General	:	
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GREGORY L. GONOT	:	
Deputy Attorney General	:	
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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?

“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

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

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

Opinion of the Attorney General

Evelle J. Younger

58 Ops.Cal.Atty.Gen 593

August 7, 1975

Opinion No. CV 74-32—August 7, 1975

SUBJECT: INDIVIDUAL SALE OF PARCELS OF LAND WITH CONDEMNED PORTIONS—Parcels of land, each with a diminution or division through condemnation proceedings, may be individually sold if and only if a new parcel map is filed under Government Code section 66428, absent a local ordinance waiving such map.

Requested by: COUNTY COUNSEL, TULARE COUNTY

Opinion by: EVELLE J. YOUNGER, Attorney General
Arthur C. de Goede, Deputy

The Honorable Calvin E. Baldwin, County Counsel of Tulare County, has asked the following question:

³ The subject matter involved in the question at hand suggests such a possible conflict if the ordinance is designed to regulate illicit sexual activity, an area which is generally preempted by the state. See *In re Lane*, 58 Cal. 2d 99 (1962); *In re Moss*, 58 Cal. 2d 117 (1962); *Spitcauer v. County of Los Angeles*, 227 Cal. App. 2d 376 (1964).

May contiguous parcels of land held by one owner be individually sold where they have been earlier recorded under the Subdivision Map Act, but a portion of each of the respective parcels has been condemned through eminent domain proceedings?

The conclusion is:

Such remaining parcels may be sold individually if and only if a new parcel map is filed under section 66428 of the Government Code, absent a waiver of such map under the provisions of that section. Such parcel map must delineate the parcels in their new configuration.

ANALYSIS

Government Code¹ section 66499.30 provides in part that it is unlawful to sell any parcel of real property until a parcel or final map thereof in full compliance with the Subdivision Map Act and any local ordinance has been recorded or filed. Since the parcels remaining after a portion of each has been condemned are no longer depicted in the map on file, such parcels no longer meet the requirements of section 66499.30. Cf. 57 Ops. Cal. Atty. Gen. 239, 242 (1974). The provisions of subdivision (d) of section 66499.30 are inapplicable because the parcels condemned in part, if previously sold or offered or contracted for sale earlier in accordance with or exempt from the applicable laws regulating the design and improvement of subdivisions, are no longer the same parcels.

This conclusion is also supported by an analysis of sections 66424, 66426 and 66428. Tentative and final maps are generally required for all divisions of land creating five or more parcels, and a parcel map is required for any division creating five or more parcels which is excepted from the requirement of filing tentative and final maps. § 66426, subd. (a) and (b). As to any other division, a parcel map is required under section 66428 unless waived by local ordinance in accordance with the requirements of that section. "Subdivision" includes the division of land for purpose of sale. Section 66424. There can be no question but that condemnation of a part of a parcel results in a "division" of land. There is also sound authority in other contexts for the proposition that a transfer of property by eminent domain is a "sale" of that property. *People ex rel Dept. of Pub. Wks. v. County of Santa Clara*, 275 Cal. App. 2d 372, 376-377, and cases cited therein; 51 Ops. Cal. Atty. Gen. 50, 51. Thus, a division of land through eminent domain proceedings is a division of land for the purpose of sale.

However, it must be noted that section 66424 also specifically provides: "Any conveyance of land to a governmental agency, public entity or public utility shall not be considered a division of land for purposes of computing the number of parcels." Thus, where a division for purpose of sale results from condemnation of part of one or more parcels, the number of parcels created is disregarded. The fact that "five or more" parcels may be created from such a division is disregarded and no tentative or final map is required under section 66426. However the fact

¹ All statutory references are to the Government Code unless otherwise noted.

that a division of land has parcel map is required in a parcel map may be and is w

Therefore, the only ma from a diminution or divis parcel map under section 664 such a map.

It might be argued that the parcel is so insubstantial that the law disregards trifle constitutes a trifle is a factu resolution by the local agenc appropriately be waived upo a condemnation of part the the provisions of the Subdiv

Opinion

SUBJECT: COLONIC IRR physical therapist may supervision of a chir irrigations himself.

Requested by: ASSISTAN CAL EXA

Opinion by: EVELLE J. Y

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that a division of land has occurred is not disregarded. Under section 66428 a
parcel map is required in any case where a final map is not required, unless the
parcel map may be and is waived in accordance with section 66428.

Therefore, the only map that need be filed in order to sell a parcel resulting
from a diminution or division of land through a condemnation proceeding is a
parcel map under section 66428, absent a local ordinance under that section waiving
such a map.

It might be argued that section 66428 is not applicable where the change in
the parcel is so insubstantial that one might apply the maxim of jurisprudence
that the law disregards trifles. Civ. Code § 3533. However, the question of what
constitutes a trifle is a factual question, depending upon all the circumstances, for
resolution by the local agency. Also, the consideration whether a parcel map may
appropriately be waived upon a change of size and configuration of a parcel due to
a condemnation of part thereof is best left to those local agencies administering
the provisions of the Subdivision Map Act and fully cognizant of local conditions.

Government Code

- a. Section 66423
- b. Section 66424
- c. Section 66426
- d. Section 66428, subsection a
- e. Section 66499.35

66423. "Subdivider" defined

"Subdivider" means a person, firm, corporation, partnership or association who proposes to divide, divides or causes to be divided real property into a subdivision for himself or for others except that employees and consultants of such persons or entities, acting in such capacity, are not "subdividers."

[Amended, Chapter 660, Statutes of 1976]

66424. "Subdivision" defined

"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. "Subdivision" includes a condominium project, as defined in subdivision (f) of Section 1351 of the Civil Code, a community apartment project, as defined in subdivision (d) of Section 1351 of the Civil Code, or the conversion of five or more existing dwelling units to a stock cooperative, as defined in subdivision (m) of Section 1351 of the Civil Code.

[Amended, Chapter 458, Statutes of 1994]

**66426. Names types of projects requiring tentative and final maps;
cites exclusions**

A tentative and final map shall be required for all subdivisions creating five or more parcels, five or more condominiums as defined in Section 783 of the Civil Code, a community apartment project containing five or more parcels, or for the conversion of a dwelling to a stock cooperative containing five or more dwelling units, except where any one of the following occurs:

- (a) The land before division contains less than five acres, each parcel created by the division abuts upon a maintained public street or highway, and no dedications or improvements are required by the legislative body.
- (b) Each parcel created by the division has a gross area of 20 acres or more and has an approved access to a maintained public street or highway.
- (c) The land consists of a parcel or parcels of land having approved access to a public street or highway, which comprises part of a tract of land zoned for industrial or commercial development, and which has the approval of the governing body as to street alignments and widths.
- (d) Each parcel created by the division has a gross area of not less than 40 acres or is not less than a quarter of a quarter section.
- (e) The land being subdivided is solely for the creation of an environmental subdivision pursuant to Section 66418.2.
- (f) A parcel map shall be required for those subdivisions described in subdivisions (a), (b), (c), (d), and (e).

[Amended, Chapter 76, Statutes of 2003]

66428. Tentative parcel map required or waived; vesting tentative parcel maps; tentative map waivers and conditions

- (a) Local ordinances may require a tentative map where a parcel map is required by this chapter. A parcel map shall be required for subdivisions as to which a final or parcel map is not otherwise required by this chapter, unless the preparation of the parcel map is waived by local ordinance as provided in this section. A parcel map shall not be required for either of the following:
 - (1) Subdivisions of a portion of the operating right-of-way of a railroad corporation, as defined by Section 230 of the Public Utilities Code, that are created by short-term leases (terminable by either party on not more than 30 days' notice in writing).
 - (2) *Any conveyance of land 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 shall not be considered a division of land for purposes of computing the number of parcels.* For purposes of this subdivision, *any conveyance of land to or from a governmental agency shall include a fee interest, a leasehold interest, an easement, or a license.*

66499.35. Certificate of compliance states compliance with Map Act; conditional certificates of compliance; recorded maps constitute a certificate of compliance; certificate inclusions

- (a) Any person owning real property or a vendee of that person pursuant to a contract of sale of the real property may request, and a local agency shall determine, whether the real property complies with the provisions of this division and of local ordinances enacted pursuant to this division. If a local agency determines that the real property complies, the city or the county shall cause a certificate of compliance to be filed for record with the recorder of the county in which the real property is located. The certificate of compliance shall identify the real property and shall state that the division of the real property complies with applicable provisions of this division and of local ordinances enacted pursuant to this division. The local agency may impose a reasonable fee to cover the cost of issuing and recording the certificate of compliance.
- (b) If a local agency determines that the real property does not comply with the provisions of this division or of local ordinances enacted pursuant to this division, it shall issue a conditional certificate of compliance. A local agency may, as a condition to granting a conditional certificate of compliance, impose any conditions that would have been applicable to the division of the property at the time the applicant acquired his or her interest therein, and that had been established at that time by this division or local ordinance enacted pursuant to this division, except that where the applicant was the owner of record at the time of the initial violation of the provisions of this division or of the local ordinances who by a grant of the real property created a parcel or parcels in violation of this division or local ordinances enacted pursuant to this division, and the person is the current owner of record of one or more of the parcels which were created as a result of the grant in violation of

this division or those local ordinances, then the local agency may impose any conditions that would be applicable to a current division of the property. Upon making the determination and establishing the conditions, the city or county shall cause a conditional certificate of compliance to be filed for record with the recorder of the county in which the real property is located. The certificate shall serve as notice to the property owner or vendee who has applied for the certificate pursuant to this section, a grantee of the property owner, or any subsequent transferee or assignee of the property that the fulfillment and implementation of these conditions shall be required prior to subsequent issuance of a permit or other grant of approval for development of the property.

Compliance with these conditions shall not be required until the time that a permit or other grant of approval for development of the property is issued by the local agency.

- (c) A certificate of compliance shall be issued for any real property that has been approved for development pursuant to Section 66499.34.
- (d) A recorded final map, parcel map, official map, or an approved certificate of exception shall constitute a certificate of compliance with respect to the parcels of real property described therein.
- (e) An official map prepared pursuant to subdivision (b) of Section 66499.52 shall constitute a certificate of compliance with respect to the parcels of real property described therein and may be filed for record, whether or not the parcels are contiguous, so long as the parcels are within the same section or, with the approval of the city engineer or county surveyor, within contiguous sections of land.

- (f) (1) Each certificate of compliance or conditional certificate of compliance shall include information the local agency deems necessary, including, but not limited to, all of the following:
- (A) Name or names of owners of the parcel.
 - (B) Assessor parcel number or numbers of the parcel.
 - (C) The number of parcels for which the certificate of compliance or conditional certificate of compliance is being issued and recorded.
 - (D) Legal description of the parcel or parcels for which the certificate of compliance or conditional certificate of compliance is being issued and recorded.
 - (E) A notice stating as follows:

This certificate relates only to issues of compliance or noncompliance with the Subdivision Map Act and local ordinances enacted pursuant thereto. The parcel described herein may be sold, leased, or financed without further compliance with the Subdivision Map Act or any local ordinance enacted pursuant thereto. Development of the parcel may require issuance of a permit or permits, or other grant or grants of approval.

- (F) Any conditions to be fulfilled and implemented prior to subsequent issuance of a permit or other grant of approval for development of the property, as specified in the conditional certificate of compliance.
- (2) Local agencies may process applications for certificates of compliance or conditional certificates of compliance concurrently and may record a single

certificate of compliance or a single conditional certificate of compliance for multiple parcels. Where a single certificate of compliance or conditional certificate of compliance is certifying multiple parcels, each as to compliance with the provisions of this division and with local ordinances enacted pursuant thereto, the single certificate of compliance or conditional certificate of compliance shall clearly identify, and distinguish between, the descriptions of each parcel.

[Amended, Chapter 1109, Statutes of 2002]