

Condemnation Does Not Result in Subdivision of Remaining Property under Map Act

A recent Court of Appeal decision, [Save Mt. Diablo v. Contra Costa County](#), No. A142357 (First Dist., October 7, 2015), provides guidance concerning the concept of a "division" of land under Subdivision Map Act, clarifying that condemnation of portions of a parcel do not result in subdivision of the remaining private areas.

Background The Map Act requires a property owner to obtain approval of either a parcel map or a final map in order for property to be sold, leased, or used as collateral for financing. The principal purposes of the Map Act are to ensure the orderly development of land, control the design of improvements, guarantee the completion of public facilities, and protect the public from fraud. In *Save Mount Diablo*, the Nunns purchased a tract of agricultural property recorded as a single parcel. The Contra Costa Water District ("CCWD") had previously condemned two intersecting strips of land across the tract, one for a roadway and the other for a pipeline. The two strips effectively divided the Nunn's property into four separate parcels. The Nunns initially pursued approval of a parcel map to legally convert the property into four parcels with one remainder parcel. Save Mount Diablo objected to the application, citing potential environmental impacts from resulting development. The Nunns then abandoned the application, instead requesting certificates of compliance for each of the four parcels separated by the CCWD strips. Under section 66499.35 of the Map Act, a certificate of compliance may be issued upon a determination that property was previously divided consistent with the Map Act and local law. These certificates, if issued, would have allowed the Nunns to sell, lease, or finance the four parcels without obtaining approval of a parcel map. The Nunns argued that the CCWD condemnation of the strips created a lawful "division" of the property into four discrete parcels and that the Nunns were entitled to certificates of compliance to recognize the prior division. The Contra Costa County Board of Supervisors ultimately agreed and ordered the issuance of the certificates. Save Mount Diablo sued to set aside this decision. **Court of Appeal**

Analysis The appellate court first considered whether the Nunns were entitled to certificates of compliance based on a prior "*de facto*" legal division. While acknowledging that the condemnation created separate fee estates in the various portions of the property, the court determined that condemnation did not divide the property for purposes of the Map Act. It stated that "regardless of whether a piece of property can be characterized as a parcel, it is entitled to a certificate of compliance only if it was the result of a prior division recognized by the Act." The court reasoned that the mere fact that parts of a property do not touch does not mean that a division has been achieved, and noted that, under the Map Act's definition of "subdivision," property may be considered a contiguous unit even if it is separated by roads, streets, utility easements, or railroad rights-of-way. Next, the court considered what it described as the Map Act's "condemnation exemption" (§ 66428(a)(2)), which provides that "land conveyed to or from a governmental agency [or] public entity . . . for rights-of-way. . ." is exempt from the parcel map requirement. The Nunns argued that because the condemnation proceeding involved a conveyance of land to a government agency, the four parcels accordingly qualified for the exemption. Not so, the court concluded, observing that the statute exempted only the land conveyed to or from the government agency, not any remaining parcels. "Condemnation proceedings frequently reshape the boundaries of the remaining property," the court said, "but nothing in the [Map] Act suggests the Legislature intended to exempt all such property from the map requirements. Finally, the court rejected the Nunn's position that they were entitled to *conditional* certificates of compliance. Under the Map Act, conditional certificates may be issued where a prior, unlawful division of property occurred (for example, by a conveyance in violation of the Map Act). The responsible agency may attach conditions to certificates of compliance to legitimize the divisions while ensuring that the parcels comply with the Map Act and local law. As applied to the Nunns' property, the court found, conditional certificates were unavailable because the property had not previously been divided for

purposes of the statute, legally or illegally.

Authors



Garrett Colli

Partner

GColli@perkinscoie.com [415.344.7160](tel:415.344.7160)

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