

CLSA-WFPS CONFERENCE 2007

April 15 – 18, 2007

Subdivision Map Act

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California Land Surveyors Association

SOME "THORNY" MAP ACT ISSUES

Tuesday, April 17, 2007
8:30 – 10:00 a.m.
Rancho Bernardo Inn
San Diego, CA

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COURSE OUTLINE
SUBDIVISION MAP ACT

1. INTRODUCTION

- (a) *Class introduction and materials.*
- (b) *"Caesar giveth, Caesar taketh away." Gives to and takes from public agencies, subdividers and the public.*
- (c) *As class will reveal, solutions to mapping problems not always found in the Map Act.*

2. OVERVIEW

- (a) *The Subdivision Map Act. (§ 66410¹ et seq.)*
- (b) *Relationship to Other Laws.*
 - (1) United States Constitution/Federal Law.
(5th and 14th Amendments).
 - (2) California Constitution/State Law
(Art. XI, § 7, authority to regulate for the public health, safety and general welfare.).
 - (3) Local Laws.
 - (A) General Plan.
 - (B) Specific Plan.
 - (C) Zoning.
 - (D) Subdivision Map Act/Use Permits/Variance/Other.

¹ Code references are to the California Government Code, unless otherwise stated.

3. WHEN IS A MAP REQUIRED?

(a) *Tentative and Parcel Maps* (§ 66428)

- (1) Local ordinance can require tentative map instead of parcel map ((a))
 - (A) Parcel Map is instantly recordable; Tentative Map is not.
 - (B) Parcel Map has limitation on scope (amount) of dedication. (§ 66411.1(a)); Tentative Map is not.
 - (C) Parcel Map has limitation on timing of fulfillment of conditions (§ 66411.1(b)); Tentative Map is not.
 - (i) Issuance of permit or grant of approval; or
 - (ii) At time specified in agreement required by local ordinance; or
 - (iii) If public health and safety or necessary to orderly development of the surrounding area.
- (2) No parcel map required for conveyance (fee, lease hold, easement or license) to or from governmental agency, public entity, public utility, or rights-of-way conveyed to a subsidiary of a public utility, unless substantial evidence exists of public necessity for map. ((a)(2))
- (3) Local ordinance shall provide procedure for waiving parcel map, including § 66426. Finding required by legislative body or advisory agency that specific development requirements of SMA and local ordinance are met by division of land. However, ordinance may require preparation of a tentative map. ((b))
 - (A) If no tentative map required for parcel map then subdivider can file a tentative map or a vesting tentative map. ((c))

(b) *What Is A Subdivision?* (§ 66424)

- (1) Division for sale, lease or finance.
- (2) Broad policy underpinnings.
 - (A) Encourage orderly development by regulating the design and improvement of the subdivision.
 - (B) Ensure that areas within the subdivision are dedicated for public purposes will be properly improved by the subdivider.

- (C) Protect the public and individual buyers from fraud and exploitation.
- (3) Examples:
 - (A) Probate Homestead. (33 Cal. 3d 379)
 - (B) Financing Devices. (58 Ops. Atty. Gen. 408)
 - (C) Tax Sales. (64 Ops. Atty. Gen. 814)
 - (D) University of California Property. (75 Ops. Atty. Gen. 98 (1992))
- (4) Meaning of division.
 - (A) Exclusive occupancy the key?
 - (B) Contiguity; § 66424; contiguity of parcels separated by a fee strip. (61 Ops. Atty. Gen. 299 (1978))
 - (C) Remainder Parcels -- Subdividing a portion. (§ 66424.6; Ops. Atty. Gen. 246 (1979))
 - (D) Reference to Assessor's Parcels.
 - (E) Timing of divisions. (66 Cal. App. 3d 191 (1977))
 - (F) 4 x 4ing

4. EXCLUSIONS/EXCEPTIONS/EXEMPTIONS

(a) Exceptions To "5 Or More" Rule (§ 66426)

No tentative and final map, but parcel map is required, for the following divisions of land:

- (1) Less than 5 acres before division, abutting a maintained public street or highway and no dedications or improvements required.
- (2) Each created parcel is 20 acres or more and has approved access to a maintained public street or highway.
- (3) One or more parcels of land zoned for industrial or commercial development with approved access to a public street or highway provided legislative body has approved street alignments and widths.
- (4) Each parcel is 40 acres or more or not less than a quarter of a quarter section.

- (5) Until January 1, 2003 land is solely for creation of environmental subdivision under § 66418.2.

(b) *Exclusions From Any Mapping Requirements.*

- (1) Agricultural leases. (§ 66412)
- (2) Building leases & financing: Offices, stores, apartments, industrial space. (§§ 66412(a), 66412.1)
- (3) Conveyances to and from public entities and public utilities. (§§ 66426.5, 66428)

(c) *Lot line adjustments.*

- (1) Section 66412(d)
- (2) Old Law
 - (A) Generally.
 - (i) Excluded from Subdivision Map Act. (§ 66412(d).)
 - (ii) Cannot Create Greater Number of Parcels.
 - (iii) Applies to two or more contiguous parcels.
 - (B) Limitations on Governmental Approval Discretion.
 - (i) Legal Lots Only?
 - (ii) Notice and Public Hearing?
 - (iii) Building and Zoning Alone Rules.
- (3) Recent Law (SB 497, Chapter 873, 2001 Stats.)

"A lot line adjustment between ~~two or more~~ four or fewer existing ~~adjacent~~ adjoining parcels, where the land taken from one parcel is added to an ~~adjacent~~ adjoining parcel, and where a greater number of parcels than originally existed is not thereby created, ~~provided if~~ the lot line adjustment is approved by the local agency, or advisory agency. A local agency or advisory agency shall limit its review and approval to a determination of whether or not the parcels resulting from the lot line adjustment will conform to local general plan, any applicable coastal plan, and zoning and building ordinances. An advisory agency or local agency shall not impose conditions or exactions on its approval of a lot line adjustment except to conform to local general plan, any applicable coastal

plan and zoning and building ordinances, to require the prepayment of real property taxes prior to the approval of the lot line adjustment, or to facilitate the relocation of existing utilities, infrastructure, or easements. No tentative map, parcel map, or final map shall be required as a condition to the approval of a lot line adjustment. The lot line adjustment shall be reflected in a deed which shall be recorded. No record of survey shall be required for a lot line adjustment unless required by Section 8762 of the Business and Professions Code."

- (d) *City/County must act on Section 66414 Exclusions within 60 days of application completion. (§ 66451.7)*

5. CERTIFICATES OF COMPLIANCE

- (a) *Generally.*

- (1) In enforcement Chapter of Map Act (§ 66499.30 et seq.)
- (2) Avoidance of potential Notice of Violation.
- (3) Preclude a basis for purchaser to void the sale.
- (4) Not allow the City/County to refuse to issue building permits or grant discretionary approvals.

- (b) *What is a Certificate of Compliance?*

- (1) Sections 66499.35, 66499.34
- (2) City's/County's Duty to Issue.
- (3) Who Can Request and When?

- (c) *Conditional Certificates.*

- (1) Conditions that can be applied to property when the illegal subdivider applies (the "bad guy").
- (2) Conditions that can be applied to property when the Innocent purchaser applies (the "good guy").
- (3) New Law – SB 497 – Now must issue conditional certificate when violation found (old law was permissive).

- (d) *Other.*

- (1) Certificates of Compliance do not insulate the property owner from compliance with general plan and zoning ordinance.

- (2) Does a city/county have to require Notice and Hearing to approve a Certificate of Compliance?
- (3) Is a Certificate of Compliance subject to review under CEQA?
- (4) How does a Certificate relate to a Notice of Violation? (§ 66499.36)

6. LIFE OF TENTATIVE MAP

(a) Initial Life of Tentative Map.

- (1) Initial Life. (§ 66452.6(a))
- (2) 24 months ⇒ statutory.
+12 months ⇒ by local ordinance.
 2 to 3 years.

(b) Extension Life.

- (1) Up to 5 years (discretionary) (§ 66452.6(e)).
- (2) 2 years if TM existed on 9/13/93. (§ 66452.11).
- (3) 1 year if TM existed on 5/14/96. (§ 66452.13)
- (4) Up to 5 years from moratorium. (§ 66452.6(f))
- (5) Up to 5 years from litigation (if local agency agrees). (§ 66452.6(f))
- (6) Up to 10 years life from phasing (see below). (§ 66452.6(a))

(c) Extension Steps

- (1) Must apply for final map before TM expires
- (2) Once application seeking discretionary extension is made, automatic extension of tentative map for earlier of: 60 days or when application acted on.
- (3) If moratorium - - 120 days. (§ 66452.6 (b)(3))
- (4) Ability to condition extension? § 66452.6.(e); *El Patio v. Permanent Rent Control Board*, 110 Cal.App.3d 915 (1980)

- (d) *Expiration of other permits issued in conjunction with a tentative map.*
(§ 65863.9)
 - (1) Life of Tentative Map
 - (2) Unless earlier date appears on face of permit
- (e) *Example:*
 - (1) TM to employ 4 multiple Final Maps
 - (2) TM approved on September 6, 1993.
 - (3) TM challenged in court; lawsuit settled 18 months from date of TM approval.
 - (4) Prerequisite to all other work is a Remediation Plan for site (required by Map TM Conditions of Approval). Plan takes 18 months to be approved by State agency. Project improvements can now be built.
 - (5) 1st Final Map filed on September 1, 1996.
 - (6) 2nd Final Map filed September 2, 1997.
 - (7) 3rd Final Map filed September 5, 1999.
 - (8) 4th Final Map filed September 6, 2002.
 - (9) What is life of TM?

7. VESTED RIGHTS

- (a) *Effect Of Approval Of Map On The Right To Develop.*
 - (1) So what!
 - (2) Sell, Lease, Finance, that's all folks!
- (b) *Common Law Vested Rights Generally.*
 - (1) Late Vesting. *Avco Community Developers, Inc. v. South Coastal Regional Comm.*, 17 Cal 3d 785 (1976)
 - (A) Building Permit.
 - (B) Reliance Thereon.
 - (2) Harsh Rule - Very Late in Process.

- (A) *Oceanic California, Inc. v. North Central Coast Regional Com.*, 63 Cal. App. 3d 57 (1976).
- (3) Legislative Response: Vesting Maps and Development Agreements.
- (c) *Vesting Maps.*
 - (1) Uses Filing Freeze Section. (§§ 66498.1, 66474.2.)
 - (2) Duration. (§ 66452.6.)
 - (A) Tentative Map -- Life of Normal Tentative Map.
 - (B) Final Map -- 1 to 2 Years
 - (C) Building Permits -- Life of Permit plus extensions.
 - (3) Tentative Map Must Still Be Approved.
 - (4) Use multiple (phased) maps to extend vested rights
 - (5) Vesting Parcel Maps versus Vesting Tentative Maps
 - (6) City Annexations/Incorporations. (§§ 66413-66413.5.)
- (d) *Development Agreements § 65864.*
 - (1) Permissive. (§ 65864 et seq.)
 - (2) Contract Approach. (§ 65866.)
 - (3) Negotiation.
 - (A) Term
 - (B) Dedications, Fees and Other Exactions
 - (C) Milestones for Determining Developer Compliance
 - (i) Life of Tentative Map/Phased Final Maps
 - (ii) Future Process / Future Approvals
 - (iii) Schedule of Development/Rate of Growth
 - (iv) Annual Review/Default/Termination Provisions
 - (v) Indemnification
 - (vi) Other (Slush Fund for City Attorney Vacations)

(e) *Comparison of VTMs and Development Agreements:*

<u>Vesting Tentative Map (VTM)</u>	<u>Development Agreement (DA)</u>
1. Processing mandatory: cannot refuse application.	Processing elective: city's/county's discretion whether to enter.
2. Exactions subject to statutory and caselaw restrictions (e.g., "nexus").	Ad hoc negotiation -- exempt from AB 1600; waiver (of nexus, etc.) potential.
3. Other land use entitlements are discretionary.	May spell out future entitlement process.
4. Locks in rules when VTM application "complete."	Normally locks in rules at execution of DA (DA may provide otherwise).
5. Vesting life = Life of tentative map, plus 1 to 2 years after final map, plus limited extensions and building permit life. Phased final maps help extend life.	Vesting life = That set forth in DA (usually life of DA). Use DA to extend the life of tentative (or vesting tentative) map and certain permits to the life of DA.
6. Does not limit other agencies (e.g., school districts); (incorporation exception).	Does not limit agencies who are not a party to DA (incorporation/annexation exception).
7. Not subject to referendum (adjudicatory act).	Subject to referendum (legislative act).
8. No contrary future rules unless needed to prevent situation "dangerous" to health/safety or changes in State/Federal law. Review VTM conditions carefully.	No contrary rules unless consistent with Agreement. Have DA expressly list subsequent laws that would not be consistent with DA (growth management, phasing requirements, etc.).
9. Should be local implementing regulation (if not, Map Act governs). Question of whether VTM application can require additional information.	Local procedural regulation needed if requested, otherwise use statute.
10. Gov't Code § 66499.37 - - 90-day statute of limitations after approval.	Gov't Code § 65009 - - 90-day statute of limitations.
11. Incorporating (new) city is subject to county-approved vesting tentative map; annexing city is not subject.	With certain exceptions, both incorporating city and annexing city are subject to county-approved agreement.

Vesting Tentative Map (VTM)

Development Agreement (DA)

- | | |
|---|---|
| 12. Subsequent entitlements subject to normal CEQA process. | Subsequent entitlements, subject to normal CEQA process, unless DA expressly abrogates. |
| 13. Successful third-party challenge can result in loss of approval (and vested right). | Successful third-party challenge can result in loss of approval (and vested right). |

8. OLD MAPS (Mike)

(a) Several ways to subdivide property in California:

- (1) Subdivision map, properly prepared, approved and recorded pursuant to the Map Act -- Gov't Code § 66412.7 provides that the recording "establishes" (*i.e.*, creates) the lots even if those lots are never conveyed; and
- (2) Through actual conveyance (deed) -- Gov't Code § § 66499.34 and 66499.35 mandate the issuance of a certificate of compliance or conditional certificate of compliance for lots conveyed, *even* when the conveyance (and hence the lot) was illegal. *See, e.g.*, 74 Ops.Atty.Gen. 149 (Opinion No. 91-105, August 13, 1991).
- (3) "Lieu Lots" - - Through Federal Government grant of land to status for schools. *Alberger v. Kingsbury*, 6 Cal. App. 93, 97-98 (1907).

(b) Old Maps Agenda.

- (1) "Legality-of-Lot" issue versus "Right-to-Develop" issue.
- (2) Salutary Purposes of Modern Map Act versus Salutary Purposes of Modern Map Act's Grandfather" clauses.

(c) Map Act "Grandfather" Clauses Pertaining to Old Maps.

- (1) Establishment Clause (§ 66412.7)--Lots created or established when recorded:

§ 66412.7. Subdivision deemed established

A subdivision shall be deemed established for purposes of subdivision (d) of Section 66499.30 and any other provision of this division on the date of recordation of the final map or parcel map, except that in the case of (1) maps filed for approval prior to March 4, 1972, and subsequently approved by the local agency or (2) subdivisions exempted from map requirements by a certificate of exception (or the equivalent) applied for prior to such date and subsequently issued by

the local agency pursuant to local ordinance, the subdivision shall be deemed established on the date the map or application for a certificate of exception (or the equivalent) was filed with the local agency.

* * * * *

- (2) Prior Compliance Section (§ 66499.30)--Generally prohibits sale, lease or financing of lots unless final or parcel map "established" in compliance with modern Map Act. Subdivision (d) grandfathers older lots.

§ 66499.30. No sale or lease until final maps are in full compliance

(a) No person shall sell, lease or finance any parcel or parcels of real property or commence construction of any building for sale, lease or financing thereon, except for model homes, or allow occupancy thereof, for which a final map is required by this division or local ordinance, until the final map thereof in full compliance with this division and any local ordinance has been filed for record by the recorder of the county in which any portion of the subdivision is located.

(b) No person shall sell, lease or finance any parcel or parcels of real property or commence construction of any building for sale, lease or financing thereon, except for model homes, or allow occupancy thereof, for which a parcel map is required by this division or local ordinance, until the parcel map thereof in full compliance with this division any local ordinance has been filed for record by the recorder of the county in which any portion of the subdivision is located.

(c) Conveyances of any part of a division of real property for which a final or parcel map is required by this division or local ordinance shall not be made by parcel or block number, initial or other designation, unless and until the final or parcel map has been filed for record by the recorder of the county in which any portion of the subdivision is located.

(d) Subdivisions (a), (b), and (c) do not apply to any parcel or parcels of a subdivision offered for sale or lease, contracted for sale or lease, or sold or leased in compliance with or exempt from any law (including a local ordinance), regulating the design and improvement of subdivisions in effect at the time the subdivision was established.

(e) Nothing contained in subdivisions (a) and (b) shall be deemed to prohibit an offer or contract to sell, lease, or finance real property or to construct improvements thereon where the sale, lease, or financing, or the commencement of construction, is expressly conditioned upon the approval and filing of a final subdivision map or parcel map, as required under this division.

(f) Nothing in subdivisions (a) to (e), inclusive, shall in any way modify or affect the provisions of Section 11018.2 of the Business and Professions Code.

(g) For purposes of this section, the limitation period for commencing an action, either civil or criminal, against the subdivider or an owner of record at the time of a violation of this division or of a local ordinance enacted pursuant to this division, shall be tolled for any time period during which there is no constructive notice of the transaction constituting the violation, because the owner of record, at

the time of the violation or at any time thereafter, failed to record a deed, lease, or financing document with the county recorder. (Emphasis added.)

* * * * *

- (3) Nonmerger Exemption (§ 66451.10)--Preempts field of involuntary merger and grandfathers old contiguous lots.

§ 66451.10. Unmerging of previously merged parcels; authority for new mergers

(a) Notwithstanding Section 66424, except as is otherwise provided for this in this article, two or more contiguous parcels or units of land which have been created under the provisions of this division, or any prior law regulating the division of land, or a local ordinance enacted pursuant thereto, or which were not subject to those provisions at the time of their creation, shall not be deemed merged by virtue of the fact that the contiguous parcels or units are held by the same owner, and no further proceeding under the provisions of this division or a local ordinance enacted pursuant thereto shall be required for the purpose of sale, lease, or financing of the contiguous parcels or units, or any of them. (Emphasis added.)

* * * * *

- (4) Parcel Map Presumption Clause (§ 66412.6)--Creates presumption that certain parcel map lots created before 3/4/72 were lawfully created.

§ 66412.6. Lawful parcels created before 3/4/72; sunset date

(a) For purposes of this division 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 at the time of the creation of the parcel there was compliance with any local ordinance or there was no local ordinance in effect which regulated divisions of land creating fewer than five parcels.

(b) For purposes of this division 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 any subsequent purchaser acquired that parcel for valuable consideration without actual or constructive knowledge of a violation of this division or the local ordinance. Owners of parcels or units of land affected by the provisions of this subdivision shall be required to obtain a certificate of compliance or a conditional certificate of compliance pursuant to Section 66499.35 prior to obtaining a permit or other grant of approval for development of the parcel or unit of land. For purposes of determining whether the parcel or unit of land complies with the provisions of this division and of local ordinances enacted pursuant thereto, as required pursuant to subdivision (a) of Section 66499.35, the presumption declared in this subdivision shall not be operative.

(c) This section shall remain in effect only until January 1, 1995, and as of that date is repealed, unless a later enacted

statute, enacted before January 1, 1995, deletes or extends that date.
(Emphasis added.)

(d) *Synthesis and Summary of Grandfather Clauses:*

- (1) A lot is legal if:
 - (A) It was lawfully created in accordance with the law in effect when it was created (or the absence of such a law) and has not subsequently been merged or altered; or
 - (B) It was unlawfully created but was subsequently legalized by the Map Act (see Certificates discussion below) and was not thereafter merged or altered.
- (2) A lot that has been merged or altered since its creation no longer exists.

(e) *Gardner Case (Gardner v. County of Sonoma, 2003 DJDAR 1429, February 6, 2003).*

- (1) In its 2003 decision *Gardner v. County of Sonoma*, the California Supreme Court held that a pre-1893 map, recorded in the absence of an applicable subdivision statute, ordinance, or regulation, does not in itself establish subdivision or create legal parcels that mandate the issuance of certificates of compliance for the subdivided parcels it depicts. 2003 DJDAR 1429 (February 6, 2003). In *Gardner*, the Court significantly narrowed the grandfathering effect of Sections 66499.30(d) and 66451.10(a) (see discussion below under *Nonmerger Exemption*), finding that "although the grandfather provisions of the Act reflect the Legislature's intent to protect those who detrimentally relied on prior subdivision laws in individual situations, they evince no intent to imbue antiquated maps with a legal significance that did not exist in their own time." *Id.* at * 1433.

- (2) In *Gardner*, the map in question divided over 1,000 acres of open land west of Sebastopol into nearly 90 lots and was generated in 1865, before the existence of any subdivision map regulations. The map was submitted and accepted for recordation by Sonoma County without any review or approval by a public entity. The map was also adopted by the Thompson Atlas of Sonoma County in 1877. The Thompson Atlas was the "official map" of Sonoma County for township lines, and county purposes, and the map was reflected in the Thompson Atlas as "The Redwood Estate of S.H. Greene."

- (3) Over the years, numerous parts of the property were conveyed to different parties. In 1903, a bulk conveyance of approximately 352 acres was made. In 1990, 158 acres of the 352 acres was conveyed to the Gardners. The conveyance to the Gardners included two of the original

lots on the Greene subdivision, and fragments of 10 of the other lots. The Gardners applied for, and were denied, 12 certificates of compliance. The planning commission authorized the department to issue one certificate of compliance recognizing the property as a single parcel. The County Board of Supervisors upheld the commission's action, and the superior court subsequently denied the Gardners' petition for a writ of mandate, a decision affirmed by the Court of Appeal. The Supreme Court affirmed.

- (4) First, the court held that the map recorded in 1865 was not a final map, a parcel map, an official map, nor an approved certificate of exception within the meaning of Section 66499.35(d). The 1965 map did not qualify as a final or parcel map because it had not been recorded "by a local agency under the provision of the Map Act of a local ordinance adopted thereunder." *Id.* at * 1430. Furthermore, the court found that the map was not an "official map," despite its adoption into the Thompson Atlas, because the Thompson Atlas had not been prepared and adopted as an official map within the meaning of Section 66499.52.
- (5) The Court also rejected the Gardners' contention that Section 66499.30(d) compelled issuance of the 12 certificates of compliance. Reading Section 66499.30(d) in conjunction with Section 66412.7, the court held that Sections 66499.30(d) and 66412.7 protect subdivision that either already were approved by local agencies, or were deemed exempt under previous subdivision laws in effect at the time the subdivisions were established." *Id.* at * 1431. The court then reasoned that the recordation of the Greene map in 1865 had not "established" the subdivision for purposes of Section 66499.30(d), and that the map had not been recorded pursuant to any preexisting statute or regulation. Alternatively, the court rejected any argument that the parcels had been created by conveyance: since the property had "remained intact under sequential owners throughout its history . . . plaintiffs cannot fix their case within the decisions recognizing the establishment of subdivisions by conveyance." *Id.* at *1432.
- (6) If a map is recorded in compliance with all laws of that time regulating the recording of a map dividing property into lots, merger would be prohibited under this provision. As with §66499.30(d), using analysis similar to that for laws regulating design and improvement, laws reaching back to at least 1850 regulate the "division" of land. However, *Gardner* makes clear that in order to take advantage of Section 66451.10, the lots must have been lawfully created in the first place, because Section 66451.10(a) "does not... address the creation of parcels in the first instance. Nor does it provide a basis for legal recognition of subdivided lots depicted on antiquated maps." *Gardner v. County of Sonoma*, 2003 DJDAR at *1432.

9. CONVEYANCES (*Mike*)

(f) *Introduction.*

- (1) Understanding that land can also be divided even through legal and illegal conveyance is critical. For example, while legal scholars disagree as to whether the modern Map Act “grandfathers” lots established by pre-1893 maps (but never conveyed), even those who will not recognize such maps alone as “creators,” agree that once a lot from such a pre-1893 map is conveyed, it is created. In other words, they see the conveyance as the “creator,” *not* the pre-1893 recorded map.
- (2) Modernly, the “thorny” issue is the conveyance of “patents” from the Federal Government to private individuals where the single patent deed transmits more than one lot, yet the lots conveyed have not been properly mapped under the Subdivision Map Act.

(g) *Some Relevant Authorities.*

- (1) *Attorney General Opinion*, 98 C.D.O.S. 2608 (April 3, 1998). Relying on *John Taft Corp. v. Advisory Agency*, 161 Cal.App.3d 749 (1984), Attorney General opined that when a federal patent conveying government property into private ownership describes the property being conveyed in terms of multiple, contiguous 'lots' depicted on an official United States Government Survey Map, each lot does not constitute a distinct legal parcel under the Map Act. See, letter response from Durkee.
- (2) *John Taft Corp. v. Advisory Agency*, 161 Cal.App.3d 749 (1984). California Court of Appeal ruled that United States Government "survey maps" do not meet the requirements for "subdivision maps" under the Subdivision Map Act. While the facts involved the conveyance of lots through patent, at issue for the Court of Appeal and where it ultimately rests its decision was whether the mere existence of the federal survey map "created" the lots shown on the map. The court reasoned that a survey map, prepared under the federal survey laws, did no more than facilitate the conveyance of lots to the public by establishing the geographic location of lots on a descriptive map, but did not meet the more rigorous requirements of a "subdivision map" under California's Map Act, including being recorded with the local county recorder. Court did not address whether conveyance alone could have created lots.
- (3) *Gomes v. County of Mendocino*, 37 Cal.App.4th 977, 983 (1995). Court of Appeal clarified the ruling in *Taft* by stating unequivocally that the physical conveyance of a federal patent (not the mere existence of a federal survey) was a subdivision of land under the Subdivision Map Act, that the federal government was a “subdivider” under the Act, and that the

federal patent conveying a parcel lawfully creates the parcel it describes. *Gomes* at 983-984.

- (4) Gov't Code § 66428(a)(2). Exempts public agencies from its parcel map requirements unless there is a showing, based on substantial evidence, that public policy necessitates a parcel map. Should federal government qualify under this section? See also, 62 Ops.Atty.Gen. 136 (1979); 62 Ops.Atty.Gen. 140 (1979).
- (5) Civil Code § 1093. Single instrument conveying multiple parcels is not only allowed, it does not evidence the intent to merge the parcels unless the instrument clearly states otherwise.

(h) *You Make the Call.*

- (1) Four lots are contiguous and were conveyed through one patent with five separate legal descriptions within the patent (for five separately identified parcels).
- (2) The four contiguous parcels were individually conveyed through five separate patents on the same day at the same time.
- (3) The four parcels were separately described within one patent but were not contiguous to each other.

10. LIEU LANDS (*Mike*)

(a) *Generally.*

- (1) Lieu lands are also legal lots created by conveyance, or in a conveyance-like manner, without the recording of a map. Lieu Lands have their origin in land grants from the federal government to the states for schools. When sections of land granted to a state for school purposes were unavailable due to settlers, or because they were included within a Military, Indian, Forest, National Park or other Reservation, states were allowed to select other lands of equal acreage "in lieu" of those lands lost. 43 U.S.C. §§ 851-852, Cal Pub. Res. Code §7402. The lands selected by the state in lieu of the unavailable lands were called "lieu lands", or "indemnity lands." *Alberger v. Kingsbury*, 6 Cal. App. 93, 97-98 (1907).
- (2) For a state to obtain title to a parcel of land as a lieu land (therefore creating a legal lot), three steps must be taken: (1) the parcel must be selected by the state, (2) the selection must be approved by the United States Land Department, and (3) the land must be listed to the state on a lieu list. *W.H. Allen v. Manuel Pedro*, 136 Cal. 1, 2 (1902) (*citing Roberts v. Gebhart*, 104 Cal. 67 (1894)). The act of listing land on the lieu list to a state conveys legal title from the federal government to the state, and land

patents are not required to convey title. *United States v. Quechan Tribe of Indians*, 601 F.2d 1059, 1061 (9th Cir. 1979).

- (3) Furthermore, the act of listing land to a state also has the effect of relating back to the date when the selection was made. *Howell v. Slauson*, 83 U.S. 539 (1890). The U.S. Supreme Court has held that a state patent to lieu lands will prevail over a federal patent to a settler whose settlement upon the land was *subsequent* to the date of the state's selection but *prior* to the actual listing. *Id.*

11. ENFORCEMENT/APPEALS/JUDICIAL REVIEW

(b) *Exhaustion of Administrative Remedies.*

- (1) Must Exhaust (appeal).
- (2) Failure is Jurisdictional.
- (3) Great Affirmative Defense.
- (4) Provide § 65009 Notice.

(c) *Statute of Limitations.*

- (1) Map Act – 90 days. (§ 66499.37)
- (2) CEQA – 30 days (NOD), 35 days (NOE) or 180 days (failure).
- (3) Planning Law – 90 days. (Gov. Code § 65009)