

# SURVEYOR

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## *India*

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526 So E. Street, Santa Rosa, CA 95404

# Q&A SMA Expert



*Michael P. Durkee, a partner in the Walnut Creek office of Allen Matkins, represents developers, public agencies and interest groups in all aspects of land use law. Mike is the principal author of Map Act Navigator (1997-2011), and co-author of Ballot Box Navigator (Solano Press 2003), and Land-Use Initiatives and Referenda in California (Solano Press 1990, 1991).*

415.273.7455 [mdurkee@allenmatkins.com](mailto:mdurkee@allenmatkins.com)

## Question

**I own a single parcel of property. Some time ago, a local public agency condemned (in fee simple absolute) a 100-foot strip down the middle of that parcel. How many parcels now exist, and am I entitled to Certificates of Compliance for the parcels that I still own?**

## Discussion

**Excellent question! In my opinion, three parcels were legally created by that condemnation: the condemned 100-foot strip (now in the government's ownership), and the two remnant parcels (located on either side of that strip), remaining in private ownership. As such, yes, you would be entitled to Certificates of Compliance for the two remnant parcels you still own.**

Generally speaking, under the Subdivision Map Act, or "Map Act" (§§ 66410 et seq.), tentative and final maps are required for a division of land that creates five or more parcels (§ 66426), whereas a parcel map is required for a division of land that creates four or fewer parcels (§ 66428(a)).

Traditionally, condemnations and other conveyances to the government of property involving a portion of an existing legal parcel required a map. (See, e.g., 58 Ops.Cal.Atty.Gen. 593 (1975).) In that 1975 Attorney General Opinion, the California Attorney General addressed a situation where a proposed condemnation by a governmental agency of a portion of a single parcel would result in three lots, the condemned portion and two remnant parcels on either side of the condemned parcel. The Attorney General concluded that a parcel map was required for this 3-lot division, reasoning that there was "no question but that condemnation of a part of a parcel results in a 'division' of land" (Id. at 594), and thus, that the proposed condemnation – that divided the land into 3 parcels - was subject to the Map Act. (Ibid.)

The Attorney General concluded that a parcel map was required because while then-existing Section 66424 provided that a conveyance of land to a governmental agency was not counted for purposes of computing the number of parcels created (that provision is now in section 66426.5), it did not exempt the conveyance from the Map Act. Hence, the condemnation would divide the property into 3 new lots, and a map memorializing that proposal was required.

However, in the very next legislative session following the Attorney General's 1975 Opinion, the Legislature amended Section 66428 to add an exemption (from any mapping requirements) for

conveyances of land to a governmental agency. Section 66428(a)(2) provides in pertinent part:

A parcel map shall not be 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. For purposes of this subdivision, land conveyed to or from a governmental agency shall include a fee interest, a leasehold interest, an easement, or a license.

In other words, no subdivision map (neither tentative and final map, nor parcel map) is required to lawfully create parcels by conveyance, condemnation, etc. when a governmental agency is involved with that transaction. Section 66428 expressly exempts from any mapping requirements "[l]and conveyed to or from a governmental agency." The reference to "land" conveyed may raise the question whether the exemption addresses only the particular parcel conveyed to or from a governmental agency, and not any other resulting parcels. However, when read in the context of the 1975 Attorney General Opinion (which reasoned definitively that a condemnation is a "division" of land) and the immediately subsequent action taken by the Legislature in response to the Attorney General Opinion, Section 66428(a)(2) must be interpreted to mean that the division of land that occurs when the portion is conveyed (through condemnation or otherwise) - including the inevitable creation of resulting remnant parcels - is exempt from the Map Act's mapping requirements. In other words, the condemnation exemption of Section 66428(a)(2) applies to the entirety of the land division effectuated by the conveyance to the government. No mapping is required in order to "create" the resulting parcels because they already exist in fact and as a matter of law. (A parcel is lawfully created upon its conveyance by deed. (Gardner v. County of Sonoma, 29 Cal.4th 990, 1001-1002 (2003).)

To argue otherwise would result in an absurdity: the portion of the parcel conveyed to the government (and in so doing "dividing" the land) is legal, but the remaining land resulting from that legal division is not.

In a 2003 Attorney General Opinion, the Attorney General concluded that a 1965 condemnation by a governmental agency lawfully created not only the condemned parcel, but also two new remnant parcels located on either side of the condemned parcel. (86 Ops.Cal.Atty.Gen. 70 (2003).) In 1965, when the condemnation occurred, the Map Act did not require parcel maps for divisions of fewer than five parcels (no map of any kind was required). The

*Continued on next page*

parcel map requirement began in 1972. The Attorney General relied on Section 66412.6, which presumes that a parcel was lawfully created if it was a division that occurred prior to 1972, the division created fewer than five parcels, and the division was not regulated by a local ordinance then in effect. Because no map was required under the Map Act or local ordinance when the remnant parcels were created (in 1965), no map was now needed to recognize their lawful status. According to the Attorney General, the "division" occurred, and the parcels were created, when the court ordered the condemnation and the deed was recorded.

Although the 2003 Attorney General Opinion and the 1975 Attorney General Opinion addressed different Map Act sections than are at issue in your case, the common thread in each Opinion is the Attorney General's conclusion that a governmental agency-involved conveyance of fee interest (through condemnation or otherwise) "divides" the land into new remnant parcels. In addition, at the time of the division addressed by each Opinion, the Section 66428(a)(2) governmental agency condemnation exemption did not yet exist. Therefore, turning to the present question, because we know that a conveyance of a portion of a parcel to a governmental agency divides the land and creates new remnant parcels, and we know that Section 66428(a)(2) exempts such governmental agency-involved conveyances from any Map Act compliance, then it follows that the condemnation by the government lawfully created two new remnant parcels without the need for any further Map Act compliance.

Further, "factually" speaking, the government's condemnation in this case clearly "divided" the land. "Land" is defined in Civil Code section 659 as three-dimensional:

***Land is the material of the earth, whatever may be the ingredients of which it is composed, whether soil, rock, or other substance, and includes free or occupied space for an indefinite distance upwards as well as downwards, subject to limitations upon the use of airspace imposed, and rights in the use of airspace granted, by law.***

Because land is three-dimensional, the conveyance of one new three-dimensional portion of property to the government must, as a matter of physical law, create two additional new parcels on either side of the conveyed portion. When land is condemned, as is the case here, the remnant parcels are each separated from each other by the intervening condemned parcel, and cannot ever physically touch each other, since the condemned parcel fully separates the remnant parcels on a three-dimensional basis: the condemned parcel goes as "high" and as "low" as land can legally go in California, thus fully separates the remnant parcels from each other.

There is no body of law supporting the legal or factual argument that two parcels that cannot and do not physically touch, that are physically separated from each other by an intervening parcel of land owned in fee by the government, are nonetheless to be treated as "one parcel." They are clearly created by the legal conveyance to the government and hence are themselves legal in character.

Finally, pursuant to Map Act section 66499.35(a), any person with a financial interest in real property may request, and a local agency shall determine, whether the property complies with the Map Act and any local ordinances enacted pursuant thereto. If the local agency determines that the property complies, it must file a Certificate of Compliance for recording. (Ibid.) In the present case, because the remnant parcels comply with the Map Act and presumably the local subdivision enacted pursuant thereto, Certificates of Compliance must be filed. ■

## Geography Quiz Answer

from page 24

The northern portion of the Mid-Atlantic ridge is created by the North American and Eurasian plates. The ridge is mostly underwater with one notable exception: Iceland. As the plates move apart the country grows by about 2 cm per year. Iceland contains the largest ice cap in Europe by volume, the Vatnajökull glacier, pictured here.



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