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Land Use Alert

Court Refuses to Recognize Legality of 1915 Subdivision Map

In a decision unlikely to be the final word on the subject, the First District Court of Appeal has ruled that the laws governing subdivision maps in 1915 did not regulate the design and improvement of subdivisions, as required by the current grandfather clause in Government Code section 66499.30(d); as a result, the court held that the proper recording of a subdivision map in 1915 in compliance with the applicable law at the time – without any subsequent independent conveyances of the parcels shown on the face of the map – did not create legal parcels (*Witt Home Ranch v. County of Sonoma* (2008) 165 Cal.App.4th 543).

The court's opinion arguably confuses the role of the Subdivision Map Act and its relationship with land use regulations, such as the Planning and Zoning Law. In addition, the crux of the court's decision – that the 1915 act did not regulate design and improvement – is largely unsupported and unexplained. As a whole, the opinion appears to reflect unwarranted concern that recognition of such parcels would lead to uncontrolled development of the land.

In this case, the landowner had applied to the County for certificates of compliance that – if issued – would have simply confirmed the legal status of 25 parcels depicted on the face of the map recorded in 1915; the lots' use would be controlled by local planning regulations (general plan, specific plan, zoning, etc.). The court first rejected the argument that the 1915 map had been grandfathered by earlier Map Act grandfathering provisions that included all previous lawfully recorded maps. The court traced the evolution of the language in the Map Act's various grandfather provisions, and held that the 1943 version must be read to have narrowed the scope of "antiquated" parcels that the legislature intended to validate. The court then held that the 1915 map did not meet the requirements of the current Map Act's grandfathering provision because the laws governing subdivision maps in 1915 did not regulate the "design and improvement of subdivisions." The court concluded that the 1915 Map Act regulated only the "drawing" that depicted the subdivision, and not the subdivision's improvement or configuration.

As support, the court explained that the approval authority of the local governing body in 1915 did not contain an independent grant of discretionary authority. Yet the court never explained why discretion is a necessary element of approval in the regulation of the design and improvement of subdivisions. Significantly, the law recognizes the creation of lots in other circumstances – such as by conveyance – where no discretion was ever exercised by the local governing body. Because the governing body retains substantial discretion in the subsequent land use approvals that would be needed for land development (e.g., general plan, specific plan, zoning, etc.), the Map Act does not need to function as the protector that the *Witt Home Ranch* court would like.

In reaching its holding, the court also relied on a policy argument that certification of the 1915 map as a lot creator would "authorize development" of the parcels at issue. However, recognition of the


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parcels under the Map Act merely confirms the legality of the parcels themselves, and their ability to be sold, leased or financed. The "use" and "development" of those parcels is regulated by, and contingent upon, compliance with local land use regulations (promulgated under the Planning and Zoning Law).

Similar cases are currently pending at various stages of litigation throughout the state; this court of appeal opinion likely will not be the last word on "antiquated" maps.

Upcoming Classes:

Mike Durkee will be teaching the following Subdivision Map Act classes at UC Davis Extension in December.

- **December 4, 2008**
  Subdivision Map Act: Part I

- **December 5, 2008**
  Subdivision Map Act: Part II