

# IRWA

## ORANGE COUNTY

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## CHAPTER 67

International Right of Way Association Chapter 67 Orange County, California



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# BUNDLE of WRITES

November 2015

## No Longer United, Yet Not Subdivided

### IRWA New Case Report at November 17, 2015 Chapter 67 Luncheon

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*Save Mount Diablo v. Contra Costa County* (Cal. Ct. App., Oct. 7, 2015) 15 Cal. Daily Op. Serv. 11084 [Condemnation which physically separates property does not effect a subdivision.]

Simply put, this case held that a “division” of property within the meaning of the Subdivision Map Act (Gov. Code § 66410 *et seq.*) (the “Act”) does not occur simply because an eminent domain proceeding results in a physical separation of a property’s non-condemned portions.

Roughly rectangular in shape, the property which was the subject of this case was crossed by two narrow, intersecting strips of land that were acquired by the Contra Costa Water District (the “District”) through condemnation proceedings in 1997. The appellant owners purchased the property in 2006. The deed described it as a single parcel, defined by metes and bounds, with District-owned land excluded. As a result of the condemnation, the property consisted of four parts, separated from each other by the narrow strips of District-owned land.

After buying the property, the appellant owners applied to the county for a parcel map subdividing the property under the Act into four lots. Before completing the parcel map process, however, the appellants abandoned their application. Instead, they asked the county to issue a certificate of compliance for each of the property’s four parts under Government Code section 66499.35, subdivision (a). Under this provision in the Act, a property owner need not file an approved map if the responsible agency concludes that “the real property complies with the provisions of [the Act] and of local ordinances enacted pursuant to [the Act].” The appellants argued that they were entitled to a certificate for each part because the District’s condemnation had the effect of subdividing the property for purposes of the Act.

County planning staff denied the appellants’ request for four certificates of compliance, concluding that the property’s separation as a result of the condemnation did not constitute a “subdivision” for purposes of the Act. The appellants appealed, and the county planning commission reversed the staff’s decision. *Save Mount Diablo* (“SMD”), a nonprofit corporation, then appealed to the county board of supervisors, which rejected the appeal and issued the four certificates.

ISMD filed a petition for writ of mandate against the county and board of supervisors, seeking an order requiring the county to set aside the certificates. The trial court granted the petition. It concluded that no legal authority supported the appellants theory that the condemnation effected a subdivision of the property within the meaning of the Act. The appellant owners appealed.

The court of appeal affirmed, holding that a taking by eminent domain of two narrow strips of land crossing a property and intersecting each other, which physically separated the property into four parts, was not a division within the meaning of the Act, and thus did not effect a subdivision as a matter of law. The court acknowledged that a subdivision map or parcel map is generally not required in order to convey land to or from a public entity or public utility (Government Code § 66428), but this did not mean that the reconfigured and divided privately owned land remaining as a result of the exempt conveyance(s) were also exempted from Map Act compliance.

#### Lessons Learned and Practical Recommendations:

To the extent a condemnation action divides a remaining property, such division is not a division within the meaning of the Subdivision Map Act, and thus does not effect a subdivision of the remaining property. As a result, owners, who may be unable to develop their reconfigured and non-contiguous leftover pieces as a single parcel project, may face hurdles and expense to obtain governmental approvals to subdivide and develop the remaining pieces as separate parcels. The bastardized remaining pieces may be of shapes or in locations that do not conform to subdivision requirements. All of this may impact severance damages in the condemnation case that resulted in the divided, but not subdivided pieces.

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