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OPINION	:	No. 79-11
of	:	May 16, 1979
GEORGE DEUKMEJIAN Attorney General	:	
Rodney Lilyquist, Jr. Deputy Attorney General	:	

SUBJECT: SUBDIVISION—Where an owner subdivides a portion of his land, the remainder may be considered and described as “not a part” of the subdivision on the required maps filed for approval.

The Honorable John A. Nejedly, Senator for the 7th District, has requested an opinion on the following question:

Where an owner subdivides a portion of his land, may the remainder be treated and described as ‘not a part” of the subdivision on the required maps filed for approval?

CONCLUSION

Where an owner subdivides a portion of his land, the remainder may be considered and described as “not a part” of the subdivision on the required maps filed for approval.

ANALYSIS

A common practice in California is for a landowner to subdivide a portion of his property, retaining a remainder for his personal residence. For example, an owner of 25

acres of land might subdivide 20 of the acres into 1 acre parcels, and retain 5 acres without intending to further subdivide it.

The question presented for analysis is whether a remainder, such as the 5 acres reserved in the example, should be considered and treated as part of the owner's subdivision of his property for purposes of the Subdivision Map Act (Gov. Code §§ 66410.6649937)[1] (hereinafter "Act"). The statute in question is section 66424, which states in part: "'Subdivision' means the division, by any subdivider, of any unit or units of improved or unimproved land, of any portion *thereof*, shown on the latest equalized county assessment roll as a unit or as contiguous units, for the purpose of sale, lease or financing, whether immediate or future. . . ." (Emphasis added.) We conclude that a "remainder" is not a subdivision "parcel" for purposes of the Act but must be shown on the required maps as part of the area surrounding the subdivision development.

In ascertaining the significance of whether a remainder should be treated as part of the subdivision, we must necessarily examine the requirements of the Act in light of its legislative goals.

In general terms, the Act provides for a rational and orderly means by which land can be divided, developed, and improved, It accomplishes this purpose by requiring, with few exceptions, that any division of land he shown on a map approved by the local governing agency. If the division and proposed development will create the need for access, drainage, utilities, and other services, the local agency may condition the approval of the division upon such improvements being made by the subdivider. (See *Bright v. Board of Supervisors* (1977) 66 Cal. App. 3d 191, 193–194; 61 Ops. Cal. Atty. Gen. 299, 300 (1978); 3 Witkin, Summary of Cal. Law (8th ed. 1973) Real Property, §§ 22–24, pp. 1788–1792; 2 Odgen's Revised Cal. Real Property Law (1975) §§ 25.1–25.2, pp. 1204–1206.)

Procedurally, if the land division results in four or less parcels, a "parcel" map is normally required; a "final" map involving stricter requirements is generally necessary for a division resulting in five or more parcels. (§§ 66426, 66428; *Bright v. Board of Supervisors*, *supra*, 66 Cal. App. 3d 191, 195; 4 Miller & Start, Current Law of Cal. Real Estate (1977) §§ 24:33–24:35, pp. 60–68; 9 Hagman & Volpert, Cal. Real Estate Law Practice (1978) § 290.24, pp. 290:12–290:35.)

Accordingly, if a remainder is considered as part of an owner's subdivision of his property, it would count as a parcel in determining whether a parcel map or final map was required and would necessarily be shown on the map as any other parcel of the subdivision.

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[1] All unidentified section references hereinafter refer to the Government Code.

We have previously addressed this issue on two occasions. In 52 Ops. Cal. Atty. Gen. 79 (1969), the landowner in question divided a portion of his property into 8 parcels and filed a map that did not include the remainder of the property. At that time, the Act defined "subdivision" as "any real property, improved or unimproved, or portion thereof . . . which is divided for the purpose of sale, lease, or financing, whether immediate or future. . . ." (Former Bus. & Prof. Code § 11535 subd. (a).) We concluded that the remainder need not be considered as part of the subdivision because of the phrase "or portion thereof" then contained in the statute:

> "We think it certain that the Legislature, by section 11535, subdivision (a), did not intend to require the owner of contiguous real property to include all of such property in a subdivision map, if he only intends to divide part of such property for the purposes prescribed by that section. To conclude otherwise would be to ignore the words 'or portion thereof' found in the definition, as well as the history of the section." (*Id*., at p. 80.)

Five years later, the Legislature deleted the words "or portion thereof" from the Act's definition of "subdivision." (Stats. 1974, ch. 1536, p. 3467.) We were then asked to review the issue again in light of the statutory amendment. In 59 Ops. Cal. Atty. Gen. 640, 641 (1976), we concluded:

> ". . . Such amendment clearly evidences the intention of the legislature to require the inclusion, in any parcel, tentative or final map submitted for approval, of all parcels resulting from any division of land including any portion or parcel of such unit not intended to be included as part of the subdivision by the subdivider. . . ."

Shortly after our latter opinion was issued in 1976, the Legislature amended the statutory definition of "subdivision" to again include the phrase "or any portion thereof." (Stats. 1977, ch. 234, § 3.)

It is apparent that this latest amendment of the statutory definition of "subdivision" evidences a legislative intent to again change the law in light of and as construed in our 1976 opinion (see 61 Ops. Cal. Atty. Gen., *supra*, at p. 116; 59 Ops. Cal. Atty. Gen. 493, 495 (1976)) and that the amendment was not for the purpose of merely clarifying existing law (see Stats. 1977, ch. 234, §§ 16–18).

Consequently, the phrase "or any portion thereof" now contained in section 66424 is given significance by requiring only that the parcels created for the specified statutory purposes be included within the subdivision's boundaries on the maps filed for approval.

Based upon our previous opinions and the legislative history of the section, we believe that the Legislature has now manifested its intent to allow a "remainder" to be omitted from the subdivision's boundaries under the given circumstances.[2]

Nevertheless, the remainder portion of land will appear on the necessary maps filed for approval as part of the area surrounding the subdivision development. Section 66445 subdivision (e) refers specifically to remainder portions as part of the surrounding area to be shown on parcel maps:

> "The Map shall show the location of each parcel and its relation to surrounding surveys. The location of any remainder of the original parcel shall be indicated, but need not be indicated as a matter of survey but only by deed reference to the existing record boundaries of such remainder if such remainder has a gross area of five acres or more."[3]

Although a tentative map need not be based on a detailed final survey of the property (§ 66424.5), the survey for the final map must "show the definite location of the subdivision, and particularly its relation to surrounding surveys." (§ 66434 subd. (e).)

Accordingly, we conclude that while the remainder portion of land would not constitute one of the parcels of the subdivision for purposes of the Act's requirements, such as determining whether a parcel map or final map is necessary for approval (see Hagman & Volpert, *supra*, at p. 290: 16), the remainder must be shown on the maps filed for approval as part of the area surrounding the subdivision.

Significantly, exclusion of the remainder from a subdivision's boundaries does not abrogate a city or county's responsibility to consider environmental impacts associated with the potential future subdivision of the remainder when it studies the environmental

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[2] The cardinal rule of statutory construction is to "ascertain the intent of the Legislature so as to effectuate the purpose of the law." (*Select Base Materials v. Board of Equal*. (1959) 51 Cal. App. 2d 640,645.) In ascertaining intent, we are to accord significance to every word and phrase of the statute. (*Moyer v. Workmen's Comp. Appeals Ed*. (1973) 10 Cal. 3d 222, 230.) "It must be presumed that the aforesaid interpretation [of the Attorney General has come to the attention of the Legislature, and if it were contrary to the legislative intent that some corrective measure would have been adopted in the course of many enactments on the subject in the meantime." (*California Correctional Officers' Assn. v. Board of Administration* (1978) 76 Cal. App. 3d 786, 794.)

[3] The various parts of a statutory enactment are to "be harmonized by considering the particular clause or section in the context of the statutory framework as a whole." (*Moyer v. Workmen's Com. p. Appeals Bd*., *supra*, 10 Cal. 3d 222, 230.) Construing section 66424 in light of section 66445 subdivision (e) indicates that a "remainder" is not a subdivision "parcel" for purposes of the Act.

effects of the pending subdivision proposal. Environmental impact analysis under the Environmental Quality Act (Pub. Res. Code § 21000 *et seq*.) must include study of the cumulative effects of a proposed project, including probable future projects such as the subdivision of a remainder portion of land. (See Pub. Res. Code § 21083(b); Title 14, Cal. Admin. Code §§ 15023.5, 15142, 15143; *Whitman v. Board of Supervisors* (1978) 88 Cal. App. 3d 397, 406–411.)

Finally, we note that should the owner thereafter subdivide the remainder, the parcels created by the previous subdivision must be considered with the parcels created from the remainder for purposes of the Act's requirements. (See *Bright v. Board of Supervisors, supra*, 66 Cal. App. 3d 191, 194; 61 Ops. Cal. Atty. Gen., *supra*, at p. 117.)[4]

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[4] We do not have before us the situation where the owner merely declares that the remainder will not be subdivided in the future or is attempting to evade the requirements of the Act. (See 52 Ops. Cal. Atty. Gen. *supra*, at p. 81.)