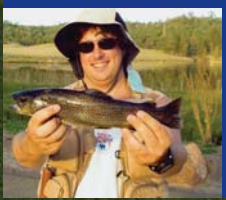


# SURVEYOR

*California*

## The Sacramento - San Joaquin Delta



### Delta *LiDAR*

Article by Joel Dudas, PE, page 10

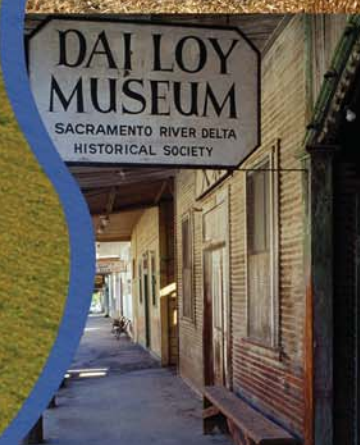
### *Delta Photography*

Photo Collection by California Department of Water Resources, page 14



### Surveying Delta Levees

Article by Nathan J. Hershey, PE, PLS, page 20



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# Q&A SMA Expert

## Question

**I recently performed a title search on property I own. The search turned up a 1915 grant deed between a previous seller and buyer, which deed references several parcels shown on a subdivision map, properly recorded in 1911. The map is still on record and the surrounding properties (and homes) reflect the parcels shown on that 1911 recorded map. Were those deed-referenced parcels created by that 1915 deed conveyance?**

## Answer

**Good question! And the expert answer is – it depends!**

Most land use practitioners agree that the conveyance of a parcel by a deed that identifies the parcel by reference to an older subdivision map, such as a map recorded in 1911, establishes that parcel as a legal parcel under the Subdivision Map Act today. (See, e.g., *Gardner v. County of Sonoma*, 29 Cal. 4th 990 (2003); *Gomes v. County of Mendocino*, 37 Cal.App.4th 977 (1995).

Moreover, most practitioners also agree that if the conveyance deed refers to multiple parcels, and those parcels are not contiguous, then those parcels also are legal under the Subdivision Map Act today. (See, e.g., *Lakeview Meadows Ranch v. County of Santa Clara*, 27 Cal.App.4th 593 (1994); *John Taft Corporation v. County of Ventura*, 161 Cal.App.3d 749 (1985). Therefore, if the parcels described in your 1915 deed are not contiguous, then those parcels were each created by the 1915 deed conveyance.

However, practitioners disagree on whether those parcels are legal if the parcels are contiguous on the subdivision map. Some would argue that contiguous parcels cannot be individually created unless they are separately conveyed (apart from each other). They argue that recent judicial decisions have, in dicta, spoken to the issue. However, each such case did not

have a deed conveying parcels from a post-1893, Subdivision Map Act-compliant, properly recorded map!

I submit that as long as the parcels are shown on a post-1893 map (properly recorded), and the parcels are separately identified in the deed (with their map/lot reference), they need not be separately conveyed (through separate deeds). Although this is a very complicated issue and could be the subject of a much longer writing, the following is a brief description of my reasoning.

The Supreme Court has concluded that the modern Subdivision Map Act originated in 1893. (*Gardner v. County of Sonoma*, 29 Cal. 4th 990 (2003). If one accepts that beginning in 1893 the Subdivision Map Act had "some purpose" (other than creating parcels through recordation), then that purpose was to ensure a proper and legal "coordination" between the conveyance document (the deed between landowner seller and buyer) and the official "data" that was placed into the hands of the neutral recorder's office - which data was the map recorded pursuant to the Map Act. This allowed the buyer to avoid being defrauded: he could go to the recorder's office (a neutral), affirm that the seller was in fact the owner of the mapped land, affirm that the map was properly recorded, affirm that the parcel was in fact shown on the face of that properly recorded map and that it was the same parcel referenced in the deed, and affirm that the parcel had not yet been sold to someone else. The deed conveyance upon being perfected (recorded) created the parcels shown on the recorded map and referenced in the perfected deed.

In other words, when a seller referenced parcels in a deed beginning in 1893, the Map Act required that the parcels be shown on a properly recorded subdivision map (see 1893 Map Act § 4). The recorded conveyance then created those map-described parcels. If the deed expressly conveys more than one parcel, then by the express terms of the deed we must conclude that the grantor intended to convey more than

*Continued on next page*

one parcel. If the seller intended to convey only one parcel, then he would have either had to use a "metes and bounds" description describing the exterior boundary of the one large parcel, or he/she would have used the recorded map as a reference but would have expressly shown his/her intent to convey them as one parcel, not more than one, on the face of the deed (see, e.g., Cal. Civ. Code § 1093).

Any other interpretation would ignore the purpose of the Map Act and the plain language of the deed. Clearly, one of the primary purposes of the 1893 Map Act was to make property conveyances more reliable, accurate, and efficient, which would allow a grantor to efficiently and accurately grant more than one parcel in one deed. In fact, any claim at that time that only one parcel was conveyed when more than one is referenced (from a map properly recorded under the Map Act) would have been a violation of the 1893 Map Act.

For the foregoing reasons, I would argue that, assuming your 1911 map was properly recorded and your 1915 deed

expressly references the map and expressly identifies more than one parcel on that map, the conveyance of those parcels in the 1915 deed "created" them as legal parcels. ❖

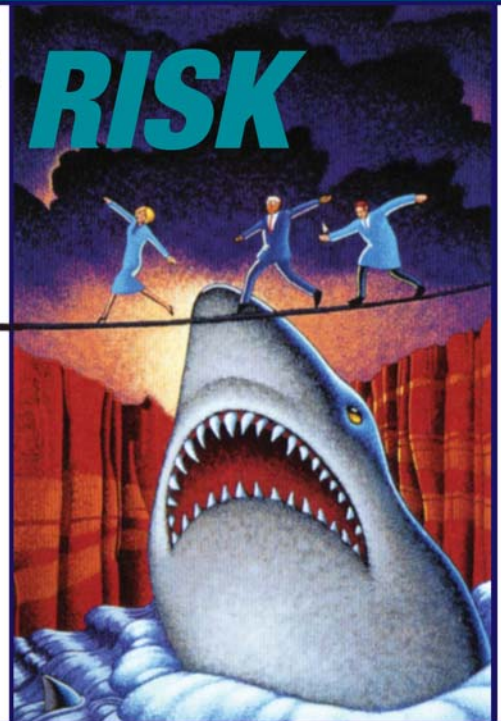
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"Mike wishes to thank Tom Tunny, Senior Counsel at Allen Matkins, for his assistance in writing this article."

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