

California Land Surveyors Association
San Diego Chapter

The Land Surveyors Act

Business and Professions Code §8700, et seq.



Introduction

- The purpose of the LS Act is to regulate the practice of land surveying to protect the public interest.
- B&P 8710.1 - "Protection of the public shall be the highest priority for the Board of Registration for Professional Engineers and Land Surveyors in exercising its licensing, regulatory, and disciplinary functions."

Introduction

- The Land Surveyors Act (SMA), was enacted in March of 1891. It set up the office of Surveyor General and empowered him to license land surveyors.
- In 1907, the Act was amended to better define the role of the land surveyor. ROS was created.
- In 1929, the Civil Engineer's Act was enacted.
- In 1933, land surveyors were put under the Board of Registration for Civil Engineers.
- In 1939, the Business and Professions Code was enacted to consolidate professional practice acts.

What is Land Surveying Practice ?

(Section 8726)

Any person, in private or public practice who:

- Determines location and elevation of fixed works
- Does topographic surveying
- Locates boundary of parcel or easement
- Surveys for the subdivision of land
- Sets reference, control, or boundary monuments
- Does geodetic or cadastral surveying
- Produces maps, plats, documents or reports for above
- Writes legal descriptions
- Prepares computerized maps and data for the above
- Manages business or coordinates others for the above
- Uses title of "land surveyor" or procures survey work

Land Surveying Practice

- A Land Surveyor must have a current and valid license to practice.
- A Land Surveyor must have a written contract with the client.
- All documents prepared by a surveyor must be signed and sealed.
- Surveyors may administer oaths
- All survey monuments must be tagged
- Other professions such as geologists, civil engineers, landscape architects may do surveying as an incidental part of their practice.... But no boundary location

Record of Survey

(Sections 8762, et seq.)

- A Record of Survey provides a public record of a surveyor's work product
- May be prepared for any survey
- Must be prepared if survey discloses:
 - Material evidence or physical change from previous records
 - Material discrepancy with previous records
 - Evidence of ambiguity in location of point or line
 - Establishment of new points or lines
 - Establishment of deed lines

Record of Survey (cont.)

(Sections 8762, et seq.)

- Must be prepared within 90 days of the completion of the survey
- Reviewed and approved by County Survey
- ROS is recorded but it does not provide constructive notice
- Not required if:
 - Survey is by public officer and in lieu map is filed
 - BLM survey
 - Subdivision map is being prepared
 - Survey of mapped line with no material discrepancy
 - Survey of mobile home park interior lot

Corner Record

(Sections 8773, et seq.)

- A Corner Record must be filed for any monument set that does not require a ROS or will not be shown on a new subdivision map
- A record of survey is required for the establishment of a lost corner
- Set monuments must be durable, sufficient in number, and identified with LS number
- Basic rule: set a monument, file a record... no exception

California Land Surveyors Association
San Diego Chapter
February 23, 2006

The Subdivision Map Act



Introduction

- The Subdivision Map Act (SMA), when enacted in 1893, consisted of just one page
- There were more than 200 subdivisions in San Diego prior to 1893.
- The first SMA required only that a map be recorded showing the lots for sale and areas dedicated for public streets and parks.
- Starting 1901, a map needed City approval
- In 1913, the SMA required that a surveyor prepare and certify the map

1893 MAP ACT STATUTE

CHAPTER LXXX.

An Act requiring the recording of maps of cities, towns, additions to cities or towns, or subdivisions of lands into small lots or tracts for the purposes of sale, and providing a penalty for the selling or offering for sale any lots or tracts in cities, towns, additions to cities, towns, subdivisions, or additions thereto, before such maps are filed and recorded.

[Approved March 9, 1893.]

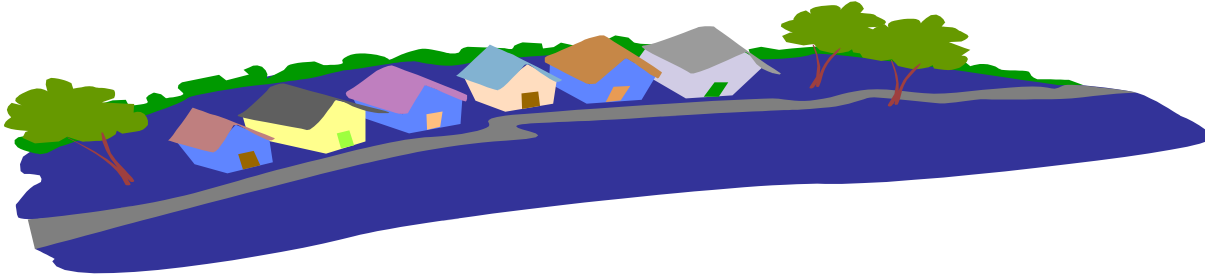
The People of the State of California, represented in Senate and Assembly, do enact as follows:

- Map or Plat of lots to be made.** SECTION 1. Whenever any city, town, or subdivision of land into lots, or any addition to any city, town, or such subdivision, shall be laid out into lots for the purposes of sale, the proprietor or proprietors thereof shall cause to be made out an accurate map or plat thereof, particularly setting forth and describing:
- Description of that reserved for public purposes.** First—All the parcels of ground within such city, town, addition, or subdivision, reserved for public purposes, by their boundaries, courses, and extent, whether they be intended for avenues, streets, lanes, alleys, courts, commons, or other public uses; and,
- For sale.** Second—All lots intended for sale, either by number or letter, and their precise length and width.
- Must be acknowledged.** SEC. 2. Such map or plat shall be acknowledged by the proprietor, or if any incorporated company, by the chief officer thereof, before some officer authorized by law to take the acknowledgment of conveyances of real estate.
- Recorded.** SEC. 3. The map or plat so made, acknowledged, and certified, shall be filed in the office of the County Recorder of the county in which the city, town, addition, or subdivision is situated.
- Penalty for violation.** SEC. 4. Every person who sells, or offers for sale, any lot within any city, town, subdivision, or addition, before the map or plat thereof is made out, acknowledged, filed, as herein provided, is guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than twenty-five dollars, and not more than five hundred dollars, or by imprisonment in the county jail not to exceed six months, or both such fine and imprisonment.

Introduction (cont.)

- A major rewrite in 1929 added the tentative map and required local subdivision ordinance
- The 1937 amendments gave the SMA its name and cities were required to regulate the design and improvement of subdivisions
- The Parcel Map was added to SMA in 1965 and in 1972 its use was mandated
- In 1974, the SMA was re-codified into the Government Code and planning became a key emphasis of the new SMA

SMA Purposes



- Regulate the division of real property
- Control the design of improvements
- Protect public health and safety
- Provide for orderly community development
- Protect public & private property interests

What is a Subdivision?

(§ 66424)

- Creates a divided and separate interest in real property (exclusive occupancy)



- For the purpose of sale, lease or financing
- Either now, or in the future
- Includes lots & condominium units

66424. "Subdivision" means the division, by any subdivider, of any unit or units of improved or unimproved land, or 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. Property shall be considered as contiguous units, even if it is separated by roads, streets, utility easement or railroad rights-of-way. "Subdivision" includes a condominium project, as defined in subdivision (f) of Section 1351 of the Civil Code, a community apartment project, as defined in subdivision (d) of Section 1351 of the Civil Code, or the conversion of five or more existing dwelling units to a stock cooperative, as defined in subdivision (m) of Section 1351 of the Civil Code.

Types of Maps

(Sections 66426 & 66428)

- **Tentative Map** is a proposal for a subdivision
 - **Parcel Map**
 - Less than 5 lots or condominium units
 - **Final Map**
 - 5 or more lots or condominium units



Tentative Maps

- Proposal for the layout, design, and improvement of a subdivision
- Approval processes
 - Approval by "local agency", i.e. - Hearing Officer or Planning Commission
 - Approval by legislative body, i.e. - City Council
- Vested Tentative Map freezes rights
- Projects may be phased into units
- Dedications or vacations of easements may be approved on the TM

Exclusions from SMA

- Short term leases of apartments or office space
- Conveyance to or from a government agency or public utility
- Lot Line Adjustment between 4 or fewer adjoining parcels

Parcel Maps

(66428)

- 4 or fewer lots or condominium units
- TM may be waived
- May use record boundary information instead of a field survey
- Improvements are required at building permit (66411.1)
- Parcel Maps may be approved by the City Surveyor/City Engineer

Final Maps

(66426)

- More than 5 lots or condominium units
- Tentative Map is always required
- Final Map must be surveyed
- Improvements are either constructed or secured by bond before the map is recorded
- Final maps must be approved by the City Council or delegate the approval to a City Official

Final Map Exceptions

(66426)

- No more than 5 acres with approved access and improvements
- At least 20 acre parcels with approved access
- All parcels are 40 acres or more
- Commercial/industrial with approved access
- Environmental Subdivision
- A Tentative Map and Parcel Map are required for all of the above projects
- The above projects may also be qualified to receive a map waiver

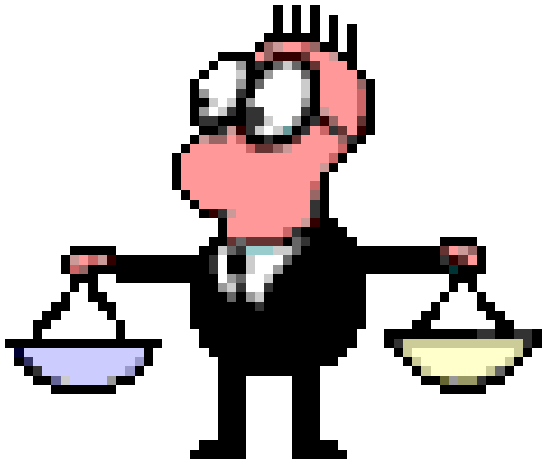
Development Rights

- Tentative map must be reviewed under the standards, regulations and policies in effect when the TM application was deemed complete. Vesting rights do not extend beyond the Parcel or Final Map. (§66474.2)
- Vesting TM extends the same standards, regulations and policies as above for a period of 2 years after recording a Parcel or Final Map. The City must allow a Vesting TM upon request. (§66498.2)

Development Rights (cont.)

- Development Agreement freezes standards, regulations, and policies as determined within the agreement. It is negotiated between the City and the developer and its vested rights can go well beyond the scope a vesting TM. The City is not obligated to enter into a Development Agreement. (Gov. Code §65864)

Processes



Discretionary

and

Ministerial



Discretionary Processing



- A Tentative Map is reviewed for compliance with law and standards, and to apply needed conditions and/or exactions to mitigate the development impact
- Findings must be made
- Public hearing before: Hearing Officer, Planning Commission, or City Council
- Results = Approved TM & Resolution

TM Review

- Review by the technical disciplines
- Environmental review
- Review by outside agencies including utilities, schools, service districts
- Review by Local Planning Groups

Required Findings

(§ 66474)

- Project is consistent with General and Specific Plan
- The site is suitable for the development
- Sufficient public improvements
- Acceptable project density
- Environmental impact minimized
- Public health and safety protected
- No impact on public easements

Life of Tentative Maps

(§ 66452.6)

- Initial approval good for two or three years
- Project phasing extends TM 3 yrs for each map recorded, up to total of 10 yrs.
- A TM may get a discretionary extension of up to 5 additional yrs by the Hearing Officer or PC
- If there is a Development Agreement, the TM and other permits are good for the term of the agreement.
- The expiration of a TM stops all action and new TM is needed

Ministerial Processing

- Private surveyor and engineer prepare the maps & construction plans
- Staff reviews maps & plans for technical issues
- Maps and plans must be in **Substantial Conformance** w/approved TM & conditions
- All Conditions of Approval contained in the Resolution must be satisfied
- City Engineer approves public improvement plans
- Bonded agreements insure completion of public improvements

Ministerial Processing (cont.)

- All outstanding impact fees, etc. collected
- City Engineer/City Surveyor approves the Parcel or Final Map
- Final Map is noticed (no notice for PM)
- Separate easements and/or documents are recorded
- Parcel Map/Final Map is recorded
- Recording the map subdivides the land, accepts/rejects all dedications, and vacates any designated easements

Finishing the Job

- Subdivision is constructed and inspected by the City
- Improvements are accepted by the City, which opens the public roads
- Bonds are released
- State Dept. Real Estate issues public report allowing sale of lots



Other Subdivision Stuff



Map Waivers

(§ 66428b)

- Intended for simple projects on fully developed sites
- Waives the mapping requirements for any qualifying parcel map
- TM may also be waived
- Waives the TM and final map for the construction of new condos on one lot.
- Includes all Parcel Maps under § 66426
- Project must conform to General Plan and zoning

Map Waivers (cont.)

- Construction of new condominiums
 - Must be on a single, fully developed lot
 - If there is more than one lot, the lots must be consolidated prior to the public hearing
 - New construction on an undeveloped lot requires a TM and parcel map or final map as appropriate

Lot Line Adjustments

(§66412d)

- Used to adjust ownership lines between 4 or fewer adjoining lots
- Limited review by city - the adjustment must conform to General Plan, zoning and building regulations, Coastal Act
- No TM, PM, or Final Map is required
- A Parcel Map is recommended
- A deed must be recorded to complete the adjustment

Correction or Amendment of Maps

(§66469-66472.1)

- Ministerial Certificate of Correction or amending map used to correct simple errors or omissions
- Discretionary amending map approved by legislative body used to make changes that don't conform to TM
- Changes cannot affect record title interest.
- CoC or amending map conclusively changes original map when approved and recorded

Certificate of Compliance

(§66499.34 & §66499.35)

- Issued to certify compliance with the SMA and local subdivision ordinance
- City must issue a CoC, but it may be conditioned to bring parcel into compliance
- No development rights are granted
- Issuing a development permit on a parcel validates that parcel

Merger of Parcels

66451.10

- The City may merge undeveloped parcels under one ownership that do not conform to current zone
- Property owners must receive 30 days written notice and they have a right to appear and testify at a merger hearing.
- If the decision is to merge, a Notice of Merger must be recorded against title.
- Merged lots will retain their prior legal description, but must be conveyed as a unit and treated as one lot for development unless re-subdivided.

Enforcement

(§66469-66472.1)

- Violation of SMA can be a felony so the City can pursue criminal prosecution
- City may record a Notice of Violation against the property title
- No permits may be issued by the City
- City Council can revert a map to acreage
- Private parties can rescind the sale & sue

Things Related to Subdivisions



Easement Creation

- An easement is:
 - A right of use made appurtenant to one parcel over an adjoining parcel such as a private access or utility easement.
 - A restriction on land use attached to a parcel such as a building restricted easement
 - A right granted to an entity or person for the use of a parcel such as a SDG&E easement (easement in gross)
- An easement is created ("granted") by the owner in a deed, on a map, or other land title document.

Easement Creation (cont.)

- A dedication is a grant to the public for use of land or facilities
 - must be offered by the owner
 - must be accepted or rejected by the City
- An Irrevocable Offer of Dedication is used when the City does not require immediate use of the easement rights. The offer is initially rejected with the right of future acceptance.
- A prescriptive easement may be created by unopposed use of land by the public or private parties.

Easement Extinguishment

- A private easement may be extinguished by:
 - Quit claim deed from the easement holder
 - Abandoned by lack of use by the easement holder... requires quiet title court action
- A public easement must be vacated, which is a formal legislative act.
 - Using "Public Streets, Highways, and Public Service Easement Vacation Law" in Calif. Streets & Highways Code Section 8300
 - Using the SMA
 - A noticed public hearing before the City Council is always required

Easement Extinguishment (cont.)

- A vacation requires findings:
 1. The easement is no longer needed
 2. There is some public benefit to vacating it
 3. Action is consistent with general plan, community plan, and local coastal program
 4. Other facilities will not be negatively impacted
- Easement rights may be reserved from the vacation such as a water line easement
- Easements cannot be converted to uses that were not originally granted

Court Decisions

- Court decisions (case law) can define and clarify the legal meaning of statutory law
- Case law may limit or extend the scope of law, apply the law to given situation, or resolve conflicts with other laws
- Starts as a conflict between the litigants
- Trial court decision applies to litigants only.
- Appellant decisions extend to the area of the court's jurisdiction.

Court Decisions (cont.)

- **Bright v. Board of Supervisors (1977)**
 - Eliminated "quartering"
- **Youngblood v. Board of Supervisors (1978)**
 - A tentative map gives a vested right to proceed with project
- **Nolan v. CA Coastal Comm. (1987)**
 - A condition must have a nexus (connection) to the project
- **Dolan v. City of Tigard (1994)**
 - A condition must be proportional to the project size
- **Gardner v. Sonoma County (2003)**
 - Lots created on pre-1893 maps may not be legal.

References

- Web site contains all state statutes
<http://www.leginfo.ca.gov/calaw.html>

