Technical Article

Maps, Tacks and Liability

The Consequences and Implications of New Mapping Policies of the City of San Diego

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MAPS, TACKS AND LIABILITY

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What are the Surveyor's Liabilities and Exposure?

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"If the original monuments are no longer discoverable, the question of location becomes one of evidence merely. It is merely idle for any State statute to direct a surveyor to locate or "establish" a corner, as the place of the original monument, according to some inflexible rule. The surveyor, on the other hand, must inquire into all the facts, giving due prominence to the acts of the parties concerned, and always keeping in mind, first, that neither his opinion nor his survey can be conclusive upon parties concerned, and, second, that courts and juries may be required to follow after the surveyor over the same ground, and that it is exceedingly desirable that he govern his action by the same lights and the same rules that will govern theirs.

- Chief Justice Thomas M. Cooley
Judicial Functions of Surveyors, 1881

My objectives in presenting this paper are in accordance with the Strategic Plan recently adopted by The California Land Surveyors Association. Therein, General Objective #1, intended to promote *Professionalism*, sets forth the following:

"To strengthen (the) ethical conduct, integrity, and objectivity in the surveying profession," CLSA is:

1. **To observe, utilize and enhance the quality of generally accepted surveying practices.**

    a. **Inform and educate our membership regarding generally accepted quality surveying practices.**

b. Provide leadership and training to enhance the quality of generally accepted surveying practices.

It is under this objective that I respectfully submit this paper for consideration by the professional land surveying community. More specifically, this paper addresses recent policy changes being advanced by the City Engineer of San Diego. These policies are reflected in a draft map-processing manual in addition to a series of unwritten policies being imposed on private surveyors as a condition of filing subdivision maps. These procedures include the treatment of historic lead and tacks, the determination of public right of ways and street centerlines, the reestablishment of curved roadways, and the breakdown of sectionized land. All of these procedures and policies appear to raise important legal questions. According to the city's official position on survey monuments:

> "We are not rejecting the lead and tack monuments. Quite the contrary, we are asking the surveyor to use the monuments as, in most cases, the best available evidence of parcel location. However, we are also asking that the surveyor resolve any inconsistencies that arise between the accepted monuments and surrounding surveys or monuments."
>
> "We are asking the surveyor to determine and establish the entire ownership of your client's property, including any reversionary rights within the street easement."
>
> "We are asking that the surveyor determine the relationship of a client's property to adjoining parcels."
>
> "The City is asking that the surveyor reserve to the public the full width of the dedicated right-of-way that overlays and encumbers the client's property, no more and no less. This requirement may change the common practice of some surveyors in downtown San Diego which allowed for a varying location and width for the public right-of-way."

It is also to be noted that:

> "The city has also indicated a willingness "to review this policy in terms of legal precedent and accepted survey practice. It may turn out that downtown San Diego is an exception to what is otherwise a statewide practice. If that is the case, then the City will accept and endorse the practice."

Based upon the City's unpublicized and unwritten implementation of this new policy, there is a sense of urgency in addressing this matter. Numerous maps have been filed under protest and duress. In order to place the professional surveyor's opposition to this new policy in perspective, I shall draw upon another opinion issued by Judge Cooley who, in 1881, wrote:

> " . . . there is no particular time that shall be required to conclude private owners, where it appears that they have accepted a particular line independently as their

> boundary, and all concerned have cultivated and claimed up to it. **Public policy requires that such lines be not lightly disturbed, or disturbed at all after the lapse of any considerable time.** The litigant, therefore, who in such a case pins his faith on the surveyor is likely to suffer for his reliance, and the surveyor himself to be mortified by a result that seems to impeach his judgment. Of course, nothing in what has been said can require a surveyor to conceal his own judgment, or to report the facts one way when he believes them to be another. He has no right to mislead, and he may rightfully express his opinion that an original monument was at one place, when at the same time he is satisfied acquiescence has fixed the rights of parties as if it were at another. **But he would do mischief if he were to attempt to "establish" monuments which he knew would tend to disturb settled rights;** the farthest he has a right to go, as an officer of the law, is to express his opinion where the monument should be, at the same time that he imparts the information to those who employ him and who might otherwise be misled, that the same authority that makes him an officer and entrusts him to make surveys, also allows parties to settle their own boundary lines, and considers acquiescence in a particular line or monument, for any considerable period, as strong if not conclusive evidence of such settlement. **The peace of the community absolutely requires this rule."**

The first substantive question involves the statement that "downtown San Diego is an exception to what is otherwise a statewide practice." This is a well-known fact; San Diego is not Los Angeles, nor is it San Francisco, Santa Barbara or for that matter, Detroit, Michigan. It is San Diego. Unique practices and standards are not uncommon in the surveying profession or any other profession for that matter. In recognition of these varying customs and practices, the Land Surveyors Act, the Subdivision Map Act, and common law all contemplate unique geographic standards. It is for this reason that the State of California issues licenses to qualified individuals. It is also for this reason that the law empowers the surveyor to exercise what is known as **"responsible charge of work"** which, is defined by Section 8703 of the Business and Professions Code as:

> " . . . the **independent control** and direction, by the use of initiative, skill, and **independent judgment**, of the observations, measurements, and descriptions involved in land surveying work."

What does it mean to exercise "independent control and judgment"? In a recent speech given by Deputy Attorney General Larry D. Thompson on October 28, 2002 in Washington, DC, to a group of lawyers, he notes:

> "(The) phrase "independent professional judgment" is, and ought to be, redundant. A professional lawyer, by definition, is a person retained to render independent judgment under the law. Indeed, among the ethical considerations that we, as attorneys, are urged to respect is the admonition that our professional judgment "be exercised solely for the benefit of the client and free of compromising influences and loyalties."
>
> "Giving independent judgment is more important than job security. Independent judgment is the only thing lawyers, as professionals, have to offer. Think about

> this: Without it, we are mere hired guns who trade off of the very integrity of our profession. What we see is that in many major corporate fraud cases, there are professionals - accountants, investment bankers, and, not least, attorneys - who were either complicit or negligent. We need to find out who they are and take whatever measures we can to answer the question that always comes up: Where were the professionals?"

According to the curriculum offered at the Paul M. Hebert Law Center, located at Louisiana State University, in commenting on the legal profession, the university staff notes:

> "The possession of a license is not enough, however; the attorney also must be free to exercise independent legal judgment. **The free exercise of independent judgment is a distinguishing characteristic of a professional.** Whether it is certifying a bridge as sound, diagnosing an illness, or giving a legal opinion, **only the person holding the appropriate license can legally make the professional decision.** A corporation cannot hold a professional license; neither can an unlicensed individual practice a profession by employing a license holder to ratify the layman's decisions. These strictures apply equally to physicians and attorneys, although the nature of professional judgment is easier to define for physicians. Since hospitals constantly deal with the issue of independent judgment with regard to physicians' services, this situation will be used to illustrate the principle of free judgment."

The Surveyor's certificate, required on a map, is as set forth in accordance with Section 66442.5 of the Subdivision Map Act and reads as follows:

> **"This map was prepared by me or under my direction and is based upon a field survey in conformance with the requirements of the Subdivision Map Act** and local ordinance at the request of (name of person authorizing map) on (date). I hereby state that this final map substantially conforms to the conditionally approved tentative map."

What this means is the surveyor who prepares the map does so by freely exercising this authority of responsible charge, issued by the State of California, and recognized by the courts. **The City Engineer does not prepare the map.** It is the private practitioner who is in responsible charge; he/she makes the decisions relative to the establishment of boundary lines. These same laws necessitate that the professional surveying community challenge City-Engineer dictated procedures that would mandate the procedures to be employed in the reestablishment of curved roadways, the mandated rejection of undocumented non-record monuments and the breakdown of sectionized land, all of which are being required as a condition of approving subdivision maps. Without belaboring the impropriety of these mandates, it is to be noted that the surveyor who prepares the map is in responsible charge and it is he/she who is going to be sued if a mistake or error is made in preparing the map. Will the city assume liability for the consequences of these mandates?

With regards to "the common practice of some surveyors" and the city's desire to "change" this practice, one is compelled to ask, under what authority does the city propose to undertake such a task and what are the implications of such a policy? More importantly, is such a policy legal? In order to answer to answer this question, we must determine where the City Engineer derives his/her authority. We do so by referring to the San Diego Municipal Code. Therein, select provisions provide as follows:

125.0601 Purpose of Final Map Procedures

The purpose of these procedures is to establish the process for approving application applications for final maps within the City and to supplement the provisions of the **Subdivision Map Act.**

125.0620 How to Apply for a Final Map

An applicant shall apply for a final map in accordance with Section 112.0102. The content and form of final maps shall conform to the provisions of the **Subdivision Map Act** and the Land Development Manual.

125.0630 Decision Process for a Final Map

(a) The City Engineer shall approve or deny a final map in accordance with the **Subdivision Map Act.**

By necessity, we must next examine Section 66416.5 of the Subdivision Map Act which defines the "City Engineer" as:

" (a) . . . the person authorized to perform the functions of a city engineer. **The land surveying functions of a city engineer may be performed by a city surveyor, if that position has been created by the local agency."**

"(b) A city engineer registered as a civil engineer after January 1, 1982, shall not be authorized to prepare, examine, or approve the surveying maps and documents. **The examinations, certifications, and approvals of the surveying maps and documents shall only be performed by a person authorized to practice land surveying pursuant to the Professional Land Surveyors Act** (Chapter 15 (commencing with Section 8700) of Division 3 of the Business and Professions Code) or a person registered as a civil engineer prior to January 1, 1982, pursuant to the Professional Engineers Act (Chapter 7 (commencing with Section 6700) of Division 3 of the Business and Professions Code)."

Section 8726 of the Land Surveyor's Act reads, in part, as follows:

"A person, including **any person employed by the state or by a city**, county, or city and county within the state, practices land surveying within the meaning of this chapter who, **either in a public or private capacity**, does or offers to do any one or more of the following:

“. . . (d) Makes any survey for the subdivision or resubdivision of any tract of land. For the purposes of this subdivision, the term "subdivision" or "resubdivision" shall be defined to include, but not be limited to, the definition in the Subdivision Map Act (Division 2 (commencing with Section 66410) of Title 7 of the Government Code) or the Subdivided Lands Law (Chapter 1 (commencing with Section 11000) of Part 2 of Division 4 of this code).”

What this means is the procedure and standards employed in both the preparation and review of subdivision maps is done so in accordance with the requirements of the Land Surveyors Act. The City Engineer and the private practitioner are all required to conduct their activities in accordance with these laws.

Returning to the Subdivision Map Act:

“66434. The final map shall be prepared by or **under the direction of a registered civil engineer or licensed land surveyor** . . . **“**

“66441. A statement by the engineer or surveyor responsible for the survey and final map is required. His or her statement shall give the date of the survey, state that the survey and **final map were made by him or her or under his or her direction, and that the survey is true and complete as shown . . .”**

“66442. (a) If a subdivision for which a final map is required lies within an unincorporated area, a certificate or statement by the county surveyor is required. If a subdivision lies within a city, a certificate or statement by the city engineer or city surveyor is required. The appropriate official shall sign, date, and, below or immediately adjacent to the signature, indicate his or her registration or license number with expiration date and state that:”

(1) He or she has examined the map.

(2) The subdivision as shown is substantially the same as it appeared on the tentative map, and any approved alterations thereof.

(3) All provisions of this chapter and of **any local ordinances applicable at the time of approval of the tentative map** have been complied with.

(4) He or she is satisfied that the map is technically correct.

An examination of local city ordinances does not allow for the City Engineer to impose survey procedures upon the private practitioner. With regards to the term *technically correct*, according to numerous interpretations of the subdivision map act across the state, it means assuring that the survey data, mathematical data, and computations are all correct. It means that the lots need to close, the geometry needs to work and the mathematics need to work. It does not mean dictating survey procedure. The limited scope and duties of the City Engineer are therefore defined and limited by law.

What then of a legitimate dispute between the City Engineer and the private practitioner? Section 8768 of the Business & Professions Code provides as follows:

> "If the matters appearing on the record of survey cannot be agreed upon by the licensed land surveyor or the registered civil engineer and the county surveyor [city engineer] within 10 working days after the licensed land surveyor or registered civil engineer resubmits and requests the record of survey be filed without further change, an explanation of the differences shall be noted on the map and it shall be presented by the county surveyor to the county recorder for filing, and the county recorder shall file the record of survey. **The licensed land surveyor or registered civil engineer filing the record of survey shall attempt to reach agreement with the county surveyor regarding the language for the explanation of the differences. If they cannot agree on the language explaining the differences, then both shall add a notation on the record of survey explaining the differences.** The explanation of the differences shall be sufficiently specific to identify the factual basis for the difference."

The law thus provides for a means of resolving disputes in preparing maps. Combined with the state mandated limitation upon the activities of the City Engineer, there are no legal provisions or basis in law for the City Engineer to dictate survey procedure, or to usurp the **independent responsible charge** required under state law. The State Board of Registration has ruled on this matter by noting the following:

> **"A county surveyor cannot require a professional land surveyor to change the methods or procedures used or require a field survey to verify the data shown on the record of survey."**

By definition, this mandate applies to the City Engineer. The procedure adopted on the map is done under the direction of a licensed individual, who, by utilizing his/her best judgment and expertise, determines the location of the tract boundaries. That is what licensed land surveyors do. They determine boundary lines. A subdivision map begins with a boundary survey; it is the first step in preparing a subdivision map. According to the subdivision map act:

> 66445. The . . . map shall be prepared by, or under the direction of, a registered civil engineer or licensed land surveyor, **shall show the location of streets and property lines bounding the property . . .**
>
> 66448. In all cases where a parcel map is required, **such map shall be based upon a field survey made in conformity with the Land Surveyors Act when required by local ordinance**, or, in absence of such requirement, shall be based either upon a field survey made in conformity with the Land Surveyors Act or be compiled from recorded or filed data when sufficient survey information exists on filed maps to locate and retrace the exterior boundary lines of the parcel map if the location of at least one of these boundary lines can be established from an existing monumented line.

> 66450. (a) If a subdivision for which a parcel map is required lies within an unincorporated area, a certificate or statement by the county surveyor is required. If a subdivision lies within a city, a certificate or statement by the city engineer or city surveyor is required. The appropriate official shall sign, date, and, below or immediately adjacent to the signature, indicate his or her registration or license number with expiration date and the stamp of his or her seal and state that . . . **He or she is satisfied that the map is technically correct.**
>
> 66474.10. If the legislative body or advisory agency determines that engineering or land surveying conditions are to be imposed on a tentative map or a parcel map for which a tentative map was not required, those conditions shall be reviewed by the city engineer, city surveyor, county engineer or county surveyor, as appropriate, **to determine compliance with generally accepted engineering or surveying practices.**

Merriam-Webster defines “generally” as:

> **“as a rule”**

Merriam-Webster defines “accepted” as:

> **“generally approved or used”**

Merriam-Webster defines “practices” as:

> **“a repeated or customary action: the usual way of doing something (local practices)**

In the event the City Engineer insists that the private surveyor adopt an unorthodox survey procedure, or a procedure the licensed practitioner is not comfortable with, the City Engineer is in violation of his mandate to “determine compliance with generally accepted engineering or surveying practices.” **The use of historic lead and tacks in determining right of way lines and boundary lines is the generally accepted surveying practice in San Diego. It is therefore the City Engineer’s legal duty to assure that the private surveyor uses the historic lead and tacks in their proper manner**.

To do otherwise, is contrary to the “common practice” of land surveyors in both the public and private sector. It is to be noted that city field surveyors use these historic lead and tacks in the same way as the private sector surveyors do. Collectively, these customs and practices are legally known as the “Standard of Care.” It is defined as:

> “The objective standard required of the reasonable person or the person of ordinary prudence. It covers all professional people, people practicing a trade or anyone carrying out work that requires a special skill. It covers anyone who claims to have a special skill, whether they are properly qualified or not. The standard of care is not a fixed "standard." **The standard of care varies with**

time, locale and circumstances, and depends on the specific practice being examined."

According to another legal treatise, when a person consults with a land surveyor, he/she is entitled to:

> ". . . the standard of advice to be expected of a careful and competent surveyor, even if the surveyor has only just qualified for practice. Regardless of the nature of the work, all surveyors are going to be held to the standard of all other surveyors. The standard of care is not what a surveyor should have done in a particular instance; it is not what others say a surveyor would do; it is not what others say they themselves would have done; **it is just what competent surveyors actually did in similar circumstances."**

As a matter of law and personal experience, a trier of fact, a judge or jury determines what the standard of care is and whether a surveyor has failed to achieve that level of performance. They do so by hearing *expert* testimony. I am a court-recognized expert in this area of practice. People who are qualified as experts express opinions as to the standard of care and as to the defendant surveyor's performance relative to that standard. The trier of fact weighs the testimony from all sides and decides in each case what the standard of care was and whether the defendant met it. According to another discourse:

> "In performing professional services for a client, a (surveyor) has the duty to have that degree of learning and skill ordinarily possessed by reputable (surveyors), practicing in the same or similar locality and under similar circumstances."

In an article entitled "Duty of a Professional," published in Civil California Jury Instructions by West Publishing Company in January 1986. (The BAJI (Bench Approved Jury Instruction) 6.37), the following is noted:

> "It is (the surveyor's) further duty to use the care and skill ordinarily used in like cases by reputable members of the (surveying) profession practicing in the same or similar locality under similar circumstances, and to use reasonable diligence and (the surveyor's) best judgment in the exercise of professional skill and in the application of learning, in an effort to accomplish the purpose for which (the surveyor) was employed."

If any one of these conditions is not met, the surveyor will have failed to meet the standard of care, and as such, he/she is professionally negligent. In Paxton v. County of Alameda (1953) 119 C. A. 2d 393, 398, 259 P. 2d 934, the court ruled:

> "Engineers have a duty to provide their services in a manner consistent with the "standard of care" of their professions. A good working definition of the standard of care of a professional is: that level or quality of service ordinarily provided by other normally competent practitioners of good standing in that field, contemporaneously providing similar services in the same locality and under the same circumstances."

What then is the standard of care relative to the use and acceptance of historic lead and tacks? In order to answer this question, we need to ascertain how these monuments were set. A simple inquiry informs us that for the most part, the City Engineer set them in the 1930's as part of a WPA project. An examination of original survey notes and records discloses that they were based upon original record monuments and at other times, as the product of various survey methods. Regardless of how they were established, the work has withstood the test of time. These surveys were well performed and of extraordinary quality. In the end, they have historically been accepted as the "best available evidence" as to the location of lots, blocks, streets and subdivisions within the City of San Diego. It is of importance to note that the most prominent advocate for the use of the old lead and tacks is the City Engineer's office. Moreover, they have properly insisted that these old monuments be used when preparing subdivision maps. By doing so, the City Engineer has fulfilled his/her obligations under the Subdivision Map Act and the Land Surveyors Act. In light of the current mandate, this raises an interesting question for consideration by the court. The City set these monuments and relied upon them for 70 years in improving and developing public streets. Up until the last few months, these markers have been uncontested. How then would the City Engineer respond to a lawsuit challenging his recent decision to reject his previous work? How does he defend this decision when the City's field survey section disagrees with this policy as evidenced by the many surveys they file and perform every day?

In order to appreciate the importance placed upon these monuments, I have consulted with a great many surveyors, public and private, in addition to Boundary Control and Legal Principles written by Curtis M. Brown, Walter G. Robillard, and Donald Wilson. Therein, the following principles, drawn heavily from case law, are espoused.

> **6.11 Control of Original Monuments Within a Subdivision**
>
> ***Principle.*** *In a lot and block description subdivision monuments called for on the plat, or monuments set by others and known to perpetuate the position of the original monuments called for, if properly identified and undisturbed, control the position of the original lot lines.*

In connection with this subject, Brown cites Justice Hand, a contemporary of Justice Cooley. Therein he notes:

> "In case of a disputed boundary line in a town, city or village, where the monuments from which the town, city or village was platted are lost or destroyed, **the courts ought not to disturb boundary lines between the lot owners which have been acquiesced in for years and upon which the lot owners have erected improvements."**

One is inevitable compelled to ask, what right then does the City have to "disturb boundary lines . . . which have been acquiesced in for years and upon which the lot owners have erected improvements"? It would appear as if there is no authority for such a practice. Brown, et al also cites more principles:

> **6.19 Establishment of Streets**

"Streets are established by the following methods listed in their usual order of importance:

(a) by natural improvements;
(b) by artificial monuments and lines actually run at the time of making the plat;
(c) by improvements;
(d) by the line of nearby streets where called for;
(e) **by the data given on the plat**; and
(f) as a last resort, by proportionate measure.

I note that the establishment of street lines by the data given on the plat, i.e. by holding the record dimension is second to last in order of importance. It is essentially a principle of last resort. Why then has the City Engineer elevated it to the highest order of importance? By doing so, according to Brown, a new series of problems are created. He notes:

"Since the lines of streets and blocks are usually one and the same thing, the establishment of street lines normally establishes block corners."

What then are the consequences of establishing a new street line by the City Engineer's new method as opposed to by conventional surveying procedure? Because the new street line would normally establish a new block corner, does this new block corner not serve as the basis for the subsequent resubdivision of the interior lots? If so, what does the new block subdivision and measurements do to the intervening lots located within the block particularly given the fact that the intervening lots were all surveyed in accordance with the historic lead and tacks. Absent any intervening monuments, do not the new block corners create new lot lines? Brown notes:

6.24 Establishment of Streets by Plat

Principle. *In the absence of evidence covered by the foregoing principles, the exact width of the street as given on the plat and the distances and angles are presumed to govern street location. Occasionally a measurement index is applied.*

In the absence of monuments, streets are given the width called for on the plat, regardless of excess or deficiency that may exist within a subdivision.

Brown also thought it important to comment on the work of the City Engineer. He and his associates note:

6.26 Establishment of Streets by City Engineers' Monuments

Principle. Offset monuments set by the city engineer to perpetuate the position of the original monuments of the original surveyor control street lines. Offset monuments not based upon adjacent original monuments are afforded

control only in proportion to the accuracy with which they were set in accordance with the foregoing rules. ***City engineers' monuments long acquiesced to are presumed to be correct; the contrary must be proved.***

". . . it can be said the city engineers' monuments are not controlling where they were not correctly set with reference to the original stakes. **When, however, city engineers' monuments have long been acquiesced in and used by surveyors and the public, they will be *presumed to be correct* and may be *prima facie* evidence except when the contrary can be shown."**

I note that the definition of *prima facie* is:

1. True, authentic, or adequate at first sight; ostensible: *prima facie credibility.*
2. Evident without proof or reasoning; obvious: *a prima facie violation of the treaty.*

6.30 Excess or Deficiency Confined to a Block

Principle. Excess or deficiency occurring within a block should not be prorated among other blocks.

"Excess or deficiency in the land platted into lots, blocks, and streets along with an absence of original markers does not always indicate that intervening streets should be located by proration. If possible, each block should be treated as distinct and the shortage or surplusage therein apportioned among the lot owners. Proration is a principle of last resort, and once a street is established by one of the means previously discussed, the street lines are unchangeable . . . Under this principle the surveyor is prohibited from going beyond the limits of the specific block.

Returning to the subdivision map act:

66495. At the time of making the survey for the final map or parcel map unless the survey is not required pursuant to Section 66448, **the engineer or surveyor shall set sufficient durable monuments to conform with the standards described in Section 8771 of the Business and Professions Code** so that another engineer or surveyor may readily retrace the survey. He shall also set such additional monuments as may be required by local ordinance. The local agency shall require that at least one exterior boundary line of the land being subdivided be adequately monumented or referenced before the map is recorded.

Section 8771 of the B&P code provides as follows:

" . . . Monuments set shall be sufficient in number and durability and efficiently placed so as not to be readily disturbed, to assure, together with monuments already existing, the **perpetuation or facile reestablishment** of any point or line of the survey.

" (b) When monuments exist that control the location of subdivisions, tracts, boundaries, roads, streets, or highways, or provide survey control, the monuments shall be located and referenced by or under the direction of a licensed land surveyor or registered civil engineer prior to the time when any streets, highways, other rights-of-way, or easements are improved, constructed, reconstructed, maintained, resurfaced, or relocated, and a corner record or record of survey of the references shall be filed with the county surveyor. They shall be reset in the surface of the new construction, a suitable monument box placed thereon, or permanent witness monuments set to perpetuate their location if any monument could be destroyed, damaged, covered, or otherwise obliterated, and a corner record or record of survey filed with the county surveyor prior to the recording of a certificate of completion for the project. **Sufficient controlling monuments shall be retained or replaced in their original positions to enable property, right-of-way and easement lines, property corners, and subdivision and tract boundaries to be reestablished without devious surveys necessarily originating on monuments differing from those that currently control the area.** It shall be the responsibility of the governmental agency or others performing construction work to provide for the monumentation required by this section. It shall be the duty of every land surveyor or civil engineer to cooperate with the governmental agency in matters of maps, field notes, and other pertinent records. Monuments set to mark the limiting lines of highways, roads, streets or right-of-way or easement lines shall not be deemed adequate for this purpose unless specifically noted on the corner record or record of survey of the improvement works with direct ties in bearing or azimuth and distance between these and other monuments of record.

(c) The decision to file either the required corner record or a record of survey pursuant to subdivision (b) shall be at the election of the licensed land surveyor or registered civil engineer submitting the document.

In order to better comprehend the meaning of Section 8771, we must rely on the appropriate definitions. "Perpetuate" means "To prolong the existence of; cause to be remembered." "Devious" means: "Not straightforward; shifty. **Departing from the correct or accepted way**; erring."

We should also consider the requirements imposed upon a surveyor when he/she prepares an ALTA survey. According to the Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys as adopted by the American Land Title Association American Congress on Surveying & Mapping and National Society of Professional Surveyors in 1999, the surveyor is required to show amongst other things:

"(i) The character and location of all walls, buildings, fences, and other visible improvements within five feet of each side of the boundary lines shall be noted. Physical evidence of all encroaching structural appurtenances and projections, such as fire escapes, bay windows, windows and doors that open out, flue pipes, stoops, eaves, cornices, areaways, steps, trim, etc., **by or on adjoining property or on abutting streets**, on any easement or over setback lines shall be indicated with the extent of such encroachment or projection . . ."

What method do you employ? More importantly, what methods have the surveying community employed over the last seventy years? How has the surveying community historically disclosed such encroachments and what have they used as the basis for this disclosure? How many of you have prepared ALTA surveys making such disclosures? Are you prepared to contact your client tomorrow and inform them that your first survey was in error or incorrect and now, their 100-unit condominium building encroaches into the public right of way that you agreed to relocate without any basis in law? What did they pay you for when you laid the building out? What are your liabilities and responsibilities? What if you are not engaged to perform the second survey? What if another surveyor unadvisably adopts the city's methodology and you are contacted by the developer's lawyer who is relying on that other surveyor's report? How do you answer these questions and what will it cost you to file these answers?

What of Records of Survey? Because the County of San Diego reviews and comments on the procedure of survey employed in preparing a Record of Survey map, he/she will insist upon an explanation by the private surveyor when he/she attempts to file a survey map wherein the historic lead and tacks are rejected. How does a private surveyor justify the use of a new procedure when he/she may have filed a Record of Survey on the same property six months earlier using proper surveying procedure? Regardless of the consequences of these actions, the City Engineer and the private practitioner are all obligated to comply with generally accepted surveying practices. What are the consequences if you fail to meet this standard of care? According to the Board Rules Regulating the Practice of Professional Land Surveying in California, *Standard of Care* is discussed as follows:

> "It is generally held that a professional land surveyor, in addition to statutory duties, owes a fiduciary duty of loyalty and good faith to a client. The professional land surveyor possesses special skill and ability upon which the client or any other person can reasonably rely. **A professional land surveyor can be held liable for a breach of duty or obligation."**

Other directives issued by the Board include the following discussions on negligence and incompetence:

> "A professional land surveyor is responsible to clients for an injury resulting from an absence of ordinary care or skill. It is generally held that **a professional land surveyor, due to special skill and ability, must exercise the same standard of care and competence as other professional land surveyors.** A professional land surveyor should anticipate that a person other than a client might use and rely on a survey. A professional land surveyor can be found liable to the third party for negligently performing a survey."
>
> "Incompetence is generally a lack of knowledge or ability in discharging professional obligations."
>
> "The Board may suspend a license for up to two (2) years or revoke a license when it finds a professional land surveyor or registered civil engineer guilty of . . .

> Fraud, deceit, negligence, or incompetence while performing land surveying services."

Based upon the above, under what authority then does the City Engineer propose to compel licensed land surveyors to change the "standard of care" when it has already been defined? The Land Surveyor's Act sets forth the following:

> "8780. The board may receive and investigate complaints against licensed land surveyors and registered civil engineers, and make findings thereon."
>
> "By a majority vote, the board may reprove, suspend for a period not to exceed two years, or revoke the license or certificate of any licensed land surveyor or registered civil engineer, respectively, licensed under this chapter or registered under the provisions of Chapter 7 (commencing with Section 6700), whom it finds to be guilty of:
>
> "(a) Any fraud, deceit, or misrepresentation in his or her practice of land surveying."
>
> **"(b) Any negligence or incompetence in his or her practice of land surveying."**
>
> "(c) Any fraud or deceit in obtaining his or her license."
>
> **"(d) Any violation of any provision of this chapter or of any other law relating to or involving the practice of land surveying."**
>
> "(e) Any conviction of a crime substantially related to the qualifications, functions, and duties of a land surveyor. The record of the conviction shall be conclusive evidence thereof."
>
> "(f) Aiding or abetting any person in the violation of any provision of this chapter."
>
> "(g) A breach or violation of a contract to provide land surveying services."
>
> **"(h) A violation in the course of the practice of land surveying of a rule or regulation of unprofessional conduct adopted by the board."**

The Board also states that it will

> ". . . rely upon the expert opinion of members of the engineering and land surveying industry to determine when a violation of the standard has occurred. This is the same practice that has always existed with respect to Board cases involving negligence and incompetence."

Let us finally examine complaints prosecuted by the State Board.

Edwin Terry Holbert, Land Surveyor L 5448
Accusation 592-A
Effective December 18, 1995: License revoked
Effective July 19, 1999: License reinstated, three years on probation
Effective July 9, 2001: probation extended one year

The Board found that Holbert, in August 1991, entered into an oral contract to perform land surveying on property located in Riverside. Holbert agreed to establish where the legal property line was and then have a corner record recorded with the Riverside County Surveyor's Office. Holbert performed the survey work and prepared a corner record diagramming the property and the lot line in question. He gave his client a copy of the corner record and was paid in full in January 1992. In early 1992, the client learned that no record had been submitted to the County. It was found that even if Holbert had submitted a corner record, it would have been insufficient. A record of survey was required because Holbert established a reference point to a line in his survey that was not previously shown on any subdivision map, official map, or record of survey previously recorded.

The corner record further referenced a solid boundary line that is two feet over from the original dashed line shown on an earlier map. Holbert also showed points and established a corner that was not on any other official map. Holbert should have known that a record of survey was necessary since he was asked to establish a line that was not shown on any previously recorded map.

Additionally, it was found that, in March 1993, Board staff notified Holbert that he was required to file a record of survey; in the fall of 1993, Holbert submitted the record of survey to the county. The County Surveyor returned the record of survey with numerous notations about the mistakes that Holbert had made and the corrections that were necessary in order for it to be recorded. Holbert resubmitted the record of survey in March 1994 but failed to make the required corrections. The county again rejected the Record of Survey. In May 1994, Holbert resubmitted the record of survey but had still failed to make the required corrections; the record was again rejected by the County. To date, no record of survey has been recorded, even though Holbert completed the project more than three and one-half years ago.

It was also found that the land surveying work performed by Holbert on the corner record was below the industry standard of care for land surveyors in the Riverside County area in that it contained numerous errors and discrepancies. The corner record Holbert prepared contained information about monuments that, upon inspection, revealed that they had not actually been uncovered and actually looked at by Holbert; he fabricated the information about such monuments. It was further found that **the land surveying work performed by Holbert on the record of survey was below the industry standard of care for land surveyors in the Riverside County area in that it contained numerous errors, inconsistencies, and misrepresentations.**

Based on these findings, it was determined that Holbert violated Business and Professions Code section 8780(a) for incompetence, negligence, fraud, and deceit in the

practice of land surveying and Business and Professions Code sections 8780(c) and 8762 for failing to timely file a Record of Survey as required by law and that cause exists to discipline his license as a land surveyor. It was also determined that cause exists to revoke his probation as ordered in case number 513-A in that he violated the conditions of probation by acting in an incompetent, negligent, fraudulent, and deceitful manner on the project in question (failure to obey all laws and regulations related to the practice of professional land surveying).

The Board revoked Holbert's license, effective December 18, 1995. It also granted the Petition to Revoke Probation and **ordered that costs in the amount of $5,207.25 be awarded to the Board.**

On June 4, 1999, the Board heard Holbert's petition for reinstatement of his license. The Board concluded Holbert has become sufficiently rehabilitated so it would not be against the public interest to reinstate his license on a probationary basis, subject to terms and conditions including, among others, that he successfully complete and pass a course in professional ethics by July 19, 2002, and provide the Board with the names and addresses of all persons or entities with whom he has a contractual or employment relationship involving the practice of professional land surveying and evidence that he has served all such persons and entities with a copy of the Board's decision; and pay the previously-ordered costs of $5,207.25 to the Board.

Effective July 9, 2001, Holbert's probation was extended for one year. Holbert must successfully complete and pass a course in professional ethics, approved in advance by the Board or its designee, by July 19, 2002. Holbert must provide the Board with verifiable proof that he has successfully completed and passed such a course.

Donald H. McMath, Land Surveyor LS 4750
Citation 96-0105-LS
Final: July 2, 1996
Action: Order of Abatement

Donald H. McMath, of Yorkville, California, was cited for violation of Business and Professions Code sections 8762, 8764(b)-(g), and 8780(c). Investigation of a complaint filed about a survey performed in Mendocino County revealed that McMath failed to file the Record of Survey within the 90-day time limit, filing it subsequently in Mendocino County Records. Also, he failed to disclose necessary pertinent data relative to the line between sections 4 and 33, T 14 N, R 15 W, MDM, on the Record of Survey. Upon receipt of the citation, McMath requested an Informal Conference, which was held on June 20, 1996. It was concluded that although McMath's methods of performing the actual survey were carried out in an appropriate manner and generally met the standard of practice, he did not disclose key information relative to the previously described line on the Record of Survey. The information and its acceptance or rejection are key elements for use in determining whether alternate positions of points or lines may exist other than the ones adopted and shown on McMath's Record of Survey. Neither the client, the adjacent neighbor, nor the County Surveyor had sufficient disclosure of that information, which should have been shown on the Record of Survey, to allow them to determine if

the omitted evidence would lead them to suspect that another boundary line may have been possible. **Consequently, it was determined McMath was negligent in the practice of land surveying because he departed from the standard of practice.**

William J. Hanks, Land Surveyor L 6883
Accusation 646-A
Effective October 7, 2000: Revoked, revocation stayed, two years on probation

The Board found Hanks' license, L6883, subject to discipline under Business and Professions Code section 8780. Hanks prepared a record of survey in Indio, California. **Hanks violated the standard of care incumbent on licensed land surveyors by not referring to a possible alternate boundary in his record of survey.** He also failed to note a long established line of occupation in his record of survey. Hanks obstructed the filing of the record of survey by removing his check payable to the Riverside County Recorder's Office.

Following a hearing on this matter, the Board ordered Hanks' license revoked but stayed the revocation and **placed Hanks on probation for two years. Hanks must pay $11,318 for the Board's costs of investigation and enforcement.** He must also complete of a minimum of one Board-approved college-level course specifically related to government regulation and administration. Additionally, Hanks was ordered to complete and pass a Board-approved course in professional ethics within one year.

Vasant Turkaram Sande, Civil Engineer C32152
Accusation 692-A
Effective February 5, 2001: Revoked, revocation stayed; 30-day actual suspension, three years on probation

The Board has issued a Decision, adopting a stipulated settlement in which Sande agreed that he understands that the charges and allegations in Accusation 692-A constitute cause for imposing discipline upon his license and that he understands that signing the stipulation enables the Board to impose such disciplinary action. In 1996, Sande entered into a verbal contract with a consumer in the County of Orange, agreeing to make a lot line survey to determine if the on-going construction on the consumer's property was within the property boundaries. Sande surveyed the property and set stakes on the property directly adjacent to the channel to show the southwesterly boundary of the property, but did not set monuments or file a record of survey or corner record with the County of Orange concerning the establishment of the southwesterly property boundary. Sande also failed to obtain the correct legal description and the records cited in the legal description for the property. He failed to review the deeds and records of adjacent parcels, failed to perform additional research at the County Surveyor's Office for other Records of Survey, other recorded maps, and the County Surveyors tie books. **He did not perform a property line survey consistent with industry standards.** Sande also failed to file a Record of Survey after stating a Record of Survey was required following his survey.

The Board revoked Sande's civil engineer license. However, this revocation was stayed, and he was placed on probation for a period of three years under certain terms and conditions. One of these conditions was a 30-day actual suspension of his license. Additionally, within one year of the effective date of the decision, **Sande was required to pay restitution to the consumer in the amount of $2,000.** In addition, **Sande was required to reimburse the Board for the costs of the investigation in the amount of $6,700** within two years of the effective date of the decision in this matter. Furthermore, Sande was required to successfully complete, within two years of the effective date of the decision, a college-level course, approved in advance by the Board or its designee, specifically related to the area of violation.

Finally, let us next examine the court's ruling when the City Engineer refuses to approve a final map for reasons other then a review under the law. I will draw on three important cases, all of which clearly define the City Engineer's obligations. One was a Supreme Court decision that surfaced here in San Diego County and the other is an appellate decision that surfaced in Los Angeles. The Supreme Court case is entitled:

Youngblood v. Board of Supervisors, 22 Cal.3d 644

[L.A. No. 30868. Supreme Court of California. November 20, 1978.]

JAMES H. YOUNGBLOOD et al., Plaintiffs and Appellants, v. BOARD OF SUPERVISORS OF SAN DIEGO COUNTY, Defendant and Respondent; SANTA FE COMPANY et al., Real Parties in Interest and Respondents.

[L.A. No. 30869. Supreme Court of California. November 20, 1978.]

WALTER S. ZABLE et al., Plaintiffs and Appellants, v. BOARD OF SUPERVISORS OF SAN DIEGO COUNTY, Defendant and Respondent; SANTA FE COMPANY et al., Real Parties in Interest and Respondents

(Opinion by Tobriner, J., expressing the unanimous view of the court.)

COUNSEL

Jonathan C. Gibson, Russell J. Clark, Stanley W. Legro and Legro, Rentto, Pate & Tower for Plaintiffs and Appellants.

Evelle J. Younger, Attorney General, R. H. Connett, E. Clement Shute, Assistant Attorneys General, Roderick Walston, Mark I. Weinberger and William M. Chamberlain, Deputy Attorneys General, Brian L. Forbes and Gray, Cary, Ames & Frye as Amici Curiae on behalf of Plaintiffs and Appellants.

Donald L. Clark, County Counsel, and John McEvoy, Deputy County Counsel, for Defendant and Respondent.

Milch, Wolfsheimer & Wagner, James S. Milch, Higgs, Fletcher & Mack and Ferdinand T. Fletcher for Real Parties in Interest and Respondents.

Acret & Perrochet, James M. Baratta, Harry N. Zavos, William H. Kronberger, Jr., Ronald A. Zumbrun, Donald M. Pach, Thomas E. Hookano, Turner & Sullivan, James P. Corn, Gary G. Kreep, Ogle, Gallo & Merzon, James B. Merzon, Asaro & Keagy, Richard R. Freeland and Charles Campbell as Amici Curiae on behalf of Defendant and Respondent and Real Parties in Interest and Respondents.

> "These consolidated cases involve the Rancho Del Dios subdivision in West-central San Diego County. On December 10, 1974, the Board of Supervisors of San Diego County approved a tentative subdivision map providing for one-acre lots, a land use permitted by the then zoning and general plan. On December 31, however, the county amended its general plan to limit density for Rancho Del Dios to one dwelling unit for each two acres; thus when the county approved the final subdivision map on October 25, 1975, the subdivision did not conform to the existing general plan. [22 Cal.3d 648]"
>
> "Plaintiffs, neighbors of the subdivision, filed two mandamus actions against the board of supervisors; both suits contend that the board acted illegally in approving the tentative and final maps and that it was under a mandatory duty to rezone the subdivision to conform to the new general plan. In Youngblood v. Board of Supervisors the trial court sustained a general demurrer without leave to amend to the application for writ, and entered judgment for defendants; this appeal followed. In Zable v. Board of Supervisors the court sustained a demurrer on the ground of another action pending and stayed further proceedings; the Zable plaintiffs appeal from that order."
>
> "While the appeal was pending before this court, the board of supervisors amended the zoning for Rancho Del Dios to conform to the general plan, thus mooting the principal issue of this appeal. The only remaining issue relates to the board's approval of the tentative and final subdivision maps. With respect to those issues, we hold that the board did not act unlawfully in approving the tentative map; once the developer complied with the conditions attached to that approval and submitted a final map corresponding to the tentative map, the board performed a ministerial duty in approving the final map. We therefore affirm the judgment of the superior court in Youngblood v. Board of Supervisors. Because plaintiffs in Zable v. Board of Supervisors have attempted to appeal only from a trial court order sustaining a demurrer -- a nonappealable order -- we dismiss the appeal in that action."
>
> "**The board's decision approving the final subdivision map is a ministerial act reviewable by ordinary mandamus pursuant to Code of Civil Procedure section 1085. (See Great Western Sav. & Loan Assn. v. City of Los Angeles (1973) 31 Cal.App.3d 403, 414 [107 Cal.Rptr. 359].)"**

Merriam-Webster defines *ministerial* as:

> **(a) being or having the characteristics of an act or duty prescribed by law as part of the duties of an administrative office.**
>
> **(b) relating to or being an act done after ascertaining the existence of a specified state of facts in obedience to a legal order without exercise of personal judgment or discretion.**

Merriam-Webster defines *discretion* as:

> **"individual choice or judgment (left the decision to his discretion)"**

The Los Angeles case is entitled:

Great Western Sav. & Loan Assn. v. City of Los Angeles , 31 Cal.App.3d 403

[Civ. No. 39599. Court of Appeals of California, Second Appellate District, Division Five. March 29, 1973.]

GREAT WESTERN SAVINGS AND LOAN ASSOCIATION, Plaintiff and Respondent, v. CITY OF LOS ANGELES et al., Defendants and Appellants

(Opinion by Ashby, J., with Kaus, P. J., and Stephens, J., concurring.)

COUNSEL

Roger Arnebergh, City Attorney, John Daly, Claude E. Hilker, Assistant City Attorneys, and George G. Buchanan, Deputy City Attorney, for Defendants and Appellants.

Edythe Jacobs as Amicus Curiae on behalf of Defendants and Appellants.

E. Arnold Oppenheim for Plaintiff and Respondent.

> "No factual matters have been raised by this appeal. The issues before us are strictly questions of law. Appellants state the basic question presented by this appeal as follows: "Do the courts of this state have the jurisdiction to mandate the Los Angeles City Council under the facts of this case to approve the subject final subdivision tract map or is the ultimate determination thereon a matter solely within the discretion of the governing body." [31 Cal.App.3d 408]
>
> "The court in Ellis v. City Council, 222 Cal.App.2d 490 [35 Cal.Rptr. 317], dealt with the performance of a mandatory duty. The court held that a building official had a mandatory duty to issue a building permit when the applicant had complied with all legal requirements upon which the issuance was conditioned. The court, at page 497, held: "Appellant next contends that the evidence conclusively

established that the denial of appellant's application for a renewal or for a new building permit was both a ministerial and an intentional act and that the trial court's findings to the contrary are therefore erroneous. We agree. In Palmer v. Fox (1953) 118 Cal.App.2d 453 [258 P.2d 30], the plaintiffs, having fully complied with all legal requirements, applied to the deputy chief engineer of the City of Palos Verdes Estates for the issuance of a building permit. The deputy, although fully empowered to grant such a permit, refused to do so. In affirming the judgment granting plaintiffs a writ of mandate, the court held that the deputy had no right or duty to withhold the permit when plaintiffs had complied with the prerequisites for its issuance. **'When an official is required and authorized to do a prescribed act upon a prescribed contingency, his functions are ministerial only, and mandamus [31 Cal.App.3d 410] may be issued to control his action upon the happening of the contingency.'** (P. 458.) (To the same effect, see Munns v. Stenman (1957) 152 Cal.App.2d 543, 557 [314 P.2d 67].)"

Merriam-Webster defines *Mandatory* as:

"containing or constituting a command**:** obligatory."

"It is clear that the governing body's function is administrative, ministerial and mandatory where the final tract map complies with the state and local laws and has complied with the conditions to the tentative tract map. The fact that approval is automatic if the governing body takes no action within the 10-day period is significant in that the automatic approval provided for in Business and Professions Code section 11611 is effective only if the final tract map "conforms to all requirements above set forth, ..." The mere fact that the governing body takes no action within the prescribed time is not sufficient. The final map must be in conformance but if it is, it is approved even without action by the governing body to either approve the final map or determine its conformance to laws and conditions."

"Where a statute or ordinance clearly defines the specific duties or course of conduct that a governing body must take, that course of conduct becomes mandatory and eliminates any element of discretion. Elder v. Anderson, 205 Cal.App.2d 326 [23 Cal.Rptr. 48]; Drummey v. State Bd. of Funeral Directors, 13 Cal.2d 75 [87 P.2d 848]."

"For the reasons already stated, we hold that the acceptance by the city council and the recording by the city clerk of a final tract map which complies with the applicable state and local law and the tentative map [31 Cal.App.3d 415] with conditions are administrative and ministerial actions, the performance of which may properly be mandated by the superior court."

"In conclusion of law number 3, the court stated: "The City Council in its action of March 24, 1971 disapproving said Final Map, failed to comply with the mandatory provisions contained in §§ 11611 and 11614 of the Business and Professions Code of the State of California, and of the provisions contained in §

17.07 of the Municipal Code of The City of Los Angeles. The duties and obligations of the members of the City Council under said sections of the law, required to be performed by them with reference to the approval and acceptance for recordation of the Final Map of Tract 30561, is administrative, ministerial and mandatory. **The City Council was vested with no discretionary rights permitting said governmental body to disapprove said Final Map if the state and the local laws and the tentative tract map conditions were complied with.** [¶] Other than (1) the failure to comply with the conditions imposed for approval of the Tentative Map, or (2) approval of the Tentative Map by reason of fraud, misrepresentation or withholding of vital information (neither of which is supported by the evidence), the reasons given by the City Council for its disapproval of the Final Map of Tract 30561 do not vest in the Council the authority to deny approval of the Final Map."

"The Subdivision Map Act sets forth the procedures and requirements to be followed for the subdivision of real property in California. The act requires every county and city in the State of California to adopt an ordinance regulating and controlling the design and improvement of subdivisions. When adopted, **that ordinance must be "consistent with and not in conflict with" the Subdivision Map Act.** (Bus. & Prof. Code, § 11506.)"

It is therefore evident that **the City Engineer cannot deny approval of the final map if it meets the requirements of the tentative map and it is deemed to be technically correct.** If the City Engineer refuses to file a final map, the court can issue a *writ of mandamus* compelling the city to record the map. *Mandamus* is defined as: **"**The name of a writ which issues from a court of superior jurisdiction, directed to an inferior court, **commanding the performance of a particular act."**

In another local case:

Kriebel v. City Council (1980) 112 Cal.App.3d 693 , 169 Cal.Rptr. 342

[Civ. No. 22373. Court of Appeals of California, Fourth Appellate District, Division One. November 26, 1980.]

HORST KRIEBEL et al., Plaintiffs and Appellants, v. CITY COUNCIL OF THE CITY OF SAN DIEGO, Defendant and Respondent; T. H. NIELSEN CORPORATION, Real Party in Interest and Respondent.

(Opinion by Butler, J., with Staniforth, Acting P. J., and Wiener, J., concurring.)

COUNSEL

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John W. Witt, City Attorney, and James J. Thomson, Deputy City Attorney, for Defendant and Respondent.

McDonald, Hecht & Worley, Donald R. Worley and Paul E. Robinson for Real Party in Interest and Respondent.

> The Subdivision Map Act (Gov. Code, §§ 66410-66499.37) requires cities and counties to adopt ordinances regulating and controlling the design and improvement of subdivisions (Gov. Code, § 66411). San Diego has enacted such an ordinance (12066 NS) set out in section 102.0201.6 et seq. of the Municipal Code. Provisions of the Subdivision Map Act as to tentative and final maps are incorporated within the ordinance. Procedures for processing tentative maps and the requirements for such maps are those provided for in the Subdivision Map Act. Final maps are likewise processed under those procedures. The ordinance does not reserve to the Council discretion as to approvals of final maps. **Accordingly, final maps are required to be approved by the Council if all of the requirements of the Subdivision Map Act and of the ordinance have been met.** This necessarily includes the requirement that all of the conditions of the tentative map have been fulfilled. **Approval of the final map in these circumstances is a ministerial act** (Great Western Sav. & Loan Assn. v. City of Los Angeles (1973) 31 Cal.App.3d 403 [107 Cal.Rptr. 359]). Approval of the final map in effect is a confirmation that the tentative map requirements have been fulfilled. Save El Toro Assn. v. Days (1977) 74 Cal.App.3d 64

On a final note, on April 12, 2003, the California Board for Professional Engineers and Land Surveyors adopted the following:

> "For the sole purpose of investigating complaints and making findings thereon under Sections 6775 and 8780 of the Code, **"incompetence"** as used in Sections 6775 and 8780 of the Code is defined as the lack of knowledge or ability in discharging professional obligations as a professional engineer of land surveyor."
>
> "For the sole purpose of investigating complaints and making findings thereon under Sections 6775 and 8780 of the Code, **"negligence" as used in Sections 6775 and 8780 of the Code is defined as the failure of a licensee, in the practice of professional engineering or land surveying to use the care ordinarily exercised in like cases by duly licensed professional engineers and land surveyors in good standing."**

As Professional Land Surveyors, we must therefore all act accordingly.