



# **Technical Article**

## **The Ministerial Duties and Obligations Of the City Engineer / City Surveyor in Reviewing and Signing Final Maps**

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# THE MINISTERIAL DUTIES AND OBLIGATIONS OF THE CITY ENGINEER/CITY SURVEYOR IN REVIEWING AND SIGNING FINAL MAPS

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A Supreme Court decision, several appellate court decisions and the State Attorney General's office have opined that the City Engineer/City Surveyor's duties in reviewing and signing final maps is limited to a ministerial review and as such, he/she is prohibited from exercising any discretionary action in carrying out these duties. In the AG ruling, issued as opinion No. 90-602 on October 30, 1990, Attorney General John K. Van De Kamp ruled:

“The approval of a final map is a ministerial function once the tentative map has been approved or the conditions fulfilled with respect to a conditionally approved tentative map.”

It is to be noted that Merriam-Webster's Dictionary 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.

Additionally, Merriam-Webster defines discretion as:

“individual choice or judgment (left the decision to his discretion)”

In deference to further discussion, Merriam-Webster defines *Mandatory* as:

“containing or constituting a command: obligatory.”

According to the Supreme Court case entitled “Youngblood v. Board of Supervisors,” 22 Cal.3d 644, [L.A. No. 30868. Supreme Court of California. November 20, 1978.], the court noted:

**“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].)”**

The Los Angeles appellate case, 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.] ruled:

“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]

**“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].)”

**“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.”

In a San Diego case entitled “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.]

**“. . . 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](#)

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.” The City Engineer’s/Surveyor’s duties are limited to reviewing the map to assure that the lots close, that there are no spelling errors, that the references agree with the source documents and that the jurats are all in accordance with the subdivision map act and local ordinance.

In the interest of examining this opinion, in event the reader wishes to challenge the conclusions reached in this paper, please contact me so that opposing points can be considered and, if need be, debated. Otherwise, it shall be assumed that the reader agrees with the above conclusions.