

Memorandum

099222653

To: HOWARD BRUNNER, PLS
Land Surveyor Consultant
Board of Registration for Professional Engineers
and Land Surveyors

Date: August 30, 1999

Telephone: (916) 445-4216
CNET: 8-485-4216
FAX: (916) 323-0971

From: Department of Consumer Affairs
Legal Office

Subject: Record of Survey Filing Requirements and the Discovery of Unrecorded Monuments

This is in response to your request for an opinion regarding the applicability of the Professional Land Surveyors' Act in the above referenced matter. I regret the press of business and the (internal) Legal Office review process, has prevented a more prompt response. Specifically, you posed the following question:

Question

Does the filing of a "corner record" obviate the need for filing a "record of survey" when a monument of a different character, not previously shown on any public record, is recovered during the course of conducting a field survey?

Conclusion

The Professional Land Surveyors' Act does not require the filing of a "record of survey" in *every* circumstance where a monument of a different character, not previously shown on any public record, is recovered during the course of conducting a field survey. Generally, the filing of a record of survey is required where there is "material evidence or physical change," which does not appear on any existing subdivision map, official map, or record of survey previously recorded or filed in the office of the county recorder. However, as a matter of law, it cannot be said that a record of survey is absolutely required in every circumstance. The filing of a corner record may obviate the need to file a record of survey provided the exact requirements of Section 8765(d) are met, and provided "sufficient monumentation" exists to establish the "precise location of property corners." This may vary among jurisdictions depending upon local development patterns as well as local standards of land surveying practice.

Analysis

In the course of conducting a field survey, a land surveyor may discover monuments that had not been previously recorded on any subdivision map, official maps or other public record due to the

fact that the newly discovered monuments were established prior to the modern mandatory filing requirements. As such, in older developed subdivisions, it is not uncommon for a land surveyor to discover monuments of an unknown origin that do not appear on any previously filed public records. This is particularly true in southern California. Although a land surveyor may certainly file a "record of survey" with the county surveyor in the county in which the survey was made, it is common practice in many local areas for the land surveyor to simply file a "corner record" with the county surveyor. It is our understanding that the standard of practice varies from county to county as to what documents are actually filed and accepted by local official county surveyors.

The question presented for analysis concerns the relationship between the filing of a "record of survey" and of a "corner record." Specifically, we are asked whether the filing of a "corner record" obviates the need for filing a "record of survey" in the aforementioned circumstance.

The Professional Land Surveyors' Act regulates the practice of land surveying. (Bus. & Prof. Code § 8700 et seq., hereinafter referred to as the "Act.")¹ The Act encourages and even mandates in some circumstances the recording of a "record of survey" when certain conditions are present. (§ 8762.) In this manner, the Act is intended to promote the recording of records of survey. Accordingly, if any of the circumstances set forth in subdivisions (a) through (e) of section 8762 occur or are discovered, a record of survey is required to be filed. Pursuant to section 8762(a), the filing of record of survey is required in a circumstance where there is "material evidence or physical change, which ... does not appear on any subdivision map, official map, or record of survey previously recorded or filed in the office of the county recorder" (§ 8762(a).)² Consequently, in a circumstance where a land surveyor conducts a field survey and discovers monuments that do not appear on any previously filed public records, section 8762's mandatory filing requirements would appear to apply. Nevertheless, there are few significant exemptions from the record of survey filing requirement mandated by section 8762.

¹ All statutory references are to the Business and Professions Code unless indicated otherwise.

² In relevant part, 8762 specifically provides:

"After making a field survey in conformity with the practice of land surveying, the surveyor or civil engineer **may file** with the county surveyor in the county in which the survey was made, a record of the survey.

After making a field survey in conformity with the practice of land surveying, the licensed land surveyor or registered civil engineer **shall file** with the county surveyor in the county in which the field survey was made a record of the survey relating to land boundaries or property lines, if the field survey discloses any of the following:

(a) Material evidence or physical change, which in whole or in part does not appear on any subdivision map, official map, or record of survey previously recorded or filed in the office of the county recorder or county surveying department, or map or survey record maintained by the Bureau of Land Management of the United States.

. . ." (Emphasis added.)

In relevant part, section 8765(d) expressly provides that a record of survey need not be filed when the field survey is a "retracement of lines shown on a subdivision map, official map, or a record of survey."³ However, the following three conditions must also be satisfied: (1) there must be no "material discrepancies" with the field survey results and existing records⁴; (2) sufficient monumentation is found to establish the precise location of property corners thereon; and (3) a corner record is filed for any property corners which are set or reset or found to be of a different character than indicated by prior records. Whether the filing of a corner record obviates the need to file a record of survey will depend on the extent to which the factual conditions applicable to this exemption are satisfied.

In interpreting the statutory provisions in question, we may rely upon several principles of statutory construction. "In construing a statute, a court's objective is to ascertain and effectuate the underlying legislative intent." (Moore v. California State Board of Accountancy (1992) 2 Cal.4th 999, 1012.) In determining legislative intent, we look first to the language of the statute, giving effect to its plain meaning.⁵ In addition, various sections of all codes must be read together and harmonized if possible.⁶ In this sense, the codes are to be regarded as blending into each other and constituting but a single statute.⁷ Consequently, the codes must be construed to

³ Section 8765 specifically provides:

A record of survey is not required of any survey:

(a) When it has been made by a public officer in his or her official capacity and a reproducible copy thereof, showing all data required by Section 8764, except the recorder's statement, has been filed with the county surveyor of the county in which the land is located. Any map so filed shall be indexed and kept available for public inspection.

(b) Made by the United States Bureau of Land Management.

(c) When a map is in preparation for recording or shall have been recorded under the provisions of the Subdivision Map Act.

(d) When the survey is a retracement of lines shown on a subdivision map, official map, or a record of survey, where no material discrepancies with those records are found and sufficient monumentation is found to establish the precise location of property corners thereon, provided that a corner record is filed for any property corners which are set or reset or found to be of a different character than indicated by prior records. For purposes of this subdivision, a "material discrepancy" is limited to a material discrepancy in the position of points or lines, or in dimensions. (1939 ch. 41, 1941 ch. 834, 1959 ch. 447, 1974 ch. 1065, 1977 ch. 576, 1984 ch. 943, 1986 ch. 229, Emphasis added.)

⁴ A "material discrepancy" is limited to a material discrepancy in the position of points or lines, or in dimensions. (Bus. & Prof. Code § 8765(d).)

⁵ Kimmel v. Goland (1990) 51 Cal.3d 202, 208-209.

⁶ Channell v. Superior Court of Sacramento County (1964) 226 Cal. App.2d 246; Rupley v. Johnson (1953) 120 Cal.App.2d 548; In Re Thrasher's Guardianship (1951) 105 Cal.App.2d 768.

⁷ Pesce v. Department of Alcoholic Beverage Control (1958) 51 Cal.2d 310.

give effect to all provisions, if reasonably possible.⁸ Nevertheless, statutes granting exemptions from a general requirement must be strictly and narrowly construed. (*U.S. v. Allen* (163 U.S. 499, 16 S.Ct. 1071).)⁹ This rule is particularly applicable where the general statutory requirements promote the public welfare.

Applying these rules, it must be noted that, although somewhat similar in nature, a corner record and a record of survey are not equivalent in scope or significance. Nevertheless, the Legislature has provided for their use as alternatives under expressly limited circumstances. Corner records and records of survey may be filed as alternatives but only in narrowly defined situations. A corner record need not be filed if a proper record of survey is filed and other conditions are met. (§ 8773.4(b).) On the other hand, a record of survey need not be filed if a corner record is filed and the other requirements of section 8765(d) are met.

The California Attorney General has previously opined and concluded that a corner record is not an alternative to the express requirement for filing a record of survey in a circumstance where "points" or "lines" are *newly established*. (64 Ops. Cal. Atty. Gen. 224, emphasis added.) Consequently, the exemption in section 8765(d) only applies when the field survey is best characterized as essentially a "retracement of lines" and other conditions are satisfied. However, if the field survey results in the establishment of new points or lines, a record of survey is required to be filed. Ultimately, the primary factual issue in determining whether a record of survey is required to be filed, will always be whether or not the points or lines revealed in the field survey are "newly established." Notwithstanding the aforementioned, it is important to remember that there may be points or lines previously established by other means such as a lot line adjustment or by grant deed which do not require the filing of a record of survey where no monumentation is accomplished or field survey conducted.¹⁰ Assuming that the points and lines revealed in a field survey are not newly established, it is necessary to examine the requirements of the exemption expressed in section 8762(d).

In determining whether points or lines are being newly established or there is simply a retracement of existing lines, section 8762(d) requires that there be no "material discrepancies" in the lines, points or dimensions shown on a subdivision map, official map, or a record of survey when compared with the position of points, lines or in dimensions derived from a field survey. Section 8765(d) also requires that "sufficient monumentation" be found to "establish the precise

⁸ *Pareses v. California State Board of Prison Directors* (1929) 208 Cal. 353; *People v. Pryal* (App.1914) 25 Cal.App. 779.

⁹ "Under the familiar rule of construction, "expressio unius est exclusio alterius," where exceptions to a general rule are specified by statute, other exceptions are not to be implied or presumed. (*Wildlife Alive v. Chickering* (1976) 18 Cal.3d 190, 195.)

¹⁰ See 77 Ops. Cal. Atty. Gen 231, regarding lot lines adjustments.

HOWARD BRUNNER

August 30, 1999

Page 5

location of property corners." Meeting this requirement may be where standards of professional practice may vary in different jurisdictions. Again, this will be a factual question. It may be argued that where monuments are discovered or recovered that are not shown on prior records, it is impossible to establish the "precise location of property corners." On the other hand, it is entirely possible that the field survey results are consistent with existing public records despite the fact that previously set monuments may not appear on prior records. One may reasonably rely upon the newly discovered monumentation as "sufficient" to establish the "precise location of property corners" where the location of the monuments are consistent with the overall land development pattern of the subdivision (i.e., consistent with the establishment of existing roads and other infrastructure) and where the public has historically relied upon that monumentation in past transfers of real property. This will be a factual judgment call and may vary on a case-by-case basis. It is our understanding that in older subdivisions, original monumentation may no longer exist and a land surveyor may discover an entire constellation of monuments not previously recorded.¹¹ So long as all of the monuments are consistent with existing records and have historically been relied upon, the filing of a corner record would obviate the need to file a record of survey. In such a circumstance, it would appear that the field survey is simply a "retracement of lines" shown on prior records.

In summary, generally, the filing of record of survey is required in a circumstance where there is "material evidence or physical change," which does not appear on any existing subdivision map, official map, or record of survey previously recorded or filed in the office of the county recorder. As a matter of law, it cannot be said that a record of survey is absolutely required in every circumstance. The filing of a corner record may obviate the need to file a record of survey provided the exact requirements of Section 8765(d) met and provided "sufficient monumentation" exists to establish the "precise location of property corners." This may vary among jurisdictions depending upon local development patterns and land use history.

I trust this is responsive to your request.

DERRY L. KNIGHT

Deputy Director

Legal Affairs



By GARY W. DUKE

Staff Counsel

¹¹ There appears to be Legislative acknowledgment that in conducting a field survey, there may be property corners that are "set or reset or found to be of a different character than indicated prior records" as reflected the exemption requirements of § 8765(d). (Stats. 1984, ch. 943, § 4.)