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CLIENT ALERT:
Water Agencies Can Require an Easement as a Condition of Providing Water to a Newly-Subdivided Parcel After the Mapping Process
by Anthony A. Verdugo and Sean A. Cottle

A municipal water district is not a "local agency" under the Subdivision Map Act and is not required to obtain an easement from residential property owners ***prior*** to the approval of a Final Parcel Map according to the recent case of *Tarbet v. East Bay Municipal Utility District*. The *Tarbet* case involved a plaintiff who rejected the notion of having an easement on his property in order to receive water service.

In 2005, owners of a large parcel of land in Hayward, California started the process of subdividing the property into three separate residential lots. In that same year, the County of Alameda approved a Tentative Parcel Map under a resolution stating that water service would be provided to each lot and connected to the District's water system in accordance with the "requirements of said District." The owners of the lots (including plaintiff Gregory Tarbet) then sought a letter from the District confirming that water service was available for each lot. The District responded and stated that it would provide water service contingent upon compliance with its regulations. A subsequent Final Parcel Map was approved and recorded, and showed a District utility easement on the newly subdivided properties in the form of a water main extension to provide water to each lot. No such utility easement was provided on the earlier Tentative Parcel Map.

Thereafter, Tarbet applied for water service. The District gave Tarbet a proposal for installing a service connection, including a 15 foot easement onto his property to allow for the installation and maintenance of the pipeline and blowoff assembly. Tarbet deemed the proposal unacceptable since it required an easement over his property. The District then refused to provide service.

Tarbet petitioned the court for a writ of mandate and sought to compel the District to provide water service. He argued in part that (1) the Subdivision Map Act provided him with "vested rights" precluding the District from obtaining any easements it had not acquired *prior* to the County's approval of the Final Parcel Map for his property, and (2) the District failed to abide by the County subdivision ordinance requiring the District to review the Tentative Parcel Map and obtain any necessary easements *prior* to the County's approval of the Final Parcel Map.

The First Appellate District affirmed that neither the Subdivision Map Act nor the County's subdivision ordinance imposed a duty on the District to acquire a pipeline easement during the parcel map review process (and *prior* to the approval of the Final Parcel Map). The court reasoned that the County -- not the District -- was the "local agency" under the Subdivision Map Act for purposes of the map approval process. As such, the District was not the "local agency" subject to the vesting rights restrictions of the Subdivision Map Act.

The court also disagreed with Tarbet's theory that the District waived its right to seek an easement by not asserting its right at the time the District issued the water service assessment letter. The court found that nothing in the Subdivision Map Act required a water agency to agree to serve water to individuals

like the plaintiff, or to acquire an easement from property owners for the purposes of providing water service. Thus, the District had no obligation to acquire an easement on the property *before* the Final Parcel Map was approved.

As a result, **landowners** planning to subdivide large parcels of property ***can*** **now be required by local water agencies to grant easements** over the subdivided parcels (to obtain water service) **even after the subdivision mapping process has ended.** ■

Sean A. Cottle
408.947.2404
sean.cottle@hogefenton.com

Anthony A. Verdugo
408.947.2422
anthony.verdugo@hogefenton.com

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