

CLSA Legislative Proposal

Streets and Highways Code – Vacation of a Public Service Easement – Delegation to Local Government Official

Background

The Streets and Highways Code contains a comprehensive and orderly procedure to vacate public streets, highways, and service easements (Sections 8300 to 8363). A public service easement as defined in Section 8306 means “a right-of-way, easement, or use restriction acquired for public use by dedication or otherwise for sewers, pipelines, polelines, electrical transmission and communication lines, pathways, storm drains, drainage, canal, water transmission lines, light and air, and other limited use public easements other than for street or highway purposes.”

These “public service easements” are often required as a condition of approval for the division of land pursuant to the Subdivision Map Act (SMA). Many times these dedicated “public service easements” are never used for the original intended purpose for which they were dedicated and cannot be converted for other uses. For example, a waterline easement cannot be used for a sewer line or for public access.

The statute allows a “legislative body” of a local agency to summarily vacate a public service easement in certain specified instances (see Section 8333). The statute requires a “legislative body” of a local agency to follow certain prescribed activities in order to vacate a “public service easement” such as the adoption of a resolution containing specified information (see Section 8335).

Statement of the Problem

Unfortunately, the requirement that a “legislative body” adopt a resolution to summarily vacate a “public service easement” is a costly and time-consuming process. It requires that the resolution be placed on a City Council or Board of Supervisors agenda and be voted upon. This activity could and should be delegated to a public official at the discretion of the local “legislative body.”

Proposed Solution

Alternatively, CLSA proposes to streamline the process of vacating a “public service easement” by allowing a local “legislative body” to delegate this function to any public officer or employee designated by the legislative body. Not only does

this save resources and ensure prompt compliance, but it also frees the legislative body from a purely ministerial act in order to concentrate on more pressing matters before the local "legislative body."

Draft of Amendments to Streets and Highways Code Sections 8333 and 8335

Section 8333 of the Streets and Highways Code is amended to read:

8333. The legislative body of a local agency, ***or any public officer or employee designated by the legislative body***, may summarily vacate a public service easement in any of the following cases:

CEAC Surveyor Committee proposal:

The legislative body of a local agency, ~~*or any public officer or employee*~~ ***the city surveyor/county surveyor or the city engineer/county engineer or his/her designee as designated by the legislative body***, may summarily vacate a public service easement in any of the following cases:

(a) The easement has not been used for the purpose for which it was dedicated or acquired for five consecutive years immediately preceding the proposed vacation.

(b) The date of dedication or acquisition is less than five years, and more than one year, immediately preceding the proposed vacation, and the easement was not used continuously since that date.

(c) The easement has been superseded by relocation, or determined to be excess by the easement holder, and there are no other public facilities located within the easement.

(Amended by Stats. 2006, Ch. 311, Sec. 3. Effective January 1, 2007.)

Section 8335 of the Streets and Highways Code is amended to read:

8335. (a) The legislative body may vacate a street, highway, or public service easement pursuant to the authority provided in this chapter by adopting a resolution of vacation. ***Additionally, the legislative body may delegate the authority to vacate a public service easement to any public officer or employee pursuant to the authority provided in this chapter by recordation of a document containing the prescribed information in subdivision (b).***

(b) The resolution of vacation shall state all of the following:

(1) That the vacation is made under this chapter.

(2) The name or other designation of the street, highway, or public service easement and a precise description of the portion vacated. The description of the portion vacated may be by a precise map which is recorded or to which reference is made in the resolution and which is permanently maintained by the public entity.

(3) The facts under which the summary vacation is made. If the vacation is made pursuant to Section 8332, the statement shall include the date of the agreement. The resolution is prima facie evidence of the facts stated.

(4) That from and after the date the resolution is recorded, the street, highway, or public service easement vacated no longer constitutes a street, highway, or public service easement.

(Added by Stats. 1980, Ch. 1050, Sec. 29.)

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