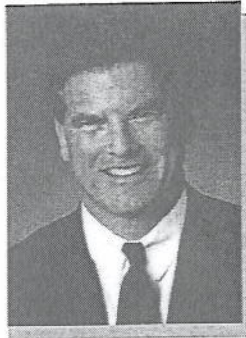
By: Mike Durkee, ESQ



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Facts:

I have an existing 5 lot industrial parcel map with 4 buildings and a common area lot. Since the time the map was filed, our client has decided that all 4 building lots need to increase by 2 feet in each direction. In order to do this, we will need to adjust the lot lines of all 4 building parcels and the common area.

Questions and Answers:

1. Can we do one lot line adjustment and adjust all 5 lots?

Under the old law, a Lot Line Adjustment was allowed between **two or more** existing adjacent parcels, where the land taken from one parcel is added to an **adjacent** parcel, and where a greater number of parcels than originally existed was not proposed. The resulting parcels only had to conform to local zoning and building ordinances. The Lot Line Adjustment rules were changed approximately 5 years ago (Senate Bill 497, adopted in 2001). By its own terms, the new law limits Lot Line Adjustments to "A lot line adjustment between **four** or **fewer** existing **adjoining** parcels..." Gov. Code § 66412(d). As such, one Lot Line Adjustment application could not address 5 lots.

2. Can we do two [or more] lot line adjustments, adjusting Lots 1, 2, and the common area and then adjust Lots 3, 4, and the common area again?

The answer to this question is much more involved and confused and ultimately hinges on the text of the local Map Act ordinance. Under the old law, a Lot Line Adjustment was allowed between **two or more** existing **adjacent** parcels, where the land taken from one parcel is added to an adjacent parcel, and where a greater number of parcels than originally existed was not proposed. The resulting parcels only had to conform to local zoning and building ordinances. Many commentators argued that Lot Line Adjustments under the old law were "ministerial acts" outside the scope of CEQA and other regulations. When the law was changed (Senate Bill 497, adopted in 2001), several questions arose regarding the meaning of the new law, including the ones you raise. Unfortunately, no clarifying response from the Legislature ever took place. What we are left with is absolute confusion. In short, whether an owner may adjust the lines of five or more existing parcels by filing a series of discrete applications for four or less parcels is often contingent on the local Map Act ordinance. For example, some jurisdiction simply limit each Lot Line Adjustment application to 4 parcels, but they will allow multiple applications, thereby ultimately allowing the adjustment of as many parcels as requested (through multiple applications). In contrast, other jurisdictions allow only 4 parcel adjustments (total) for the entire time the applicant owns the property! Under California law, a subdivider is prevented from evading the tentative and final map requirements under Section 66426 by making successive divisions of four or fewer parcels each. Although this prohibition against "quartering" applies to the determination between whether a parcel map or tentative map is required, its application to Lot Line Adjustments is unknown. The purpose of the anti-quartering rule appears to be founded on the idea that the taxpayer should be protected from undue burdens caused by improper development. Since most Lot Line Adjustment are for purposes other than development, the anti-quartering rule should not apply. There is nothing explicitly in the new law that prohibits multiple Lot Line Adjustment applications.

Unfortunately, different local agencies will likely have different interpretations of the "four or fewer" requirement, thereby leading to inconsistent application of this requirement throughout the state.

3. Is there another way to "adjust" the lines without having to do a tentative map and subsequent parcel map?

I have heard of a couple of creative solutions. Because the new Lot Line Adjustment law has been inconsistently interpreted and applied, some jurisdiction that want to allow more than 4 lot line adjustments have elected to enact new local regulations that are not adopted within the scope of

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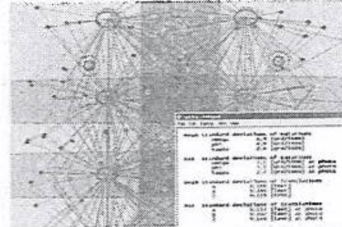

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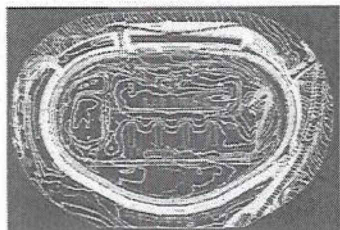

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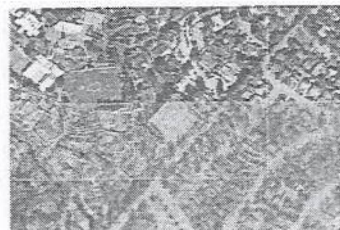

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the Lot Line Adjustment law's § 66412(d), but instead are adopted under the city or county's police power, using Map Act § 66499.20 _ when the land is held in common ownership. I am not sure if that approach does not have pre-emption problems.

A more legally supportable approach may this second alternative: I have heard that some jurisdiction have enacted "special" local regulations placed within their local Map Ordinance that allow for the approval of a "no condition" parcel map or tentative/final map (depending on the number of lots involved), if the proposal is for the simple adjustment of existing lot lines (and not to allow new development). Under this approach, the new adjusted lots are shown on the face of a new recordable map (parcel map or final map as the case may be), and pursuant to the Map Act's §§ 66499.20 _ , upon recordation, the relevant recorded map merges and re-subdivides the old lots, creating the new (adjusted) lots that are shown on its face. ❖

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